No. 124417

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS ex rel. KWAME RAOUL, Attorney General of the State of Illinois, Plaintiff-Appellant, v. ELIZABETH REENTS, an individual, Defendant-Appellee, and STATELINE RECYCLING, LLC, an Illinois limited liability corporation, Defendant.	)	On Appeal from the Appellate Court of Illinois, Second Judicial District, No. 2-17-0860, There Heard on Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Winnebago County, Illinois, No. 17 CH 60, The Honorable J. EDWARD PROCHASKA, Judge Presiding.

BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT

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NATURE OF THE CASE

The People of the State of Illinois ex rel. Kwame Raoul, Attorney General of the State of Illinois (Attorney General),[1] filed a civil environmental enforcement action in the circuit court against Elizabeth Reents, the owner of a parcel of property (the site), and Stateline Recycling, LLC (Stateline), a company conducting an operation involving the dumping of construction and demolition debris at the site, alleging violations of the Illinois Environmental Protection Act (Act), 415 ILCS 5/1 *et seq.* (2016). During discovery in the case, the Attorney General asked that Reents allow his representatives access to the site to inspect it pursuant to Illinois Supreme Court Rule 214(a) (Rule 214(a)). Reents refused that request because, she claimed, the Attorney General was attempting to circumvent the probable cause and warrant requirements of the Fourth Amendment to the United States Constitution and Article I, Section 6 of the Illinois Constitution.

The Attorney General moved the circuit court to compel Reents to give his representatives access to the site for inspection because it not only was relevant to but also the subject matter of the action, and therefore the site's condition was discoverable under the Illinois Supreme Court Rules (Rules). Reents objected to the site inspection solely on constitutional grounds. The circuit court granted the Attorney General's motion to compel, noting that

[1] The current Attorney General, Kwame Raoul, should be substituted for the former Attorney General, Lisa Madigan, as the captioned party by operation of law. *See* 735 ILCS 5/2-1008(d) (2018).

Rule 214(a), which applies to any party in a civil case, allowed the Attorney General to inspect the site because it was relevant to the civil litigation. After Reents refused to comply with that order, the circuit court held her in friendly contempt and she appealed.

The appellate court reversed the order compelling the site inspection, vacated the contempt order, and remanded for further proceedings. It did not analyze whether the circuit court abused its discretion in ordering the site inspection. Instead, it held that this Court's civil discovery rules, including Rule 214(a), and orders entered under them when the government is the party requesting relevant discovery – like the order granting the site inspection here – violate the Fourth Amendment. In doing so, the appellate court declined to hold that the protections underlying this Court's civil discovery rules and orders entered thereunder – including relevance, proportionality, and judicial oversight – satisfy the Fourth Amendment's reasonableness requirement. And it directed the circuit court on remand to apply the three-factor test from *New York v. Burger*, 482 U.S. 691 (1987) – used to evaluate the constitutionality of a regulatory scheme authorizing warrantless administrative inspections of closely regulated industries outside of litigation – in ruling on the Attorney General's discovery request. This Court granted the Attorney General leave to appeal.

ISSUES PRESENTED FOR REVIEW

1. Whether the appellate court erred in unnecessarily deciding this case on constitutional grounds; and, if so, whether on review the circuit court's discovery order was not an abuse of discretion.

2. Whether this Court's civil discovery rules and the circuit court's order allowing the Attorney General's site inspection entered pursuant to them are constitutionally reasonable, thus rendering unnecessary the application of *Burger*'s three-part test, which did not involve, and is unworkable for, civil discovery proceedings.

ILLINOIS SUPREME COURT RULE INVOLVED

Rule 214(a) provides:

> Any party may by written request direct any other party to produce for inspection, copying, reproduction photographing, testing or sampling specified documents, including electronically stored information as defined under 201(b)(4), objects or tangible things, or to permit access to real estate for the purpose of making surface or subsurface inspections or surveys or photographs, or tests or taking samples, or to disclose information calculated to lead to the discovery of the whereabouts of any of these items, whenever the nature, contents, or condition of such documents, objects, tangible things, or real estate is relevant to the subject matter of the action. The request shall specify a reasonable time, which shall not be less than 28 days after service of the request except by agreement or by order of court, and the place and manner of making the inspection and performing the related acts.

Ill. Sup. Ct. R. 214(a).

STATEMENT OF FACTS

The circuit court proceedings

In January 2017, pursuant to his authority under the Act, *see* 415 ILCS 5/42(a), (d), (e) (2016), the Attorney General, on his own motion and at the request of the Illinois Environmental Protection Agency (Agency), on behalf of the People of the State of Illinois, filed a civil action in the circuit court against Reents and Stateline. (C7-31, 192-235). The Attorney General claimed that Reents and Stateline were conducting an unpermitted operation involving the dumping of construction and demolition debris on the site (2317 Seminary Street in Rockford, Illinois), in violation of the Act. (*Id.*). The amended complaint (C192-235), which was the operative one, alleged as follows.

Reents acquired ownership of the site in early April 2015. (C216); *see also* (C327 (Reents admitted she was granted tax deed for site recorded that date)). Beginning at least by late July 2015, and continuing through the filing of the action, Stateline and/or its corporate predecessor, Busse Development & Recycling, Inc., conducted an operation involving the dumping of construction and demolition debris at the site. (C193).

Pursuant to the Agency's authority under section 4 of the Act to carry out the purposes and investigate potential violations of the Act, *see* 415 ILCS 5/4(b), (c), (e) (2014), in late July 2015, an Agency inspector conducted a scheduled inspection, previously arranged through and agreed to by a Stateline representative, who met and invited the inspector onto the property. (C193);

see also (C272 (Stateline admitted Agency inspection was pre-scheduled and arranged through its member on behalf of Stateline)). At that time, the site contained visible mixed piles consisting of concrete, brick, painted cinder blocks, asphalt, and soil, some of which were placed above ground. (C193). The Stateline representative told the inspector that the intention was to recycle as much of that material as possible (C193); *see also* (C272 (Stateline admitted its representative made statement)), but no indication of recycling was present (C193). One year later, an Agency inspector went to the site to conduct a follow-up inspection. (*Id.*). But the inspector left shortly after arrival because no personnel were present, though the site's gate was unlocked and open, and operating hours were posted. (*Id.*). The inspector observed from the site's gate area the mixed piles of materials present during the prior inspection. (C193-94).

The Attorney General's amended complaint brought four counts against Reents and six counts against Stateline. (C192-232). The counts against Reents included: open dumping of waste and refuse without a permit, 415 ILCS 5/21(a) (2016); disposal, storage, and abandonment of waste at an unpermitted facility, 415 ILCS 5/21(e) (2016); open dumping of waste resulting in litter and the deposition of general and clean construction or demolition debris, 415 ILCS 5/21(p) (2016); and failure to pay construction or demolition debris fill operation fees, 415 ILCS 5/22.51(a) (2016). (C216-32). The Attorney General alleged the same violations against Stateline in four counts while the

two additional counts alleged that it conducted a waste-disposal operation without a permit, 415 ILCS 5/21(d) (2016), and violated clean construction or demolition debris regulations, 415 ILCS 5/22.51 (2016); 35 Ill. Admin. Code §§ 1150.200, 1150.201(a). (C192-215). The Attorney General sought injunctive relief (enjoining further violations of the Act and ordering corrective action to abate the violations); civil penalties of $50,000 for each violation of the Act and $10,000 per day of violation, *see* 415 ILCS 5/42(a) (2016) (any person "shall be liable for a civil penalty of not to exceed $50,000 for the violation and an additional civil penalty of not to exceed $10,000 for each day during which the violation continues"); and costs, *see* 415 ILCS 5/42(f) (2016), against Reents and Stateline. (C192-232).

Shortly after this action was filed, Reents moved to quash evidence of the Agency's 2015 and 2016 inspections of the site and dismiss the action, insofar as it was based on those inspections, claiming that the Agency lacked her permission or a warrant to inspect the site, in violation of the Fourth Amendment to the United States Constitution and Article I, Section 6 of the Illinois Constitution. (C134-37, 172-76). In response, the Attorney General contended that the Agency inspections were lawful and that Reents should request suppression of evidence at trial, not at the pleading stage. (C81-88). The court denied the motion to quash and dismiss without prejudice. (C186).

Three months after filing this action, the Attorney General served Reents with a discovery request pursuant to Rule 214(a) for access to the site

in order to inspect it. (C104-08, 246-47). The Attorney General requested that Reents "allow representatives of the Illinois Attorney General access to the real property controlled and/or owned by [her] located at 2317 Seminary Street, Rockford, Winnebago County, Illinois, including any buildings, trailers, or fixtures thereupon."[2] (C246). The Attorney General requested site access on one identified date in May 2017 at a specified time, or at such other time upon which the parties may agree. (*Id.*).

Separately, the discovery request noted that "[a]t this inspection" "representatives of the [Agency] may also accompany Attorney General representatives and conduct an inspection pursuant to their authority under [section 4 of the Act], 415 ILCS 5/4 (2014)." (*Id.*).

After Reents did not accommodate a site inspection on the requested date, the Attorney General proposed alternative inspection dates and times. (C257). In response, Reents "formally interpos[ed]" an objection to the "civil discovery site inspection" based on the Fourth Amendment and Article I, Section 6. (*Id.*). Reents "believe[d]" that the Attorney General's site inspection request under Rule 214(a) was an "improper attempt to circumvent the Constitutional requirement for a warrant." (*Id.*).

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[2] By his notation that "representatives of the Illinois Attorney General" be allowed "access to" the site for the Rule 214(a) inspection (*see* C246), the Attorney General contemplated that his "representatives" may include Agency inspectors. That is because the Attorney General's Office does not employ its own internal environmental inspectors, and Agency personnel may serve as the Attorney General's inspectors in civil enforcement actions like this one. (*See* Attorney General AE Br. at 15-16).

After the Attorney General's unsuccessful attempts to resolve the discovery dispute with Reents during spring and summer 2017 in accordance with Rule 201(k) (*see* C238, 244, 259-63) and her failure to grant access to the site for the Rule 214(a) inspection (*see* C238-40), the Attorney General moved the circuit court to compel Reents to allow his representatives access to the site (C236-63). The Attorney General explained that because the site was the subject of this action, the site's status was relevant to the alleged violations of the Act and thus was discoverable under this Court's rules, which allow the Attorney General's representatives to access the site, including any buildings, trailers, or fixtures thereupon, and to inspect it and perform "related acts, including the taking of photographs" at a reasonable time within 14 days. (C239-40, 244). In addition, the Attorney General explained that his request for site access comported with Rule 214(a)'s other requirements. (C240).

Separately, the motion mentioned the Agency's independent authority under sections 4(c) and (d) to inspect the site for violations of and to monitor compliance with the Act. (C240-42, 244). The motion stated that Agency personnel "may reasonably accompany the Illinois Attorney General's Office during an inspection under Supreme Court Rule 214(a)." (C242; *see* C244).

In response, Reents objected to the site inspection on constitutional grounds. (C281-88). She contended that by its discovery request "the State" was attempting to use Rule 214 to circumvent the probable cause and warrant requirements under the Fourth Amendment and Article I, Section 6. (C281-

82, 284-85, 287-88). She claimed that these constitutional protections required the Attorney General to establish probable cause, which he had not done, and obtain a judicially-issued warrant before conducting the site inspection. (C281, 284-85, 287-88).

Reents also made several references to the Illinois Constitution's (Article I, Section 6) prohibition against unreasonable invasions of privacy. (C282-83, 286). And she again contended that the Agency's 2015 and 2016 inspections were unconstitutional warrantless searches. (C284-85).

Reents did not, however, oppose the motion to compel by making a relevance objection to the site inspection or arguing that the request did not comport with Rule 214 or other provisions of the civil discovery rules. (C281-88). She did not object to the scope of the Attorney General's request or ask that the circuit court enter a protective order or additional limitations governing a site inspection if it granted the Attorney General's motion. (*Id.*).

In reply (C340-47), the Attorney General explained that Rule 214(a)'s plain language applies to all parties in civil litigation, without excepting a government litigant, and required Reents to respond to the reasonable discovery request for an inspection of the site, which not only was relevant to but was the subject matter of the litigation (C340-42, 345). In addition, the Attorney General answered Reents' constitutional objection by maintaining that the civil discovery rules – including their relevance, reasonableness, and judicial oversight requirements – satisfy constitutional concerns. (C342-43).

Thus, a properly issued discovery order pursuant to those rules does not run afoul of constitutional requirements, and its propriety should be evaluated on a non-constitutional basis. (C342-43).

Here, the Attorney General noted, Reents did not deny that the site was relevant to the subject matter of the case or claim that the Attorney General's request did not meet Rule 241's other requirements. (C341). In addition, the Agency's 2015 and 2016 inspections were not at issue during the discovery proceedings. (C345). Thus, the only question before the circuit court was whether it should enforce this Court's civil discovery rules that require civil litigants to respond to reasonable and relevant discovery requests. (C341).

During oral argument on the motion to compel (R1-21), each party stood by their written arguments (R7-15). Reents again challenged the requested site inspection only on constitutional grounds, without articulating any other objections to it or requesting that limitations allowed under the civil discovery rules be imposed should she be compelled to allow the inspection. (R7-21).

Thereafter, the circuit court granted the Attorney General's "motion to compel as to the Rule 214(a) inspection of Reents' real estate," "including the [Agency] participating in the inspection" (discovery order), but stayed its enforcement for one week pending Reents' decision to seek a contempt order. (C351; *see also* R15-18). It reasoned that "Rule 214 . . . appl[ies] to all civil cases" and allows any party to request access to real estate to inspect it when it is relevant to the subject matter of the litigation. (R15-16). Here, the court

noted, "clearly" "the subject matter is . . . the premises" owned by Reents and the Attorney General alleged violations of the Act in this civil action was "all about the property"; thus, the "physical status of the site is highly relevant in this particular case." (R16). It further explained that this was a civil case, not a criminal one, and although the "Fourth Amendment isn't thrown out the window," Rule 214 gave the Attorney General the right to inspect a site that was relevant to the litigation. (*Id.*).

A week later, Reents stated her "respectful intent to refuse to comply" with the discovery order, and the circuit court held her in friendly contempt and sanctioned her $100 (contempt order) so that she could immediately appeal the discovery order. (C353). The court stayed the contempt order pending appeal (*id.*), which Reents took pursuant to Rule 304(b)(5) (C367-69).

While the appeal was pending, the Agency moved the circuit court to issue an administrative inspection warrant authorizing its representatives to enter, inspect, and photograph the then-locked site based on its stand-alone authority under sections 4(c) and (d) of the Act to ascertain possible ongoing and/or other violations of the Act. (A42-60). The circuit court granted that motion and issued the warrant. (A40-41). The appellate court took judicial notice of that order. (A9, ¶ 19).

The appellate court's opinion

The appellate court reversed the circuit court's discovery order, vacated the contempt order, and remanded the case for further proceedings. (A3, ¶ 1;

A34, ¶¶ 70-73). The court limited its analysis to the only argument Reents' pressed in support of her challenge to the discovery order (A9-34, ¶¶ 19-70): that allowing the Attorney General's site inspection under Rule 214(a) was an impermissible warrantless search of the property in violation of the Fourth Amendment and Article I, Section 6 (A2-3, ¶ 1; A9, ¶ 18).[3] As a result, the appellate court never analyzed whether the circuit court abused its discretion in entering the discovery order, including whether it should have ordered additional limitations on the Attorney General's site inspection pursuant to the civil discovery rules. (A2-A34). However, in apparent response to the Attorney General's argument that the circuit court did not abuse its discretion in entering the discovery order (Attorney General AE Br. at 11-16, 25), the appellate court did acknowledge that "discovery orders are typically reviewed under the abuse-of-discretion standard" (A8-A9, ¶ 17).

The appellate court also acknowledged that the site was "the subject matter" of and "of course relevant" to the Attorney General's environmental enforcement action. (A3, ¶ 3; A22, ¶ 42). But it repeatedly characterized the action as "quasi-criminal" (A22, ¶ 43; A30, ¶ 58; *see also* A13, ¶ 27), noting that

[3] The appellate court characterized Reents' challenge under Article I, Section 6 of the Illinois Constitution as one under its search-and-seizure provision (protecting against "unreasonable" "searches, seizures"), not its privacy clause (protecting against "unreasonable" "invasions of privacy"). (A9, ¶ 18; A10, ¶ 21 & n.3). In doing so, the court noted that the Fourth Amendment "provides the same level of protection" as Illinois' search-and-seizure provision. (*Id.*). The appellate court's analysis made no mention of the Illinois Constitution's privacy clause. (A2-A34).

the Attorney General sought "substantial" civil penalties, in addition to injunctive relief and costs, within a statutory scheme that allowed criminal penalties, though the Attorney General had not sought those here (A3-4, ¶ 5; A20-21, ¶¶ 39, 41; A22, ¶ 43; A28, ¶ 54). Also, the court described the Attorney General's allowed discovery request as one "for unrestricted access" to or an "unrestricted search of" the site. (A21, ¶ 39; A23, ¶ 45; A28, ¶ 54; A34, ¶ 69).

In holding that Reents was justified in refusing to comply with the discovery order, the appellate court first stated that the "fourth amendment applie[d] to the discovery order," which allowed the Attorney General access to Reents' commercial property. (A20, ¶ 39; A21, ¶ 40; A22, ¶ 42; A22, ¶ 43; A24, ¶¶ 46-47; A28, ¶ 54; A30, ¶ 58). It then decided that this Court's civil discovery rules, including Rule 214(a), and discovery orders entered under them in civil cases where the government is the party requesting relevant discovery, violate the Fourth Amendment (A8, ¶ 17; A23, ¶ 45; A28, ¶54; A30, ¶ 58), although it stated that it was "expressly limit[ing]" its holding "to the facts of this case" (A30, ¶ 58). It did not explain whether this was a facial or an as-applied constitutional violation. (A2-A34).

Specifically, the appellate court determined that this Court's "civil discovery rules do not satisfy the core protection of the fourth amendment here" (A28, ¶ 54), and that there was "no persuasive basis upon which to hold that the parameters of the civil discovery rules satisfy the fourth amendment here" (A30, ¶ 58). In doing so, it rejected the idea that the protections

underlying the civil discovery rules and orders entered thereunder – including relevance, proportionality, and judicial oversight – satisfy constitutional concerns, including the Fourth Amendment's reasonableness requirement, when a government litigant seeks relevant discovery from private parties. (A22-A23, ¶¶ 44-45; A25-28, ¶¶ 48-54; A30-A34, ¶¶ 60-70). Indeed, the court concluded: "relevance does not set the bar here." (A22, ¶ 43). In addition, it implicitly rejected the point that the Fourth Amendment's reasonableness requirement was no more rigorous than the reasonableness protections within the civil discovery rules and orders entered under them. (A27-A28, ¶¶ 53-54).

