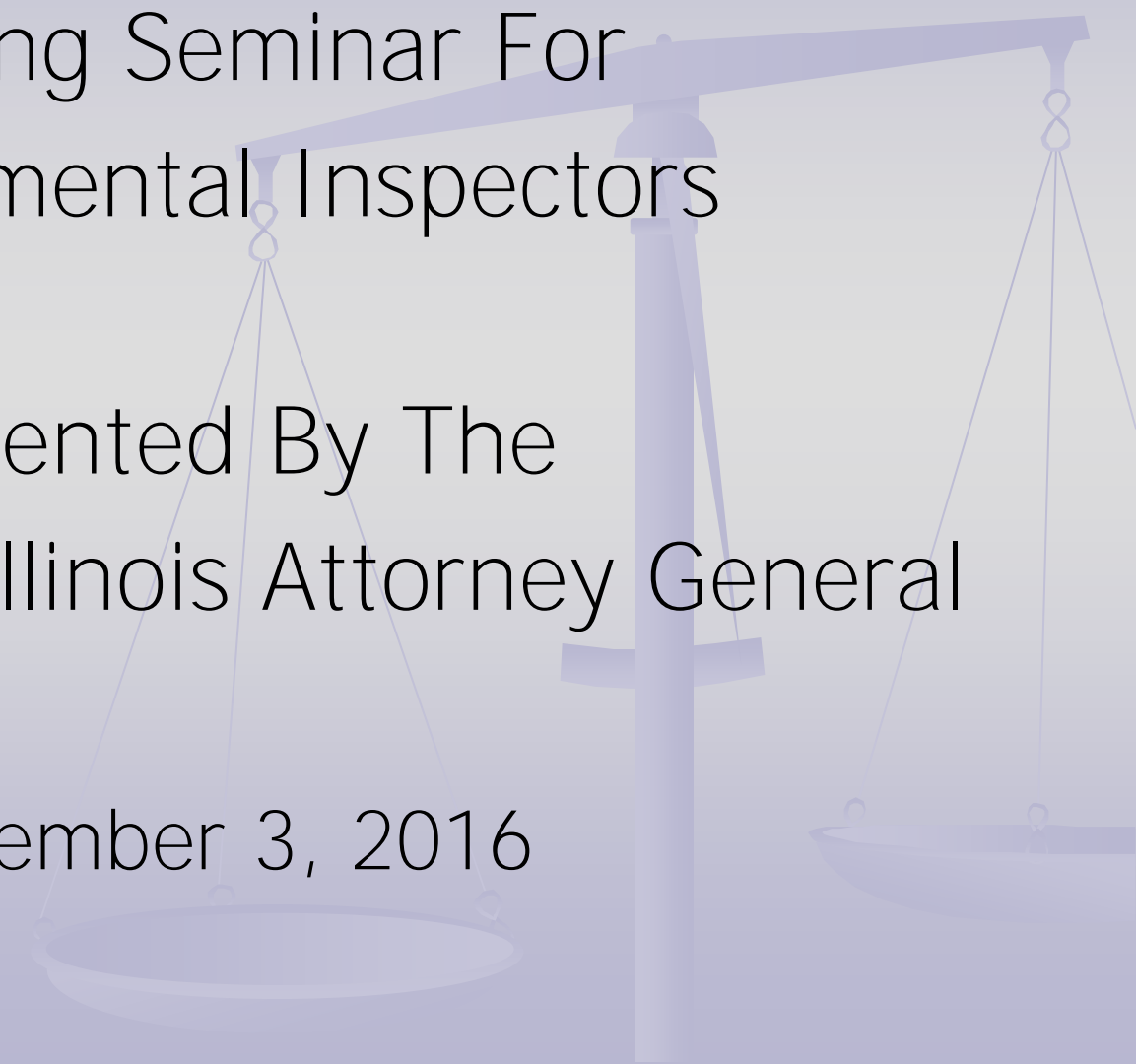


Making A Good Case Better

Training Seminar For
Environmental Inspectors

Presented By The
Office of the Illinois Attorney General

November 3, 2016

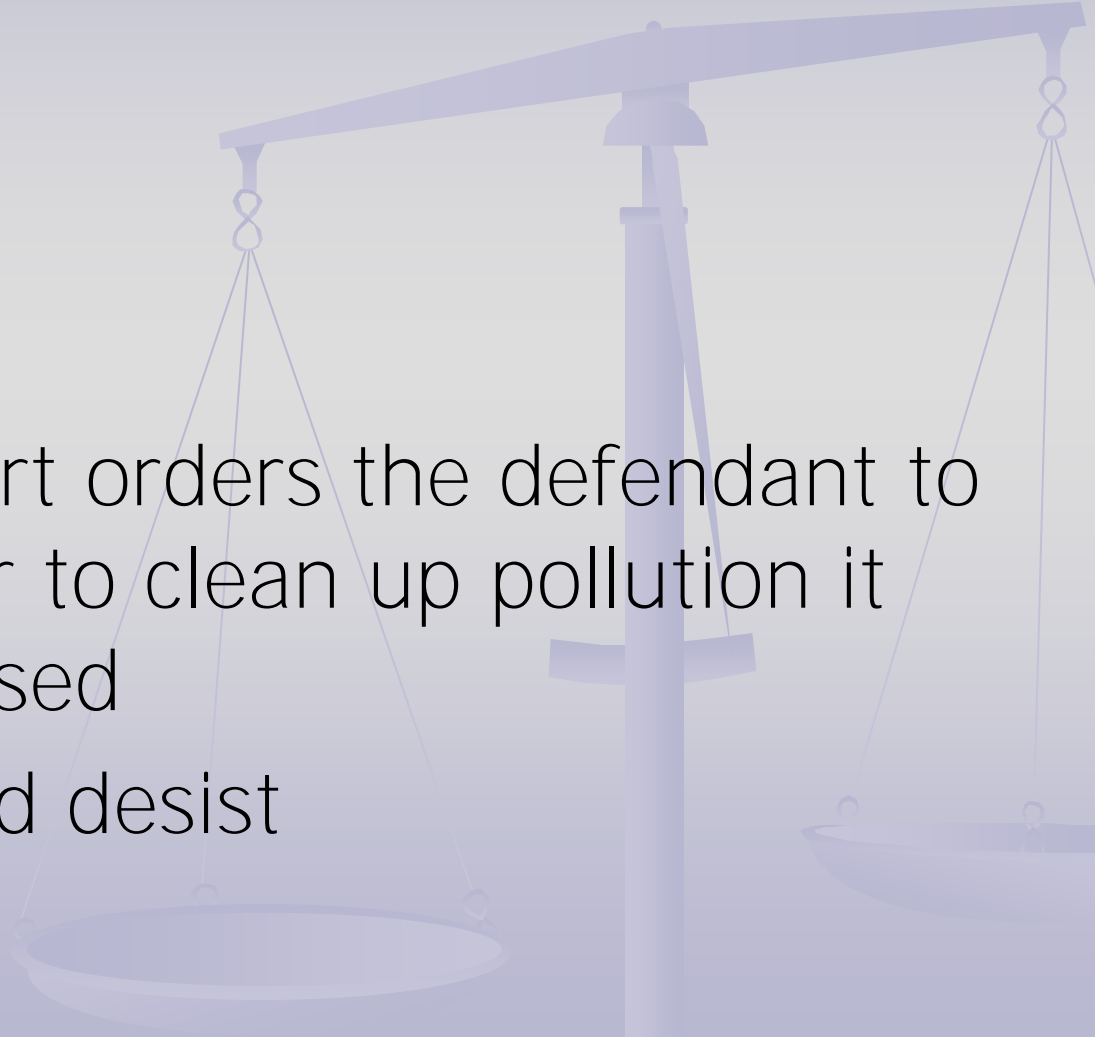


How The Attorney General Handles An Environmental Enforcement Case

- Lifecycle of an enforcement case
 - Inspection
 - Section 31 process
 - **Referral to AG/States' Attorney**
 - Litigation
 - Circuit Court vs. PCB
 - Resolution



