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January 6, 2023

John R. Hughes
Hughes Law Office
101 East 38th Street
Sioux Falls, South Dakota 57105
john@hugheslawyers.com

Re: Affidavit of Kelli Buscher Regarding Stormwater Discharge Permits
SDR10K637 and SDR10K562

Mr. Hughes,

Enclosed is the executed affidavit of Kelli Buscher regarding Stormwater Discharge Permits SDR10K637 and SDR10K562 and accompanying exhibits. Given time constraints, I am emailing you the affidavit as well as sending you the original through the mail. I do wish to point out that the June 21, 2022 Warning Letter regarding Phillips Crossing refers to the Phillips Crossing permit number but names it as the Grant Park Addition. This is merely a scrivener's error. Please let me know if there are any issues with the affidavit and/or exhibits.

Also, I would appreciate it if you would let me know the outcome of your hearing and the parallel court cases.

Thank you.

A handwritten signature in cursive script that reads "Ann F. Mines Bailey".

Ann F. Mines Bailey
Assistant Attorney General

AFM/lde
Enc.

the receiving water. Big Sioux River was listed as the receiving water for the Grant Park Addition. The Notices of Intent maybe found at <https://danr.sd.gov/OfficeOfWater/SurfaceWaterQuality/stormwater/StormWaterDBSearch.aspx>.

5. Approval of the Notices of Intent were issued on April 15, 2021. The approval was conditioned upon compliance with the terms of the General Permit, particularly Section 3.0 detailing effluent limits and Section 5.0 setting forth Stormwater Pollution Plan requirements. The letters of approval may be found at <https://danr.sd.gov/OfficeOfWater/SurfaceWaterQuality/stormwater/StormWaterDBSearch.aspx>.

6. On March 4, 2022, the Program received a complaint regarding the above-named sites. The complaint stated there were no erosion or sediment controls installed thus resulting in dust and sediment blowing and washing offsite.

7. At my direction, Jill Riedel, an Engineer III with the Program, conducted an onsite inspection on March 29, 2022. The inspection revealed that there were no stabilization measures installed. Sediment had accumulated in the gutters and had been tracked onto the streets. Verbal directions were given for the corrective actions which needed to be taken.

8. An additional complaint was received on May 9, 2022, indicating dissatisfaction that no corrective actions had been taken since the March 29 inspection. It was alleged in the complaint that stormwater mixed with sediment was washing into the City's storm sewer system and flowing into the marshy areas and natural drainage systems that extend across the property of the Baltic School District and into Murphy's Pond, causing sediment to accumulate in these waters of the state. It also asserted complaints regarding dust and sediment from the project sites affecting private property and the public at large.

9. On June 6, 2022, I personally conducted an onsite inspection along with Jill Riedel. This inspection revealed that some measures had been installed but needed maintenance while other corrective actions had not been taken. Warning letters were issued on June 21, 2022. Attached hereto as Exhibit 1 is true and correct copy of the Warning Letter dated June 21, 2022, and accompanying inspection report dated June 6, 2022, regarding the Phillips Crossing site which were issued by the Program and kept in the official administrative files. Also attached hereto as Exhibit 2 is a true and correct copy of the Warning Letter dated June 21, 2022, and the accompanying inspection report dated June 6, 2022, regarding the Grant Park Addition site which were issued by the Program and kept in the official administrative files.

These inspection reports detail the findings of the onsite visit and set forth the corrective measures that were required to be taken.

10. At my direction, a follow up inspection was conducted on July 13, 2022. Again, it was determined that while some measures had been installed, several needed maintenance and others had not been implemented at all. Warning Letters were issued on August 15, 2022. Attached hereto as Exhibit 3 is true and correct copy of the Warning Letter dated August 15, 2022, and accompanying inspection report dated July 13, 2022, regarding the Phillips Crossing site which were issued by the Program and kept in the official administrative files. Also attached hereto as Exhibit 4 is a true and correct copy of the Warning Letter dated August 15, 2022, and accompanying inspection report dated July 13, 2022, regarding the Grant Park Addition site which were issued by the Program and kept in the official administrative files. These inspection reports detail the findings of the onsite visit and set forth the corrective measures that were required to be taken.

11. A subsequent onsite inspection was conducted on October 26, 2022 at my direction. It was determined that while efforts had been made to stabilize parts of the site and control erosion, some areas needed maintenance and additional areas had not been stabilized. It was also noted that sediment had continued to be tracked out and that there were issues regarding the minimization of dust at the sites. Warning letters were issued on November 23, 2022. Attached hereto as Exhibit 5 is true and correct copy of the Warning Letter dated November 23, 2022, and accompanying inspection report dated October 26, 2022, regarding the Phillips Crossing site which were issued by the Program and kept in the official administrative files. Also attached hereto as Exhibit 6 is a true and correct copy of the Warning Letter dated November 23, 2022, and accompanying inspection report dated October 26, 2022, regarding the Grant Park Addition site which were issued by the Program and kept in the official administrative files. These inspection reports detail the findings of the onsite visit and set forth the corrective measures that were required to be taken.

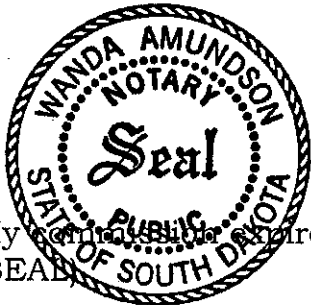
12. Based upon these investigations and the repeated determinations that these sites are discharging in violation of the conditions of the permits, the Program is commencing enforcement actions on both SDR10K637 (Phillips Crossing) and SDR10K562 (Grant Park Addition) held by Grant Park Capital LLC.

DATED this 5th day of January, 2023.

Kelli Buscher

Kelli Buscher
Program Administrator
SDDANR, Surface Water Quality Program

On this 5th day of January, 2023, before me personally appeared Kelli Buscher known to me to be the same and that she executed the within instrument and acknowledged to me the document herein.



My commission expires:
(SEAL)

Wanda Amundson
Notary Public - South Dakota

Wanda Amundson
My Commission Expires
July 28, 2028