Turning to the discovery order, the appellate court noted that "under these facts Reents must be able to avail herself of the protection provided by the fourth amendment" (A23, ¶ 45), and discussed whether the circuit court's discovery order allowed a "reasonable search under the fourth amendment" (A30, ¶ 60). It posited that the Attorney General had "made no showing beyond relevance to support the reasonableness" of the "search of the [s]ite." (A31, ¶ 60). And it criticized the circuit court for "not consider[ing] fourth amendment principles at all" in compelling Reents' compliance with the Attorney General's request for an "unrestricted search," without ordering any limits on the scope, place, or time of the site inspection it viewed the Fourth Amendment mandated. (A34, ¶ 69). The court made no mention of Reents' lack of objections to or requests for limitations on the discovery request apart from her constitutional challenge. (A2-A34).

The appellate court then concluded that "at a minimum" the Attorney General had to meet the three-factor test in *New York v. Burger*, 482 U.S. 691 (1987), to "justify the search of Reents' property," and remanded the case to the circuit court to "apply *Burger*'s framework in ruling" on the motion to compel the site inspection and in "crafting the discovery order." (A31, ¶ 60; A32-34, ¶¶ 64-70). It noted that Reents' commercial site contained a landfill, and that operation of landfills is a closely regulated industry that diminished her expectation of privacy and so "lessened" the application of the Fourth Amendment's warrant and probable cause requirements. (A31-A33,¶¶ 61-66). But, it claimed, applying *Burger*'s three-part test – used to evaluate whether a regulatory scheme authorizing warrantless administrative inspections of closely regulated industries outside of litigation are reasonable under the Fourth Amendment – was necessary to satisfy Fourth Amendment principles. (A32, ¶¶ 63-64; A34, ¶ 69). The court did not clarify whether the application of the *Burger* test, in this case and those like it, replaces or supplements the determinations (including relevance, proportionality, and scope) required under this Court's civil discovery rules. (*See* A30-A34, ¶¶ 60-70).

ARGUMENT

This Court should reverse the judgment of the appellate court, affirm the circuit court's discovery order, and remand this case to the circuit court for Reents to comply with the discovery order and further proceedings. To begin, the appellate court tried to limit its holding regarding the constitutionality of this Court's civil discovery rules and the circuit court's discovery order to this particular case, without explaining whether it found a facial or an as-applied constitutional violation. Nevertheless, its ruling was broad: for if it applies here, then it applies to any case where a government litigant seeks relevant discovery within the bounds of and protections inherent in this Court's rules.

The appellate court, however, erred in unnecessarily deciding this case on constitutional grounds, and this Court may reverse its judgment for that reason alone. Indeed, this Court and the appellate court previously have concluded that no constitutional issue existed when a circuit court ordered, within discovery proceedings, the production of information relevant to the subject of the litigation under the civil discovery rules, as was the case here. Instead of adopting the absolute, and misguided, position that the ordered relevant site inspection violated the Fourth Amendment, the appellate court should have, at most, evaluated whether the circuit court abused its discretion in entering the discovery order as it did, even though Reents did not object to its scope or request entry of additional limitations or protections. And in that regard, either this Court or the appellate court should review the discovery

order on this non-constitutional basis, conclude that the circuit court did not abuse its discretion in its entry, and affirm it.

Even if this Court considers the merits of the appellate court's decision on constitutional grounds, it should reverse the judgment. This Court's rules, regulating the conduct of discovery as overseen by the circuit court, and orders requiring the production of relevant information and site inspections under them when requested by a government litigant, fully accommodate any Fourth Amendment interests implicated and satisfy its reasonableness requirement. This constitutional scheme ensures that a government litigant's access to property is limited in scope to what is reasonably needed to obtain information relevant and proportional to the pending civil litigation, as determined by the circuit court.

In addition, this Court should conclude that *Burger*'s three-part test is inapplicable to the Attorney General's request for and the circuit court's order allowing a site inspection, or any other request by a litigant (including a government litigant) for discovery within civil litigation, because this Court's rules and orders entered pursuant to them already satisfy the Fourth Amendment's reasonableness requirement. The appellate court incorrectly equated a government litigant's request for relevant discovery within civil litigation to a warrantless administrative search allowed by a statutory scheme without any prior judicial scrutiny. Indeed, *Burger*'s test did not involve, and it is unworkable in, discovery proceedings within pending civil litigation.

I. The only issue before this Court is the propriety of the circuit court's discovery order, entered pursuant to this Court's civil discovery rules, which would typically be reviewed for an abuse of discretion.

As the appellate court recognized (A9, ¶ 19), the sole issue is the propriety of the circuit court's discovery order compelling Reents' compliance with the Attorney General's request for his representatives to inspect the site under Rule 214(a) within this civil enforcement action. To be clear, two items are not at issue.

First, as the appellate court recognized (*see* A8, ¶ 17; A9, ¶ 19; A33, ¶ 68), the Agency's separate, stand-alone authority to access the site under section 4 of the Act to ascertain possible ongoing and/or other violations of the Act was not before the appellate court, nor is it before this Court. True, in his Rule 214(a) discovery request and motion to compel, the Attorney General requested that his representatives be granted access to the site within the pending civil litigation (C236-40, 246-47), and that Agency representatives be allowed access to the site to inspect it under the Agency's separate authority under section 4 of the Act (C240-42, 244, 246). But after the Agency was issued the administrative inspection warrant authorizing its representatives to enter the site to inspect it for ongoing and/or additional violations of the Act under section 4 of the Act (A41), the Attorney General's reliance on section 4 of the Act as a basis to authorize Agency representatives to accompany his personnel was no longer at issue (*see* A9, ¶ 19; A33, ¶ 68). Likewise, the

propriety of the issuance of the administrative inspection warrant to the Agency was not and is not at issue. (A9, ¶ 19).

And there also is no problem with the discovery proceedings within the Attorney General's civil enforcement action taking place alongside the Agency's authority under the Act and pursuant to a warrant to inspect the site. Indeed, the propriety of such simultaneous proceedings in the parallel federal analog has been confirmed. *See In re Stanley Plating Co., Inc.*, 637 F. Supp. 71, 71-73 (D. Conn. 1986) (concluding issuance of warrant to United States Environmental Protection Agency to inspect premises under its statutory authority to discover potential violations of federal act was proper in light of United States' pending civil action as to violations of federal act and corresponding inspection of same premises within those civil discovery proceedings).

Second, as the appellate court noted (A8, ¶ 15 n.2), the propriety of the circuit court's denial, without prejudice, of Reents' motion to quash any evidence obtained by the Agency's 2015 and 2016 inspections and dismiss the case or to determine the lawfulness of the prior searches was not at issue before the appellate court, nor is it at issue here. As the appellate court recognized and the Attorney General conceded, a different procedural mechanism may be used in the future to challenge the admissibility of that evidence at trial. (*See* C81-88, 345; A8, ¶ 15 n.2).

Pre-trial discovery orders are non-final and ordinarily not appealable. *Norskog v. Pfiel*, 197 Ill. 2d 60, 69 (2001). But their correctness may be tested through contempt proceedings resulting from a party's refusal to comply with an order compelling discovery, *id.*, and once the circuit court orders a contempt sanction, the contemnor may appeal, *see* Ill. Sup. Ct. R. 304(b)(5), so that the appellate court may review the discovery order, *Norskog*, 197 Ill. 2d at 69. This course was followed here. (C351, 353, 367-69; R15-18).

An order compelling discovery is ordinarily reviewed for a "manifest abuse of discretion," *Klaine v. S. Ill. Hosp. Servs.*, 2016 IL 118217, ¶ 13, because a circuit court has "broad discretion" in ruling on discovery matters, *Castro v. Brown's Chicken & Pasta, Inc.*, 314 Ill. App. 3d 542, 554 (1st Dist. 2000). Under this most deferential standard of review, a circuit court's discovery order will be disturbed only if it is unreasonable and arbitrary, ignores recognized principles of law, or where no reasonable person would take the circuit court's view. *Salvator v. Air & Liquid Sys. Corp.*, 2017 IL App (4th) 170173, ¶ 66; *Castro*, 314 Ill. App. 3d at 554. The reviewing court will defer to the circuit court even where reasonable minds could differ on the merits of the arguments presented. *Id.* This is the standard under which the circuit court's discovery order should be reviewed, on non-constitutional grounds.

But if this Court considers the merits of the constitutional basis underlying the appellate court's opinion, then a purely legal issue is presented. On that point, the reviewing court may independently determine the

correctness of a circuit court's discovery order, exercising *de novo* review on issues of law regarding the construction of this Court's rules, *Klaine*, 2016 IL 118217, ¶ 13; *Zagorski v. Allstate Ins. Co.*, 2016 IL App (5th) 140056, ¶ 21, and whether they are constitutional, *Kaull v. Kaull*, 2014 IL App (2d) 130175, ¶ 22.

II. This Court's civil discovery rules, crafted with constitutional concerns in mind, allow "any party" access to real estate to conduct an inspection when relevant to the subject matter of the action and within the rules' limitations while overseen by the circuit court.

This Court has primary constitutional authority to control court procedure. *Kunkel v. Walton*, 179 Ill. 2d 519, 527-30 (1997) (citing Ill. Const. 1970, art. VI, §§ 1, 16). The Court regulates judicial proceedings through rulemaking, including rules governing civil proceedings in the circuit court. *Id.* at 530-31; Ill. Sup. Ct. R., art. II.

Relevant here, the pre-trial civil discovery rules, *see* Ill. Sup. Ct. R. 201-24, "form a comprehensive scheme for fair and efficient discovery with judicial oversight to protect litigants from harassment,"*Kunkel*, 179 Ill. 2d at 531, in order to enhance the truth-seeking process, aid in preparation of trial, eliminate surprise, and promote an expeditious and final determination of controversies in accord with the parties' substantive rights, *Salvator*, 2017 IL App (4th) 170173, ¶ 65. By design, the rules are "flexible and adaptable to the infinite variety of cases and circumstances appearing" in the circuit courts, *Kaull*, 2014 IL App (2d) 130175, ¶ 29 (citing *Monier v. Chamberlain*, 35 Ill. 2d 351, 355 (1966)), who are authorized to exercise broad authority and discretion

over the conduct and control of discovery, *Bright v. Dicke*, 166 Ill. 2d 204, 208 (1995); *Shamrock Chi. Corp. v. Wroblewski,* 2019 IL App (1st) 182354, ¶ 40.

This Court has been mindful of constitutional concerns when crafting the civil discovery rules. *See Kunkel*, 179 Ill. 2d at 531, 537-39. To that end, it has considered both the United States and Illinois Constitutions' prohibitions against "unreasonable searches and seizures" and the Illinois Constitution's prohibition against "unreasonable invasions of privacy" in composing them, including their enumerated safeguards, limitations, and constraints. *Kunkel*, 179 Ill. 2d at 531, 537-39. For example, it has noted that the rules' relevance requirement (*see infra* pp. 24-25) "has a constitutional dimension," *Kunkel*, 179 Ill. 2d at 531, because "[i]n the context of civil discovery, reasonableness is a function of relevance," *id.* at 538. (*See also infra* § IV).

Once an action has been filed and all parties appear (or should have appeared) the rules control the pre-trial search for matters relevant to the litigation. *Kaull*, 2014 IL App (2d) 130175, ¶ 33; Ill. Sup. Ct. R. 201(d) ("no discovery procedure shall be noticed or otherwise initiated" prior to the appearance of all defendants or the time within which they are required to appear unless by leave of court upon good cause shown). Thus, there can be no pre-trial compelled production of information, including a site inspection, until a court has become involved and discovery is underway, *see* Ill. Sup. Ct. R. 201(c)(2) ("court may supervise all or any part of any discovery procedure"); Ill. Sup. Ct. R. 201(d); Ill. Sup. Ct. R. 201(k) (court involvement upon motion

noting parties' reasonable attempts to resolve differences over discovery have failed); Ill. Sup. Ct. R. 213(d), 214(c) (court may compel discovery response upon motion); *Rhodes v. Uniroyal, Inc.*, 101 Ill. App. 3d 328, 330 (3d Dist. 1981) (no legal duty to allow site inspection before filing suit with accompanying discovery proceedings), and after the parties have notice and opportunity to be heard, *Kaull*, 2014 IL App (2d) 130175, ¶ 44.

Though the scope of permissible discovery under the rules "can be quite broad," *Carlson v. Jerousek*, 2016 IL App (2d) 151248, ¶ 31, parties to litigation "do not sacrifice all aspects of privacy, confidentiality, and privilege," *Custer v. Cerro Flow Prods., Inc.*, 2019 IL App (5th) 190285, ¶ 31. Indeed, the civil discovery rules address constitutional concerns about reasonableness and privacy via limitations and safeguards in several ways. *Carlson*, 2016 IL App (2d) 151248, ¶ 31.

To begin, the rules require full disclosure only of matters relevant to the action, Ill. Sup. Ct. R. 201(b)(1) ("a party may obtain by discovery full disclosure regarding any matter relevant to the subject matter involved in the pending action"), that are not privileged, Ill. Sup. Ct. R. 201(n). Though the scope of information considered relevant under Rule 201(b)(1) is "expansive," including both evidence that would be admissible at trial and information leading to the discovery of admissible evidence, the relevance requirement safeguards against "improper and abusive discovery" and acts as an "independent constraint on discovery." *Kunkel*, 179 Ill. 2d at 531, 533.

Among the enumerated methods of discovering relevant information, *see* Ill. Sup. Ct. R. 201(a), 212-17, is an inspection of real estate, Ill. Sup. Ct. R. 214(a), at issue here. Rule 214(a) allows a litigant access to real property, as follows:

> Any party may by written request direct any other party . . . to permit access to real estate for the purpose of making surface or subsurface inspections or surveys or photographs, or tests or taking samples, or to disclose information calculated to lead to the discovery of the whereabouts of any of these items, whenever the . . . real estate is relevant to the subject matter of the action.

Ill. Sup. Ct. R. 214(a). The requesting party must specify a "reasonable time" for the inspection (more than 28 days after service of the request, except by agreement or court order), and the "place and manner of making the inspection and performing the related acts." *Id.*

To be clear, Rules 201(b)(1) and 214(a) use the terms "a party" and "any party" in authorizing who may obtain relevant discovery, including an inspection of real estate. In the rules' plain language, this Court did not exclude the government from their application and entitlements, nor did it specify additional or different procedures or limitations when the government is a litigant requesting discovery, including an inspection of real estate. *See Kaull*, 2014 IL App (2d) 130175, ¶ 28 (explaining supreme court rules have the force of law, and should be obeyed and enforced as written given their plain and ordinary meaning resulting from clear and unambiguous language). Nor should they be read as such. *See Ferris, Thompson & Zweig, Ltd. v. Esposito*,

2017 IL 121297, ¶ 22 (court will not depart from rule's plain language by reading exceptions, limitations, or conditions into it that deviate from or conflict with expressed intent).

This Court has enumerated additional safeguards and limitations on discovery, in addition to relevance, both to address constitutional concerns and prevent abuse. *See* Ill. Sup. Ct. R. 201(c); *see also Carlson*, 2016 IL App (2d) 151248, ¶¶ 31-41. The recently added proportionality provision, *see* Ill. Sup. Ct. R. 201(a), (c)(3), ensures that the discovery of private information will be constitutionally reasonable, *see Carlson*, 2016 IL App (2d) 151248, ¶ 35. Proportionality allows the court to determine whether the "likely burden or expense of the proposed discovery" "outweighs the likely benefit" by considering the amount in controversy, the parties' resources, the importance of the issues in the litigation, the importance of the requested discovery in resolving the issues, Ill. Sup. Ct. R. 201(c)(3), and the privacy concerns of the responding party, *Carlson*, 2016 IL App (2d) 151248, ¶ 39. And a discovery request may be rejected if it is "disproportionate in terms of burden or expense." Ill. Sup. Ct. R. 201(a).

In addition, the rules prescribe other limitations and protections to discourage abuse of and encourage compliance with the discovery process. *See Zagorski*, 2016 IL App (5th) 140056, ¶ 37. In supervising discovery, Ill. Sup. Ct. R. 201(c)(2), the circuit court may enter a protective order "denying, limiting, conditioning, or regulating discovery to prevent unreasonable

annoyance, expense, embarrassment, disadvantage, or oppression," Ill. Sup. Ct. R. 201(c)(1). In addition, the court may impose a variety of sanctions for a party's refusal to comply with the rules or a discovery order, *see* Ill. Sup. Ct. R. 219(a), (c) (enumerating remedies available including barring evidence, striking pleadings, dismissing an action, and payment of reasonable expenses and attorneys' fees), and may order that information obtained through a party's abuse of discovery procedures be suppressed in addition to other remedies, *see* Ill. Sup. Ct. R. 219(d).

After a discovery request is served, the responding party has a reasonable time, *see* Ill. Sup. Ct. R. 214(a); *Carlson*, 2016 IL App (2d) 151248, ¶ 28, either to respond or assert a good-faith objection to the request, Ill. Sup. Ct. R. 213(d), 214(c); *Zagorski*, 2016 IL App (5th) 140056, ¶ 36. If objecting to the request or any part of it, the responding party must articulate a specific objection, such as: relevance; the request is overly broad; the matter sought is protected by the attorney-client or work-product privilege; and/or the request is unduly burdensome or harassing. *See, e.g.*, *Zagorski*, 2016 IL App (5th) 140056, ¶ 35; *see also* Ill. Sup. Ct. R. 201(b)(2), (n). And it must adequately defend the grounds claimed for the objection. *Zagorski*, 2016 IL App (5th) 140056, ¶ 35. The rules require the parties to make a reasonable attempt to resolve their differences, *see* Ill. Sup. Ct. R. 201(k), but if they cannot agree, then the objection to the request "shall be heard by the court upon prompt notice and motion," Ill. Sup. Ct. R. 201(k), 213(d), 214(c), and the court must

"promptly" rule on the objection, *Zagorski*, 2016 IL App (5th) 140056, ¶ 37. A responding party may waive or forfeit an objection to a discovery request by failing to timely raise a specific objection or make a specific argument in support of its objection. *See, e.g.*, *Salvator*, 2017 IL App (4th) 170173, ¶¶ 64, 67.