Need Facts To Support Each Element Of the Violation

- Air pollution
 - Water pollution
 - Land violations
 - Injunction: court orders the defendant to stop polluting or to clean up pollution it has already caused
 - PCB – Cease and desist
 - Penalties
- 

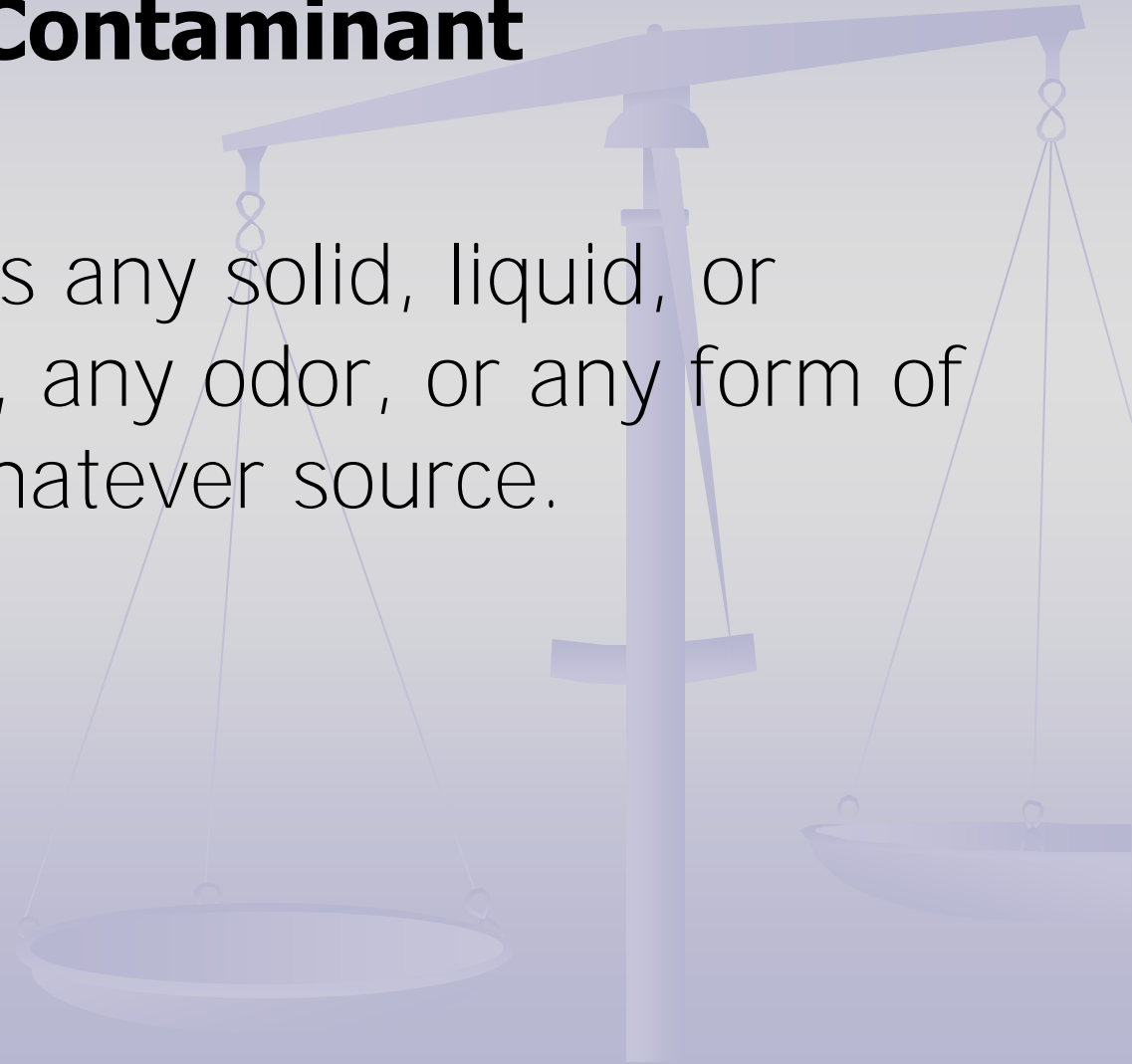
Water Pollution

- Section 12. No person shall:
 - (a) **Cause or threaten or allow** the discharge of any **contaminants** into the environment in any State so as to **cause or tend to cause water pollution** in Illinois, either alone or in combination with matter from other sources, or so as to violate [Pollution Control Board] regulations.

Water Pollution

- Section 3.165. **Contaminant**

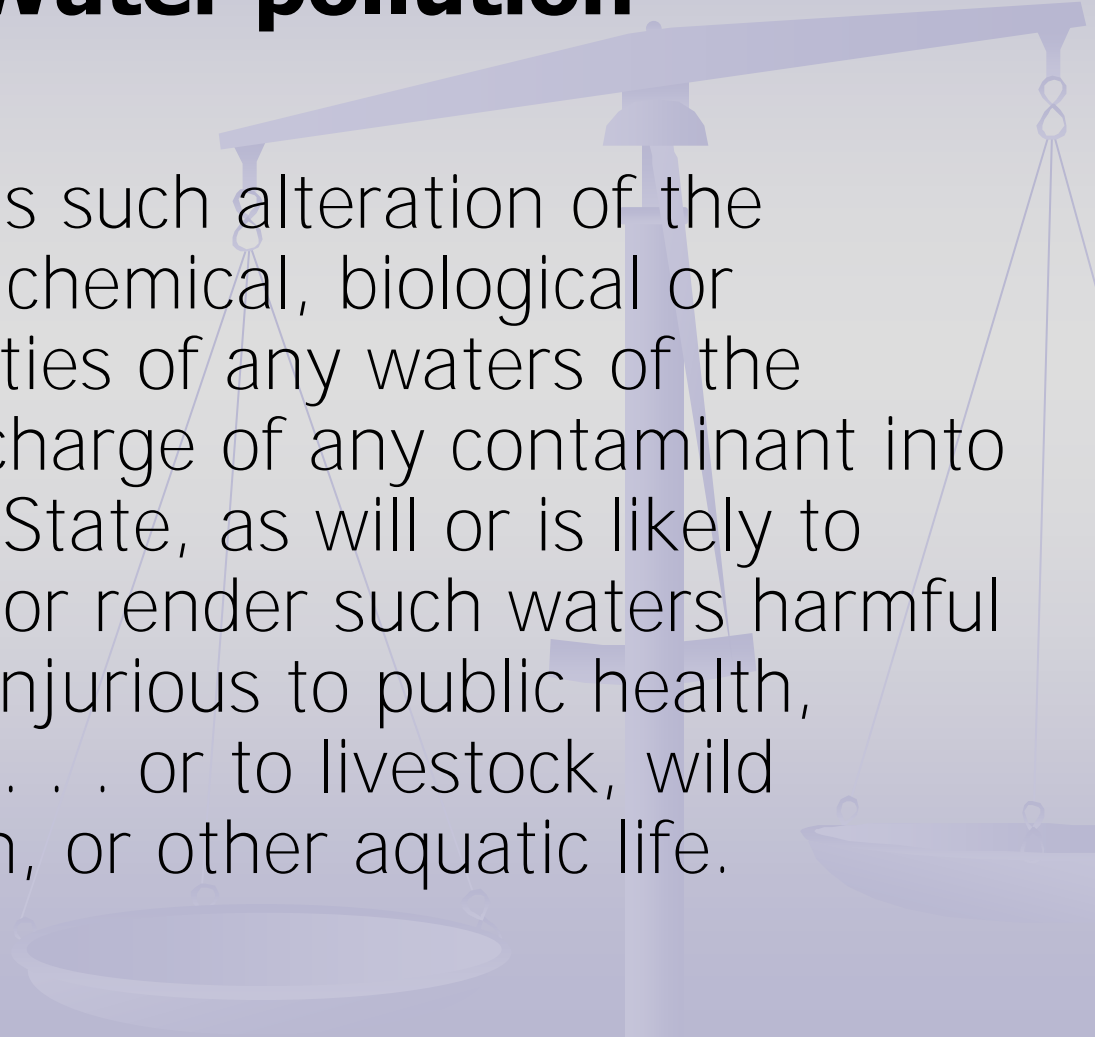
"Contaminant" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.



