

2015

VeraSun energy bankruptcy poses perils for farmers and elevators

Roger McEowen

Iowa State University, mceowen@iastate.edu

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Recommended Citation

McEowen, Roger (2015) "VeraSun energy bankruptcy poses perils for farmers and elevators," *Ag Decision Maker Newsletter*: Vol. 13 : Iss. 2 , Article 2.

Available at: <http://lib.dr.iastate.edu/agdm/vol13/iss2/2>

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Farmland ownership, continued from page 2

A trend related to age and multiple ownership is a trend in Iowa towards more ownership by non-residents. In 1982, only six percent of the land was owned by people who either didn't live here or only lived in Iowa on a part-time basis. In 2007, 21 percent of the land is now owned by people who don't live in the state. This included 14 percent of the land owned by non-residents and 7 percent that is by part-time residents.

A majority of the owners, 56 percent, live on a farm. This means that 44 percent do not. The percentage of land owned by those who do not live on a farm has increased seven percent since 1982.

Rented acres

The percentage of farmland rented in Iowa has not significantly changed over the past few decades. In the coming years one would expect the percent of land rented to increase. An increase in age of owner, an increase in out of state owners, and an increase in multiple owners all point towards an increase in the amount of land that is rented. There are some mitigating factors, such as increasing age of farmers, mechanization and so forth, nonetheless, one would expect rented acres to increase over time.

One dramatic change that has occurred is the method of renting. Basically landowners have one of two types; cash rent or crop share. In 1982, the rented acres were equally divided between cash rent and crop share rent.

In 2007, however, this had changed dramatically with 77 percent of the rented acres now cash rented and 22 percent crop shared.

There appears to be two driving forces towards more cash rent. One is the changing nature of land ownership. An out of state owner is not likely to be interested in being paid a bushel of corn in Iowa. Similarly the nature of farming is also leading the increase in cash renting. As one person has more landlords it is easier to keep track of a cash rent as opposed to shares. Cash renting land has become so popular that there are actually more acres cash rented than there are farmed by the owner.

Changing land ownership

Iowa farmland ownership is changing and all indications are that it will continue to change for the foreseeable future. It is hard to predict exactly what this change will mean

But one thing is certain we will continue to see a more dispersed ownership and increase in concentration of the management of the land.

As Iowa prepares for its future, knowing and understanding the trends in land values will be important. Who will farm the land and how will it be farmed depend on our understanding of ownership trends.



VeraSun energy bankruptcy poses perils for farmers and elevators

By Roger McEowen, CALT Director, Leonard Dolezal Professor in Agricultural Law, (515) 294-4076, mceowen@iastate.edu

VeraSun Energy and its 24 subsidiaries filed Chapter 11 bankruptcy on October 31, 2008 in the United States Bankruptcy Court in Delaware. The bankruptcy filing raises numerous questions for farmers and grain elevators that have legal relationships with VeraSun.

The bankruptcy filing raises numerous questions for farmers who have contracted to deliver grain to VeraSun and also for elevators. Here's a rundown of the most important questions:

Q. Will farmers and elevators be paid for corn delivered before filing?

A. VeraSun will treat claims of corn suppliers that supplied corn to it at different times differently as is required by the bankruptcy code. VeraSun will treat all corn suppliers that supplied corn to its plants before October 11, 2008 as unsecured creditors that may share in a dividend at some time, many months in the future. However, VeraSun has received confirmation from the Delaware Bankruptcy Court that corn suppliers who supplied corn from October 11 through October 31 will

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VeraSun operates 17 ethanol plants in eight states:

Indiana	Iowa	Michigan	Minnesota	Nebraska	North Dakota	Ohio	South Dakota
Linden	Albert City	Woodbury	Janesville	Albion	Hankinson	Bloomington	Aurora
Reynolds	Charles City		Welcome	Central City			Marion
	Dyersville			Ord			
	Fort Dodge						
	Hartley						

be treated as priority creditors that can be paid in full from VeraSun’s cash provided they agree to continue supplying corn at prevailing market prices, not contracted prices. VeraSun’s attorneys drafted the following language that is found in the Bankruptcy Court’s Order Affirming the Administrative Expense Status of the Claims of Creditor that provided goods (corn) within 20 days of the bankruptcy filing:

In return for receiving prompt payment on account of obligations arising with respect to any 20-Day Goods, the Vendors, through the endorsement of any check for payment or other written acknowledgment in respect of such 20-Day Goods, shall be deemed to have agreed to continue supplying Goods to the Debtors at prevailing market prices in accordance with the most favorable terms and conditions (including payment terms) pursuant to historical practices in effect between such Vendor and the Debtors in the twelve months prior to the Petition Date, or such other terms and conditions as are agreed to by the Debtors and the applicable Vendor.