III. The appellate court erred in unnecessarily deciding this case on constitutional grounds. The discovery order should be reviewed on non-constitutional grounds and upheld if the circuit court did not abuse its discretion in entering it.

Courts are "prohibit[ed]" from deciding a case on constitutional grounds "without first exhausting all potential nonconstitutional grounds" for its resolution. *In re E.H.*, 224 Ill. 2d 172, 178-79 (2006) (noting constitutional issues should be reached "only as a last resort"); *see also* Ill. Sup. Ct. R. 18(c)(4) (requiring court to state that its decision cannot rest upon alternative, non-constitutional ground). Here, the appellate court erred in proceeding directly to a constitutional analysis of the civil discovery rules and the circuit court's discovery order, and deciding this case on those grounds, without first addressing whether the circuit court had abused its discretion in entering the discovery order as it did. On that point, the discovery order should be upheld because the circuit court did not abuse its discretion in entering it. (*See infra* pp. 32-34, 42-43). But the appellate court did not explain why its decision could not rest upon that non-constitutional ground. This, alone, warrants reversal of the appellate court's judgment. *See In re E.H.*, 224 Ill. 2d at 179.

Indeed, on two occasions this Court has made clear that an order compelling discovery of relevant information, as did the discovery order here, did not present a "substantial" or "debatable" constitutional issue for its direct review and, at most, presented only non-constitutional issues regarding the order's scope. In *Monier v. Chamberlain*, defendants appealed directly to this Court claiming that the circuit court's order compelling their disclosure of requested information violated the federal and state constitutional prohibitions against unreasonable searches and seizures. 31 Ill. 2d 400, 400-01 (1964). Because its modern pre-trial civil discovery rules ensured that the "boundaries of the area constitutionally protected against unreasonable search and seizure were fixed at the limits of relevance," *id.* at 402-03, this Court concluded that the discovery order, which directed the production of information relevant to the subjects of the litigation, "would not violate the constitutional rights of the parties," *id.* at 404. However, the Court also recognized that a "debatable" constitutional issue had existed in prior cases and may exist if there is no requirement of relevance governing disclosure of information within litigation or a circuit court orders the production of matters that are not relevant, pertinent, or material to the issues presented by the action. *Id.* at 401-03 (citing cases). But because the defendants challenged only the order's scope, which they argued required production of information that could have been privileged or otherwise protected from disclosure, the challenge did not "present any debatable constitutional issues" for this Court's

review. *Id.* at 404-05. Thus, the Court transferred the matter to the appellate court to resolve the non-constitutional issues. *Id.* at 404-05.

Three years later, this Court relied on *Monier*'s reasoning in declining to consider the defendant auto manufacturer's constitutional challenge, including as an unreasonable search and seizure, to discovery orders requiring its production of records for cars four model years after the model year of the car at issue in the lawsuit. *People ex rel. Gen. Motors Corp. v. Bua*, 37 Ill. 2d 180, 193-95 (1967). Instead, this Court resolved the matter on non-constitutional grounds. *Id.* In doing so, it concluded that the circuit court abused its discretion in the scope of documents it ordered produced absent a "preliminary showing" that the documents were relevant or material to the issues in the action. *Id.* at 193-94.

Following this Court's conclusions in *Monier* and *Bua* that issues regarding discovery orders can and should be resolved on non-constitutional grounds whenever possible, the appellate court also has rejected attempts to constitutionalize a purported error in a discovery order, entered after applying the requirements in the civil discovery rules, when unnecessary to resolve the case before it, *see Shamrock Chi. Corp.*, 2019 IL App (1st) 182354, ¶¶ 32-38; *City of N. Chi. v. N. Chi. News, Inc.*, 106 Ill. App. 3d 587, 591-93 (2d Dist. 1982); *cf. Kaull*, 2014 IL App (2d) 130175, ¶¶ 37-47, including when the government was the party that requested the discovery, *see City of N. Chi.*, 106 Ill. App. 3d at 592-93. For when the compelled information is relevant, the

inquiry considered in protecting against unreasonable search and seizure, then no potential constitutional issue is presented, *City of N. Chi.*, 106 Ill. App. 3d at 592, and the scope of the circuit court's discovery order, applying the civil discovery rules, should be reviewed for an abuse of discretion, *Shamrock Chi. Corp.*, 2019 IL App (1st) 182354, ¶¶ 33-38; *City of N. Chi.*, 106 Ill. App. 3d at 593.

In these cases, the appellate court analyzed whether the circuit court abused its discretion in ordering the production of the information requested under the civil discovery rules. *Shamrock Chi. Corp.*, 2019 IL App (1st) 182345, ¶¶ 32-38 (circuit court did not abuse discretion in ordering production of "discernibly relevant" information that "directly relates" to issues in action); *City of N. Chi.*, 106 Ill. App. 3d at 591-92 (circuit court properly ordered production of items requested by government "[m]ost certainly" relevant to action). But like this Court, it recognized that a constitutional issue may be presented by the compelled disclosure of information that is irrelevant to the issues in the action. *Custer*, 2019 IL App (5th) 190285, ¶ 31; *City of N. Chi.*, 106 Ill. App. 3d at 592.

Thus, if there is no relevance requirement or showing, there may be a constitutional issue to decide. But that was not the case here. The site was not only relevant to the Attorney General's civil environmental enforcement action, it is the subject matter of the action. That was recognized by the appellate court (A3, ¶ 3; 22, ¶ 42) and circuit court (R16), and has not been

contested by Reents (C281-89, 341; R1-21). And Reents likewise never questioned the compliance of the site inspection request or discovery order under Rules 214(a) and 201(b)(1), including their relevance requirements and other parameters. Thus, the rules' relevance requirement was met, *see* Ill. Sup. Ct. R. 201(b)(1), 214(a), rendering the site inspection reasonable whether viewed as a constitutional matter or a civil discovery rule protection, *see* *Kunkel*, 179 Ill. 2d at 531, 538; *see also infra* § IV. In addition, the Attorney General's site inspection request was limited to one date at a particular time (C246, 257) and the discovery order did not enlarge those parameters (C351).

Indeed, during the circuit court proceedings, Reents interposed no specific objections to the Attorney General's site inspection request apart from the constitutional challenge (*see* C257, 281-88, 341; R1-21), potentially waiving or forfeiting any available objections, *see* Ill. Sup. Ct. R. 214(a), (c); *Carlson*, 2016 IL App (2d) 151248, ¶ 28; *Zagorski*, 2016 IL App (5th) 140056, ¶¶ 35-36; *Salvator*, 2017 IL App (4th) 170173, ¶¶ 64, 67. Nor did she propose that any protections or limitations be applied to the site inspection. (*See* C257, 281-88, 341; R1-21). But if the appellate court's concern was that the discovery order allowed an "unlimited search" of the site by the Attorney General (A21, ¶ 39; A23, ¶ 45; A28, ¶ 54; A34, ¶ 69), then it should have evaluated whether the circuit court abused its discretion in entering the discovery order with those terms. And, if it did, the appellate court could have remanded the case for the

circuit court to reconsider the order's scope and implement any necessary additional limitations or protections as allowed under the civil discovery rules.

In addition, as far as evaluating the propriety of this discovery order, the appellate court's intimation that this action was quasi-criminal, due to the civil penalties that the Attorney General sought and the criminal penalties available but not sought (A22, ¶ 43; A30, ¶ 58; *see also* A13, ¶ 27), was incorrect. *See Scott v. Ass'n for Childbirth At Home, Int'l*, 88 Ill. 2d 279, 288 (1981) (noting Act is a regulatory and remedial statutory scheme, not a penal enactment, even where $50,000 civil penalty may be imposed for violation, which aids enforcement but does not render scheme punitive). This was purely a civil action governed by this Court's civil discovery rules pursuant to which the circuit court issued its discovery order requiring Reents to allow the Attorney General and his representatives access to the site, the subject matter of the action, for an inspection.

In short, no constitutional issues were implicated here. Thus, there was no need for the appellate court to hold unconstitutional the discovery order, much less this Court's civil discovery rules. *See E.H.*, 224 Ill. 2d at 178-79 (noting appellate court erred in first deciding case on constitutional grounds and compounded error by unnecessarily declaring statute at issue facially unconstitutional, *in dicta*, which was unnecessary to its resolution). The appellate court's unnecessary constitutionalization of the issue, in and of itself, warrants reversal of its judgment and a remand for it to decide the appeal on

non-constitutional grounds, *see E.H.*, 224 Ill. 2d at 179, or for this Court to review whether the circuit court abused its discretion in entering the discovery order.

IV. This Court's civil discovery rules and the circuit court's discovery order entered pursuant to them are constitutionally reasonable.

If this Court considers the merits of the constitutional basis underlying the appellate court's opinion, then it should reverse its judgment on that ground.

To begin, some courts have questioned whether a Fourth Amendment analysis even applies to civil discovery rules and orders entered under them, including in cases where the government is the party requesting discovery. *See, e.g.*, *Kaull*, 2014 IL App (2d) 130175, ¶¶ 35-41, 47 (explaining that most instances of courts applying Fourth Amendment analysis to civil discovery requests between private parties occurred prior to adoption of modern rules of discovery, which require a showing of relevance, and concluding that applying Fourth Amendment to such discovery requests undermines core principles of modern discovery rules); *City of N. Chi.*, 106 Ill. App. 3d at 593 (noting that where government is plaintiff litigant requesting discovery there is no persuasive argument that "civil discovery procedures should be subject to the type of constitutional analysis utilized in unreasonable search and seizure criminal cases"); *Union Oil Co. of Cal. v. Hertel*, 89 Ill. App. 3d 383, 385-86 (1st Dist. 1980) (stating that application of search and seizure law is unwarranted

in action between private parties under civil discovery rules requiring relevance); *see also United States v. Int'l Bus. Mach. Corp.* (*IBM*), 83 F.R.D. 97, 103 (S.D.N.Y. 1979) (questioning whether government's request for discovery "should be susceptible to fourth amendment attack at all" but declining to decide this question because constitutional reasonableness requirement was satisfied). However, this Court need not decide that issue here.

For even if the Fourth Amendment applies to a modern discovery request, proper application of this Court's civil discovery rules ensures the constitutional reasonableness of any discovery ordered pursuant to them, including when the government is the requesting party. In fact, prior to the appellate court's decision below, Illinois courts agreed on this point, and federal courts have similarly recognized that the federal civil discovery rules ensure the constitutional reasonableness of orders entered pursuant to them. This Court should re-affirm that conclusion and apply it here.

And because this Court's civil discovery rules, including Rule 214(a), ensure that the constitutional reasonableness requirement is satisfied, so does any discovery order entered in compliance with them. The appellate court erred in concluding otherwise. And the appellate court compounded its error in requiring application of *Burger*'s three-part test to the Attorney General's site inspection request.

A. The civil discovery rules, with their limitations and judicial oversight provisions, ensure that any discovery orders entered based on them satisfy the constitutional reasonableness requirement, including the discovery order entered here.

In the context of a search and seizure undertaken by law enforcement to discover evidence of criminal activity, the Fourth Amendment generally requires the issuance of a judicial warrant after a showing of probable cause. *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 653 (1995). But a search can be constitutional without a warrant and probable cause. *Id.* That was the case here.

In the context of civil discovery requested by a party, including the government, both Illinois and federal courts have recognized that the Fourth Amendment is satisfied by proper application of the civil discovery rules' limitations – including relevance (of which reasonableness is a function), proportionality, and judicial oversight. That is, the rules are inherently reasonable and when properly invoked and applied in discovery, as they were in this case, so are discovery orders entered pursuant to them that satisfy their requirements, including the discovery order here.

There exists a "strong presumption" that court rules are constitutional. *Kaull*, 2014 IL App (2d) 130175, ¶ 29. Indeed, nearly 60 years ago, this Court explained that the relevance requirement in its civil discovery rules satisfied the United States and Illinois Constitutions' guarantee against unreasonable searches and seizures: "the boundaries of the area constitutionally protected

against unreasonable search and seizure [are] fixed at the limits of relevance." *Monier*, 31 Ill. 2d at 402. And more than 30 years after *Monier*, the Court re-affirmed that the rules' constraints address this constitutional requirement: "[i]n the context of civil discovery, reasonableness is a function of relevance." *Kunkel*, 179 Ill. 2d at 531, 538 (addressing Illinois constitution's prohibition against unreasonable invasion of privacy). Thus, it was for good reason that the appellate court previously acknowledged the dearth of authority holding that a court civil discovery rule violates the Fourth Amendment. *See Kaull*, 2014 IL App (2d) 130175, ¶ 27.

In earlier opinions, the appellate court stated that this Court's civil discovery rules "are not blind" to the constitutional interests of the responding party. *Carlson*, 2016 IL App (2d) 151248, ¶ 31. In fact, it noted that the rules "more than satisfy" Fourth Amendment concerns through their requirements of "relevance and reasonableness together with judicial oversight." *Kaull*, 2014 IL App (2d) 130175, ¶ 45. Indeed, the civil discovery rules' relevance limitation on compelled disclosure ensures that there will not be a "general investigation" into a private party's matters that is not material to the issues in litigation. *Kunkel*, 179 Ill. 2d at 538.

The appellate court also recognized that this Court's addition of the proportionality analysis in 2014, *see* Ill. Sup. Ct. R. 201(c)(3), along with the relevance requirement, establishes a system that satisfies constitutional requirements: "[t]he civil discovery rules adopt two safeguards to ensure that

the discovery of private information will be 'reasonable' (and hence constitutional): relevance and proportionality." *Carlson*, 2016 IL App (2d) 151248, ¶¶ 35-36; *see also Custer*, 2019 IL App (5th) 190285, ¶ 31 (stating relevance and proportionality requirements protect against unconstitutional invasion of litigants' privacy). Most recently, the appellate court again concluded that where the applicable discovery rule requires relevance, reasonableness, and judicial oversight, it "complies, by definition, with the fourth amendment" and the Illinois Constitution's privacy clause. *Shamrock Chi. Corp.*, 2019 IL App (1st) 182354, ¶ 32.

Federal courts have similarly concluded that the federal civil discovery rules ensure compliance with the Fourth Amendment, even in cases where the government was the requesting party. *See, e.g.*, *United States v. Conces*, 507 F.3d 1028, 1039-40 (6th Cir. 2007) (noting absence of support for proposition that "ordinary discovery requests in civil litigation [made by government litigant] must satisfy the Fourth Amendment standard of probable cause, in addition to or apart from the usual standards set forth in the Federal Rules of Civil Procedure"); *IBM*, 83 F.R.D. at 103-04 & n.11 (stating that if Fourth Amendment applies to discovery requests by government in civil litigation, it would hold them "to a standard of reasonableness no more rigorous than that imposed by" requirements of federal civil discovery rules). These courts have reasoned that the requirement that the requested information be relevant, accords with the Fourth Amendment's reasonableness requirement and does

not require a separate showing of probable cause. *See Conces*, 507 F.3d at 1039-40; *see also IBM*, 83 F.R.D. at 103-04 (explaining that additional indicia of reasonableness include the requesting party's need for the discovery, the breadth of the request, the particularity with which the information sought is described, and the burden imposed by the disclosure). Thus, the appellate court's statement in this case, that "relevance does not set the bar here" (A22, ¶ 43), conflicts with prior decisions of both Illinois and federal courts.

To be sure, there may be a constitutional problem if the applicable rules did not include a relevance requirement governing disclosure of information in discovery. *See Kunkel*, 179 Ill. 2d at 538-59 (because statute at issue required blanket disclosure without consideration of matters at issue in litigation or judicial control over disclosure, statute was unconstitutional). But this Court's current civil discovery rules limit compelled disclosure to matters that a court deems relevant. *Id.* at 538. Judicial oversight of the discovery process is likewise constitutionally significant. To that end, the availability of judicial review of the propriety of a discovery request to ensure compliance with the rules' requirements prior to compelling disclosure protects a litigant's Fourth Amendment rights in the same manner as does the warrant requirement during criminal investigatory proceedings, *see Kaull*, 2014 IL App (2d) 130175, ¶¶ 46-47, when the government must obtain a court's confirmation of the existence of probable cause shown by an affiant's oath or affirmation during *ex*

parte proceedings prior to a search or seizure, *McCray v. Illinois*, 386 U.S. 300, 307 (1967).

Because the civil discovery rules' relevance requirement and the availability of judicial review prior to compelled production ensures compliance with the constitutional reasonableness standard, once it is determined that the information sought is relevant to the issues in litigation, there is no need to require a showing of probable cause or a warrant. *See City of N. Chi.*, 106 Ill. App. 3d at 592-93 (relying on requirements of relevance and judicial oversight of discovery process to implicitly reject argument that materials could be "seized" by government only pursuant to valid warrant because Fourth Amendment analysis used in criminal cases does not apply to civil litigation); *Conces*, 507 F.3d at 1039-40 (government's discovery request in civil litigation need not satisfy Fourth Amendment probable cause standard in addition to federal rules' standards); *see also IBM*, 83 F.R.D. at 102 (noting difference between government as litigant verses government acting in investigatory capacity outside of litigation).

Whether viewed through a constitutional or discovery lens, the baseline reasonableness standard is the same and the discovery rules' requirements satisfy the constitutional reasonableness standard. Federal courts have so concluded in evaluating those rules. *See, e.g.*, *IBM*, 83 F.R.D. at 103-04; *see also Conces*, 507 F.3d at 1039. Thus, the appellate court erred in suggesting that the Fourth Amendment's reasonableness requirement requires more than

the protections established by this Court's civil discovery rules. (*See* A27-28, ¶¶ 53-54).

In addition, contrary to the decision below (A22-25, ¶¶ 44-47), that it was the *government* seeking the site inspection here does not change the analysis. Properly applied, this Court's civil discovery rules compel discovery of only relevant information, with an additional safeguard of proportionality, pursuant to judicial oversight in a public forum when the parties have an opportunity to be heard; this satisfies the reasonableness standard under the Fourth Amendment and Illinois Constitution, including when the government is the litigant requesting the information. *See, e.g.*, *City of N. Chi.*, 106 Ill. App. 3d at 592-93; *Conces*, 507 F.3d at 1039-40; *IBM*, 83 F.R.D. at 103-04. So, even if many of Illinois' cases addressing the constitutional reasonableness of the civil discovery rules are in the context of private party litigants (*see* A22-25, ¶¶ 44-47), there was no basis for the appellate court to conclude that these protections do not satisfy the reasonableness standard when the government is the litigant.

