

VeraSun filing burdens suppliers

By JACQUI FATKA

IN bankruptcy filings, the court granted VeraSun the authority to make payments on goods received on or after Oct. 11, but under U.S. Bankruptcy Code, VeraSun is unable to pay for services provided before Oct. 31 or for goods delivered to the company before Oct. 11.

"If you have not been paid for goods or services provided before these dates, you will be provided in the next few months with a claim form to be completed and filed with the court. Any distribution on the claim will be pursuant to a plan of reorganization that is accepted by creditors and approved by the court or other court orders," a letter from VeraSun posted on its web site said. "We sincerely regret any hardship this may cause."

VeraSun said it will be able to pay for goods and services delivered after the Oct. 31 bankruptcy filing date. Earlier this month, VeraSun received \$215 million in debtor-in-possession financing and plans to continue operations at its 14 ethanol plants (*Feedstuffs*, Nov. 10).

In a Securities & Exchange Commission filing, VeraSun reported that it expects third-quarter gross losses to be nearly double what it originally forecasted in September — dropping from a range of \$63 million to \$103 million to a final net loss of \$206.7 million. The company missed the Nov. 10 deadline for filing its report but said it expects to release final numbers "on or before Nov. 17."

Contract obligations

The bankruptcy filing raises many questions for farmers and grain elevators that have legal relationships with VeraSun.

VeraSun will treat all parties that supplied corn to its plants before Oct. 11 as unsecured creditors that may share in a dividend at some time many months in the future.

Roger McEowen, director for Iowa State University's Center for Agricultural Law & Taxation, said the bankruptcy language appears to trump any obligations that VeraSun debtors have to pay the contract prices they agreed to pay farmers and elevators while requiring farmers and elevators to continue selling corn at current market prices.

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/bu. and the prevailing market price increases to \$6, VeraSun has the option

Key Points

- Farmers and elevators still bound by contracts.
- Contract holders can seek time limit for VeraSun to accept or reject contracts.

to enforce the contract by accepting it.

McEowen said 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 farmers and elevators that agreed to sell to VeraSun are required to honor those contracts until VeraSun decides whether to accept them.

VeraSun can enforce the terms of delivery contracts it has with farmers and

elevators. Until the company rejects a contract, the farmer or elevator is still bound by its terms.

McEowen explained that the bankruptcy code makes a 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 certain date.

If they file such a motion and set a date by which VeraSun accepts or rejects contracts, VeraSun would be required to determine which to accept or reject. If the contract was rejected, the farmer or elevator would be free to sell the corn to whomever it chooses.

"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," McEowen said.

If a corn supply contract is rejected, it is treated as if VeraSun rejected the contract on the day before it filed bankruptcy. McEowen said the farmer or elevator whose contract is rejected will need to market its corn previously covered by the contract, and then it can file a claim in the 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.

Iowa State now home to crop genomics lab

THE largest cluster of plant databases in the nation has a new home — the Crop Genome Informatics Laboratory, an Agricultural Research Service (ARS) and Iowa State University facility in Ames, Iowa.

The building housing the center was recently renovated and formerly known as the Agronomy Laboratory. The center houses under one roof 25 researchers from both Iowa State and the ARS Corn Insects & Crop Genetics Research Unit. Previously, the scientists were scattered in different offices across campus.

The 8,000 sq. ft. building now includes the MaizeGDB (Maize Genetics & Genomics Database), PlantGDB (Plant Genome Database), Soybase, the Soybean Breeder's Toolbox and the PLEXdb (Plant Expression Database). Each database is a tool that provides biological information as well as gene data about specific agronomic traits. The databases are available to researchers on campus and around the world.

The goal of the center is to enhance communication and collaboration among scientists, according to Carolyn Lawrence, an ARS research geneticist and assistant professor in genetics, development and cell biology in the university's College of Agriculture & Life Sciences.

Lawrence, who coordinates the facility, said there are advantages to having scientists studying similar topics under one roof.

"Things are happening a little faster," she said. "There's something to be said about using technology to communicate, but it's easier to communicate now that we are all in one building."



NEW LAB: Scientists work together at the Crop Genome Informatics Laboratory on the Iowa State campus. Shown in the back row are (left to right) Carolyn Lawrence, Sudhansu Dash, Steven Cannon, Taner Sen, Rex Nelson, Darwin Campbell and Nick Lauter, and in the front row are (left to right) Carson Andorf, Nathan Weeks, David Grant and Randy Shoemaker.

The building also has resources for teleconferencing and space to train database users on and off campus.

"Our goal is to advance the science of bioinformatics to the point that we can utilize these huge databases for the benefit of other researchers," said Les Lewis, former research leader of the Corn Insects & Crop Genetics Research Unit and chair of the Iowa State entomology department. "The bottom line is to benefit farmers who are growing soybeans, corn, barley and other crops."

The U.S. Department of Agriculture has been working on plant breeding and genetics on the Iowa State cam-

pus since 1922. Crop and plant biological data have been collected over the years and put into databases, which have continued to grow and evolve.

The basis for Iowa State's current plant database recognition and funding are the Zea mays Database, BarleyBase and Soybase.

Funding for the renovation included \$225,000 from ARS, \$150,000 from the College of Agriculture & Life Sciences, \$100,000 from the Plant Sciences Institute, \$85,000 from the agronomy department and \$25,000 from the genetics, development and cell biology department.

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Minnesota blending grants

The Minnesota Department of Agriculture is accepting grant proposals that will enhance the state's biodiesel industry. A total of \$300,000 in funds is available to the owners of facilities that supply petroleum products to customers that sell, use or transport fuel in the state. Proposals must include assurances that the facility will provide biodiesel-blended fuels to the Minnesota diesel fuel market in cold-weather conditions. More information is at www.mda.state.mn.us by clicking on Grants, Loans & Financing.

New appointment

AE Biofuels Inc., a vertically inte-

grated biofuels company, announced the appointment of John R. Block to its board of directors. Block served as secretary of the U.S. Department of Agriculture from 1981 to 1986 and as an executive in the food industry. He is now a senior legislative adviser to Olsson Frank Weeda Terman Bode Matz P.C.

Feasibility spreadsheet

A new addition to the resource list at the Agricultural Marketing Resource Center is a Cellulosic Ethanol Feasibility Template developed by agricultural economists at Oklahoma State University. The spreadsheet-based template lets users assess the economics of a commercial-scale plant using enzymatic hydrolysis methods to process cellulosic materials into ethanol. The template can be downloaded and modified to mimic the basic operating parameters of a proposed ethanol

plant under a variety of production conditions. Find it at www.agmrc.org/media/cms/cellulosic_ethanol_feasibility_1008_4D1FC29BC1ED0.xls.

Barley yield contest

Following the groundbreaking of its first barley-based ethanol and protein feed bioprocessing facility in Hopewell, Va., Osage Bio Energy LLC is launching the Barley Bin Builder Yield Contest for the 2009 crop season. The Barley Bin Builder Yield Contest will award \$1,000 by state to the farmer entry with the highest barley yield per acre within a seven-state region. Osage Bio Energy, Perdue AgriBusiness and the Virginia Farm Bureau are co-sponsoring the contest. Farmers in Delaware, Maryland, Virginia, Kentucky, Tennessee, North Carolina and South Carolina are eligible to enter the contest.