

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM S-8  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

**PACIFIC ETHANOL, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of incorporation or organization)

**41-2170618**  
(I.R.S. Employer Identification No.)

**400 Capitol Mall, Suite 2060, Sacramento, California**  
(Address of Principal Executive Offices)

**95814**  
(Zip Code)

**2016 STOCK INCENTIVE PLAN**

(Full title of the plan)

**Neil M. Koehler**  
**Chief Executive Officer**  
**Pacific Ethanol, Inc.**  
**400 Capitol Mall, Suite 2060, Sacramento, California 95814**  
(Name and address of agent for service)

**(916) 403-2123**  
(Telephone number, including area code, of agent for service)

*Copies of all correspondence to:*

**John T. Bradley, Esq.**  
**Troutman Sanders LLP**  
**5 Park Plaza, Suite 1400, Irvine, California 92614**  
**(949) 622-2700**

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company,” and “emerging growth company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer   
Non-accelerated filer  (Do not check if a smaller reporting company)

Accelerated filer   
Smaller reporting company   
Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

**CALCULATION OF REGISTRATION FEE**

| Title of Securities to be Registered | Amount to be Registered <sup>(1)</sup> | Proposed Maximum Offering Price Per Share <sup>(2)</sup> | Proposed Maximum Aggregate Offering Price <sup>(2)</sup> | Amount of Registration Fee <sup>(2)</sup> |
|--------------------------------------|--|--|--|---|
| Common Stock, \$0.001 par value      | 2,500,000                              | \$3.00   | \$7,500,000.00   | \$933.75                                  |

(1) In the event of a stock split, stock dividend, or similar transaction involving the Registrant’s Common Stock, the number of shares registered hereby shall automatically be increased to cover the additional shares in accordance with Rule 416(a) under the Securities Act of 1933, as amended (the “Securities Act”).

(2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(h) under the Securities Act, and is based upon the average of high and low sales prices of the Registrant’s common stock on The NASDAQ Capital Market on June 11, 2018.



## EXPLANATORY NOTE

Pacific Ethanol, Inc. (referred to as “we,” “us,” and through similar terms) filed the following registration statement with the Securities and Exchange Commission on Form S-8:

- Registration No. 333-212070, filed on June 16, 2016 with respect to 1,150,000 shares of our common stock relating to our 2016 Stock Incentive Plan (the “Plan”).

We amended the Plan in March 2018 to increase the number of shares covered by the Plan from 1,150,000 to 3,650,000 shares of common stock. Our stockholders adopted and approved this increase at our 2018 annual meeting of stockholders held on June 14, 2018.

This Form S-8 is filed for the purpose of registering the additional 2,500,000 shares of common stock under the amended Plan.

## PART I

### INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The documents containing the information specified in Part I, Items 1 and 2, will be sent or given to each participant in accordance with Form S-8 and Rule 428(b)(1) of the Securities Act. We will furnish without charge to each participant to whom information is required to be delivered, upon written or oral request, a copy of each document incorporated by reference in Part II, Item 3 of this registration statement, which documents are incorporated by reference in the Section 10(a) prospectus, and any other documents required to be delivered to them under Rule 428(b) of the Securities Act. Requests should be directed to Pacific Ethanol, Inc., 400 Capitol Mall, Suite 2060, Sacramento, California 95814, Attention: Secretary. Our telephone number is (916) 403-2123.

## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

#### ITEM 3. Incorporation of Documents by Reference.

We incorporate the following documents by reference in this registration statement:

- Our current report on Form 8-K for June 14, 2018, as filed with the Securities and Exchange Commission on June 14, 2018;
- Our quarterly report on Form 10-Q for the three months ended March 31, 2018, as filed with the Securities and Exchange Commission on May 10, 2018;
- Our current report on Form 8-K for May 8, 2018, as filed with the Securities and Exchange Commission on May 8, 2018;
- Our current report on Form 8-K for March 30, 2018, as filed with the Securities and Exchange Commission on April 5, 2018;
- Our annual report on Form 10-K for the year ended December 31, 2017, as filed with the Securities and Exchange Commission on March 15, 2018;
- Our current report on Form 8-K for February 28, 2018, as filed with the Securities and Exchange Commission on February 28, 2018; and
- The description of our capital stock contained in our Current Report on Form 8-K filed with the Securities and Exchange Commission on April 13, 2017.