Indeed, there is no precedent for holding, and no reason to hold, that the civil discovery rules somehow apply differently to the government than to private parties. When those rules are properly applied, it should not be more difficult for the government to obtain discovery than it would be for a private party to obtain the same discovery, for that would undermine the notion of liberal pre-trial discovery and the opportunity for all parties to seek relevant

information to advance the litigation without surprise in order to ascertain the truth. *See DuFour v. Mobil Oil Corp.*, 301 Ill. App. 3d 156, 160-61 (1st Dist. 1998).

There was likewise no constitutional problem with this discovery order. Because the civil discovery rules are constitutionally sufficient, the only question before the appellate court was whether the circuit court's application of those rules to the Attorney General's discovery request demonstrated an abuse of discretion. *See Shamrock Chi. Corp.*, 2019 IL App (1st) 182354, ¶ 33-38 (appellate court evaluates claim of overbroad discovery order not as constitutional matter but to determine whether circuit court abused its discretion in entering order). For if a circuit court's order compelling the production of information during discovery "satisfies the requirements of [this Court's civil discovery] rules, it would satisfy any constitutional concerns." *Kaull*, 2014 IL App (2d) 130175, ¶ 47.

Here, the site inspection that the circuit court ordered was reasonable and not an abuse of discretion. After the Attorney General made its request to inspect Reents' property, which was the subject matter of the action, Reents did not challenge the request as seeking irrelevant information (or on any other ground other than her constitutional challenge). (*See* C257, 281-88, 341; R1-21). That the request sought relevant information was recognized by the appellate court (A3, ¶ 3; A22, ¶ 42) and circuit court (R15-16). The circuit court granted the Attorney General's request to inspect the site on one date at

a reasonable time (C246, 239-40, 244, 351), after the Attorney General had attempted to resolve the issue with Reents (C238, 244, 259-63); *see* Ill. Sup. Ct. R. 201(k), who again interposed no objections to it under the civil discovery rules, *see* Ill. Sup. Ct. R. 201(b)(2), (n), 213(d), 213(a), (c); *Zagorski*, 2016 IL App (5th) 140056, ¶ 36; *Salvator*, 2017 IL App (4th) 170173, ¶¶ 64, 67, or requested any limitations on the inspection or otherwise sought a protective order, *see* Ill. Sup. Ct. R. 201(a), (c)(1) & (3), during proceedings on the Attorney General's motion to compel when Reents could be heard and the circuit court could pass on such matters in overseeing this discovery request within the parameters of the rules (*see* C281-88; R1-21).

Even in light of Reents' failure to avail herself of the civil discovery rules' safeguards, to the extent that the appellate court was troubled by what it deemed as "unrestricted access" allowed the Attorney General by the discovery order, the court should have addressed those concerns by reversing the circuit court's order as an abuse of discretion and directing it to impose available limitations on the site inspection. But no authority supports the notion that the allowance of an alleged "overbroad" discovery site inspection is a Fourth Amendment violation. *See, e.g.*, *Shamrock Chi. Corp.*, 2019 IL App (1st) 182354, ¶¶ 33-38.

Moreover, the appellate court's suggestion that the Attorney General would use the discovery rules "arbitrar[ily]" (A20, ¶ 38; A21, ¶ 41) for a "fishing expedition" to gather or "extort" evidence of criminal activity (A16, ¶

32; A13, ¶ 28) is unsubstantiated. *See Conces*, 507 F.3d at 1039-40 (no indication in record that government's discovery request was intended to assist in any pending or anticipated criminal investigation or prosecution); *Abrahamson v. Ill. Dep't of Prof'l Regulation*, 153 Ill. 2d 76, 95 (1992) (state actors presumed to act in good faith).

On the contrary, the record establishes that the Attorney General filed this civil environmental enforcement action in good faith and grounded in fact. (C7-31, 192-235). The complaint specified the conditions at the site, which were twice viewed by an Agency inspector, and how those conditions violated multiple provisions of the Act. (C192-235). If Reents had a legitimate basis to challenge the Attorney General's request for the site inspection (which she did not), she could have asked the circuit court to invoke one of the mechanisms for raising such a challenge available under the rules. *See* Ill. Sup. Ct. R. 219(a), (c), (d) (sanctions available when civil pleading not well-grounded in fact or interposed for improper purpose). But there was no basis for the appellate court to impose upon this discovery request or order any Fourth Amendment requirement other than the constitutional reasonableness standards inherent in the civil discovery rules.

B. *Burger*'s three-part test is inapplicable to and unworkable for civil discovery proceedings.

The appellate court compounded its error by requiring the circuit court on remand to apply *Burger*'s three-part test to the Attorney General's request for discovery in crafting a discovery order. This Court should hold that *Burger*

is inapplicable to this civil discovery request, either as an additional or separate requirement, for at least two reasons.

First, as explained, the constraints and provisions set forth in this Court's civil discovery rules ensure that orders entered pursuant to the rules satisfy the Fourth Amendment, including its reasonableness requirement. *See supra* § 4, A. Thus, discovery requests made pursuant to the rules, including the Attorney General's request for a site inspection, should not be subject to some other standard to ensure their constitutional reasonableness because that would be redundant. *See Conces*, 507 F.3d at 1039; *IBM*, 83 F.R.D. at 103-04.

Second, *Burger* did not involve a government request for discovery within civil litigation pursuant to court rules with judicial oversight, *see* 482 U.S. at 693-703, and *Burger*'s three-part test is inapplicable to and unworkable for such requests. At issue in *Burger* was the constitutionality of a state statute authorizing a warrantless administrative inspection of commercial property used in a closely regulated business (auto junkyard) to enforce the regulatory scheme outside of litigation and with no judicial oversight. *Id.* at 693-95. Recognizing that an owner of commercial property in a closely regulated industry has a reduced expectation of privacy, the United States Supreme Court concluded that the reasonableness of a government search under the Fourth Amendment is not dependent upon a probable-cause

showing and issuance of a warrant, which have a "lessened application" in that context. *Id.* at 702.

Instead, the Court set forth three criteria that had to be satisfied to conclude that an administrative inspection under such a regulatory scheme was constitutionally reasonable. *Id.* at 702-03. First, "there must be a 'substantial' government interest that informs the regulatory scheme pursuant to which the inspection is made." *Id.* at 702. Second, the "warrantless inspections must be necessary to further the regulatory scheme," such that forcing inspectors to obtain a warrant before an inspection would frustrate the scheme's purposes. *Id.* at 702-03. Third, the statute's "inspection program, in terms of the certainty and regularity of its application, must provide a constitutionally adequate substitute for a warrant." *Id.* at 703. As to the third criterion, the statute must perform the two functions of a warrant. *Id.* One, it must advise the owner of the premises that the search is being made pursuant to the law, such that the owner "cannot help but be aware" that the property "will be subject to periodic inspections undertaken for specific purposes." *Id.* And two, it must limit the inspectors' discretion, by limiting the inspections in "time, place, and scope." *Id.* After applying those criteria, the Court concluded that the regulatory scheme at issue there fell within the exception to the warrant requirement for administrative inspections of closely regulated businesses and met the Fourth Amendment's reasonableness standard. *Id.* at 703-12.

Here, the appellate court concluded that "at a minimum" the Attorney General had to meet *Burger*'s three-factor test to "justify the search of Reents' property" and directed the circuit court to apply that framework in crafting a discovery order. (A31, ¶ 60; A32-35, ¶¶ 64-70). It claimed that the current discovery order did not satisfy *Burger*'s third criterion because it lacked "any" limits on time, place, and scope of the inspection and failed to "properly inform Reents of the government's exercise of its power to search her property." (A34, ¶ 69). But again, the appellate court's concerns about the scope of the discovery order, if accurate (the Attorney General had identified a single date and time for the site inspection) and not forfeited by Reents, could have been addressed on remand to the circuit court with directions to apply additional parameters and protections as allowed under the civil discovery rules. And Rule 214(a) itself, along with the discovery order entered under it and the other civil discovery rules, informed Reents that her property could be subject to a site inspection during discovery if the property were relevant to the Attorney General's lawsuit, which it unquestionably was.

Significantly, the appellate court did not explain whether the application of the *Burger* test here and in all cases where the government requests relevant discovery either replaces or supplements the civil discovery rules. (*See* A30-34, ¶¶ 60-70). In addition, it is unclear, in practice, whether a government litigant's discovery request or motion to compel discovery must be accompanied by a *Burger* argument or showing, or if a circuit court must *sua*

sponte engage that analysis when deciding whether to compel discovery. And it would seem, the circuit court would no longer be entering a true discovery order, subject to review under an abuse of discretion standard, but perhaps analyzing a legal question, whether *Burger*'s three prongs are met, subject to *de novo* review.

In any event, *Burger*'s three-part test for regulatory administrative inspections is not comparable to government-requested discovery within civil litigation. The *Burger* factors evaluate the constitutional reasonableness of statutorily sanctioned warrantless administrative inspections of closely regulated businesses outside of and before litigation without judicial oversight. 482 U.S. at 693-95. Here, civil discovery takes place within active litigation under the authority and oversight of the circuit court with the additional requirements of relevance and proportionality – all of which guarantee the reasonableness of the government inspection, the abuse of which can be sanctioned by the court. The two schemes are completely different.

Moreover, *Burger*'s three criteria are unworkable in the context of civil discovery proceedings. To begin, the appellate court offered no guidance on how to apply the *Burger* test to civil discovery requests and orders. Unlike the civil discovery rules, the *Burger* test does not offer a mechanism for a judge to evaluate and set parameters on a government litigant's request for discovery, including for site access or information. The *Burger* test applies to statutes with stated parameters to determine whether the statutes' requirements are

constitutionally reasonable; but it is not used to determine what parameters are or may be necessary to meet that standard as the appellate court here seemed to envision the circuit court's application of it. Thus, it is unclear how the circuit court would practically apply the *Burger* test when crafting a discovery order for the Attorney General's site access.

Furthermore, the appellate court seemed not to address the applicability of the first two *Burger* criteria to civil discovery proceedings. (*See* A31-34, ¶¶ 60-70). Indeed, they cannot apply for they concern something different.

As to the first prong of the test, the relevant "substantial government interest" in civil discovery is unclear. And there is no "regulatory scheme" pursuant to which an inspection is being made without judicial oversight. Under the Illinois Constitution, the conduct of litigation and the discovery process is governed by this Court's rules. True, the Act is the basis for the Attorney General's civil action against Reents for her alleged violations of it, *see* 415 ILCS 5/42(a), (e) (2016), but it is not the authority that allows the Attorney General to request information, including a site inspection, relevant to matters at issue in the lawsuit during civil discovery proceedings in order to prepare for trial.

As to the second part of the test, it also is unclear how an inspection is "necessary to further" any "regulatory scheme" here. The Attorney General's interest in pursuing this civil action is the fulfillment of his charge to enforce the Act. But that interest is not related to furthering this Court's civil

discovery rules, which is not a regulatory scheme, and the Attorney General's Rule 214(a) discovery request is not furthering a regulatory scheme.

Accordingly, this Court should conclude that *Burger*'s three-part test is inapplicable to civil discovery proceedings.

CONCLUSION

For these reasons, Plaintiff-Appellant People of the State of Illinois ex rel. Kwame Raoul, Attorney General of the State of Illinois, requests that this Court reverse the judgment of the appellate court, affirm the circuit court's discovery order, and remand the matter to the circuit court for Defendant-Appellee Elizabeth Reents to comply with the discovery order and for further proceedings.

Respectfully submitted,

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Dated: February 13, 2020

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, and the Rule 341(c) certificate of compliance, the certificate of filing and service, and those matters to be appended to the brief under Rule 342(a) is 50 pages.

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APPENDIX

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SUPREME COURT CLERK

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September 25, 2019

In re: People State of Illinois ex rel. Lisa Madigan, etc., Appellant, v. Stateline Recycling, LLC, etc., et al., Appellees. Appeal, Appellate Court, Second District.
124417

The Supreme Court today ALLOWED the Petition for Leave to Appeal in the above entitled cause.

We call your attention to Supreme Court Rule 315(h) concerning certain notices which must be filed.

Very truly yours,

Carolyn Taft Grosboll

Clerk of the Supreme Court

2018 IL App (2d) 170860
No. 2-17-0860
Opinion filed December 27, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois,	)	Appeal from the Circuit Court of Winnebago County.
Plaintiff-Appellee,	)	
v.	)	No. 17-CH-60
STATELINE RECYCLING, LLC, and ELIZABETH REENTS,	)	
Defendants	)	Honorable J. Edward Prochaska,
(Elizabeth Reents, Defendant-Appellant).	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court, with opinion.
Presiding Justice Birkett and Justice Burke concurred in the judgment and opinion.

OPINION

¶ 1 Defendant Elizabeth Reents appeals from the trial court's order finding her in "friendly contempt" and imposing a monetary sanction of $100 for failing to comply with a discovery order. The discovery order requires that she allow the Illinois Attorney General, the Illinois Environmental Protection Agency (IEPA), and their representatives to inspect her commercial property, pursuant to the Attorney General's discovery request under Illinois Supreme Court Rule 214(a) (eff. July 1, 2014). Reents argues that we should reverse the discovery order because the inspection amounts to an impermissible warrantless search of her property, in violation of her

rights under the fourth amendment to the United States Constitution (U.S. Const., amend. IV) and article I, section 6, of the Illinois Constitution (Ill. Const. 1970, art. I, § 6). For the following reasons, we reverse the discovery order, vacate the contempt order, and remand for further proceedings.

¶ 2 I. BACKGROUND

¶ 3 The subject matter of this environmental-enforcement action is a parcel of property of approximately 10 acres located at 2317 Seminary Street in Rockford (Site). Reents allegedly became the owner of the Site when she obtained a tax deed to the property; the deed was recorded on April 8, 2015.

¶ 4 On January 17, 2017, the Attorney General, "on her own motion and at the request of the Illinois Environmental Protection Agency," sued Reents and defendant Stateline Recycling, LLC, for violations of the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (West 2016)). The Attorney General filed an amended complaint after the trial court granted Reents's motion to dismiss on the ground that the particular counts against each defendant were not separated.

¶ 5 In the amended complaint, the counts against both Reents and Stateline Recycling include open dumping (*id.* § 21(a)); disposal, storage, and abandonment of waste at an unpermitted facility (*id.* § 21(e)); open dumping resulting in litter and the deposition of construction and demolition debris (*id.* § 21(p)); and failure to pay "clean construction or demolition debris"-fill operation fees (*id.* § 22.51(a)).[1] The Attorney General seeks civil

[1] There are two additional counts against Stateline Recycling only: conducting a waste-disposal operation without a permit (*id.* § 21(d)(2)) and violation of the clean-construction- or demolition-debris-fill operation regulations (*id.* §22.51(a), (b)(3)).

penalties of $50,000 for each violation and $10,000 for each day that the violation continues, injunctive relief, and costs pursuant to the Act. *Id.* §§ 42, 43.

¶ 6 The Attorney General alleges that Stateline Recycling and/or its corporate predecessor, Busse Development & Recycling, Inc. (Busse), conducted an operation for the dumping of construction and demolition debris at the Site. According to the amended complaint, a July 29, 2015, inspection by an IEPA inspector revealed piles of mixed concrete, brick, painted cinder blocks, asphalt, and soil at the Site, with some of the mixed material placed above the ground. There was no indication of recycling the material, although a Stateline Recycling representative relayed an intention to recycle it. The amended complaint further alleges that, at a subsequent inspection of the Site, on July 14, 2016, the IEPA inspector found the gate to the Site open but no personnel present. The inspector left, but, from his vantage point by the gate, he observed the continued presence of the piles of mixed concrete, brick, painted cinder blocks, asphalt, and soil.

¶ 7 On April 6, 2017, the Attorney General issued Reents a discovery request pursuant to Rule 214(a) for access to the Site. Rule 214(a), titled "Discovery of Documents, Objects, and Tangible Things—Inspection of Real Estate," provides, *inter alia*, that any party may by written request direct any other party to permit access to real estate "for the purpose of making surface or subsurface inspections or surveys or photographs, or tests or taking samples *** whenever the nature, contents, or condition of such *** real estate is relevant to the subject matter of the action." Ill. S. Ct. R. 214(a) (eff. July 1, 2014). The Attorney General's Rule 214(a) request sought to:

> "Allow representatives of the Illinois Attorney General access to the real property controlled and/or owned by Reents located at 2317 Seminary Street, Rockford, Winnebago County, Illinois, including any buildings, trailers, or fixtures thereupon.

> Plaintiff requests access on May 5, 2017 at 11 a.m., or at such other time as may be agreed between the parties. At this inspection, representatives of the Illinois Environmental Protection Agency may also accompany Attorney General representatives and conduct an inspection pursuant to their authority under 415 ILCS 5/4 (2014)."

¶ 8 Reents objected to the discovery request on the grounds that it was an improper attempt to circumvent the constitutional requirement for a warrant and therefore violated the fourth amendment to the United States Constitution and article I, section 6, of the Illinois Constitution.

¶ 9 After unsuccessful efforts to resolve the discovery dispute pursuant to Illinois Supreme Court Rule 201(k) (eff. May 29, 2014), on July 25, 2017, the Attorney General filed a motion to compel Reents to permit the inspection. The Attorney General argued that she is entitled to inspect the Site under Rule 214(a), because the Site is relevant to the subject matter of the lawsuit: a complaint for violations of the Act pertaining to the operation of a landfill on the Site. The Attorney General also argued that IEPA representatives should be allowed to accompany her representatives during the inspection because the IEPA has its own independent statutory authority to inspect the Site pursuant to the Act. See 415 ILCS 5/4(c) (West 2016) (granting the IEPA "authority to conduct a program of continuing surveillance and of regular or periodic inspection *** of refuse disposal sites"); *id.* § 4(d)(1) (granting the IEPA authority "[i]n accordance with constitutional limitations *** to enter at all reasonable times upon any private or public property for the purpose of *** [i]nspecting and investigating to ascertain possible violations of this Act"). Indeed, according to the Attorney General, landfill operations are a "highly regulated commercial activity"; thus, IEPA inspections can be reasonably anticipated.