Water Pollution

- Section 3.545. **Water pollution**

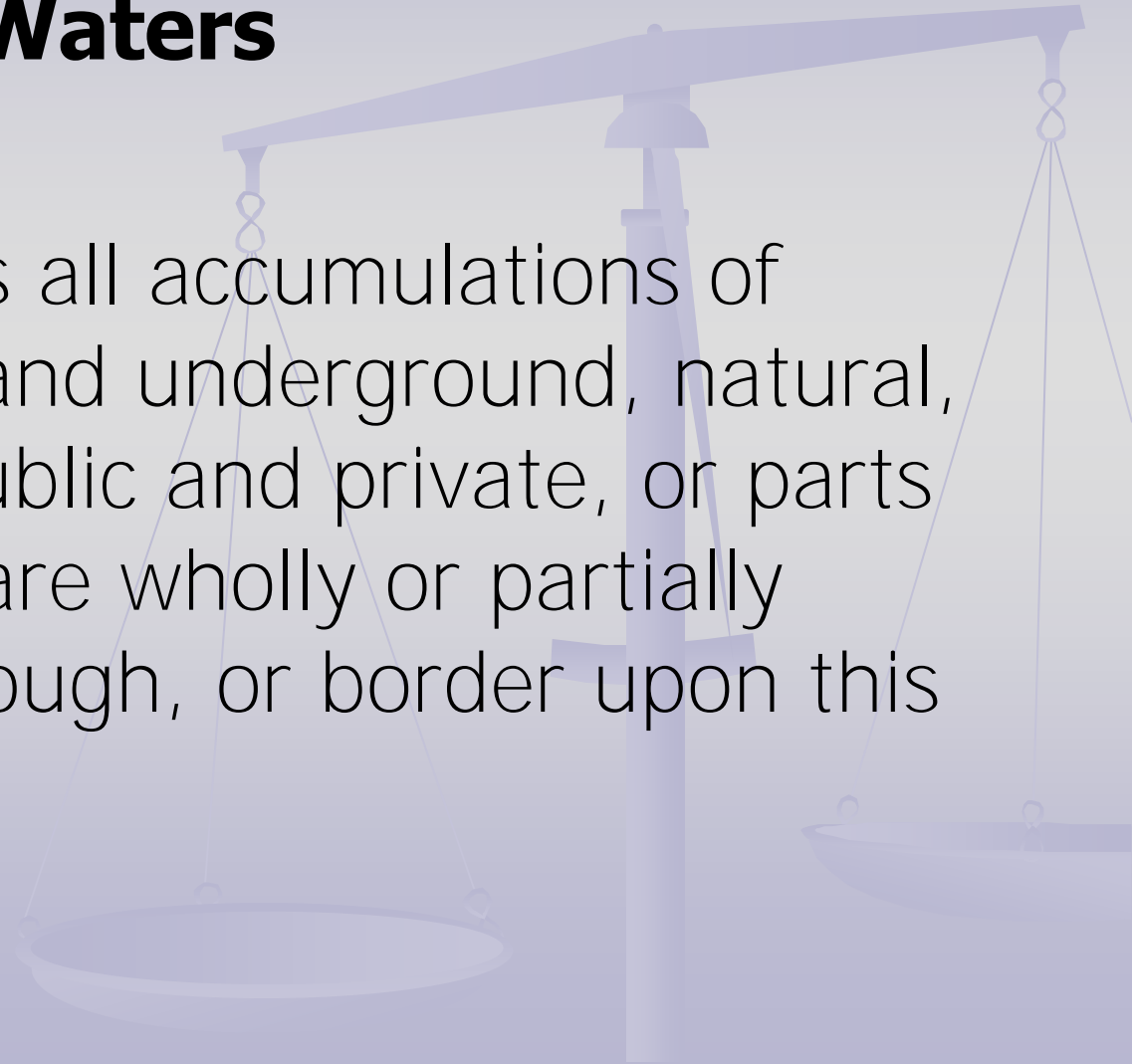
"Water pollution" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, . . . or to livestock, wild animals, birds, fish, or other aquatic life.