All reports and other documents we subsequently file after the date of this registration statement under Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (“Exchange Act”), prior to the filing of a post-effective amendment which indicates that all securities offered under this registration statement have been sold, or which deregisters all securities then remaining unsold, shall be deemed incorporated by reference into this registration statement and shall be a part of this registration statement from the date of filing such documents.

For purposes of this registration statement, any document or any statement contained in a document incorporated or deemed to be incorporated herein by reference shall be deemed to be modified or superseded to the extent that a subsequently filed document or a statement contained herein or in any other subsequently filed document, which also is or is deemed to be incorporated herein by reference modifies or supersedes such document or such statement in such document. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this registration statement.

Notwithstanding the above, information that is “furnished to” the Securities and Exchange Commission shall not be deemed “filed with” the Securities and Exchange Commission and shall not be deemed incorporated by reference into this registration statement.

ITEM 4. Description of Securities.

Not applicable.

ITEM 5. Interests of Named Experts and Counsel.

Not applicable.

ITEM 6. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law (“DGCL”) permits a corporation to indemnify its directors and officers against expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with a pending or completed action, suit or proceeding if the officer or director acted in good faith and in a manner the officer or director reasonably believed to be in the best interests of the corporation.

Our certificate of incorporation provides that, except in certain specified instances, our directors shall not be personally liable to us or our stockholders for monetary damages for breach of their fiduciary duty as directors, except liability for the following:

- any breach of their duty of loyalty to Pacific Ethanol or our stockholders;
- acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the DGCL; and
- any transaction from which the director derived an improper personal benefit.

In addition, our certificate of incorporation and bylaws obligate us to indemnify our directors and officers against expenses and other amounts reasonably incurred in connection with any proceeding arising from the fact that such person is or was an agent of ours. Our bylaws also authorize us to purchase and maintain insurance on behalf of any of our directors or officers against any liability asserted against that person in that capacity, whether or not we would have the power to indemnify that person under the provisions of the DGCL. We have entered and expect to continue to enter into agreements to indemnify our directors and officers as determined by our board of directors. These agreements provide for indemnification of related expenses including attorneys’ fees, judgments, fines and settlement amounts incurred by any of these individuals in any action or proceeding. We believe that these bylaw provisions and indemnification agreements are necessary to attract and retain qualified persons as directors and officers. We also maintain directors’ and officers’ liability insurance.

The limitation of liability and indemnification provisions in our certificate of incorporation and bylaws may discourage stockholders from bringing a lawsuit against our directors for breach of their fiduciary duty. They may also reduce the likelihood of derivative litigation against our directors and officers, even though an action, if successful, might benefit us and our stockholders. Furthermore, a stockholder's investment may be adversely affected to the extent that we pay the costs of settlement and damage awards against directors and officers as required by these indemnification provisions. At present, there is no pending litigation or proceeding involving any of our directors, officers or employees regarding which indemnification is sought, and we are not aware of any threatened litigation that may result in claims for indemnification.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to our directors, officers and controlling persons under the foregoing provisions of our certificate of incorporation or bylaws, or otherwise, we have been informed that in the opinion of the Securities and Exchange Commission, this indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

ITEM 7. Exemption from Registration Claimed.

Not Applicable.

ITEM 8. Exhibits.