¶ 10 In response to the motion to compel, Reents argued that there was no legal authority to support the use of Rule 214(a) to permit the government to search her property. Her position was

that the prior inspections, on July 29, 2015, and July 14, 2016, amounted to unconstitutional warrantless searches and that the Attorney General sought to use this civil action to accomplish another warrantless search. Reents further disputed the characterization that she is engaged in a "highly regulated commercial activity." She stated that she is a "property owner who recently came into possession by tax purchase of a piece of property" and that "[t]here is no evidence that she has conducted or permitted the conduct of regulated activities upon her property." Reents pointed out that the Site had been ordered closed in March 2011 in a prior environmental-enforcement action, brought by the Attorney General against Busse.

¶ 11 In reply, the Attorney General maintained that the plain language of Rule 214(a) reflects that it applies to all parties in civil litigation and does not except the State. Moreover, the Attorney General argued that the lawsuit was not a criminal case and that the protections inherent in the civil discovery rules satisfy constitutional privacy concerns.

¶ 12 At the hearing on the motion to compel, the Attorney General reiterated that Rule 214(a) allows an inspection of the Site. The Attorney General also challenged Reents's expectation of privacy, because the Site is a landfill—a "highly regulated industry" subject to recurring inspections under the Act: "If you look at the regulations, you know, there are pages and pages. There are over a hundred pages of regulations for landfills. And so the idea that this is somehow an unregulated industry or *** anything less than a highly regulated industry is, is just simply not true."

¶ 13 Reents acknowledged that the Site might have been a landfill in the past but disputed that it has been a landfill under her ownership. Reents stated that the judgment in the 2011 environmental-enforcement action was not registered in the chain of title; "had it been[,][she] probably wouldn't got [*sic*] in this property." Reents also argued that the Attorney General

should be required to obtain an administrative warrant, as the initiation of a civil lawsuit was not grounds to circumvent the fourth amendment.

¶ 14 Following the hearing, the trial court granted the Attorney General's motion to compel Reents's compliance with the Rule 214(a) request to inspect the Site. The trial court reasoned:

> "I think Supreme Court Rule 214 does apply to all civil cases and it indicates that, that any party may request direct [*sic*] by any other party permission, access to real estate for purposes of making surface or subsurface inspections, surveys, photographs, taking tests, whenever the nature[,] contents[,] or condition of the real estate is irrelevant [*sic*] to the subject matter. Here, I think, clearly the subject, the subject matter is the, is the premises that is owned currently by Elizabeth Reents.
>
> It is clearly an—alleged to the violations of the Illinois EPA that's what's alleged in the complaint. It's all about the property; it's all about the subject matter. And, I think, Supreme Court Rule 214 gives the plaintiff absolute right to, to inspect that property. This is not a—it's not a criminal case. I think that although certainly the [f]ourth [a]mendment isn't thrown out the window, this is not a criminal case, it's a civil case.
>
> The landfill is a highly regulated activity, alleged landfill is a highly regulated activity under the Illinois EPA and, I think, the physical status of the site is highly relevant in this particular case.
>
> So I am going to grant the motion to compel over objection."

¶ 15 The order granting the motion to compel provided that "[p]laintiff's Motion to Compel as to the Rule 214(a) inspection of Reents's Real Estate is granted, including the Illinois EPA participating in the inspection" and that enforcement was stayed for one week, "pending Reents's determination to seek a friendly contempt to challenge the decision." The trial court subsequently

entered an order "regarding the Court's order compelling a SCR 214(a) Inspection of the subject premises commonly known as 2317 N. Seminary, Rockford, IL," holding Reents in "friendly contempt" and imposing a monetary sanction of $100 based upon "Reents having indicated her respectful intent to refuse to comply with this Court's order so that she might appeal the issue." The trial court stayed the order pending appeal. Reents timely appealed pursuant to Illinois Supreme Court Rule 304(b)(5) (eff. Mar. 8, 2016).[2]

¶ 16 II. ANALYSIS

¶ 17 The issue in this case is whether Reents was justified in refusing to obey the trial court's discovery order compelling her compliance with the Attorney General's Rule 214(a) request to inspect the Site. Discovery orders are not final orders and therefore not ordinarily appealable. *Norskog v. Pfiel*, 197 Ill. 2d 60, 69 (2001). However, the correctness of a discovery order may be tested through a contempt proceeding, as Reents did here. See *id.* An order finding a person in contempt of court and imposing a monetary or other penalty is appealable pursuant to Rule 304(b)(5). Our review of the trial court's contempt finding requires review of the order on which it was based. *Norskog*, 197 Ill. 2d at 69. Discovery orders are typically reviewed under the abuse-

[2] In addition to challenging the Rule 214(a) discovery request, Reents filed a motion, pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2016)), to quash any evidence obtained by the inspections in 2015 and 2016 and dismiss the case or, alternatively, to hold an evidentiary hearing to determine the lawfulness of the prior searches and the resulting evidence. The Attorney General responded that a motion *in limine*, not a section 2-615 motion, was the appropriate procedural mechanism to challenge the admissibility of evidence, and she also raised the same arguments set forth in the motion to compel. The trial court denied the motion without prejudice. The propriety of this ruling is not before this court.

of-discretion standard. *Carlson v. Jerousek*, 2016 IL App (2d) 151248, ¶ 24; *Kaull v. Kaull*, 2014 IL App (2d) 130175, ¶ 22. Where, however, the appeal involves a question of law, such as a constitutional challenge, the *de novo* standard of review applies. *Kaull*, 2014 IL App (2d) 130175, ¶ 22.

¶ 18 Reents raises a constitutional challenge. She argues that the Attorney General's Rule 214(a) discovery request amounts to a search under the fourth amendment to the United States Constitution and article I, section 6, of the Illinois Constitution, because the government, not a private litigant, is seeking the inspection. We review this constitutional claim *de novo*. See *Kaull*, 2014 IL App (2d) 130175, ¶ 22.

¶ 19 Initially, however, we address the Attorney General's request that we take judicial notice of proceedings that occurred in the trial court subsequent to the filing of the contempt order and Reents's notice of appeal. Namely, the Attorney General successfully moved for an administrative warrant, authorizing IEPA representatives to enter the Site to "observe, inspect, and photograph the Site, and all operations, processes, structures and materials upon said Site." The Attorney General represented at oral argument that the State has thus abandoned reliance upon section 4(d)(1) of the Act (415 ILCS 5/4(d)(1) (West 2016)) as a basis to authorize the accompaniment of IEPA representatives at the inspection. We take judicial notice of the trial court's order and note that its propriety is not before this court. See *People v. Matthews,* 2016 IL 118114, ¶ 5 n.1. Thus, the sole issue is whether the trial court properly compelled Reents's compliance with the Attorney General's request to inspect the Site pursuant to Rule 214(a). We turn to Reents's constitutional challenge to the discovery order.

¶ 20 A. Applicability of Constitutional Principles to the Discovery Order

¶ 21 The fourth amendment to the United States Constitution, applicable to the states through the fourteenth amendment (U.S. Const., amend. XIV), protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" and provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const., amend. IV. The Illinois Constitution states that "[t]he people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means" and providing that "[n]o warrant shall issue without probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized." Ill. Const. 1970, art. I, § 6.[3]

¶ 22 The fourth amendment was crafted in response to the " 'reviled "general warrants" and "writs of assistance" of the colonial era, which allowed British officers to rummage through homes in an unrestrained search for evidence of criminal activity.' " *Carpenter v. United States*, 585 U.S. ___, ___, 138 S. Ct. 2206, 2213 (2018) (quoting *Riley v. California*, 573 U.S. ___, ___, 134 S. Ct. 2473, 2494 (2014)). Indeed,

[3] Reents does not argue that the Illinois Constitution provides greater protection here. In this regard, our supreme court has stated that the fourth amendment provides the same level of protection as the search-and-seizure provision of the Illinois Constitution. *People v. Lampitok*, 207 Ill. 2d 231, 240-41 (2003). "The narrow exception *** to the lockstep doctrine in the fourth amendment context is not relevant to this case." *Id.* at 240-41 (citing *People v. Krueger*, 175 Ill. 2d 60, 75-76 (1996)).

> "[o]pposition to such searches was in fact one of the driving forces behind the Revolution itself. In 1761, the patriot James Otis delivered a speech in Boston denouncing the use of writs of assistance. A young John Adams was there, and he would later write that '[e]very man of a crowded audience appeared to me to go away, as I did, ready to take arms against writs of assistance.' " *Riley*, 573 U.S. at ___, 134 S. Ct. at 2494 (quoting 10 John Adams, Works of John Adams 247-48 (Charles F. Adams ed. 1856)).

The speech became " 'the first scene of the first act of opposition to the arbitrary claims of Great Britain. Then and there the child Independence was born.' " *Id.* at ___, 134 S. Ct. at 2494 (quoting Adams, *supra*, at 248)).

¶ 23 It was against this historical backdrop that the United States Supreme Court first addressed the parameters of the fourth amendment, in *Boyd v. United States*, 116 U.S. 616 (1886). *Boyd* was a civil forfeiture case against 35 cases of plate glass. The government alleged that the partners of E.A. Boyd & Sons fraudulently imported the plate glass without paying the prescribed tax. The district court ordered the partners to produce an invoice regarding the value and quantity of the imported glass. *Id.* at 617-19. The statute under which the notice to produce was issued stated that if they failed to produce the document, the government's allegations "shall be taken as confessed." (Internal quotation marks omitted.) *Id.* at 619-20.

¶ 24 The Court in *Boyd* held the proceeding and the statute unconstitutional, with its rationale encompassing both fourth and fifth amendment[4] principles as it recounted the historical foundation of the constitutional provisions. *Id.* at 624-32. In finding that the order to produce the

[4] The fifth amendment to the United States Constitution provides, *inter alia*, that no person "shall be compelled in any criminal case to be a witness against himself." U.S. Const., amend. V.

invoice amounted to a search and seizure under the fourth amendment, the Court reasoned: "[A] compulsory production of a man's private papers to establish a criminal charge against him, or to forfeit his property, is within the scope of the Fourth Amendment to the Constitution, in all cases in which a search and seizure would be, because it is a material ingredient, and effects the sole object and purpose of search and seizure." *Id.* at 622.

¶ 25 But, the Court stated, the question remained: was the search and seizure, or its equivalent—the "compulsory production of a man's private papers, to be used in evidence against him in a proceeding to forfeit his property for alleged fraud against the revenue laws"—an *unreasonable* search and seizure within the meaning of the fourth amendment? *Id.* In concluding that it was, the Court noted the relation between the fourth and fifth amendments and reasoned that seizing a man's private papers to be used in evidence against him was not substantially different from compelling him to be a witness against himself. *Id.* at 634-35.

¶ 26 The Court also contrasted the search and seizure under consideration—that of a person's private documents for the purpose of obtaining the information contained therein or using the documents as evidence against the person—with searches and seizures of stolen goods or goods concealed to avoid the payment of taxes. *Id.* at 623-24. With respect to searches and seizures of stolen goods or goods concealed to avoid the payment of taxes, the person from whom the property is seized lacks a superior proprietary interest in the goods: the owner from whom goods were stolen is entitled to their possession, and the government has an interest and right to concealed goods until the taxes are paid. *Id.* As well, the law had long authorized the seizure of such goods. *Id.* The government has no comparable interest in a person's private documents. See *id.* at 624.

¶ 27 The Court in *Boyd* rejected the notion that the civil form of the proceeding precluded constitutional protection, stating:

> "Reverting then to the peculiar phraseology of this act, and to the information in the present case, which is founded on it, we have to deal with an act which expressly excludes criminal proceedings from its operation, (though embracing civil suits for penalties and forfeitures,) and with an information not technically a criminal proceeding, and neither, therefore, within the literal terms of the Fifth Amendment to the Constitution any more than it is within the literal terms of the Fourth. Does this relieve the proceedings or the law from being obnoxious to the prohibitions of either? We think not; we think they are within the spirit of both." *Id.* at 633.

As "suits for penalties and forfeitures, incurred by the commission of offences against the law, are of this quasi criminal nature, we think that they are within the reason of criminal proceedings for all the purposes of the Fourth Amendment [to] the Constitution, and of that portion of the Fifth Amendment which declares that no person shall be compelled in any criminal case to be a witness against himself." *Id.* at 634. Indeed, the proceeding, though civil in form and lacking in "many of the aggravating incidents of actual search and seizure," was criminal in nature, given its substance and substantial purpose. *Id.* at 634-35.

¶ 28 Concerned by the prospect that the government could extort the production of private papers through civil proceedings, the Court cautioned:

> "It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person

> and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon." *Id.* at 635.

¶ 29 As fourth and fifth amendment jurisprudence developed, the Court wrestled with the underpinnings of *Boyd*. The case was understood to hold that a seizure, under warrant or otherwise, of purely evidentiary materials violated the fourth amendment and that the seized materials were inadmissible by virtue of the fifth amendment privilege against self-incrimination. *Fisher v. United States*, 425 U.S. 391, 407 (1976). Over time, though, the Court dissected the conflation of the fourth amendment's rule against unreasonable searches and seizures with the fifth amendment's ban on compelled self-incrimination. See *id.* at 407-08. The focus of fifth amendment case law moved toward the protection of a person's right against incrimination by the person's own compelled testimonial communication rather than an independent prohibition of the compelled production of every type of incriminating evidence. See, *e.g.*, *id.* at 410-14 (declining to extend the protection of the fifth amendment to documents prepared by taxpayers' accountants and given by the taxpayers to their attorneys). In this regard, the Court also established that an individual cannot rely on the fifth amendment to avoid producing a collective entity's records the individual holds in a representative capacity (as the defendant partners in *Boyd* essentially had). See *Bellis v. United States*, 417 U.S. 85, 87-91 (1974). Thus, a law firm partner could not invoke the fifth amendment right against self-incrimination to avoid a subpoena seeking partnership records. See *id.* at 95-96.

¶ 30 The Court ultimately rejected what had come to be regarded as the "mere evidence" rule set forth in *Boyd*—that the fourth amendment allowed the seizure of only the fruits or

instrumentalities of a crime while prohibiting the seizure of "mere evidence" of a crime. See *Warden v. Hayden*, 387 U.S. 294, 301-04 (1967). The Court found the rule unsupported by the language of the fourth amendment. *Id.* at 298, 309-10 (holding that the fourth amendment did not preclude the seizure of a robbery suspect's clothing found by a police officer in a washing machine in the house that the suspect had entered, despite the fact that the clothing was "mere evidence" with only evidentiary value as opposed to the actual fruits or instrumentalities of the robbery).

¶ 31 As fourth amendment jurisprudence was refined, the Court continued to examine the scope of the constitutional protection in the context of the compelled production of documents pursuant to governmental demand. In *Hale v. Henkel*, 201 U.S. 43 (1906), *overruled in part on other grounds by Murphy v. Waterfront Comm'n of New York Harbor*, 378 U.S. 52 (1964), a case involving an antitrust investigation, a corporate officer refused to comply with a grand jury subpoena requiring him to testify and produce what essentially amounted to all of the company's books and records. While noting that the fourth amendment was not intended to interfere with the power of courts to compel the production of documentary evidence, the Court nevertheless stated that ordering the production of books and papers can constitute an unreasonable search and seizure. *Id.* at 73. The Court found the subpoena at issue "far too sweeping in its terms" to be considered reasonable. *Id.* at 76. "[S]ome necessity should be shown, either from an examination of the witnesses orally, or from the known transactions of these companies with the other companies implicated, or some evidence of their materiality produced, to justify an order for the production of such a mass of papers." *Id.* at 77. The Court likened the overly broad subpoena to the historically abhorred general warrant—both "equally indefensible." *Id.*

¶ 32 This sentiment was echoed in *Federal Trade Comm'n v. American Tobacco Co.*, 264 U.S. 298, 305 (1924), where the Federal Trade Commission sought through administrative subpoenas access to the "accounts, books, records, documents, memoranda, contracts, papers and correspondence" of tobacco companies under investigation for unfair competition and price-fixing. The Court declined to enforce the subpoenas, concluding:

> "Anyone who respects the spirit as well as the letter of the Fourth Amendment would be loath to believe that Congress intended to authorize one of its subordinate agencies to sweep all our traditions into the fire [citation], and to direct fishing expeditions into private papers on the possibility that they may disclose evidence of crime. *** It is contrary to the first principles of justice to allow a search through all of respondents' records, relevant or irrelevant, in the hope that something will turn up." *Id.* at 305-06.

¶ 33 In *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186, 202 (1946), however, the Court rejected a fourth amendment challenge to the administrative subpoenas at issue, highlighting the distinction between a "constructive" search, like a subpoena, and an actual search and seizure. There, in an investigation into fair labor practices, the administrator for the Department of Labor's Wage and Hour Division issued subpoenas to the Oklahoma Press Publishing Company for the production of records relating to its labor practices and coverage under the governing statute. *Id.* at 189. In holding that the subpoenas may be enforced, the Court reasoned that the "short answer to the Fourth Amendment objections is that the records in these cases present no question of actual search and seizure, but raise only the question whether orders of court for the production of specified records have been validly made; and no sufficient showing appears to justify setting them aside." *Id.* at 195. The Court explained that the "primary source of misconception concerning the Fourth Amendment's function lies perhaps in the

identification of cases involving so-called 'figurative' or 'constructive' search with cases of actual search and seizure. Only in this analogical sense can any question related to search and seizure be thought to arise in situations which, like the present ones, involve only the validity of authorized judicial orders." *Id.* at 202. The Court concluded that "the Fourth [Amendment], if applicable, at the most guards against abuse only by way of too much indefiniteness or breadth in the things required to be 'particularly described.' " *Id.* at 208. Thus, the Court stated, an administrative subpoena is enforceable when the investigation is authorized by Congress and is for a purpose Congress may order, the documents sought are relevant to the inquiry, and the information sought is reasonable, including particularity in the description of the place to be searched and the person or things to be seized. *Id.* at 209.

¶ 34 The Court nevertheless subsequently confirmed the applicability of the fourth amendment to an administrative subpoena and reviewed the requirements that must be met for its enforcement: " 'It is now settled that, when an administrative agency subpoenas corporate books or records, the Fourth Amendment requires that the subpoena be sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome.' " *Donovan v. Lone Steer, Inc.*, 464 U.S. 408, 415 (1984) (quoting *See v. City of Seattle*, 387 U.S. 541, 544 (1967)).

