Ethanol Production Incentive Cash Fund (EPIC) REPORT

Prepared by:

The Nebraska Department of Revenue
Motor Fuels Division
and
The Nebraska Ethanol Board

December 2009

Dave Heineman
Governor

STATE OF NEBRASKA
DEPARTMENT OF REVENUE
Douglas A. Ewald, *Tax Commissioner*
MOTOR FUELS DIVISION
P.O. Box 98904 • Lincoln, Nebraska 68509-8904
Phone: (402) 471-5730 • Fax (402) 471-5607
www.revenue.ne.gov/fuels

December 1, 2009

Mr. Patrick J. O'Donnell
Clerk of the Legislature
Nebraska State Capitol Building
Room 2018
Lincoln, NE 68509

Dear Mr. O'Donnell:

This report has been prepared by the Nebraska Department of Revenue and the Nebraska Ethanol Board in compliance with the provisions of Neb. Rev. Stat. § 66-1345(6), which states:

> *(6) On or before December 1, 2003, and each December 1 thereafter, the Department of Revenue and the Nebraska Ethanol Board shall jointly submit a report to the Legislature which shall project the anticipated revenue and expenditures from the Ethanol Production Incentive Cash Fund through the termination of the ethanol production incentive programs pursuant to section 66-1344. The initial report shall include a projection of the amount of ethanol production for which the Department of Revenue has entered agreements to provide ethanol production credits pursuant to section 66-1344.01 and any additional ethanol production which the Department of Revenue and the Nebraska Ethanol Board reasonably anticipate may qualify for credits pursuant to section 66-1344.*

The report is divided in four sections: Agreements; Analysis; Funding; and Conclusion.

- The Agreement section lists the 11 facilities that have qualified for production credits, including their physical location and plant size.
- The Analysis section is based upon the combined data experiences of the Department of Revenue and Nebraska Ethanol Board.
- The Funding section identifies the various sources of funds for the fiscal years covered in this report.
- The Conclusion section discusses our best estimates of costs and how these costs relate to the time periods available to earn and use production credits under Neb. Rev. Stat. § 66-1344.

If you have any questions regarding this report, please contact:

Karen Rowley
Audit Manager
Nebraska Department of Revenue
Motor Fuels Division
(402) 471-5756

Steve Sorum
Project Manager
Nebraska Ethanol Board
(402) 471-2941

Sincerely,

Douglas A. Ewald

Douglas A. Ewald
Tax Commissioner
Nebraska Department of Revenue

Sincerely,

Todd Sneller
Administrator
Nebraska Ethanol Board

cc: Senator Mike Flood, Speaker
Senator John Wightman, Chair, Executive Board of the Legislative Council
Senator Tom Carlson, Chair, Agriculture Committee
Senator Deb Fischer, Chair, Transportation & Telecommunications Committee
Senator Lavon Heidemann, Chair, Appropriations Committee
Senator Abbie Cornett, Chair, Revenue Committee
Governor Heineman
Gerry Oligmueller, State Budget Administrator
Lauren Kintner, Governor's Policy Research Office
Cindy Miserez, Budget Management Analyst

Agreements

The Department of Revenue entered into agreements with 29 entities to provide ethanol production credits pursuant to Neb. Rev. Stat. § 66-1344. Of those 29 entities, the following 11 met all the eligibility requirements by June 30, 2004.

Original Name	Plant Location	Plant Size (Gallons)
Cornhusker Energy Lexington LLC*	Lexington	40 million
Elkhorn Valley Ethanol LLC*	Norfolk	40 million
Horizon Renewable Energy LLC*	Cambridge	20 million
Husker Ag Processing LLC	Plainview	20 million
KAAPA Ethanol LLC	Axtell	30 million
Midwest Renewable Energy LLC	Sutherland	14 million
Nordic Biofuels of Ravenna LLC**	Ravenna	84 million
Platte Valley Fuel Ethanol LLC	Central City	40 million
S.W. Energy LLC*	McCook	30 million
Trenton Agri Products LLC	Trenton	30 million
Wheatland Industries LLC*	Madrid	40 million

* Denotes projects whose initial plant size is stated as 100,000 gallons. Final plant size projected to increase to listed amount.

** Denotes project whose initial plant size is stated as 150,000 gallons. Final plant size projected to increase to listed amount.

Of the 11 plants that qualified, six were small plants frequently referred to as “pilot projects.” Five of these six plants were 100,000 gallon plants and one plant was a 150,000 gallon plant. These pilot projects may become Research and Development units. All of these pilot plants shut down operations after meeting the eligibility requirements and five have since built full-size production facilities.

Analysis

Of the 11 plants that qualified on or before June 30, 2004, ten are operational.

