

January 8, 2009

**By Email and U.S. Mail**

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Re: *In the Matter of the Alleged Violation by Dan Theobald, d/b/a  
Dan's Container Services, Ltd.*  
OAH Docket No. 3-6229-20086-3

Dear Counsel:

This letter constitutes the Second Prehearing Order concerning Mr. Theobald's motion to compel discovery of certain email communications between the Washington County Attorney's Office and employees of the Washington County Department of Public Health and Environment. According to the privilege log provided by the County, the communications were made both before and after the May 2008 inspection that provided the basis for the Notice of Violations at issue in this matter. The County maintains these documents are protected by the attorney-client privilege and work-product doctrine.

With regard to the two communications dated April 23, 2008, it is entirely possible that the attorney-client privilege is applicable, but it is difficult to see how the work-product doctrine would apply, since these communications pre-dated the inspection in May 2008. The County should submit these documents to the Administrative Law Judge within three business days of receipt of this Order for *in camera* review. If the claim of privilege is upheld, I will return the documents to the County. If there is any factual information that is not privileged, I will forward a copy of the documents (with any privileged information redacted) to Mr. Sheu.

With regard to the communications made in June 2008, all appear to be between an attorney and client related to the drafting and wording of the Notice of Violation. It

appears the attorney-client privilege was properly invoked, and the request for *in camera* review of them is denied.<sup>1</sup>

Sincerely,

s/ Kathleen D. Sheehy  
KATHLEEN D. SHEEHY  
Administrative Law Judge  
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[Kathleen.Sheehy@state.mn.us](mailto:Kathleen.Sheehy@state.mn.us)

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<sup>1</sup> See, e.g., *Kobluk v. University of Minnesota*, 574 N.W.2d 436 (Minn. 1988) (affirming claim of attorney-client privilege under Government Data Practices Act with regard to drafts of a document exchanged between a client and lawyer, where the final version was made public).