¶ 35 While issues regarding the reach of the fourth amendment continued to evolve, there was no dispute that the fourth amendment's prohibition on unreasonable searches and seizures applies not only to private homes but also to commercial premises. See *See*, 387 U.S. at 543; accord *Marshall v. Barlow's Inc.*, 436 U.S. 307, 311 (1978) ("The Warrant Clause of the Fourth Amendment protects commercial buildings as well as private homes. To hold otherwise would belie the origin of that Amendment, and the American colonial experience."). Thus, in *See*, the

Court held that a warehouse owner could not be prosecuted for refusing the fire department's attempt to enter his locked commercial warehouse for a warrantless code-enforcement inspection. *See,* 387 U.S. at 541, 546. In so holding, the Court considered the fourth amendment framework that must be satisfied in the context of an administrative subpoena for corporate records, *i.e.*, the subpoena must be "sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome." *Id.* at 544 (citing, *inter alia*, *Oklahoma Press Publishing*, 327 U.S. 186, and *Hale*, 201 U.S. 43). The Court found "strong support in these subpoena cases for our conclusion that warrants are a necessary and a tolerable limitation on the right to enter upon and inspect commercial premises." *Id.* Indeed, in light of the "analogous investigative functions performed by the administrative subpoena and the demand for entry, we find untenable the proposition that the subpoena, which has been termed a 'constructive' search [(*Oklahoma Press Publishing*, 327 U.S. at 202)], is subject to Fourth Amendment limitations which do not apply to actual searches and inspections of commercial premises." *Id.* at 545.

¶ 36 Of course, this fourth amendment protection was held applicable to the administrative search of a personal residence as well. See *Camara v. Municipal Court of the City & County of San Francisco*, 387 U.S. 523, 527-30 (1967). In *Camara*, decided the same day as *See*, the Court held that an apartment building tenant was justified in invoking the fourth amendment to refuse an annual inspection of his premises by a municipal health inspector. *Id.* at 540. In determining that the civil nature of the inspection program did not preclude fourth amendment protection, the Court reasoned that the basic purpose of the fourth amendment is "to safeguard the privacy and security of individuals against arbitrary invasions by government officials." *Id.* at 528. It would be "anomalous to say that the individual and his private property are fully protected by the

Fourth Amendment only when the individual is suspected of criminal behavior." *Id.* at 530. Recognizing, however, that the purpose of the inspection program was building safety, not discovery of evidence of a crime, the Court also set forth a framework for determining whether the probable cause requirement for a warrant had been met, focusing on the governmental interest at stake and whether reasonable legislative or administrative standards for conducting the inspection had been satisfied with respect to the particular dwelling. *Id.* at 537-38.

¶ 37 As *Camara* reasoned, and as the Court continued to recognize, the fourth amendment applies in the civil context as well as the criminal context. *Soldal v. Cook County*, 506 U.S. 56, 67 (1992) (noting that the court of appeals "acknowledged what is evident from our precedents—that the [Fourth] Amendment's protection applies in the civil context as well"). Although frequently invoked in criminal cases, the fourth amendment protects against governmental intrusion into the homes and affairs of all citizens. *Kimmelman v. Morrison*, 477 U.S. 365, 374 (1986). Regardless of whether the claim is made in a criminal or a civil proceeding, "[t]he gravamen of a Fourth Amendment claim is that the complainant's legitimate expectation of privacy has been violated by an illegal search or seizure." *Id.*

¶ 38 Over time and as technology advanced, the Court continued to emphasize protecting privacy interests in addition to taking a property-rights approach as it addressed fourth amendment challenges. See, *e.g.*, *Katz v. United States*, 389 U.S. 347, 353 (1967) (holding that the government's electronic surveillance of the defendant's telephone conversations in a telephone booth violated the fourth amendment and stating that "the Fourth Amendment protects people—and not simply 'areas'—against unreasonable searches and seizures"). In determining that the government's acquisition of "cell-site location information" records amounted to a search under the fourth amendment, the Court recently reiterated that privacy interests, in

addition to property rights, guide fourth amendment analysis. *Carpenter*, 585 U.S. at ___, 138 S. Ct. at 2213. Thus, "[w]hen an individual 'seeks to preserve something as private,' and his expectation of privacy is 'one that society is prepared to recognize as reasonable,' we have held that official intrusion into that private sphere generally qualifies as a search and requires a warrant supported by probable cause." *Id.* at ___, 138 S. Ct. at 2213 (quoting *Smith v. Maryland*, 442 U.S. 735, 740 (1979)). Although not definitively resolved by any "single rubric," the analysis of which expectations of privacy are entitled to fourth amendment protection is "informed by historical understandings 'of what was deemed an unreasonable search and seizure when [the Fourth Amendment] was adopted.' " *Id.* at ___, 138 S. Ct. at 2213-14 (quoting *Carroll v. United States*, 267 U.S. 132, 149 (1925)). In defining the framework for this analysis, the Court set forth two "basic guideposts." *Id.* at ___, 138 S. Ct. at 2214. First, as established in *Boyd*, the fourth amendment seeks to secure " 'the privacies of life' " against " 'arbitrary power.' " *Id.* at ___, 138 S. Ct. at 2214 (quoting *Boyd*, 116 U.S. at 630). Second, and in a related vein, "a central aim of the Framers was 'to place obstacles in the way of a too permeating police surveillance.' " *Id.* at ___, 138 S. Ct. at 2214 (quoting *United States v. Di Re*, 332 U.S. 581, 595 (1948)).

¶ 39 Against this legal landscape, we turn to the issue presented in this case—whether the fourth amendment applies to the discovery order compelling Reents's compliance with the Attorney General's Rule 214(a) request to inspect the Site. We are compelled to hold that it does. In this environmental-enforcement action, the Attorney General seeks to enforce our state's environmental controls against what is alleged to be unpermitted, open dumping of construction and demolition debris at a landfill, in violation of the statutory strictures. The amended complaint seeks civil penalties of $50,000 for each violation and $10,000 for each day the violation

continues, injunctive relief, and costs. See 415 ILCS 5/42, 43 (West 2016). It is through the instrument of this civil action that the Attorney General issued the discovery request under Rule 214(a) for unrestricted access to the Site and "any buildings, trailers, or fixtures thereupon." See Ill. S. Ct. R. 214(a) (eff. July 1, 2014) (providing that any party may by written request direct any other party to permit access to real estate "for the purpose of making surface or subsurface inspections or surveys or photographs, or tests or taking samples *** whenever the nature, contents, or condition of such *** real estate is relevant to the subject matter of the action").

¶ 40 Yet what is at stake here is Reents's privacy interest in her commercial property. As discusse*d infra*, this is a diminished expectation of privacy, as the property is a closely regulated landfill. However, Reents undoubtedly maintains a privacy interest that society is prepared to recognize as reasonable. Se*e New York v. Burger*, 482 U.S. 691, 699 (1987). From *Boyd* in 1886 through *Carpenter* in 2018, the constant throughout fourth amendment jurisprudence is that the privacies of life, such as one's private property, should be protected from governmental intrusion. In light of this jurisprudence and under the facts and circumstances of this case, we must consider fourth amendment principles in reviewing the discovery order allowing governmental access to Reents's private property.

¶ 41 The Attorney General notes that this is a civil case, no criminal penalties are being sought, and there is no parallel criminal case pending against Reents. It seems we have come full circle, as the Supreme Court addressed the essence of these very claims in *Boyd*, involving a statute "embracing civil suits for penalties and forfeitures" and "an information not technically a criminal proceeding." *Boyd*, 116 U.S. at 633. The concepts in *Boyd* have evolved, but its heart holds true: the fourth amendment "seeks to secure 'the privacies of life' against 'arbitrary power.' " *Carpenter*, 585 U.S. at ___, 138 S. Ct. at 2214 (quotin*g Boyd*, 116 U.S. at 630). The

impetus for the governmental intrusion—whether civil or criminal in nature—is not determinative. See *Soldal*, 506 U.S. at 67; *Camara*, 387 U.S. at 530.

¶ 42 The Attorney General suggests that a routine discovery request made in the context of a civil enforcement action has no need for fourth amendment oversight. We cannot agree. As the Attorney General observes, Rule 214(a) allows the inspection of property relevant to the subject matter of the action, and the Site is of course relevant to this action alleging environmental violations there. See Ill. S. Ct. R. 214(a) (eff. July 1, 2014).

¶ 43 But relevance does not set the bar here. The government is the plaintiff against Reents under a statutory scheme that allows for substantial civil penalties, injunctive relief, and, although not currently sought in this case, criminal penalties and forfeiture. See 415 ILCS 5/42 (West 2016) ("Civil penalties"); *id.* § 43 ("Injunctions or other necessary actions"); *id.* § 44 ("Criminal acts; penalties"); *id.* § 44.1 ("Forfeitures"). As in *Boyd*, though civil in form, the action here amounts to a quasi-criminal proceeding, "within the reason of criminal proceedings for all the purposes of the Fourth Amendment [to] the Constitution ***." *Boyd*, 116 U.S. at 634. This sentiment set forth in *Boyd* governs with equal force here—the civil form of this proceeding does not, in and of itself, mandate encroachment on Reents's private property rights without considering fourth amendment protection.

¶ 44 Nevertheless, relying upon our decision in *Kaull*, the Attorney General argues that the protections underlying the civil discovery rules satisfy any fourth amendment privacy concerns with respect to a discovery request in a civil case. The Attorney General's reliance upon *Kaull* is misplaced. *Kaull* involved a civil proceeding between private parties to identify beneficiaries of a trust. *Kaull*, 2014 IL App (2d) 130175, ¶ 1. The trial court granted the trustee's motion to compel the respondent to submit a DNA sample pursuant to Illinois Supreme Court Rule 215 (eff. Mar.

28, 2011), which sets forth the procedure and parameters for physical and mental examinations of parties and other persons. *Kaull*, 2014 IL App (2d) 130175, ¶ 19. The respondent challenged the constitutionality of Rule 215 on the grounds that the rule allows the court to order searches, seizures, and invasions of privacy without a showing of good cause or a satisfaction of any burden of proof. *Id.* ¶ 27. We held that the resolution of the constitutional challenge was unnecessary for the disposition of the case, because, in a civil case between private parties, the discovery rules' requirements of relevance and reasonableness, together with the judicial oversight provided by the rules, more than satisfy any fourth amendment privacy concerns. *Id.* ¶¶ 44-45. We reasoned that "applying the fourth amendment to requests for discovery in civil cases between *private parties* undermines the core principles of modern discovery." (Emphasis added.) *Id.* ¶ 47. We also noted that pretrial discovery procedures are in general conducted in private and that protective orders afford *private litigants* the opportunity to prevent the public disclosure of private information that might be " 'damaging to reputation and *privacy*.' " (Emphasis added.) *Id.* ¶ 52 (quoting *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 33, 35 (1984)).

¶ 45 Here, of course, this case is not between private parties. To the contrary, as discussed, the government is the plaintiff against Reents in this action under a statutory scheme that allows for significant civil penalties and, although not currently sought in this case, criminal penalties and forfeiture as well. See 415 ILCS 5/42-5 to 44.1 (West 2016). The government's Rule 214(a) discovery request seeks unrestricted access to property in which Reents maintains a privacy interest. In this regard, the discovery request amounts to a request for an actual search of private property, not merely a constructive search for information. The history of fourth amendment jurisprudence demonstrates that under these facts Reents must be able to avail herself of the protection provided by the fourth amendment.

¶ 46 The Attorney General also cites *City of North Chicago v. North Chicago News, Inc.*, 106 Ill. App. 3d 587 (1982), for the proposition that civil discovery procedures should not be subject to a fourth amendment analysis. There, the City of North Chicago sought to enjoin the defendant from selling materials in violation of the municipality's obscenity ordinance. *Id.* at 588. The court rejected the defendant's fourth amendment challenge to an order compelling the defendant's compliance with the municipality's request to produce the materials at issue, stating that the defendant presented no persuasive argument that civil discovery procedures should be subject to "the type of constitutional analysis utilized in unreasonable search and seizure criminal cases." *Id.* at 592-93. However, the court made no mention of the fact that the plaintiff was a municipality, and the parties do not appear to have raised the distinction. Indeed, in rejecting the application of the fourth amendment, the court relied upon *Monier v. Chamberlain*, 31 Ill. 2d 400 (1964)—a case involving private litigants only. *City of North Chicago*, 106 Ill. App. 3d at 593. Thus, *City of North Chicago* does not guide our analysis.

¶ 47 Instructive in this regard is *Union Oil Co. of California v. Hertel*, 89 Ill. App. 3d 383 (1980), in which the court, as in *Kaull*, rejected the application of fourth amendment principles to a discovery order in a civil case between private parties. There, a default judgment was entered against the defendant, based upon his refusal to comply with the trial court's order compelling him to provide a handwriting sample in accordance with the plaintiff's discovery request. *Id.* at 384-85. In discarding the defendant's argument that the discovery order violated his right to be free from unreasonable searches and seizures, the court reasoned that search-and-seizure law did not apply in an action between private parties. *Id.* at 386. Rather, "the provisions in the United States and Illinois constitutions prohibiting unreasonable searches and seizures were designed to protect the individual against oppressive action by the government and its officers." (Emphasis

omitted.) *Id.* This cautionary language resonates here, where Reents invokes fourth amendment protection from the government's power to search her property.

¶ 48 The Attorney General also cites decisions from other jurisdictions to support the extension of *Kaull*'s holding to civil cases where the government is the party seeking disclosure. According to the Attorney General, "courts have repeatedly declined to impose different civil discovery requirements where a governmental entity is a party to a civil action." See, *e.g.*, *Hyster Co. v. United States*, 338 F.2d 183 (9th Cir. 1964); *United States v. Acquest Wehrle, LLC*, No. 09-CV-637C(F), 2010 WL 1708528 (W.D.N.Y. Apr. 27, 2010) (unpublished); *United States v. Bell*, 217 F.R.D. 335 (M.D. Pa. 2003); *Leybovich v. City of New York*, No. 89 CV 1877, 1992 WL 104828 (E.D.N.Y. Apr. 23, 1992) (unpublished); *United States v. International Business Machines Corp.*, 83 F.R.D. 97 (S.D.N.Y. 1979); *Mentor v. Eichels*, No. 2014-L-097, 2015 WL 1289341 (Ohio Ct. App. Mar. 23, 2015).[5]

¶ 49 Initially, we note that decisions from other jurisdictions are not binding on this court. *Kostal v. Pinkus Dermatopathology Laboratory, P.C.*, 357 Ill. App. 3d 381, 395 (2005). This is particularly so here where several of the cases upon which the Attorney General relies are unpublished. See *Illinois State Toll Highway Authority v. Amoco Oil Co.*, 336 Ill. App. 3d 300, 317 (2003). Moreover, the Attorney General provides no analysis of any of these decisions beyond a mere parenthetical description. These deficiencies aside, a close review of the cases

[5] The Attorney General also cites *Aderholt v. Bureau of Land Management*, No. 7:15-CV-00162-0, (N.D. Tex. 2016) (unpublished), but provides neither a publicly available source for this unpublished district court case nor provides a copy. We disregard this citation.

demonstrates that they do not offer a persuasive basis for the Attorney General's position in any event.

¶ 50 For instance, in *International Business Machines Corp.*, 83 F.R.D. at 98, an antitrust action, IBM challenged the government's subpoena for documents issued to IBM's board chairman pursuant to Federal Rule of Civil Procedure 45(d). IBM argued that the subpoena constituted an unreasonable search and seizure in violation of the fourth amendment. *Id.* at 99. In scrutinizing the argument, the district court distinguished investigative subpoenas (subpoenas *duces tecum* issued in the course of investigations by grand juries and administrative agencies like those in *Hale*, 201 U.S. 43, and *Oklahoma Press Publishing*, 327 U.S. 186, respectively) from the subpoena at issue before it—a subpoena *duces tecum* served by the government in the course of a civil proceeding. See *International Business Machines Corp.*, 83 F.R.D. at 101-02. The district court stated that investigative subpoenas are subject to the fourth amendment's prohibition against unreasonable constructive searches and seizures, because investigative grand jury subpoenas seek to discover criminal activity and investigative administrative subpoenas seek to discover statutory violations. *Id.* In contrast, the district court reasoned, when the government "discards its investigative role for that of litigant," initiates a civil action, and issues a subpoena *duces tecum*, "it would appear the protection sought resides in the Federal Rules of Civil Procedure, not the fourth amendment." *Id.* at 102.

¶ 51 Nonetheless, in the same breath, the district court recognized that the fourth amendment objections could not be rejected merely because the case was a civil antitrust action without criminal or administrative sanctions, as the "Supreme Court has made clear that fourth amendment protection is not restricted to searches and seizures designed to uncover criminal wrongdoing." *Id.* at 103 (citing, *inter alia*, *Camara*, 387 U.S. 523, and *See*, 387 U.S. 541). The

district court also recognized that the fourth amendment protects reasonable expectations of privacy from governmental intrusion, and it questioned why the protection would depend upon whether the government played the role of investigator or litigant. *Id.* at 102. Indeed, to hold that a subpoena served by the government in the course of a civil antitrust action cannot be challenged on fourth amendment grounds in the same manner as an investigative subpoena would lead to an "incongruous result: the timing of the government's document demand determines the applicability of the fourth amendment, even though precisely the same privacy interest is involved in each situation." *Id.* at 102-03.

¶ 52 Ultimately, the district court found itself "left in doubt" as to whether the "analogical 'search and seizure' embodied in a civil discovery subpoena" should be susceptible to a fourth amendment challenge. *Id.* at 103. The district court, therefore, assumed *arguendo* the applicability of the fourth amendment's reasonableness requirement without resolving the issue. *Id.* The district court proceeded to conclude that the fourth amendment's reasonableness requirement was "no more rigorous than that imposed by [R]ule 45(b)" and analyzed the issue within the confines of a reasonableness challenge to a civil discovery request, ultimately denying IBM's challenge. *Id.* at 103-09.

¶ 53 The district court in *Bell* and the Ohio appellate court in *Mentor* similarly resolved fourth amendment challenges to civil discovery requests, albeit in abbreviated fashion. In *Bell*, the district court rejected a "right-of-privacy" objection to the government's request for the production of documents in a civil case the government brought against a tax protestor. However, the court reasoned that a court "may take concerned individuals' privacy interests into consideration in determining whether a discovery request is oppressive or unreasonable" under the civil discovery rules. *Bell*, 217 F.R.D. at 343. *Mentor* involved a civil lawsuit a municipality

brought against individuals to have a residence declared a public nuisance. The court held that, even if the fourth amendment were a proper basis on which to challenge the municipality's inspection of the residence, the reasonableness requirement of the civil discovery rules satisfied the fourth amendment. *Mentor*, 2015 WL 1289341, at *4.

