## STATE OF NORTH CAROLINA

## IN THE OFFICE OF ADMINISTRATIVE HEARINGS 10 FHR 6501

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## PETITIONER'S PARTIAL CONSENT MOTION FOR EXTENSION TO COMPLETE DISCOVERY AND FOR NEW SCHEDULE

Petitioner Rose Acre Farms Inc hereby moves for

- an extension to complete discovery through and including August 15
  2011 and
- 2 a new hearing schedule as follows
  - a Hearing on Petitioner's Motion for Summary Judgment to be held the week of August 15 2011 (the time formerly set for the hearing on the merits)
  - b Hearing on the merits if necessary to begin the week of
    October 17 2011

In support of this Motion, Petitioner states the following

The undersigned has spoken with Respondent's counsel Anita LeVeaux and Respondent consents to closing discovery on August 15 2011 with

EXHIBITA

- regard to the preparation of Petitioner's expert reports but opposes the extension of any other discovery beyond the current discovery deadline of July 8 2011
- This matter involves complex issues and numerous witnesses and documents. Although, substantial discovery has gone forward the need to review additional documents just produced by Respondents, the possible need for additional depositions of agency officials, the need for depositions of scientists who are in the midst of relevant research, and the need for the investigation of additional complex scientific information will require additional time beyond the current deadline of July 8, 2011.
- In addition, on March 14 2011 Petitioner's Counsel sent a Freedom of Information Act Request to the US Fish and Wildlife Service (FWS') requesting documents concerning the FWS study of ammonia emissions from Petitioner's Hyde County farm. To date only a very small portion of those documents have been provided. Once these documents are reviewed, it is likely that Petitioner may need to take more depositions. Furthermore Petitioner has requested that Sara Ward (an official with the FWS located in North Carolina and author of a 2009 report which Respondent's witnesses indicated was relied upon to impose the conditions in the 2010 Permit which are the subject of this action) appear for a deposition in Raleigh. To date FWS has denied Petitioner's Counsel

needs additional time to determine how best to obtain the relevant information and testimony

Finally Dr Hans W Paerl a participant in Sara Ward s study just published a paper in *Hydrobiologia* which addresses the key issues in the Sara Ward study Particularly because Sara Ward is not available for deposition Petitioner needs to depose Dr Paerl and his co authors including Karen Rossignol if necessary

- On May 31 2011 Petitioner filed its Motion for Summary Judgment in response to Respondent's Motion for Extension, this Court has issued an Order dated, June 13 2011 granting Respondent an extension to file its Response to Petitioner's Motion through and including July 11 2011
- In all likelihood Petitioner will seek leave of court to file a Reply Brief to be due on or about August 1 2011 Accordingly the week originally scheduled for the hearing on the merits (August 15 19) is an appropriate time within which to schedule the hearing on the Motion for Summary Judgment At this time Respondent does not consent to the filing of a Reply Brief but consents to the proposed dates for hearing the Motion for Summary Judgment
- Should a hearing on the merits be necessary the Parties agree to an extension of the hearing schedule to the week of October 17 2011 This later date is necessary because lead counsel for Petitioner Gary Baise will be out of the country from September 12 26 2011 and counsel for

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Partial Consent Motion for Extension to Complete Discovery and New Schedule was served by first class mail postage prepaid on the following

Anita LeVeaux Assistant Attorney General Environmental Division NC Department of Justice 9001 Mail Service Center Raleigh, NC 27699 9001

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This the 30<sup>th</sup> day of June 2011

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