1. Cornhusker Energy Lexington LLC
2. Elkhorn Valley Ethanol LLC
3. Mid America Agri Products/Horizon LLC (originally Horizon Renewable Energy LLC)
4. Husker Ag Processing LLC
5. KAAPA Ethanol LLC
6. Midwest Renewable Energy LLC
7. Abengoa Bioenergy of Nebraska LLC (originally Nordic Biofuels of Ravenna LLC)
8. Green Plains Central City LLC (originally Platte Valley Fuel Ethanol LLC)
9. Trenton Agri Products LLC
10. Mid America Agri Products/Wheatland LLC (originally Wheatland Industries LLC)

Mid America Agri Products/Horizon LLC ceased operations in January, 2009 after operating for approximately nine months. In an article published by NTV Nebraska.TV on May 5, 2009, the plant CEO Robert Lundeen stated, "Due to economic conditions, the plant has closed." There has been interest from prospective buyers of the facility, though no sale is currently pending. With industry profitability conditions showing marked improvement in the 2nd and 3rd quarters of 2009, it seems likely the plant may resume operations at some point. However, it does not appear likely that it can be restarted in time to earn significant production credits in the current fiscal year.

S.W. Energy LLC has demonstrated no visible activity since a small pilot plant qualified the project for the production credit program in June, 2004. There has been no construction work at the site for more than five years and given permitting, financing, and construction lead times, it appears unlikely this project can earn production credits before the program sunset date of June 30, 2012.

Funding

Funding is derived from several different sources. They include:

- Grain checkoff - an excise tax of seven-eighths cent per bushel on the sale of corn and seven-eighths cent per hundredweight on the sale of grain sorghum (Neb. Rev. Stat. § 66-1345.01);
- General Funds (Neb. Rev. Stat. § 66-1345.04);
- Transfers from the Petroleum Release Remedial Action Cash Fund (Neb. Rev. Stat. § 66-1519);
- Off-road refunds - retention of a portion of tax refunded on motor vehicle fuels (Neb. Rev. Stat. § 66-726[2]);
- Denaturant tax - a tax on natural gasoline used as a denaturant (Neb. Rev. Stat. § 66-489[2]);
- Transfers from the Agricultural Alcohol Fuel Tax Fund (AAFTF) - specific transfers from AAFTF authorized during the 2009 Special Session;
- AAFTF transfers - those funds in excess of $550,000 in the AAFTF, which would otherwise be designated to fund the Ethanol Board (Neb. Rev. Stat. § 66-489[2]); and
- Interest while the EPIC Fund maintains a positive balance.

Conclusion

This report assumes that production credits are being earned and claimed by ten facilities. It is projected that two facilities will complete their entitlement period during fiscal year 2010-2011. It is anticipated that the remaining eight facilities will continue earning and claiming production credits through fiscal year 2011-2012.

Projections show that the EPIC Fund will not meet its obligations during fiscal year 2010-2011. At the conclusion of the entitlement periods available to qualified claimants on June 30, 2012, it is estimated that unpaid production credits of approximately **$4.3 million** will remain.

Projected EPIC Fund Balance

Estimated Expenditures

FY	2009/2010	2010/2011	2011/2012	2012/2013	Totals
Plant 1	($2,812,500)	($2,100,000)			($4,912,500)
Plant 2	(2,812,500)	(2,812,500)			(5,625,000)
Plant 3	(2,812,500)	(2,812,500)	($2,200,000)		(7,825,000)
Plant 4	(2,812,500)	(2,812,500)	(2,812,500)		(8,437,500)
Plant 5	(2,812,500)	(2,812,500)	(2,812,500)		(8,437,500)
Plant 6	(2,812,500)	(2,812,500)	(2,812,500)		(8,437,500)
Plant 7	(2,812,500)	(2,812,500)	(2,812,500)		(8,437,500)
Plant 8	(2,812,500)	(2,812,500)	(2,812,500)		(8,437,500)
Plant 9	(2,812,500)	(2,812,500)	(2,812,500)		(8,437,500)
Plant 10		(2,812,500)	(2,812,500)		(5,625,000)
Plant 11					0
Totals	**($25,312,500)**	**($27,412,500)**	**($21,887,500)**		**($74,612,500)**

Estimated Revenues

FY	2009/2010	2010/2011	2011/2012	2012/2013	Totals
Grain Checkoff	$11,270,000	$11,270,000	$11,270,000	$2,750,000	$36,560,000
General Funds	10,750,000	5,500,000	2,500,000		18,750,000
Petroleum Release Remedial Action Fee	1,500,000	1,500,000	1,500,000		4,500,000
Off-Road Refund, Denaturant Tax & Transfers from AAFTF	454,000	28,000			482,000
AAFTF Transfers - (Excess of $550,000)					0
Totals	**$23,974,000**	**$18,298,000**	**$15,270,000**	**$2,750,000**	**$60,292,000**

Estimated Cash Flow

FY	2009/2010	2010/2011	2011/2012	2012/2013	Totals
Projected EPIC Beginning Balance	$9,409,196	$8,430,696	($443,804)	($7,061,304)	
EPIC Fund - Revenues	23,974,000	18,298,000	15,270,000	2,750,000	$60,292,000
EPIC Fund - Expenditures	(25,312,500)	(27,412,500)	(21,887,500)		(74,612,500)
Interest on Invested Funds	360,000	240,000			600,000
Totals	**$8,430,696**	**($443,804)**	**($7,061,304)**	**($4,311,304)**	