

Contracts with VeraSun for 2008 Delivery – January 22, 2009

Recently VeraSun made a proposal to certain of those with contracts to sell corn to VeraSun that called for delivery between the filing of the bankruptcy (October 31, 2008) and December 31, 2008 which had not been performed by VeraSun. Those contracts had lapsed or been "rejected" by VeraSun. Normally in bankruptcy when a contract has been rejected by the buyer (VeraSun), the seller has the right to file a claim for damages from that rejection and is freed from the obligations of the rejected contract. This means the seller would be free to sell or otherwise dispose of or use the corn that was under contract.

VeraSun has made a limited time offer to those sellers to extend the delivery date under the contract through December 2009. This means that the contract would be "reinstated" as a prepetition contract with a later delivery date. VeraSun would thus have a renewed opportunity to purchase the corn at the contract price in December, 2009, to reject the contract any time between now and December, 2009 or to try to reach an agreement with the seller for modification of the contract. Any seller who selects this option would be under a legal obligation to furnish the corn in accordance with the contract.

Each seller should assess its situation and determine if this option is beneficial and may wish to consult legal counsel. The Extension Option Form which was attached to the VeraSun notice **MUST BE POSTMARKED NO LATER THAN JANUARY 30, 2009**. Those who are not interested in the extension need not respond.

NOTE: THIS IS NOT INTENDED TO BE LEGAL ADVICE. INFORMATION DISCUSSED IN THIS PAPER MAY REQUIRE ADDITIONAL CONSULTATION WITH YOUR ATTORNEY.

This briefing paper was prepared by the National Corn Growers Association with information from David A. Lander, Thompson Coburn LLP, St. Louis, Missouri. For more information, please see www.ncga.com.