

Pacific Ethanol, Inc.
Form 8-K
April 15, 2010

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d) OF
THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported) April 10, 2010

PACIFIC ETHANOL, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

000-21467
(Commission File Number)

41-2170618
(IRS Employer
Identification No.)

400 Capitol Mall, Suite 2060, Sacramento, CA
(Address of principal executive offices)

95814
(Zip Code)

Registrant's telephone number, including area code: (916) 403-2123

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01 Entry into a Material Definitive Agreement.

Entry of Order Approving Stipulation for Settlement of Claim

On April 13, 2010, the Superior Court of the State of California for the County of Los Angeles entered an Order Approving Stipulation for Settlement of Claim (the “Order”) in the matter entitled Socius CG II, Ltd. v. Pacific Ethanol, Inc. The Order provides for the full and final settlement of Socius GC II, Ltd.’s (“Socius”) \$4,000,000 claim against us (the “Claim”). Socius purchased the Claim from Lyles United, LLC (“Lyles United”), a creditor of Pacific Ethanol, Inc., pursuant to the terms of a Purchase Agreement dated effective as of April 10, 2010 between Socius and Lyles United. The Claim consists of the right to receive \$4,000,000 of principal amount of and under a loan made by Lyles United to us pursuant to the terms of an Amended and Restated Promissory Note dated November 7, 2008 in the original principal amount of \$30,000,000. Pursuant to the terms of the Order, on April 14, 2010, we issued and delivered to Socius 3,750,000 shares of our common stock (the “Settlement Shares”), subject to adjustment as set forth in the Order.

The Settlement Shares represent approximately 5.67% of the total number of shares of our common stock outstanding immediately preceding the date of the Order. The total number of shares of our common stock to be issued to Socius or its designee in connection with the Order will be adjusted on the 6th trading day following the date on which the Settlement Shares are issued, as follows: (i) if the number of VWAP Shares (as defined below) exceeds the number of Settlement Shares initially issued, then we will issue to Socius or its designee additional shares of our common stock equal to the difference between the number of VWAP Shares and the number of Settlement Shares, and (ii) if the number of VWAP Shares is less than the number of Settlement Shares, then Socius or its designee will return to us for cancellation that number of shares as equals the difference between the number of VWAP Shares and the number of Settlement Shares.

The number of VWAP Shares is equal to (i) \$4,000,000 divided by 80% of the volume weighted average price as reported by Bloomberg LP (“VWAP”) of our common stock over the 5-day trading period immediately following the date on which the Settlement Shares were delivered to Socius, plus (ii) \$30,213 for Socius’ legal fees, expenses and costs incurred through March 29, 2010, plus an amount equal to Socius’ reasonable legal fees, expenses and costs incurred after March 29, 2010, with the total divided by the VWAP of our common stock over the 5-day trading period immediately following the date on which the Settlement Shares were delivered to Socius. In no event will the number of shares of our common stock issued to Socius or its designee in connection with the settlement of the Claim, aggregated with all shares of our common stock then owned or beneficially owned or controlled by, collectively, Socius and its affiliates, at any time exceed (x) 9.99% of the total number of shares of our common stock then outstanding, or (y) without our prior written consent, that number of shares of our common stock that would trigger a new limitation under Internal Revenue Code Section 382. In addition, in no event will the aggregate number of shares of our common stock issued to Socius or its designee in connection with the settlement of the Claim, aggregated with any other shares of our common stock issued to Socius and/or its designees by us, at any time exceed 19.99% of the total number of shares of our common stock outstanding immediately preceding the date of the Order unless we have obtained either (1) stockholder approval of the issuance of more than such number of shares of our common stock pursuant to NASDAQ Marketplace Rule 5635(d) or (2) a waiver from NASDAQ of our compliance with Rule 5635(d).

The description of the Order does not purport to be complete and is qualified in its entirety by reference to the Order, which is filed as Exhibit 10.1 to this report and incorporated herein by reference.

Item 3.02 Unregistered Sale of Equity Securities.

The information set forth in Item 1.01 of this report is incorporated herein by reference.

The offer and sale of the securities described in Item 1.01 were effected in reliance on Section 3(a)(10) of the Securities Act of 1933, as amended.

Item 8.01 Other Events.

Purchase Agreement with Lyles United

On April 10, 2010, Socius and Lyles United entered into a Purchase Agreement (the "Purchase Agreement") which provides for the sale by Lyles United to Socius of Lyles United's right to the Claim. As of the date of the Purchase Agreement, we were indebted to Lyles United for unpaid principal amount of \$20,000,000 under the Lyles United Note. We are a party to the Purchase Agreement through our execution of an acknowledgment contained therein.

In the acknowledgment, we acknowledged and agreed with Socius and Lyles United (i) that certain of the recitals in the Purchase Agreement are true and correct, (ii) that the sale of the \$4,000,000 claim to Socius covers only such amount, that Lyles United reserves and preserves all of its other claims and interests under the Lyles United Note and that Lyles United's sale of the \$4,000,000 claim does not in any way prejudice or have any adverse effect on such other claims and interests of Lyles United under the Lyles United Note (iii) that the execution, delivery and performance of the Purchase Agreement does not and will not conflict with the terms of the Lyles United Note (or any credit enhancement documents that have been executed in connection with the Lyles United Note) nor will it require any waiver or consent, (iv) that the Lyles United Note is valid, outstanding and enforceable in accordance with its terms and is not subject to any defense or offset and that Lyles United continues to have a valid, enforceable and perfected security interest in certain of our assets pursuant to certain credit enhancement documents entered into by us and Lyles United in connection with the Lyles United Note, and (v) that Socius and Lyles United are relying on our acknowledgments and agreements in entering into the Purchase Agreement.

The description of the Purchase Agreement does not purport to be complete and is qualified in its entirety by reference to the Purchase Agreement, which is filed as Exhibit 99.1 to this report and incorporated herein by reference.

Complaint for Damages

In connection with the purchase of the Claim and pursuant to the terms of the Purchase Agreement, on April 12, 2010, Socius filed a complaint for damages against us with the Court. On April 13, 2010, our counsel and counsel for Socius filed with the Court a joint ex parte application for court order approving stipulation for settlement of Claim. After holding a hearing, the Court issued the Order on April 13, 2010.

Item 9.01 Financial Statements and Exhibits.

Exhibit No.	Description
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10.1	Order Approving Stipulation for Settlement of Claim (*)
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99.1 Purchase Agreement dated April 10, 2010 by and between Lyles United, LLC and Socius CG II, Ltd. containing an Acknowledgment by Pacific Ethanol, Inc. (*)

*

Filed herewith

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: April 14, 2010

PACIFIC ETHANOL, INC.

By: /S/ CHRISTOPHER W. WRIGHT
Christopher W. Wright,
Vice President, General Counsel & Secretary

EXHIBITS FILED WITH THIS REPORT

Number	Description
10.1	Order Approving Stipulation for Settlement of Claim (*)
99.1 Purchase Agreement dated April 10, 2010 by and between Lyles United, LLC and Socius CG II, Ltd. containing an Acknowledgment by Pacific Ethanol, Inc. (*)	