This language appears to trump any obligations that the VeraSun Debtors have to pay the contract prices they agreed to pay farmers and elevators while requiring the farmers and elevators to continue selling corn at current market prices. This interpretation is further supported by the language in the Corn Suppliers Letter from VeraSun dated November 4th that provides the following:

We have also requested specific authority from the Court to pay those trade partners from whom we have received corn on or after October 11, 2008 in the ordinary course. We have been granted authority by the Court to make these payments. However, if you already received a check but have not yet cashed it, we need to re-issue you a check. Also, to get authority from the Court to pay for corn delivered before the filing date, we will need an acknowledgment from you that you will continue to do business with us on normal terms. This acknowledgment will be

on the back of the check to pay for the corn and will be accepted by your endorsement.

Farmers and elevators that sign the checks in order to get prompt payment for the corn that VeraSun purchased within 20 days of filing appear to have agreed to continue supplying corn at prevailing market prices.

Warning: Farmers and elevators that receive checks from VeraSun for grain delivered between October 11 and October 31 should show the checks to their attorneys to determine what signing the check will contractually obligate them to perform in the future. They could be agreeing to deliver corn at the prevailing market price with payment on the most favorable terms provided within the past 12 months.

Q. Will VeraSun honor its contracts?

A. The bankruptcy code allows a debtor to decide whether to accept or reject contracts like grain supply contracts through the date of confirmation of the plan. Thus, if a farmer or elevator has a contract to sell grain to VeraSun for \$5.25 per bushel and the prevailing market price increases to \$6.00 per bushel, VeraSun has the option to enforce the contract by accepting the contract.

At this time, VeraSun appears to have the upper hand as it can wait until plan confirmation to decide whether to accept or reject corn contracts while the farmers and elevators that have agreed to sell to VeraSun are required to honor those contracts until VeraSun decides whether to accept them.

Q. Do farmers and elevators need to honor their contractual commitments to VeraSun?

A. VeraSun can enforce the terms of delivery contracts it has with farmers and elevators. Until VeraSun rejects a contract, the farmer or elevator is still bound by the terms of the contract. If the farmer or elevator sells the corn elsewhere and the price increases, VeraSun could

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require the farmer or elevator to fulfill the contract even if the cost of corn is considerably higher than the farmer or elevator will receive from VeraSun.

Note: Contract holders can seek limit on time for VeraSun to accept or reject contracts.

The bankruptcy code makes provision for those burdened by contracts to request that the Bankruptcy Court enter an order requiring that the Debtors accept or reject the contracts by a date certain. If such a motion were filed and a date was set for VeraSun to accept or reject contracts, VeraSun would be required to determine which contracts to accept or reject. If the contract was rejected, the farmer or elevator would be free to sell the corn to whomever it chose. Farmers and elevators should consider hiring a bankruptcy lawyer to collectively represent them in the VeraSun bankruptcy as their interests appear to be identical. By hiring one attorney, the farmers and elevators can have their interests properly represented when none of them could afford proper representation alone.

Q. What happens if Vera Sun rejects a corn delivery contract?

A. If a corn supply contract is rejected the rejection is treated as if VeraSun rejected the contract on the day before it filed bankruptcy. The farmer or elevator

whose contract is rejected will need to market its corn previously covered by the contract, then it can file a claim in the VeraSun bankruptcy that will be treated as an unsecured claim that can share in the dividend paid to unsecured creditors many months later. There is no guarantee that any payment will be made to unsecured creditors.

Future Developments

On Nov. 14, VeraSun filed a motion to establish a procedure for assumption or rejection of contracts. Unfortunately, it does not set any date certain by which VeraSun would have to assume or reject contracts. Thus, if the court approves VeraSun's motion, contract suppliers would not be able to invoke the bankruptcy procedure to establish a certain time. Consequently, in order to have input in the process, contract suppliers have until Nov. 21 to file an objection. For corn contracts that have not been rejected, the contracts remain executory. However, for farmers that have not cashed a VeraSun check containing a restrictive endorsement which ties the supplier to market price for future deliveries, it appears that VeraSun must pay the contract price for corn that is delivered.

Information will be posted as it becomes available on the Center for Ag Law and Taxation web site: <http://www.calt.iastate.edu/>



Get the facts on selling and buying manure in Iowa

By Angela Rieck-Hinz, Agronomy, (515) 294-9590, amrieck@iastate.edu, Willy Klein, Extension Communications and External Relations, (515) 294-0662, wklein@iastate.edu

Selling and Buying Manure in Iowa, a fact sheet developed by members of the Iowa Manure Management Action Group (IMMAG) is now available. This fact sheet is the tenth fact sheet in the series and is written to assist producers in Iowa who want to sell or buy animal manure. The series of fact sheets, including the newly released Selling and Buying Manure in Iowa, is available at <http://www.agronext.iastate.edu/immag/pubsimms.html>.

“This valuable tool comes at a time when more farmers are considering the application of manure as an alterna-

tive to high priced commercial fertilizers this fall,” said Angela Rieck-Hinz, Iowa State University Extension program specialist. “The fact sheet discusses selling regulated and non-regulated manure sources as well as things to consider when buying manure.”

Because of the many rules associated with manure management, regulated by either the Department of Natural Resources or the Iowa Department of Agriculture and Land Stewardship, IMMAG members identified topics they felt the state's crop and livestock producers needed as a resource. In addition to buying

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