Water Pollution

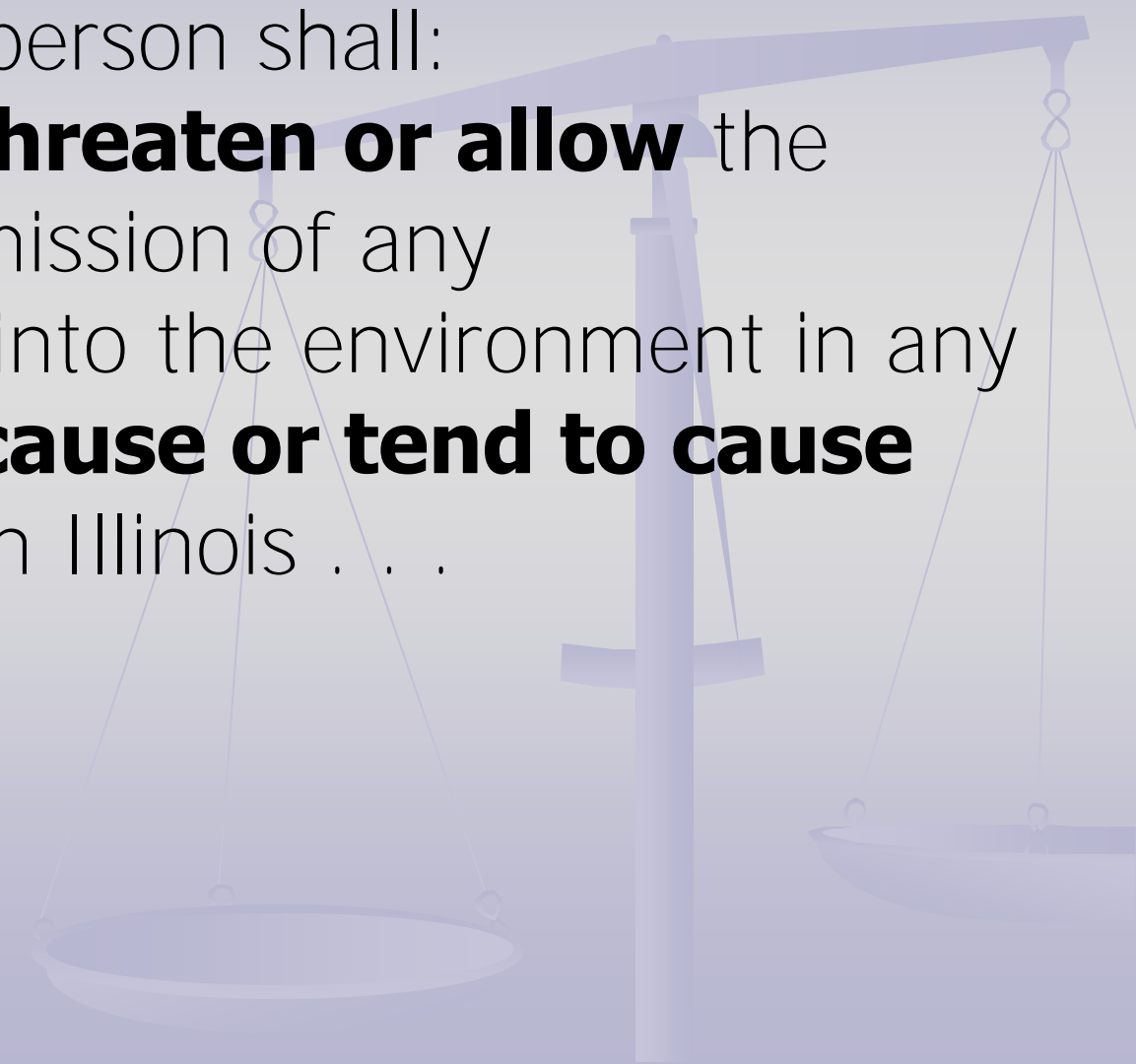
- Section 3.550. **Waters**

"Waters" means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.



Air Pollution

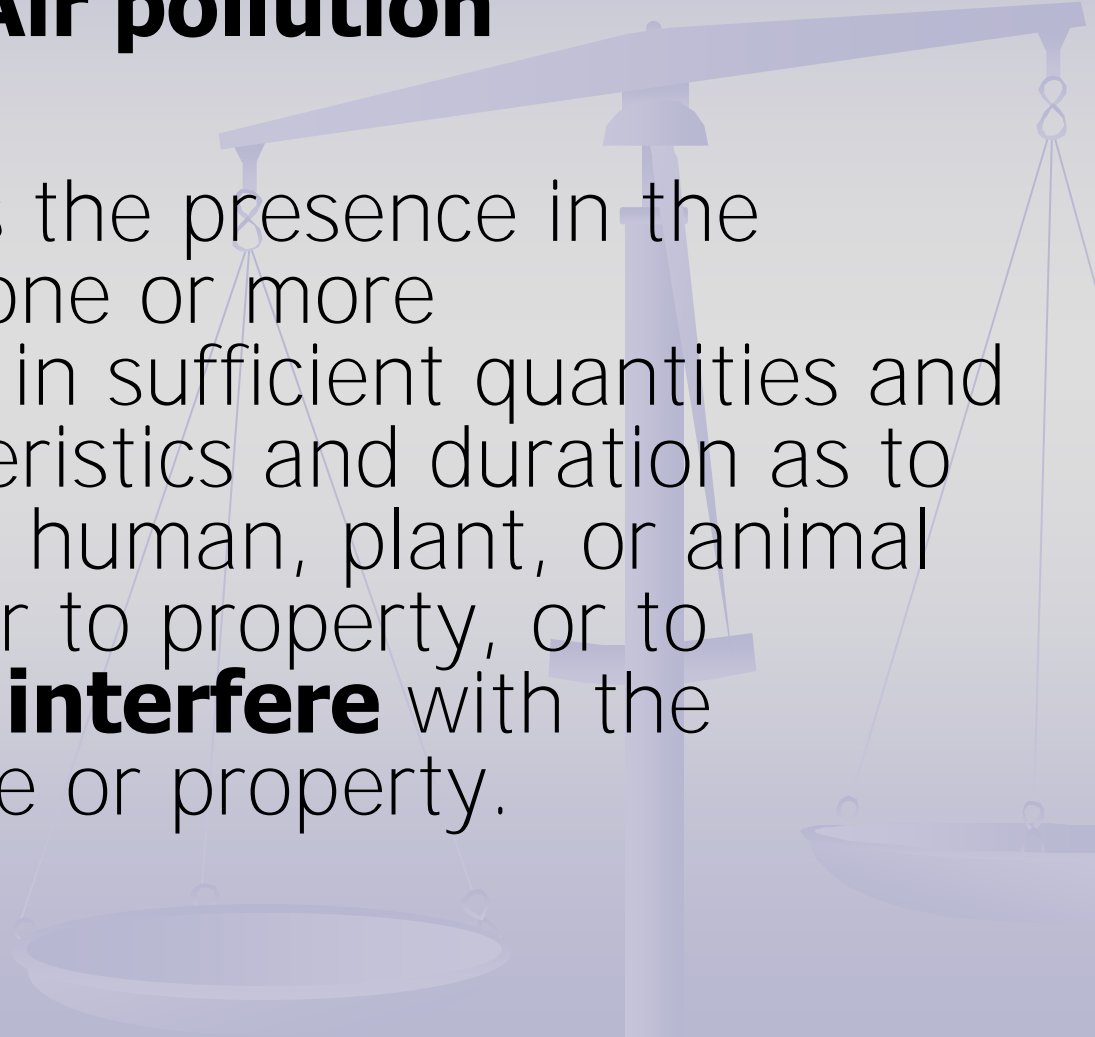
- Section 9. No person shall:
 - (a) **Cause or threaten or allow** the discharge or emission of any **contaminant** into the environment in any State so as to **cause or tend to cause air pollution** in Illinois