¶ 54 The history of fourth amendment jurisprudence demonstrates that the civil discovery rules do not satisfy the core protection of the fourth amendment here. Initially, we note that, unlike the government's subpoena *duces tecum* in *International Business Machines Corp.* and the government's request for the production of documents in *Bell*, the Attorney General's Rule 214(a) request to inspect the Site amounts to a request for an actual search of Reents's property, not just a constructive search for documents. Moreover, as the district court in *International Business Machines Corp.* recognized, the basic purpose of the fourth amendment—to safeguard individuals' privacy and security against arbitrary governmental intrusion—applies in the civil context, regardless of whether an individual is suspected of criminal conduct. *International Business Machines Corp.*, 83 F.R.D. at 102-03 (citing, *inter alia*, *Camara*, 387 U.S. 523, and *See*, 387 U.S. 541). Here, through the Rule 214(a) discovery request in this enforcement action seeking substantial civil penalties, the government seeks unrestricted access to the Site, in which Reents maintains an undisputed privacy interest. Under these facts, we conclude that fourth amendment protection applies to Reents's privacy interest in her property.

¶ 55 The remaining foreign cases upon which the Attorney General relies provide no basis to hold otherwise. The Attorney General provides the following parenthetical explanation for the *Hyster* decision: " 'We do not find the ["civil investigative demand" under the Antitrust Civil Process Act (15 U.S.C. §§ 1311-14 (Supp. IV 1963))] unreasonable on its face, and [the plaintiff company] has made no attempt to show that it is unreasonable in its actual application to [it].' "

In *Hyster*, the court of appeals rejected, *inter alia*, a fourth amendment challenge to the constitutionality of the Antitrust Civil Process Act, which provides a precomplaint procedure by which the Justice Department may demand information from an entity under investigation for a civil violation of antitrust laws. *Hyster*, 338 F.2d at 186. The Attorney General's parenthetical description of *Hyster* disregards the underlying premise that fourth amendment principles applied; the plaintiff company simply had not established that the government's demand for information was an unreasonable search and seizure. See *id.*

¶ 56 *Acquest Wehrle* and *Leybovich* are inapposite. The Attorney General cites *Acquest Wehrle* for the proposition that "no 'substantive Fourth Amendment issue' [is involved] in [a] discovery request to inspect land, even where 'potential criminal charges against Defendant and its principals [were] being considered.' " See *Acquest Wehrle*, 2010 WL 1708528, at *2. However, the district court's underlying rationale for rejecting the fourth amendment challenge included the application of the "open fields" doctrine, as there was "no indication the parcel has been fenced or posted, nor has Defendant pointed to the potential for any invasion of its legitimate privacy interests." *Id.*

¶ 57 Similarly inapplicable is *Leybovich*, an action under 42 U.S.C. § 1983 (1988) against the City of New York and several police officers, alleging that the officers illegally entered and searched the plaintiff's home. *Leybovich*, 1992 WL 104828, at *1. The defendants claimed that the officers entered and searched the home because they feared for the lives and safety of the occupants. *Id.* The defendants served a discovery request to enter the plaintiff's home to photograph and measure it. *Id.* The district court rejected as "absurd" the plaintiff's fourth amendment objection to the defendants' request. *Id.* However, there was no analysis of fourth

amendment principles beyond the statement that the discovery order adequately protected against unreasonable intrusion by limiting the time and scope of the entry. *Id.*

¶ 58 In sum, the Attorney General provides no persuasive basis upon which to hold that the parameters of the civil discovery rules satisfy the fourth amendment here. The trial court ordered Reents to comply with the Attorney General's discovery request to inspect the Site pursuant to Rule 214(a). The Attorney General is the plaintiff in what amounts to a quasi-criminal environmental-enforcement action against Reents, seeking substantial civil penalties. In the discovery request, the Attorney General seeks unrestricted access to the Site, including "any buildings, trailers, or fixtures thereupon." This is a request for an actual search of the Site, not just a constructive search for information. Under these facts and in the face of Reents's undisputed privacy interest in her property, we are compelled to consider fourth amendment principles in resolving Reents's challenge to the discovery order. Our holding that fourth amendment principles apply here is expressly limited to the facts of this case. We express no opinion as to the broader issue of the applicability of the fourth amendment to a governmental discovery request in a civil case generally.

¶ 59 B. The Sufficiency of the Discovery Order

¶ 60 Having determined that fourth amendment principles apply to the discovery order here, the question remains whether the search of Reents's property is a reasonable search under the fourth amendment. As aptly stated in summarizing fourth amendment jurisprudence,

> "[w]hether the interests protected by the Fourth Amendment are characterized as privacy, property, security, or a combination of them, it is clear that under some circumstances, that interest may be invaded by the state upon an adequate showing and compliance with proper procedure. However interpreted, the Fourth Amendment is not an absolute bar to

> searches and seizures. Instead, the question often amounts to what showing must be made in any particular context to constitutionally justify a search." *State v. Ochoa*, 792 N.W.2d 260, 278 (Iowa 2010).

Here, the Attorney General made no showing beyond relevance to support the reasonableness of the search of the Site. We also note in this regard that the record demonstrates no evidentiary basis to support the search. The complaint (and the amended complaint) are unverified, and the Rule 214(a) discovery request is not supported by affidavit. We address the showing that the Attorney General was required to make to justify the search of Reents's property.

¶ 61 As discussed *supra*, the fourth amendment's prohibition on unreasonable searches and seizures applies not only to private homes but also to commercial property. *Burger*, 482 U.S. at 699. "An owner or operator of a business thus has an expectation of privacy in commercial property, which society is prepared to consider to be reasonable." *Id.* The expectation of privacy in commercial property, however, "is different from, and indeed less than, a similar expectation in an individual's home." *Id.* at 700. The privacy expectation in commercial property being used in a "closely regulated" industry is "particularly attenuated." *Id.*; see *59th & State Street Corp. v. Emanuel*, 2016 IL App (1st) 153098, ¶ 18.

¶ 62 A closely regulated industry is one that is subject to such " 'close supervision and inspection' " that its owner "cannot help but be aware that his property will be subject to periodic inspections undertaken for specific purposes." *Donovan v. Dewey*, 452 U.S. 594, 600 (1981) (quoting *Colonnade Catering Corp. v. United States*, 397 U.S. 72, 76-77 (1970)). Recognized examples include running an automobile junkyard (*Burger*, 482 U.S. at 709), mining (*Donovan*, 452 U.S. at 602), firearms dealing (*United States v. Biswell*, 406 U.S. 311, 311-12 (1972)), and

liquor sales (*Colonnade Catering Corp.*, 397 U.S. at 76-77; *59th & State Street Corp.*, 2016 IL App (1st) 153098, ¶ 19).

¶ 63 In light of the diminished expectation of privacy in commercial property being used in a closely regulated industry, "the warrant and probable-cause requirements, which fulfill the traditional Fourth Amendment standard of reasonableness for a government search [citation], have lessened application in this context." *Burger*, 482 U.S. at 702. Where, in the operation of a closely regulated industry, such as a landfill, "the privacy interests of the owner are weakened, and the government interests in regulating particular businesses are concomitantly heightened, a warrantless inspection of commercial premises may well be reasonable within the meaning of the Fourth Amendment." *Id.*

¶ 64 Nonetheless, a warrantless administrative inspection of a closely regulated business is reasonable only if (1) there is a substantial government interest underlying the regulatory scheme pursuant to which the inspection is made, (2) the inspection is necessary to further the regulatory scheme, and (3) the regulatory scheme sets forth sufficient "certainty and regularity" to provide the business owner with a constitutionally adequate substitute for a warrant. (Internal quotation marks omitted.) *Id.* at 702-03. Thus, the regulatory scheme must advise the property owner that the property will be subject to periodic inspections undertaken for specific purposes and limit the discretion of the inspectors as to the time, place, and scope of the inspection. *Id.* at 703; *59th & State Street Corp.*, 2016 IL App (1st) 153098, ¶ 19.

¶ 65 Neither party disputes that the operation of landfills is a highly regulated industry. Indeed, the Act sets forth extensive, long-recognized regulatory oversight provisions for the operation of landfills. See 415 ILCS 5/20 *et seq.* (West 2016)); see also *Resource Investments, Inc. v. United States*, 85 Fed. Cl. 447, 457 (2009) ("municipal solid waste disposal is a highly

regulated industry"); *Mid-American Waste Systems, Inc. v. City of Gary, Indiana*, 49 F.3d 286, 291 (7th Cir. 1995) ("Disposition of waste is a highly regulated industry. A claim that the Constitution protects this industry from public control—even when the landfill is public property—would bring nothing but belly laughs.").

¶ 66 What Reents disputed in the trial court was that the Site has been a landfill under her ownership. However, at the hearing on the motion to compel, Reents all but acknowledged the status of the Site as a landfill in stating that she would not have purchased the property had she known about the judgment in the 2011 environmental-enforcement action. Accordingly, Reents suggests on appeal that the Attorney General should be required at a minimum to meet *Burger*'s three-part test for a warrantless inspection of a closely regulated business. We agree.

¶ 67 To be sure, Reents crafts her argument as a constitutional challenge to section 5/4(d)(1) of the Act, which authorizes the IEPA "[i]n accordance with constitutional limitations *** to enter at all reasonable times upon any private or public property for the purpose of *** [i]nspecting and investigating to ascertain possible violations of this Act.") 415 ILCS 5/4(d)(1) (West 2016). She contends that section 4(d)(1) authorizes the IEPA to engage in warrantless administrative searches without satisfying the criteria set forth in *Burger*.

¶ 68 The record demonstrates that Reents did not raise this challenge to section 4(d)(1) of the Act in the trial court, the trial court did not rule on this issue, and Reents briefs the issue only in cursory fashion. The statute is not addressed at all by the Attorney General other than, as discussed *supra*, the Attorney General's representation that the State has abandoned reliance upon section 4(d)(1) as a basis to authorize the accompaniment of IEPA representatives at the inspection, in light of the administrative warrant the Attorney General ultimately obtained on the IEPA's behalf. Thus, the challenge to the constitutionality of section 4(d)(1) is forfeited as well

as unnecessary to our resolution of Reents's appeal. See *People v. Waid*, 221 Ill. 2d 464, 473 (2006) (the court will not address a constitutional issue that is unnecessary for disposition of the case); *Nationwide Mutual Fire Insurance Co. v. T&N Master Builder & Renovators*, 2011 IL App (2d) 101143, ¶ 23 (issues raised for the first time on appeal are forfeited).

¶ 69 Moreover, Reents's challenge to section 4(d)(1) assumes too much. The point here is that the trial court properly held that the Site is a landfill, a closely regulated industry, but failed to consider *Burger*'s framework in crafting the discovery order. Indeed, the trial court did not consider fourth amendment principles at all in compelling Reents's compliance with what amounts to an unrestricted search of the Site and "any buildings, trailers, or fixtures thereupon." The discovery order lacks any limits on the time, place, and scope of the inspection such that it could provide an adequate substitute for a warrant, as contemplated by *Burger*. Fourth amendment principles mandate that the discovery order be limited to properly inform Reents of the government's exercise of its power to search her property.

¶ 70 Accordingly, we reverse the discovery order and remand for the trial court to apply *Burger*'s framework in ruling on the Attorney General's motion to compel. In light of our holding and the trial court's finding of Reents's "respectful intent to refuse to comply with this Court's order so that she might appeal the issue," we also vacate the contempt order and the monetary sanction. See *Kaull*, 2014 IL App (2d) 130175, ¶ 94.

¶ 71 III. CONCLUSION

¶ 72 For the foregoing reasons, we reverse the trial court's discovery order, vacate the trial court's contempt order, and remand the cause for further proceedings consistent with this opinion.

¶ 73 Reversed; vacated; cause remanded with directions.

APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT,
FROM THE CIRCUIT COURT OF WINNEBAGO COUNTY, IL

PEOPLE OF THE STATE OF ILLINOIS
ex rel. LISA MADIGAN, Attorney General
of the State of Illinois,

Plaintiff,

vs.

STATELINE RECYCLING, LLC, an Illinois limited liability corporation, and ELIZABETH REENTS, an individual.,

Defendant.

CASE NO. 2017 CH 60

NOTICE OF APPEAL

The defendant, ELIZABETH REENTS, by her attorney, appeals to the Appellate Court of Illinois, Second District, from the orders of the Honorable Judge Edward Prochaska dated September 22, 2017 (attached) finding the Defendant ELIZABETH REENTS in contempt of court for indicating her intent not to comply with the courts order of September 15, 2017 (¶2 attached) compelling the her to allow a warrantless premises inspection by the State of Illinois in a pollution enforcement action.

By this appeal, the Plaintiff seeks the following relief from the Appellate Court of Illinois for the Second District:

1. Reversal of the Court's Order of September 22, 2017 holding the defendant ELIZABETH REENTS in contempt for indicating that she intended to refuse to permit the warrantless inspection of the subject premises and to vacate the Court's Order of September 15, 2017 granting the PEOPLE OF THE STATE OF ILLINOIS's motion to compel a warrantless inspection of the defendant's premises in an environmental enforcement action.

Respectfully Submitted, ELIZABETH REENTS

By: //s//Mark Rouleau
Mark Rouleau

Mark A. Rouleau
ARDC 6186135
4777 E. State St., Unit #7
Rockford, Illinois 61108
(815) 229-7246

CC - 75

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
COUNTY OF WINNEBAGO

FILE STAMP

PEOPLE OF THE STATE

vs.

STATELINE RECYCLING
etal

Case No. 17 CH 60

ORDER

This matter having come before this Court on status regarding the Courts' order compelling a SCR 214a ~~Rule~~ Inspection of the subject premises commonly know as 2317 N Seminary, Rockford, IL the defendant KEENTS having indicated her respectful intent to refuse to comply with this Courts' order so that she might appeal the issue,

IT IS ORDERED that the ~~Plaintiff~~ Defendant KEENTS is held in friendly contempt and is sanctioned $100 which is stayed pending appeal. This case is set for further status on November 22, 2017 at 9:00 AM. The case is not stayed.

Enter 7/22/17

Judge

CF 5.28.07

CC - 75

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
COUNTY OF WINNEBAGO

FILE STAMP

People of the State of Illinois

vs.

Stateline Recycling Recycling, LLC

Case No. 17CH60

ORDER

This cause coming to be heard on Plaintiff's Motion to Compel Reents' Discovery, the parties appearing through Counsel, and the Court hearing oral argument, It is Hereby Ordered:

(1) Defendant Reents to provide to Plaintiff an Affidavit pursuant to Rule 214 of the completeness of her Document Production within 7 days;

(2) Plaintiff's Motion to Compel as to the Rule 214(a) inspection of Reents' Real Estate is granted, including the Illinois CPA participating in the inspection;

(3) The enforcement of Item No. 2 is stayed until September 22, 2017 pending Reents' determination to seek a friendly contempt to challenge the decision; and

(4) This cause is continued to September 22, 2017 at 1:30 p.m. for status on the enforcement of Item No. 2.

Enter 9/15/17 Judge

CC - 75

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
COUNTY OF WINNEBAGO

FILE STAMP
FILED
Date: 9/22/17
Thomas A. Klein
Clerk of the Circuit Court
By _____ Deputy
Winnebago County, IL

PEOPLE OF THE STATE

vs.

STATELINE RECYCLING
et al

Case No. 17 CH 60

ORDER

This matter having come before this Court on status regarding the Courts' order compelling a SCR 214a ~~Rule~~ Inspection of the subject premises commonly know as 2317 N Seminary, Rockford, IL. The defendant KEENTS having respectfully indicated her intent to refuse to comply with this Courts' order so that she might appeal the issue,

IT IS ORDERED that the ~~Plaintiff~~ Defendant KEENTS is held in friendly contempt and is sanctioned $100 which is stayed pending appeal. This case is set for further status on November 22, 2017. The case is not stayed.

Enter 9/22/17

Judge

CF 5.28.07

A38 C 353

CC - 75

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
COUNTY OF WINNEBAGO

FILE STAMP
FILED
Date: 9.15.17
Thomas A. Klein
Clerk of the Circuit Court
By _____ Deputy
Winnebago County, IL

People of the State of Illinois

vs.

Stateline Recycling Recycling, LLC

Case No. 17 CH 60

ORDER

This cause coming to be heard on Plaintiffs' Motion to compel Reents' Discovery, the parties appearing through Counsel, and the Court hearing oral argument, It is Hereby Ordered:

(1) Defendant Reents to provide to Plaintiff an Affidavit pursuant to Rule 214 of the completeness of her Document Production with 7 days;

(2) Plaintiff's Motion to Compel as to the Rule 214(a) inspection of Reents' Real Estate is granted, including the Illinois EPA participating in the inspection;

(3) The enforcement of Item No. 2 is stayed until September 22, 2017 pending Reents' determination to seek a friendly contempt to challenge the decision; and

(4) This cause is continued to September 22, 2017 at 1:30 pm for status on the enforcement of Item No. 2.

Enter 9/15/17 Judge _____

CF 5.28.07

CC - 75

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
COUNTY OF WINNEBAGO

FILE STAMP

People of the State of Illinois

VS.

Statutory Recycling, LLC, and Elizabeth Reents

Case No. 17CH60

ORDER

This cause coming to be heard on Plaintiffs' Motion for Administrative Inspection Warrant and Status on Discovery, the Parties appearing through counsel, and the Court being advised in the premises,

It is Hereby Ordered:

(1) This cause is continued to September 12, 2018 at 9:00 a.m.;

(2) Plaintiffs' Motion for Administrative Warrant is granted over Defendant Reents' objection; and

(3) The Administrative Inspection Warrant is issued.

