

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN RE HEARING FOR REISSUING)	
THE GENERAL WATER POLLUTION)	MOTION TO PRESENT
CONTROL PERMIT FOR)	NARRATIVE TESTIMONY
CONCENTRATED ANIMAL FEEDING)	
OPERATIONS)	

The Department of Environment and Natural Resources (DENR) Feedlot Permit Program hereby moves for entry of an order allowing it to present narrative testimony during the hearing scheduled for September 27-29, 2016. This basis for this motion is set forth below.

The South Dakota Rules of Evidence apply to contested case hearings. SDCL 1-26-19(1) provides that in a contested case, “[t]he rules of evidence as applied under statutory provisions and in the trial of civil cases in the circuit courts of this state, or as may be provided in statutes relating to the specific agency, shall be followed.” SDCL 19-19-611(a) further provides that “[t]he court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to: (2) [a]void wasting time.” South Dakota Rule of Evidence 611(a) is identical Rule 611(a) of the Federal Rules of Evidence.

In *United States v. Pless*, 982 F.2d 1118 (7th Cir. 1992), the court applied Fed. R. Evid. 611(a) to determine whether the trial court had properly allowed narrative testimony. The court noted that:

Fed. R. Evid. 611(a) provides district judges with authority to allow testimony in narrative form rather than as answers to specific questions,

and we ourselves have said that 'there is . . . nothing particularly unusual, or incorrect in a procedure of letting a witness relate pertinent information in a narrative form as long as it stays within the bounds of materiality.'

Pless, 982 F.2d at 1123 (citation omitted).

The hearing in the instant matter is scheduled for three days, and the parties have identified numerous expert and lay witness. Allowing DENR witnesses to present testimony in narrative format will be efficient and avoid needless consumption of time consistent with SDCL 19-19-611(a).

Dated this 15th day of September, 2016.



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STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN RE HEARING FOR REISSUING)
 THE GENERAL WATER POLLUTION) CERTIFICATE OF SERVICE
 CONTROL PERMIT FOR)
 CONCENTRATED ANIMAL FEEDING)
 OPERATIONS)

The undersigned hereby certifies that a true and correct copy of the *Motion for Narrative Testimony and Motion Requesting Clarification of the Order the Parties will Present at the September Hearing* were filed today in the above-entitled matter and served by email upon the following individuals:

Catherine Duenwald Office of Hearing Examiners 523 E. Capitol Ave. Pierre, SD 57501	Steven M. Pirner, Secretary DENR Hearing Chairman 523 E. Capitol Pierre, SD 57501
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/s/ Ellie J. Bailey
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