Air Pollution

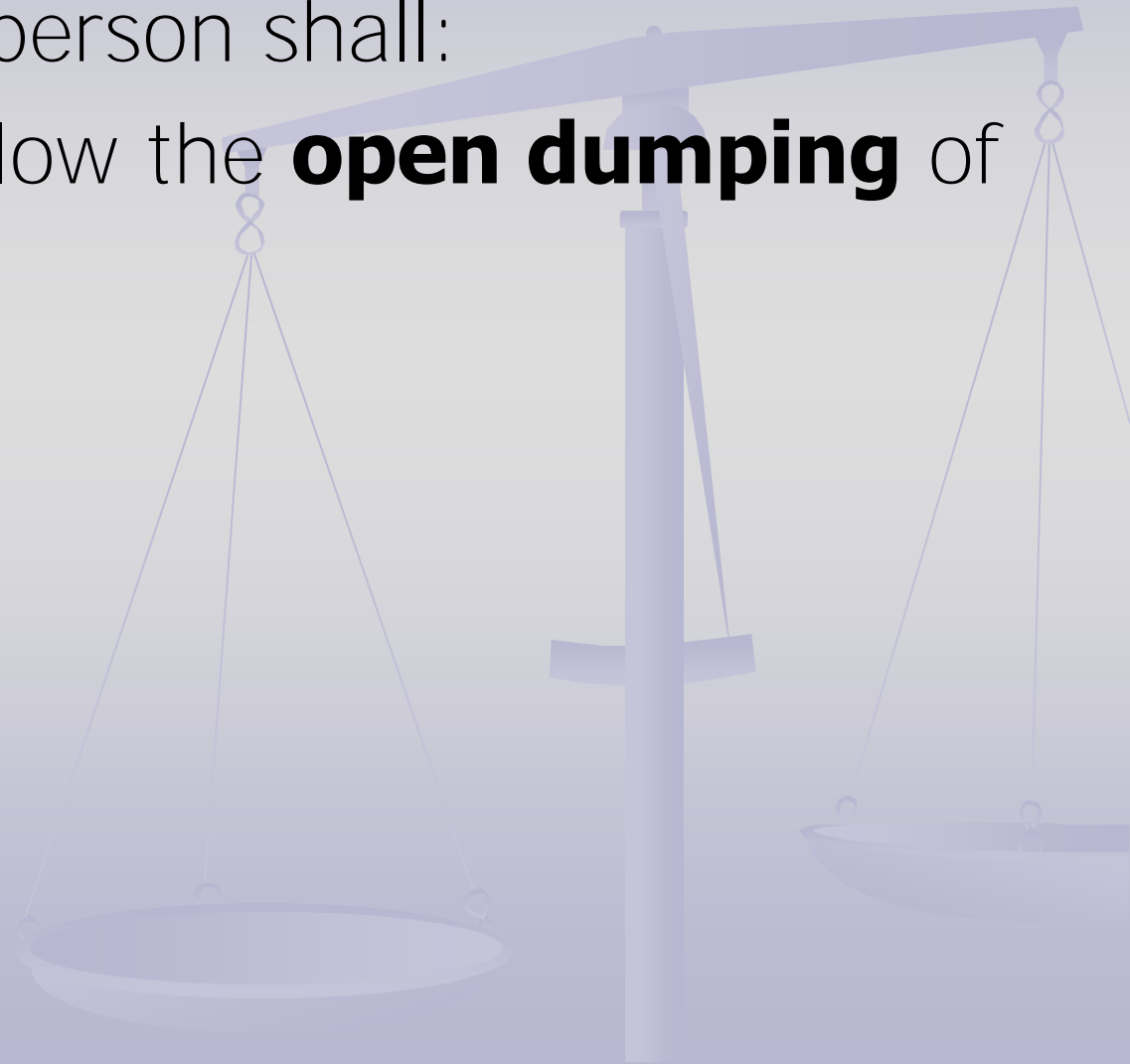
- Section 3.115. **Air pollution**

"Air pollution" is the presence in the atmosphere of one or more **contaminants** in sufficient quantities and of such characteristics and duration as to be **injurious** to human, plant, or animal life, to health, or to property, or to **unreasonably interfere** with the enjoyment of life or property.



Land Violations

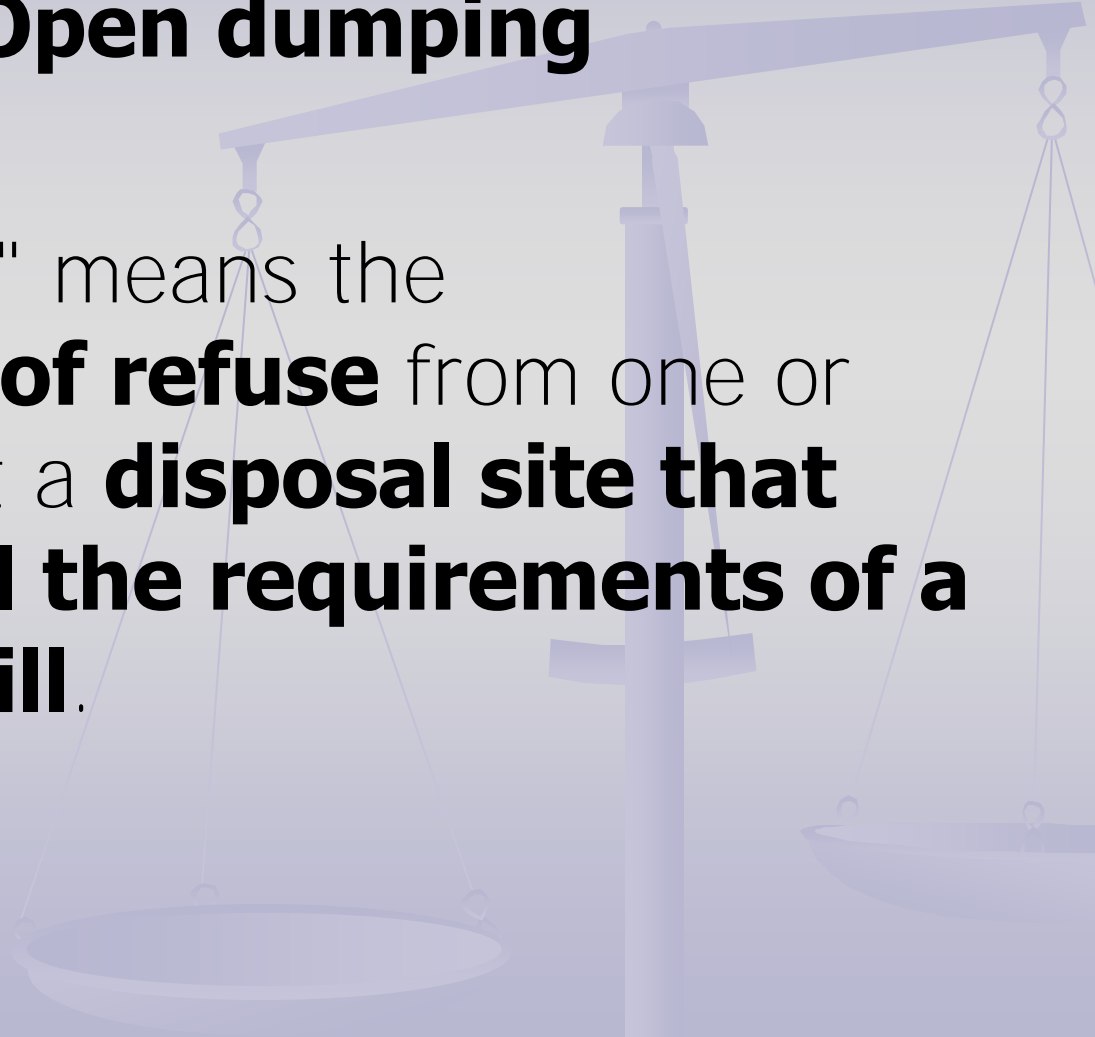
- Section 21. No person shall:
- (a) Cause or allow the **open dumping** of any waste.