| Exhibit Number      | Description   | Incorporation by Reference |             |                |             | Filed Herewith |
|---------------------|---|----------------------------|-------------|----------------|-------------|----------------|
|                     |   | Form                       | File Number | Exhibit Number | Filing Date |                |
| <a href="#">4.1</a> | <a href="#">Certificate of Incorporation</a>  | 10-Q                       | 000-21467   | 3.1            | 11/06/2015  |                |
| <a href="#">4.2</a> | <a href="#">Certificate of Designations, Powers, Preferences and Rights of the Series A Cumulative Redeemable Convertible Preferred Stock</a> | 10-Q                       | 000-21467   | 3.2            | 11/06/2015  |                |
| <a href="#">4.3</a> | <a href="#">Certificate of Designations, Powers, Preferences and Rights of the Series B Cumulative Convertible Preferred Stock</a>            | 10-Q                       | 000-21467   | 3.3            | 11/06/2015  |                |
| <a href="#">4.4</a> | <a href="#">Certificate of Amendment to Certificate of Incorporation dated June 3, 2010</a>   | 10-Q                       | 000-21467   | 3.4            | 11/06/2015  |                |
| <a href="#">4.5</a> | <a href="#">Certificate of Amendment to Certificate of Incorporation dated June 8, 2011</a>   | 10-Q                       | 000-21467   | 3.5            | 11/06/2015  |                |
| <a href="#">4.6</a> | <a href="#">Certificate of Amendment to Certificate of Incorporation dated May 14, 2013</a>   | 10-Q                       | 000-21467   | 3.6            | 11/06/2015  |                |
| <a href="#">4.7</a> | <a href="#">Certificate of Amendment to Certificate of Incorporation dated July 1, 2015</a>   | 10-Q                       | 000-21467   | 3.7            | 11/06/2015  |                |
| <a href="#">4.8</a> | <a href="#">Amended and Restated Bylaws</a>   | 10-Q                       | 000-21467   | 3.1            | 11/12/2014  |                |
| <a href="#">4.9</a> | <a href="#">Specimen Common Stock Certificate</a>   | S-3                        | 333-217323  | 4.9            | 04/14/2017  |                |

**Incorporation by Reference**

| Exhibit Number       | Description  | Form | File Number | Exhibit Number | Filing Date | Filed Herewith |
|----------------------|--|------|-------------|----------------|-------------|----------------|
| <a href="#">4.10</a> | <a href="#">2016 Stock Incentive Plan (as amended through June 14, 2018)</a>                             | 10-Q | 000-21467   | 10.2           | 05/10/2018  |                |
| <a href="#">4.11</a> | <a href="#">Form of Employee Restricted Stock Agreement under 2016 Stock Incentive Plan</a>              | 10-K | 000-21467   | 10.5           | 03/15/2018  |                |
| <a href="#">4.12</a> | <a href="#">Form of Non-Employee Director Restricted Stock Agreement under 2016 Stock Incentive Plan</a> | 10-K | 000-21467   | 10.6           | 03/15/2017  |                |
| <a href="#">5.1</a>  | <a href="#">Opinion of Troutman Sanders LLP</a>  |      |             |                |             | X              |
| <a href="#">23.1</a> | <a href="#">Consent of Troutman Sanders LLP (contained in Exhibit 5.1)</a>                               |      |             |                |             | X              |
| <a href="#">23.2</a> | <a href="#">Consent of Independent Registered Public Accounting Firm</a>                                 |      |             |                |             | X              |
| 24.1                 | Power of Attorney (contained on the signature page to this registration statement)                       |      |             |                |             | X              |

ITEM 9. Undertakings.

The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to the registration statement:

- (i) To include any prospectus required by Section 10(a)(3) of the Securities Act;
- (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and
- (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

*Provided, however,* that paragraphs (1)(i) and (1)(ii) do not apply if the information required to be included in a post-effective amendment by those clauses is contained in periodic reports filed with or furnished to the Securities and Exchange Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference into the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the indemnification provisions summarized in Item 6 above, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Sacramento, State of California, on this 14<sup>th</sup> day of June, 2018.

