

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

Ken B. Peterson, Commissioner

**ORDER ON MOTION
TO COMPEL DISCOVERY
(SECOND PREHEARING ORDER)**

v.

Strategic Materials, Inc.

This matter came before Administrative Law Judge Eric L. Lipman upon the Department's Motion to Compel Discovery (Motion). Respondent did not file a response to the Motion. The hearing record on this Motion closed on August 8, 2016, the due date for a responsive pleading.

Scott A. Grosskreutz, Assistant Attorney General, appeared on behalf of the Minnesota Department of Labor and Industry (Department). Thomas V. Erdos, Jr., Attorney at Law, made an earlier appearance on behalf of Strategic Materials, Inc. (Respondent).

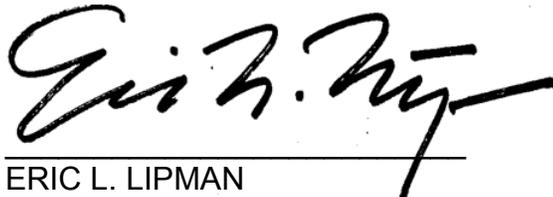
Based upon the Motion and the record, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

ORDER

1. The Department's Motion to Compel Discovery is **GRANTED**.
2. Respondent shall respond to the Department's discovery request **by 4:30 p.m. on Friday, September 16, 2016**.
3. At the same time that it responds to the discovery request, Respondent shall file at the Office of Administrative Hearings a copy of the Affidavit of Service attesting to the service of these responses.
4. If Respondent fails to comply with the directives of Paragraphs 2 and 3 of this Order, it may be found in default pursuant to Minn. R. 1400.6000 (2015).
5. The First Prehearing Order is **MODIFIED** as follows below:
 - (a) The deadline for filing and service of a dispositive motion, including a motion for partial summary disposition, is **4:30 p.m. on Friday, October 14, 2016**.

- (b) Any dispositive motion shall be accompanied by a numbered recital from the moving party of all material facts as to which there is no genuine dispute, along with a specific citation to that part of the hearing record supporting each fact.¹
 - (c) **By 4:30 p.m. on October 28, 2016**, the non-moving party shall file at the Office of Administrative Hearings and serve its response to any earlier-filed dispositive motion. When opposing such a motion the non-movant shall, in like manner, make a recital of any material facts claimed to be in dispute.²
 - (d) **By 4:30 p.m. on Friday, November 4, 2016**, the moving party shall file at the Office of Administrative Hearings and serve upon the opposing party any reply in support of its Motion.
6. If a dispositive motion is filed, the date and time of any oral argument on the motion will be established by a later written order.

Dated: August 25, 2016



ERIC L. LIPMAN
Administrative Law Judge

¹ See Minn. R. 1400.5500 (J), .6600 (2015); Minn. Gen. R. Prac. 115.03(d)(3).

² *Id.*; see also *Murphy v. Country House, Inc.*, 240 N.W.2d 507, 511-12 (Minn. 1976) (in order to defeat an otherwise proper motion for summary disposition, the non-moving party must show the existence of material facts that are genuinely disputed); *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996) (a material fact is a fact whose resolution will affect the result or outcome of the case).

NOTICE

Any document filed with the Office of Administrative Hearings, or that a party wishes to make part of the hearing record, may be filed in any one of the following ways: (1) by **e-Filing** through the Office of Administrative Hearings' e-Filing system; (2) by **mail**; (3) by **facsimile**; or (4) by **personal delivery**. (See 2015 Minn. Laws. Ch. 63, § 7; Minn. R. 1400.5550, subp. 5 (2015)).

The e-Filing system is accessible at: <http://mn.gov/oah/forms-and-filing/efiling/>

Attorneys representing government agencies are encouraged to use the e-Filing system to make filings.

Any party filing proposed hearing exhibits using the e-Filing system or by facsimile shall also provide a paper copy of the exhibits to the Administrative Law Judge on the same date that they are faxed or e-Filed. Filings are effective on the date the Office of Administrative Hearings receives the filing. (See Minn. R. 1400.5500 (J), (Q); .5550, subp. 5 (2015)).

MEMORANDUM

Respondent is a large glass processor that operates a recycling facility in Saint Paul, Minnesota.³

The Department asserts that the Respondent violated provisions of the Minnesota Occupational Safety and Health Act (OSHA) in July of 2015.⁴ Specifically, the Department maintains that the Respondent: failed to maintain a respiratory protection program; exposed employees to particulate materials in excess of permissible exposure limits; and failed to monitor environmental exposure of employees to carbon monoxide.⁵ Based upon the alleged violations, the Department assessed penalties totaling \$15,400.⁶

Respondent appealed the assessment of penalties, denying some of the allegations in the OSHA citations and asserting affirmative defenses.⁷

On May 26, 2016, the Department served discovery on Respondent consisting of nine interrogatories and three requests for the production of documents.⁸ On July 7, 2016, the Department's counsel sent an electronic mail message to Respondent's counsel requesting a response to the discovery.⁹ Respondent has not responded in any matter to the Department's discovery requests.

³ See NOTICE AND ORDER FOR HEARING, Exhibit (Ex.) 2 at 1 (Mar. 21, 2016).

⁴ *Id.*

⁵ NOTICE AND ORDER FOR HEARING, Ex. 2 at 3-9 (Mar. 21, 2016).

⁶ *Id.*

⁷ NOTICE AND ORDER FOR HEARING, Ex. 3 (Mar. 21, 2016).

⁸ Affidavit of Scott Grosskreutz (Grosskreutz Aff.) at Ex. A (July 20, 2016).

⁹ Grosskreutz Aff. at Ex. B (July 20, 2016).

On July 20, 2016, the Department filed a Motion to Compel Discovery, seeking an order requiring Respondent to respond to the discovery requests served on May 26, 2016.¹⁰ The Department also seeks an extension of the dispositive motion deadline, which was originally set for July 22, 2016.¹¹ Respondent did not respond to the Motion.

The Minnesota Rules of Civil Procedure permit discovery “upon a showing of good cause and proportionality” of “any matter relevant to the subject matter involved in the action.”¹² In administrative proceedings, information sought by discovery procedure is considered to be relevant if the information “has a logical relationship to the resolution of a claim or defense in the contested case proceeding, is calculated to lead to such information, or is sought for purposes of impeachment.”¹³

The contested case rules allow discovery that is available under the Rules of Civil Procedure for the District Courts of Minnesota.¹⁴ The party seeking the discovery has the burden of proof to show the discovery is needed for the proper presentation of the party’s case, not for purposes of delay; and the issues or amounts in controversy are significant enough to warrant the discovery.¹⁵ The party opposing the discovery may raise any objections available under the Minnesota Rules of Civil Procedure, including lack of relevancy or privilege.¹⁶

The Department’s nine interrogatories and three requests for production of documents are well-tailored to the issues presented in this case and do not appear to be unduly burdensome.¹⁷ The Administrative Law Judge, therefore, concludes that Respondent must respond to the Department’s discovery requests.

E. L. L.

¹⁰ Department Motion (Mot.) to Compel at 1 (July 20, 2016).

¹¹ Department Mot. to Compel at 1 (July 20, 2016).

¹² Minn. R. Civ. P. 26.02(b).

¹³ G. Beck et al, *Minnesota Administrative Procedure* § 9.2 (2d ed. 1998).

¹⁴ Minn. R. 1400.6700, subp. 2 (2015).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See Grosskreutz Aff. at Ex. A (July 20, 2016).