Land Violations

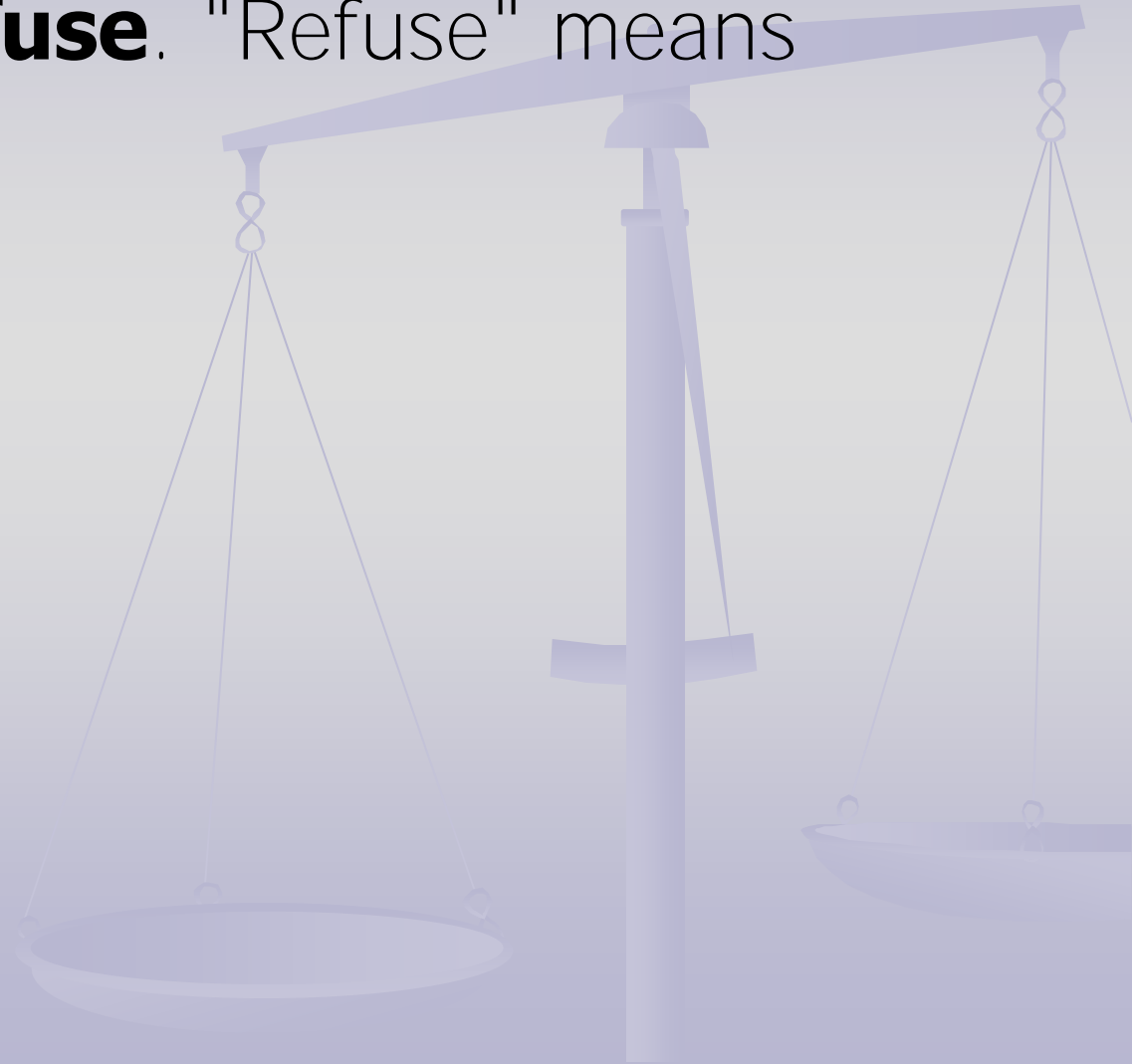
- Section 3.305. **Open dumping**

"Open dumping" means the **consolidation of refuse** from one or more sources at a **disposal site that does not fulfill the requirements of a sanitary landfill.**



Land Violations

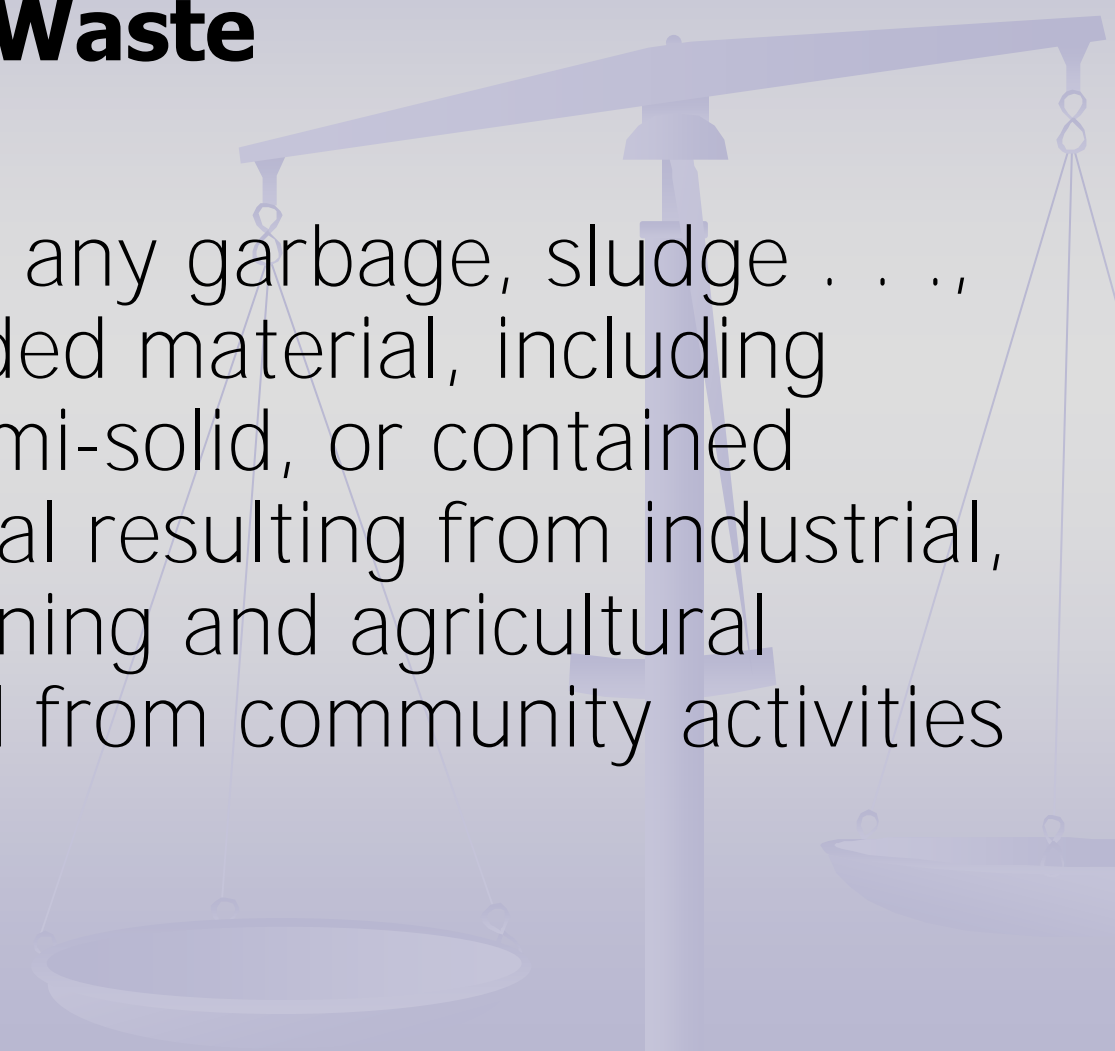
- Sec. 3.385. **Refuse.** "Refuse" means **waste.**



Land Violations

- Section 3.535. **Waste**

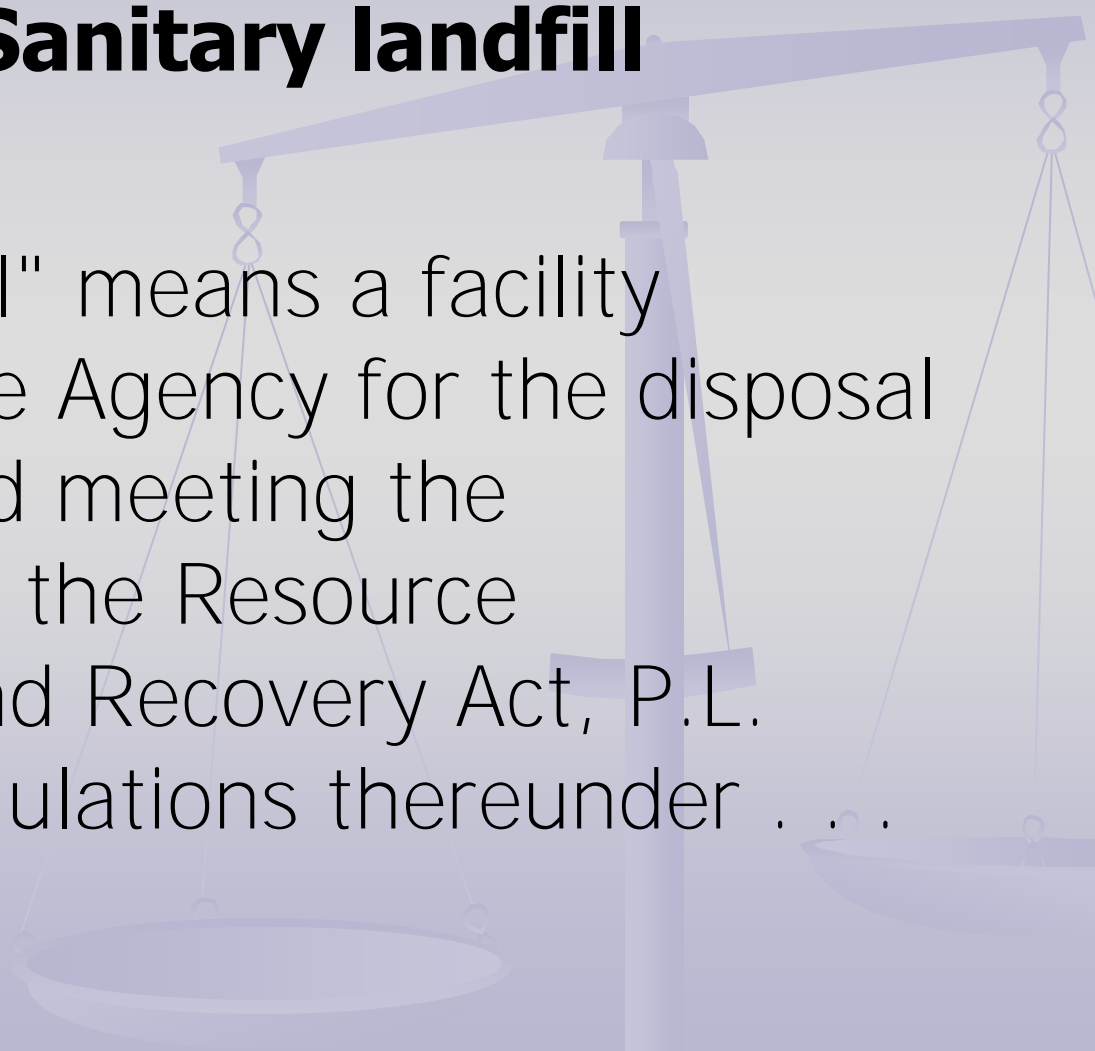
"Waste" means any garbage, sludge, or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities



