

MEMORANDUM

February 26, 2009

To: Official Committee of Unsecured Creditors (the “Committee”) of VeraSun Energy Corporation, et al. (the “Debtors”)  
From: Akin Gump Strauss Hauer & Feld LLP (“Akin Gump”)  
Re: VeraSun Energy Corporation, et al. – Summary of Recently Filed Pleadings

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**1. Motion of Debtors for an Order Under Bankruptcy Code Section 1121(d) Extending Exclusive Periods During Which Debtors May File and Solicit Acceptances of a Plan (the “Exclusivity Motion”)**

By the Exclusivity Motion, the Debtors seek authority to extend their exclusive periods to file and solicit acceptances of a plan of reorganization (the “Exclusive Periods”) from February 28, 2009 and April 29, 2009 to June 30, 2009 and August 31, 2009, respectively. Pursuant to section 1121(b) of the Bankruptcy Code, a debtor has the exclusive right to file and solicit a plan of reorganization during the first 120 days and 180 days, respectively, following the commencement of a chapter 11 case. The Bankruptcy Code provides, however, that on request of a party in interest, the Bankruptcy Court may, for cause, extend the Exclusive Periods.<sup>1</sup>

The Debtors assert that given the size of their operations, the fragmented capital structure, and the number of different prepetition and postpetition lenders involved in these chapter 11 cases, the sheer size and complexity of the Debtors’ cases alone justify an extension of the Exclusive Periods. In addition, the Debtors state that the timelines associated with the sales process contemplated in (i) certain of the Debtors’ debtor-in-possession financing facilities (collectively, the “DIP Facilities”) and (ii) the order approving Valero Energy Corporation (“Valero”) as a stalking horse bidder for substantially all of the assets at the VSE Segment,<sup>2</sup> as well as approving bidding procedures for the sale of the assets of all of the Segments<sup>3</sup> (the “Bidding”

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<sup>1</sup> Pursuant to Bankruptcy Code section 1121(d), the Exclusive Filing Period and the Exclusive Solicitation Period may not be extended beyond a date that is 18 months and 20 months, respectively, after the petition date.

<sup>2</sup> The “VSE Segment” consists of; VeraSun Aurora Corporation, LLC; VeraSun Charles City, LLC; VeraSun Fort Dodge, LLC; VeraSun Hartley, LLC; VeraSun Reynolds, LLC; VeraSun Welcome, LLC; VeraSun Marketing, LLC; as well as VeraSun BioDiesel, LLC; VeraSun Litchfield, LLC; VeraSun Granite City, LLC; and VeraSun Tilton, LLC, which consist exclusively of undeveloped property.

<sup>3</sup> The “Segments” consist of the following: (i) the VSE Segment; (ii) the “ASA Segment,” consisting of substantially all of the assets of ASA Albion, LLC, ASA Bloomingburg, LLC, ASA Linden, LLC, and ASA OpCo Holdings; (iii) the “US BioEnergy Segment,” consisting of substantially all of the assets of US BioEnergy Corporation, VeraSun

Procedures Order”), make a four month extension of their Exclusive Periods appropriate and warranted in these chapter 11 cases. The Debtors maintain that the extension will allow the Debtors’ proposed sale process to run its course and give the Debtors the opportunity to formulate, propose, and solicit a plan, without the disruption of their efforts that might be caused by the filing of competing plans by non-Debtor parties.

**2. Motion for Order Pursuant to Fed. R. Bankr. P. 9019 Approving Settlement Agreement Between Debtors and Industrial Air Technology, Corp. (the “IAT Motion”)**

By the IAT Motion, the Debtors seek approval of a certain settlement agreement (the “IAT Settlement Agreement”) between the Debtors and Industrial Air Technology Corp. (“IAT”) pursuant to which (i) IAT will pay \$2,450,000 (the “Settlement Amount”) to the Debtors, and (ii) the Debtors will release IAT and certain insurance providers from any and all liability related to an incident that occurred on September 10, 2005 at the Debtors’ ethanol plant in Fort Dodge, Iowa (the “Fort Dodge Facility”).

According to the IAT Motion, on February 1, 2005, the Debtors entered into a contract with John Zink Company LLC (“John Zink”) for the purchase of two thermal oxidizer systems that were to be installed at the Fort Dodge Facility. John Zink proceeded to purchase two fans from IAT, which were installed in the Fort Dodge Facility as components of the thermal oxidizer systems. On September 10, 2005, one of the IAT fans at the Fort Dodge Facility exploded (the “Event”). Thereafter, IAT personnel inspected the fan that had not exploded, observed cracks in it, and agreed that the fan was unsafe and should be taken out of service. The Debtors assert that they promptly shut down the Fort Dodge Facility.

As stated in the IAT Motion, the Debtors made claims against certain of their insurance providers, including ACE American Insurance Company, Liberty Mutual Company, and Lexington Insurance Company (collectively, the “Insurers”) for damages resulting from the Event, estimated to be between \$2 million and \$4 million. The Debtors and the Insurers ultimately settled these claims, pursuant to which the Insurers paid the Debtors approximately \$3 million. Moreover, as part of the settlement, the parties entered into a Joint Prosecution Agreement (the “Joint Prosecution Agreement”). Pursuant to the Joint Prosecution Agreement, the Debtors and the Insurers agreed, among other things, that (i) the Debtors and the Insurers would collectively pursue their legal rights against any third parties who may be legally responsible for the Event, (ii) the Insurers would advance the costs of investigating and prosecuting the recovery litigation, including expert fees, investigation costs, court reporters’ fees, copying costs, travel expenses, filing fees, and related litigation expenses (collectively, the “Expenses”), (iii) in the event of any recovery—whether through settlement, judgment or

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Albert City, LLC, VeraSun Central City, LLC, VeraSun Dyersville, LLC, VeraSun Hankinson, LLC, VeraSun Janesville, LLC, VeraSun Ord, LLC, and VeraSun Woodbury, LLC; and (iv) the “Marion Segment” consisting of substantially all of the assets of US Bio Marion, LLC.

otherwise—the Insurers would first recoup the Expenses before any of the funds would be distributed, and (iv) of the funds remaining after the Insurers recovered the Expenses, if any, 45% would go to the Insurers, 45% would go to the Debtors, and 10% would go to the Ethanol Risk Program.<sup>4</sup>

The Debtors assert that on February 20, 2007, they commenced litigation and asserted claims against IAT for negligence, strict liability, breach of implied warranties and breach of contract. Following the denial of various motions for summary judgment and partial summary judgment, the Debtors and IAT engaged in efforts to resolve the dispute, which culminated in the IAT Settlement Agreement. Pursuant to the IAT Settlement Agreement, IAT is required to pay the Settlement Amount of \$2,450,000. After subtracting litigation expenses of \$162,201.37, the Debtors will receive a settlement distribution of \$1,029,509.38, representing 45% of the funds remaining after the payment of the Expenses in accordance with the Joint Prosecution Agreement. The Insurers and the Ethanol Risk Program will receive \$1,029,509.38 and \$228,779.87, respectively.

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<sup>4</sup> The Ethanol Risk Program is an agreement between a consortium of ethanol producers to pool resources. The signatories to the agreement – including the Debtors – are able to draw upon the funds in the program upon experiencing certain losses.