Enter 7/11/18

Judge

MR
JM

CF 5.28.07

A40

IN THE CIRCUIT COURT FOR THE SEVENTEENTH JUDICIAL CIRCUIT
WINNEBAGO COUNTY, ILLINOIS

FILED
Date: 7/11/18
Clerk of the Circuit Court
Deputy
Winnebago County, IL

PEOPLE OF THE STATE OF ILLINOIS *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois,	)	
Plaintiff,	)	
v.	)	No. 2017 CH 60
STATELINE RECYCLING, LLC, an Illinois limited liability corporation, and ELIZABETH REENTS, an individual,	)	
Defendants.	)	

ADMINISTRATIVE INSPECTION WARRANT

To all peace officers of the State of Illinois, and/or Greg Kazmerski, and any other duly authorized employees or agents of the Illinois Environmental Protection Agency ("Illinois EPA");

On June 19, 2018, the Plaintiff filed its Motion for Administrative Inspection Warrant ("Motion"). Upon examination of the Motion, including the affidavit of Greg Kazmerski of the Illinois EPA, I find that the Illinois EPA is entitled to this administrative search warrant pursuant to Section 4 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/4 (2016).

I therefore command that you enter at a reasonable time the property owned and operated by ELIZABETH REENTS, located at 2317 N. Seminary, Rockford, Winnebago County, Illinois, and that Greg Kazmerski and/or other representatives of Illinois EPA fully and completely observe, inspect, and photograph that Site. Your authority to execute this Administrative Inspection Warrant shall expire within five business days of issuance.

JUDGE

Date: 7/11/18

CIRCUIT COURT ★ 17TH JUDICIAL CIRCUIT ★ WINNEBAGO COUNTY ILLINOIS

I hereby certify that this document is a true, perfect and complete copy of the original on file in my office.

Clerk of the Circuit Court
Winnebago County, Illinois

By: Deputy Clerk

Date 7/11/18

IN THE CIRCUIT COURT FOR THE SEVENTEENTH JUDICIAL CIRCUIT
WINNEBAGO COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS *ex rel*. LISA MADIGAN, Attorney General of the State of Illinois,	)	
Plaintiff,	)	
v.	)	No. 2017 CH 60
STATELINE RECYCLING, LLC, an Illinois limited liability corporation, and ELIZABETH REENTS, an individual,	)	
Defendants.	)	

MOTION FOR ADMINISTRATIVE INSPECTION WARRANT

Now comes Plaintiff, People of the State of Illinois *ex rel.* Lisa Madigan, Attorney General of the State of Illinois ("Plaintiff"), and upon the affidavit of GREG KAZMERSKI, Environmental Protection Specialist with the Illinois EPA, requests that this Court issue an Administrative Inspection Warrant to enter, pursuant to Section 4(c) and (d) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/4(c) and (d) (2016), property owned by Defendant ELIZABETH REENTS ("Reents") located at 2317 Seminary Street, Rockford, Winnebago County, Illinois ("Site"), which is the property at issue in this litigation, to observe, inspect, and photograph the Site, and all operations, processes, structures and materials upon said Site. In Support of Plaintiff's Motion for Administrative Inspection Warrant, Plaintiff states as follows:

1. The purpose of the inspection and investigation is to fulfill the Illinois EPA's duty under Section 4(c) and (d) of the Act, 415 ILCS 5/4(c) and (d) (2016), and determine whether violations of the Act and regulations promulgated thereunder, especially land pollution regulations

relating to the accumulation and storage of waste are occurring at the Site.

2. On January 17, 2017, Plaintiff filed a civil enforcement action against Reents and Stateline Recycling, LLC (together, "Defendants") under the terms of Section 42 of the Act, 415 ILCS 5/42, related to their ownership and/or operation of the Site. That action is now pending before this Court.

3. The Site is currently locked, and it is impossible for the Illinois EPA to enter the Site that Reents owns for the purpose of inspecting and investigating to ascertain possible violations of the Act.

4. As shown by the Affidavit of Illinois EPA inspector Greg Kazmerski, attached hereto as Exhibit A, the Illinois EPA has previously observed landfill operations and/or the storage or abandonment of waste at the Site, and reasonably believes that the abandonment of waste and/or other violations at the Site continue to occur. The gate to the property is currently locked and cannot be accessed by Illinois EPA inspectors. Exhibit A, ¶4.

5. Pursuant to Section 4(c) and (d) of the Act, Illinois EPA has the right and obligation to perform unannounced inspections to ascertain potential violations of the Act and Board regulations promulgated thereunder. As a regular practice, Illinois EPA conducts unannounced inspections on facilities, including privately owned landfills, and performs inspections in response to complaints. Such inspections are an important tool for Illinois EPA's compliance monitoring of regulated facilities. Reents' denial of access for the purpose of inspection prevents Illinois EPA from performing its obligations under the Act.

6. Section 4(c) and (d) of the Act, 415 ILCS 5/4(d) (2016), provides, in relevant part, as follows:

(c) The Agency shall have authority to conduct a program of continuing

surveillance and of regular or periodic inspection of actual or potential contaminant or noise sources, of public water supplies, and of **refuse disposal sites**.

(d) In accordance with constitutional limitations, **the Agency shall have authority to enter at all reasonable times** upon any private or public property for the purpose of:

(1) Inspecting and investigating to ascertain possible violations of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order…

(**emphasis added**).

7. In her deposition in this matter, Defendant Reents repeatedly admitted that the Site is a dump site. *See* Reents Dep. 21:7; 22:24-23:6; 31:24-32:5; 47:17; 55:2-3; 93:18-22). A copy of relevant portions of Defendant Reents' deposition transcipt is attached hereto as Exhibit B.

8. Illinois courts routinely recognize the Illinois EPA's authority to enter property for purposes of inspection under Section 4 of the Act, 415 ILCS 5/4. "[U]nder a common sense reading of section 4(d) **the [Illinois EPA] is implicitly authorized to go before a court and request an administrative inspection warrant in order to carry out its duties under the Illinois Environmental Protection Act**." *Tippin v. Rockdale Sash & Trim Co., Inc.*, 196 Ill.App.3d 333 (1st Dist.1990) (**emphasis added**); *see also People v. Van Tran Electric Corp.*, 152 Ill.App.3d 175 (5th Dist. 1993) (Illinois EPA entitled to an injunction for access to property for purposes of, *inter alia*, conducting an inspection of regulated facility); *see also Ill. Env. Protection Agency v. Shafer*, PCB 11-28 (July 26, 2012) (Illinois EPA's inspection of regulated facility is permitted under Section 4 of the Act);[1] *Ill. Env. Protection Agency v. Barry*, PCB 88-71, slip op. at 78, (May 10,

[1] The Board has concurrent jurisdiction to hear civil environmental enforcement cases (415 ILCS 5/5(d); *see also Janson v. Illinois Pollution Control Bd.*, 69 Ill. App. 3d 324, 327–28 (3d Dist. 1979)), and because the Board is responsible for administering the Act, its interpretation of a regulation or statute is entitled to deference. *Emerald Performance Materials, LLC v. Illinois Pollution Control Bd.*, 2016 IL App (3d) 150526, ¶21 citing *Cent. Illinois Pub. Serv. Co. v. Pollution Control Bd.*, 116 Ill. 2d 397, 409 (1987).

1990) ("to gain access to the Barry property an administrative inspection warrant had to be obtained by the Agency.") Available at: https://pcb.illinois.gov/documents/dsweb/Get/Document-23559; *County of Ogle v. Wilson*, AC 16-10, at 5 (Ogle County Solid Waste Management Department inspected the site, after acquiring an Administrative Search Warrant). Available at: https://pcb.illinois.gov/documents/dsweb/Get/Document-91415.

9. For the reasons stated herein, this Court is authorized to issue an Administrative Inspection Warrant authorizing Illinois EPA to conduct an inspection of the Site. A proposed Administrative Inspection Warrant for this Court's consideration is attached hereto as Exhibit C.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, requests that this Court grant its Motion and enter an Order:

1. Finding that Illinois EPA is entitled to enter, at reasonable times, the property owned and controlled by ELIZABETH REENTS, located at 2317 Seminary Street, Rockford, Winnebago County, Illinois;

2. Issuing an Administrative Inspection Warrant to Illinois EPA for said property that requires ELIZABETH REENTS or her representative to appear at a reasonable, agreed-upon time to ensure gates and/or other barriers are unlocked; and

3. Granting any additional relief that this Court deems appropriate and just.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN, Attorney
General of the State of Illinois

By: /s/ Jamie Getz
JAMIE D. GETZ (ARDC No. 6296185)
STEPHEN J. SYLVESTER (ARDC No. 6282241)
Assistant Attorneys General
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ssylvester@atg.state.il.us

IN THE CIRCUIT COURT FOR THE SEVENTEENTH JUDICIAL CIRCUIT
WINNEBAGO COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois,	)	
Plaintiff,	)	
v.	)	No. 2017 CH 60
STATELINE RECYCLING, LLC, an Illinois limited liability corporation, and ELIZABETH REENTS, an individual,	)	
Defendants.	)	

AFFIDAVIT OF GREG KAZMERSKI

I, GREG KAZMERSKI, being first duly sworn upon oath, depose and state:

1. I am employed by the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, ("Illinois EPA") as an Environmental Protection Specialist III in the Field Operations Section, Bureau of Land. My office is located at Illinois EPA's Rockford Illinois Regional Office.

2. Among my duties in the Field Operations Section is to conduct announced and unannounced inspections of solid waste management facilities. Inspections are conducted pursuant to the authority granted to Illinois EPA under Section 4(c) and (d) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/4(c) and (d) (2016), to determine compliance with the Act and Illinois Pollution Control Board ("Board") regulations. Included are Board regulations regulating landfills and the accumulation and storage of waste. During these inspections, Illinois EPA inspectors commonly take photographs.

3. I have reviewed the Illinois EPA's file relating to 2317 Seminary St., Rockford,

Winnebago, Illinois ("Site"). Specifically, I reviewed prior inspection reports of the Site as conducted by other employees of the Illinois EPA. The prior inspection reports indicate ongoing violations relating to the storage and disposal of construction or demolition debris.

4. On June 18, 2018, I attempted to inspect the Site. The gate to the Site was locked and no personnel were present to allow me on the property. From the public street, I observed piles of broken asphalt and concrete. However, I was unable to fully ascertain the conditions at the Site without being able to access the property.

5. I have personal and direct knowledge of the facts stated herein, and if called as a witness at a hearing in this matter, could competently testify thereto.

FURTHER AFFIANT SAYETH NOT.

GREG KAZMERSKI

State of Illinois
County of Winnebago
Signed and sworn (or affirmed) to before me on June 19, 2018
by Greg Kazmerski

Notary Public

OFFICIAL SEAL
ALBERTA WALKER
NOTARY PUBLIC, STATE OF ILLINOIS
My Commission Expires 03/31/2020

WINNEBAGO COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS ex rel. LISA MADIGAN, Attorney General of the State of Illinois,	)	
Plaintiff,	)	
vs.	)	No. 2017 CH 60
STATELINE RECYCLING, LLC, an Illinois limited liability company, and ELIZABETH REENTS, an individual,	)	
Defendants.	)	

The discovery deposition of ELIZABETH REENTS, taken in the above-entitled cause, before Wendi L. Mirshak, a certified shorthand reporter, on September 22, 2017 at 4777 East State Street, Suite 7, Rockford, Illinois, pursuant to notice at 11:00 a.m.

Wendi L. Mirshak

License No.: 084-003960

APPEARANCES:

OFFICE OF THE ATTORNEY GENERAL
ASSISTANT ATTORNEY GENERAL
ENVIRONMENTAL BUREAU
BY: MS. JAMIE D. GETZ
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Recycling, LLC;

APPEARANCES: (Cont'd)

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BY: MR. MARK ROULEAU
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rouleau-law@comcast.net
Representing Ms. Reents.

The list is produced two weeks prior to the tax sale date?

A. Right. It's made available to the tax buyers.

Q. Do you remember what you saw when you drove by in October of 2012 or 2013?

A. I saw a dump site.

Q. Okay.

A. I saw a trailer. That's about it.

Q. Did you see a fence?

A. Yeah, cyclone fence around it.

Q. Did you see any people?

A. No.

Q. Did you see any trucks or movement?

A. No, I did not see any and I did not see any moving vehicles or anything like that, no.

Q. Did you see any signs indicating what the site was or who might be there?

A. Not that I recall, no.

Q. Okay. Was there anything else you remember when you first saw that site in 2012 or is that pretty much it?

A. I think looked like just some debris.

Q. Understand.

Did you do any other research before or after you visited the site with respect to the site?

A. No.

MR. ROULEAU: At any time? Before the sale?

MS. GETZ: I'll clarify it.

BY MS. GETZ:

Q. So from the time that you first saw the -- I'm learning about the process.

MR. ROULEAU: Delinquent property list or list of delinquent is what the --

BY MS. GETZ:

Q. Delinquent property list. Let me formulate my question.

A. Uh-huh.

Q. From the time that you saw the site listed on the delinquent property list until the time that you bid, you did tell me that you saw the site. Did you do any other research with respect to the site?

A. No.

Q. Did you speak to anyone about it?

A. No.

Q. Okay. Other than the site, have you

ever purchased a property that also you would describe as a dump site or was this your first one?

A. No.

Q. Was this your first one?

A. Yes.

MR. ROULEAU: Show a continuing objection calling it purchasing the property. It wasn't purchase the property. She purchased the delinquent taxes which were owned by the State of Illinois.

MS. GETZ: Right. This would be Reents 2.

(Whereupon, Reents Deposition Exhibit No. 2 was marked for identification.)

BY MS. GETZ:

Q. Ms. Reents, can you please take a look at what's been marked as Exhibit 2.

A. Yes.

Q. Have you seen this before?

A. I believe Attorney Rouleau showed me this, yes.

Q. Okay. It was produced in the documents that we requested from you via your attorney.

it's the second from the bottom. It says, did you know it to be industrial and the answer was yes. What caused you to know it to be industrial, the site?

A. It's not residential. It's not commercial. Perhaps commercial.

Q. Did you think there was any commerce going on at the property or --

MR. ROULEAU: I'm going to object to the extent that I believe that's a legal description based on zoning.

MS. GETZ: Okay. That's not what I mean then.

MR. ROULEAU: No, obviously, but I mean that's -- our properties are zoned in the area and I believe the proper zoning for a dump would be industrial.

MS. GETZ: Okay. Yes.

MR. ROULEAU: And there's heavy and light industrial zoning. I think this property may have both, so.

MS. GETZ: Okay.

BY MS. GETZ:

Q. Did you observe anything that -- at the

site that caused you to agree or disagree with it being industrial?

A. Being what?

Q. Classified as industrial.

A. It -- it appeared to be a dump site.

Q. Okay.

(Whereupon, Reents Deposition Exhibit No. 6 was marked for identification.)

BY MS. GETZ:

Q. You've been handed Exhibit 6. Have you seen this before?

MR. ROULEAU: This is at any time?

MS. GETZ: At any time.

THE WITNESS: Not that I recall.

BY MS. GETZ:

Q. Never?

A. Not that I recall.

Q. Do you know what this is?

A. It's filed in 2009. It appears to be a clutch situation concerning the State of Illinois and the dump site.

Q. But you haven't seen it prior to me showing it to you right now?

some point in the spring of 2015. When was this first meeting at the Bears Den?

A. I don't recall --

Q. Approximately?

A. -- really when it was.

Q. I don't need an exact date.

A. I think it was probably summer of '15. I would say summer of '15.

Q. And what did you talk about at that first meeting in the Bears Den?

A. A lot of chitchat. Not anything concerning business. We spoke briefly concerning the business and nothing was agreed upon. That was it.

Q. When you say the business, what does that refer to?

A. The Busse yard. The dump site.

Q. Okay. What did you discuss about that?

A. My intention or hopes of selling it to her.

Q. So at some point you learned that she was operating a business on the site. Is that what you are saying?

A. I can't really answer that. I don't

activities there.

Q. You observed that it was a dump site?

A. I observed that.

Q. Did she ever mention that fact to you that it was a dump site?

A. We never -- never really -- no. Not as I recall. Nothing.

Q. Okay. Did you ever lock the site?

MR. ROULEAU: Do you mean her individually or did she instruct somebody else to lock it on her behalf?

MS. GETZ: I was going to follow up with that.

BY MS. GETZ:

Q. Did you cause a lock to be placed on the site?

A. Yes, eventually after Attorney Rouleau had encouraged that I must do so.

Q. So what date was that lock placed?

A. It must have been February, March perhaps of this year.

Q. 2017?

A. Uh-huh.

Q. And other than your conversation with

A. It was an office. It had --
Q. It had --
A. It was in -- it was occupied.
Q. Okay.
A. It was occupied.
Q. Did it have files and folders and things like that?
A. Yes.
Q. Typical office supplies?
A. Sure.
Q. You said it -- was she -- did it seem -- did it seem that she was operating a business?
A. I assumed so.
Q. What kind of business?
A. Whatever business she had there at the site.
Q. Did you understand what kind of business she was operating?
A. To the best of my knowledge, it was a business where operators of salvage or -- there were material to be -- of materials to dump.
Q. How did you come up with that determination?

IN THE CIRCUIT COURT FOR THE SEVENTEENTH JUDICIAL CIRCUIT
WINNEBAGO COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS *ex rel*. LISA MADIGAN, Attorney General of the State of Illinois,	)	
Plaintiff,	)	
v.	)	No. 2017 CH 60
STATELINE RECYCLING, LLC, an Illinois limited liability corporation, and ELIZABETH REENTS, an individual,	)	
Defendants.	)	

ADMINISTRATIVE INSPECTION WARRANT

To all peace officers of the State of Illinois, and/or Greg Kazmerski, and any other duly authorized employees or agents of the Illinois Environmental Protection Agency ("Illinois EPA");

On _____, the Plaintiff filed its Motion for Administrative Inspection Warrant ("Motion"). Upon examination of the Motion, including the affidavit of Greg Kazmerski of the Illinois EPA, I find that the Illinois EPA is entitled to this administrative search warrant pursuant to Section 4 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/4 (2016).

I therefore command that you enter at a reasonable time the property owned and operated by ELIZABETH REENTS, located at 2317 N. Seminary, Rockford, Winnebago County, Illinois, and that Greg Kazmerski and/or other representatives of Illinois EPA fully and completely observe, inspect, and photograph that Site. Your authority to execute this Administrative Inspection Warrant shall expire within five business days of issuance.

_____

JUDGE

Date: _____

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CERTIFICATE OF FILING AND SERVICE

I certify that on February 13, 2020, I electronically filed the foregoing Brief and Appendix of Plaintiff-Appellant with the Clerk of the Supreme Court of Illinois by using the Odyssey eFileIL system.

I further certify that the other participant in this appeal, named below, is a registered service contact on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system.

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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

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