Land Violations

- Section 3.445. **Sanitary landfill**

"Sanitary landfill" means a facility permitted by the Agency for the disposal of waste on land meeting the requirements of the Resource Conservation and Recovery Act, P.L. 94-580, and regulations thereunder . . .



Land Violations



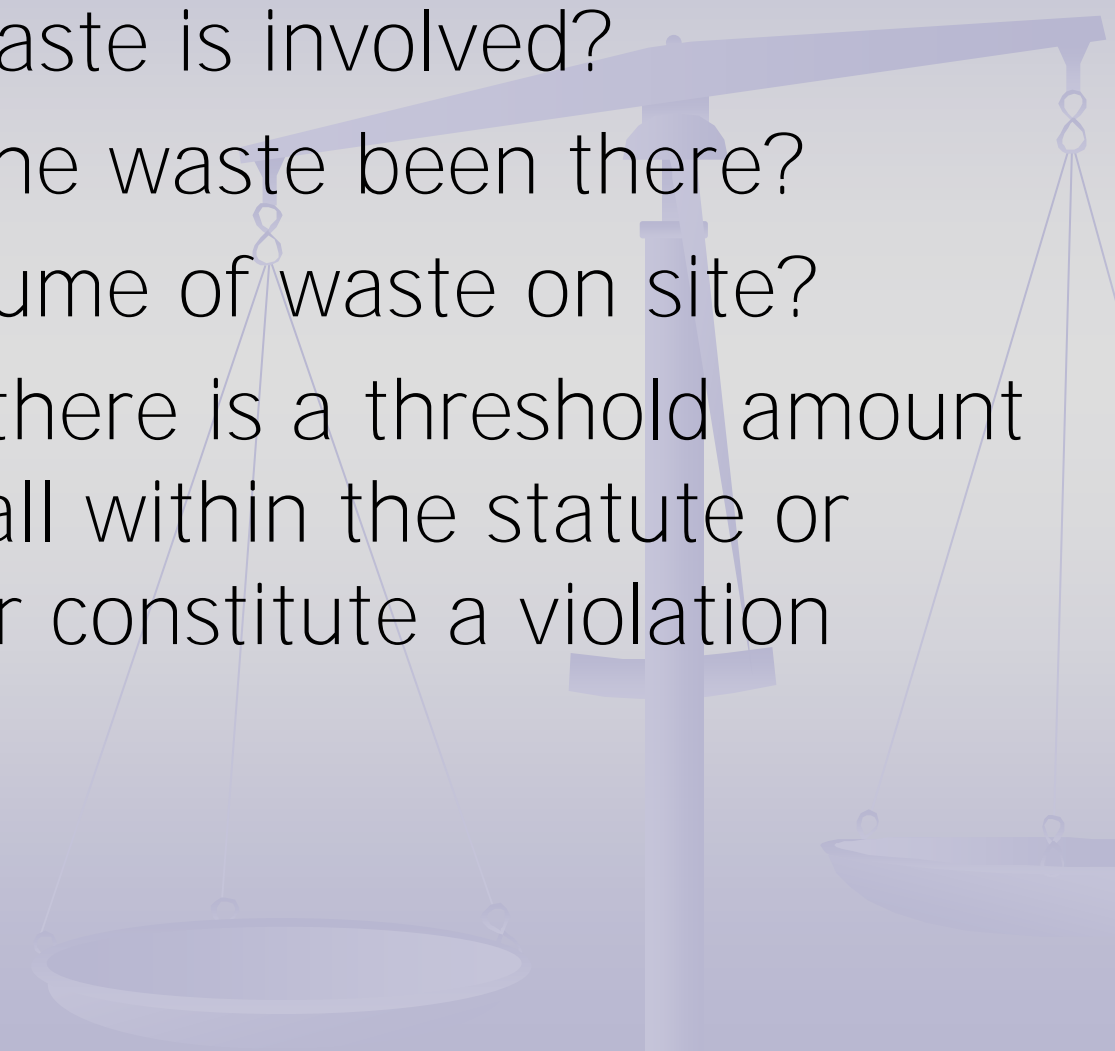
- Section 21. No person shall:
- (d) Conduct any waste-storage, waste-treatment, or waste-disposal operation:
 - (1) without a permit granted by the Agency or in violation of any conditions imposed by such permit

Land Violations



- Section 21. No person shall:
 - (f) Conduct any hazardous waste-storage, hazardous waste-treatment or hazardous waste-disposal operation:
 - (1) without a RCRA permit for the site issued by the Agency . . . , or in violation of any condition imposed by such permit

Other Important Facts

- What kind of waste is involved?
 - How long has the waste been there?
 - What is the volume of waste on site?
 - Important if there is a threshold amount required to fall within the statute or regulations or constitute a violation
- 