PACIFIC ETHANOL, INC.,  
a Delaware corporation

By: /s/ NEIL M. KOEHLER  
Neil M. Koehler  
President and Chief Executive Officer

## POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Neil M. Koehler his attorney-in-fact and agent, with the power of substitution and resubstitution, for him and in his name, place or stead, in any and all capacities, to sign any amendment to this registration statement on Form S-8, and to file such amendments, together with exhibits and other documents in connection therewith, with the Securities and Exchange Commission, granting to such attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully as he might or could do in person, and ratifying and confirming all that the attorney-in-fact and agent, or his substitute or substitutes, may do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

| <u>Signature</u>                             | <u>Title</u>  | <u>Date</u>   |
|--|---|---------------|
| /s/ WILLIAM L. JONES<br>William L. Jones     | Chairman of the Board and Director  | June 14, 2018 |
| /s/ NEIL M. KOEHLER<br>Neil M. Koehler       | President, Chief Executive Officer (principal executive officer) and Director | June 14, 2018 |
| /s/ BRYON T. MCGREGOR<br>Bryon T. McGregor   | Chief Financial Officer (principal financial and accounting officer)          | June 14, 2018 |
| /s/ MICHAEL D. KANDRIS<br>Michael D. Kandris | Chief Operating Officer and Director  | June 14, 2018 |
| /s/ TERRY L. STONE<br>Terry L. Stone         | Director  | June 14, 2018 |
| /s/ JOHN L. PRINCE<br>John L. Prince         | Director  | June 14, 2018 |
| /s/ DOUGLAS L. KIETA<br>Douglas L. Kieta     | Director  | June 14, 2018 |
| /s/ LARRY D. LAYNE<br>Larry D. Layne         | Director  | June 14, 2018 |



TROUTMAN SANDERS LLP  
Attorneys at Law  
5 Park Plaza, Suite 1400  
Irvine, CA 92614-2545  
949.622.2700 telephone  
troutmansanders.com

June 14, 2018

Pacific Ethanol, Inc.  
400 Capitol Mall, Suite 2060  
Sacramento, California 95814

Re: *Registration Statement on Form S-8*

Ladies and Gentlemen:

At your request, we have examined the form of registration statement on Form S-8 (the "Registration Statement") to be filed by Pacific Ethanol, Inc., a Delaware corporation (the "Company"), with the Securities and Exchange Commission (the "Commission") pursuant to the Securities Act of 1933, as amended (the "Act"), for the purpose of registering 2,500,000 shares of common stock, \$0.001 par value per share, of the Company (the "Shares"), to be sold by the Company upon the exercise of options or pursuant to awards to be granted by the Company under its 2016 Stock Incentive Plan (as amended). The Shares will be offered and sold pursuant to the Company's Registration Statement to be filed with the Commission. This opinion is being furnished in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Act, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement or prospectus, other than as to the validity of the Shares.

We have examined such matters of fact and questions of law as we have considered appropriate for purposes of this letter. In our examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, and the conformity to authentic original documents of all documents submitted to us as copies. We have also assumed that the Shares will be evidenced by appropriate certificates that have been properly executed and delivered. With your consent, we have relied upon the foregoing and upon certificates and other assurances of officers of the Company and others as to factual matters without having independently verified such factual matters.

You have informed us that the Company may issue the Shares from time to time on a delayed or continuous basis. This opinion is limited to the General Corporation Law of the State of Delaware ("DGCL"), including the statutory provisions of the DGCL, all applicable provisions of the Constitution of the State of Delaware and all reported judicial decisions interpreting these laws, and federal law, exclusive of state securities and blue sky laws, rules and regulations.

Subject to the foregoing, it is our opinion that the Shares have been duly authorized by all necessary corporate action of the Company, and, upon issuance of the Shares in accordance with the terms of the Plan, the Registration Statement, the terms of the Company's certificate of incorporation and applicable law, and delivery and payment therefor, such Shares will be validly issued, fully paid and nonassessable securities of the Company.

This opinion is for your benefit in connection with the Registration Statement and may be relied upon by you and by persons entitled to rely upon it pursuant to the applicable provisions of federal securities laws. We consent to your filing this opinion as an exhibit to the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission thereunder.

Respectfully submitted,

/s/ TROUTMAN SANDERS LLP

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**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in this registration statement on Form S-8 of Pacific Ethanol, Inc. of our reports dated March 15, 2018 relating to the consolidated financial statements and the effectiveness of internal control over financial reporting of Pacific Ethanol, Inc., which appear in the Annual Report on Form 10-K of Pacific Ethanol, Inc. for the year ended December 31, 2017.

/s/ RSM US LLP

Sioux Falls, South Dakota

June 14, 2018

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