

In the Event of Sale, Possibilities for Grower Contracts with VeraSun – Dec. 22, 2008

Given recent speculation that a sale of some or all of the VeraSun ethanol plants may be imminent, the following question was posed to counsel:

What might happen to the grower contracts for corn if VeraSun is sold?

Response:

If a sale is approved then there are three alternatives (and generally this decision is made by the buyer):

1. The debtor may assume the contract and assign it to the buyer; (if there has been any type of default on the contract then the buyer or debtor must cure that default in order for it to be assumed and assigned;) under these circumstances the debtor is relieved from liability under the contract and the buyer becomes liable under the contract;
2. The debtor may reject the contract; (under these circumstances the other party to the contract may file a claim in the bankruptcy but has no claim against the buyer;) or
3. The debtor and the buyer may make some kind of a deal to consensually modify the contract and the buyer agrees to be bound by it. (For example, the averaging type of arrangement that is occurring at some of the original VeraSun plants.) This can only be done if both the buyer and the grower agree.

As a practical matter it seems that it is pretty unlikely that the buyer will want to assume many of these above market contracts. On the other hand, the buyer will need a steady supply of corn and will need some amount of good will, or will at least want to avoid bad will among the local or regional producers. Therefore, it is possible that at some of the plants the buyer will work to do a consensual type of arrangement.

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.
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