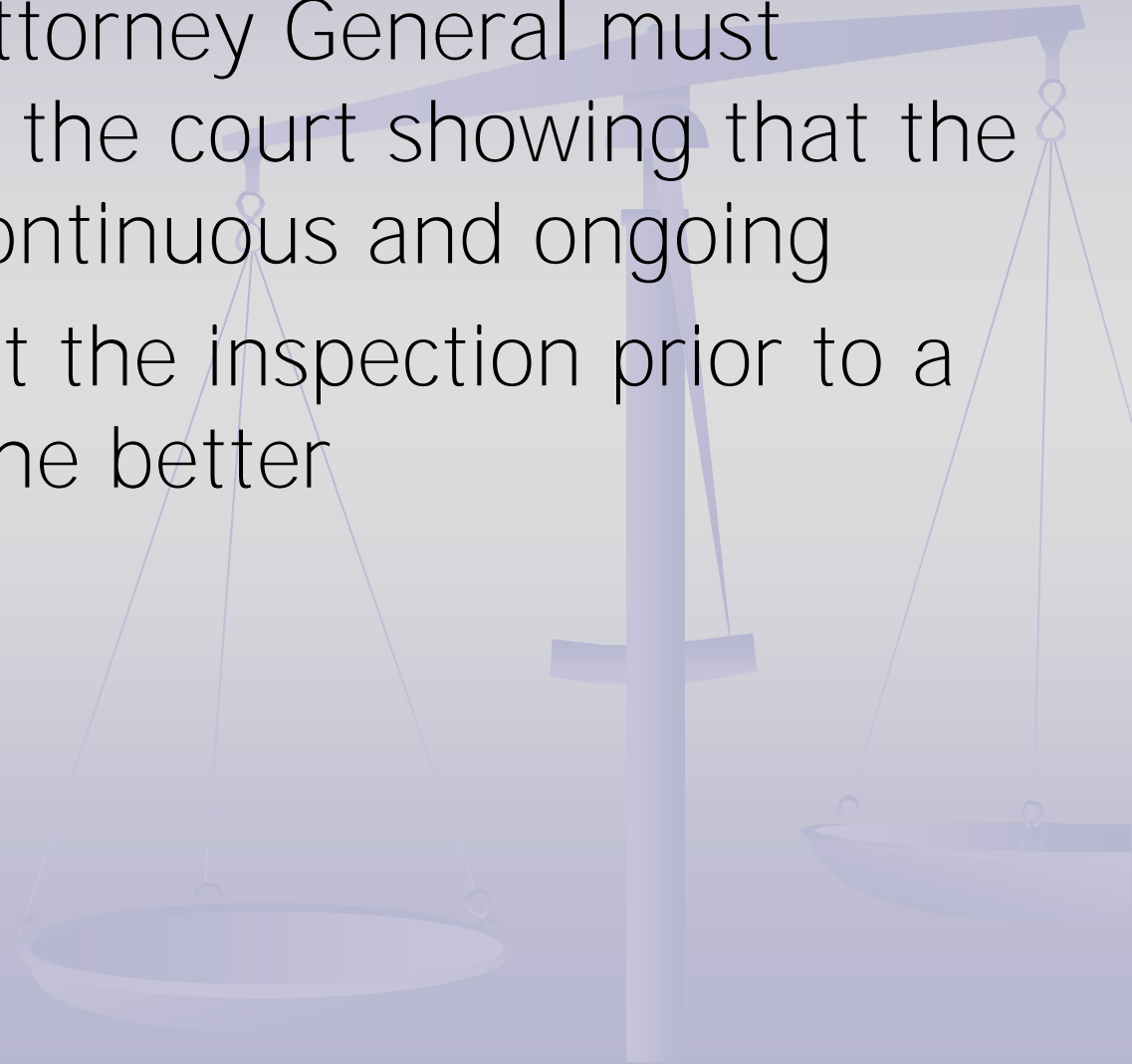
Injunctions



- An injunction is a court order prohibiting someone from doing something, or compelling someone to take action
- Environmental cases: a court order requiring someone to stop polluting or clean up the pollution they have caused
- Other examples: reduce emissions, apply for permits, keep required records, obtain financial assurance

Injunctions

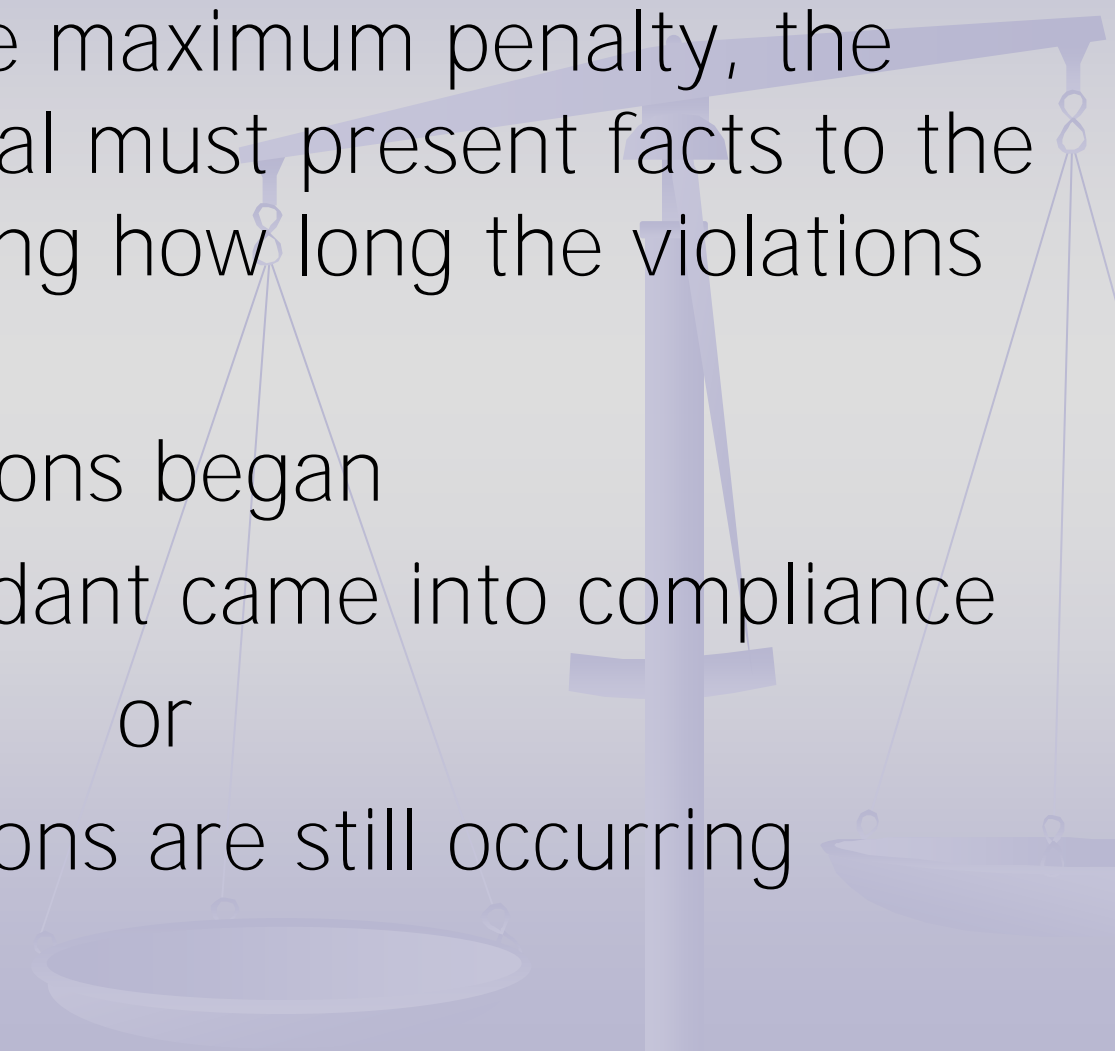
- The Assistant Attorney General must present facts to the court showing that the violations are continuous and ongoing
- The more recent the inspection prior to a court hearing, the better



Penalties

- Section 42. Civil penalties
(a) . . . [A]ny person that violates any provision of this Act or any regulation adopted by the Board, or any permit or term or condition thereof, . . . 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 . . .

Penalties: Maximum

- To calculate the maximum penalty, the Attorney General must present facts to the court establishing how long the violations continued
 - Date the violations began
 - Date the defendant came into compliance
or
 - That the violations are still occurring
- 

Penalties: Mitigating Factors

- Section 42. Civil penalties

(h) In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

(1) the duration and gravity of the violation

Duration Of The Violations



- When did the violations begin?
- Have the violations been corrected?
- When were the violations corrected?
- Is a violation resolved when the release or discharge stops?
- Or is a violation resolved when remediation is complete?
- Examples

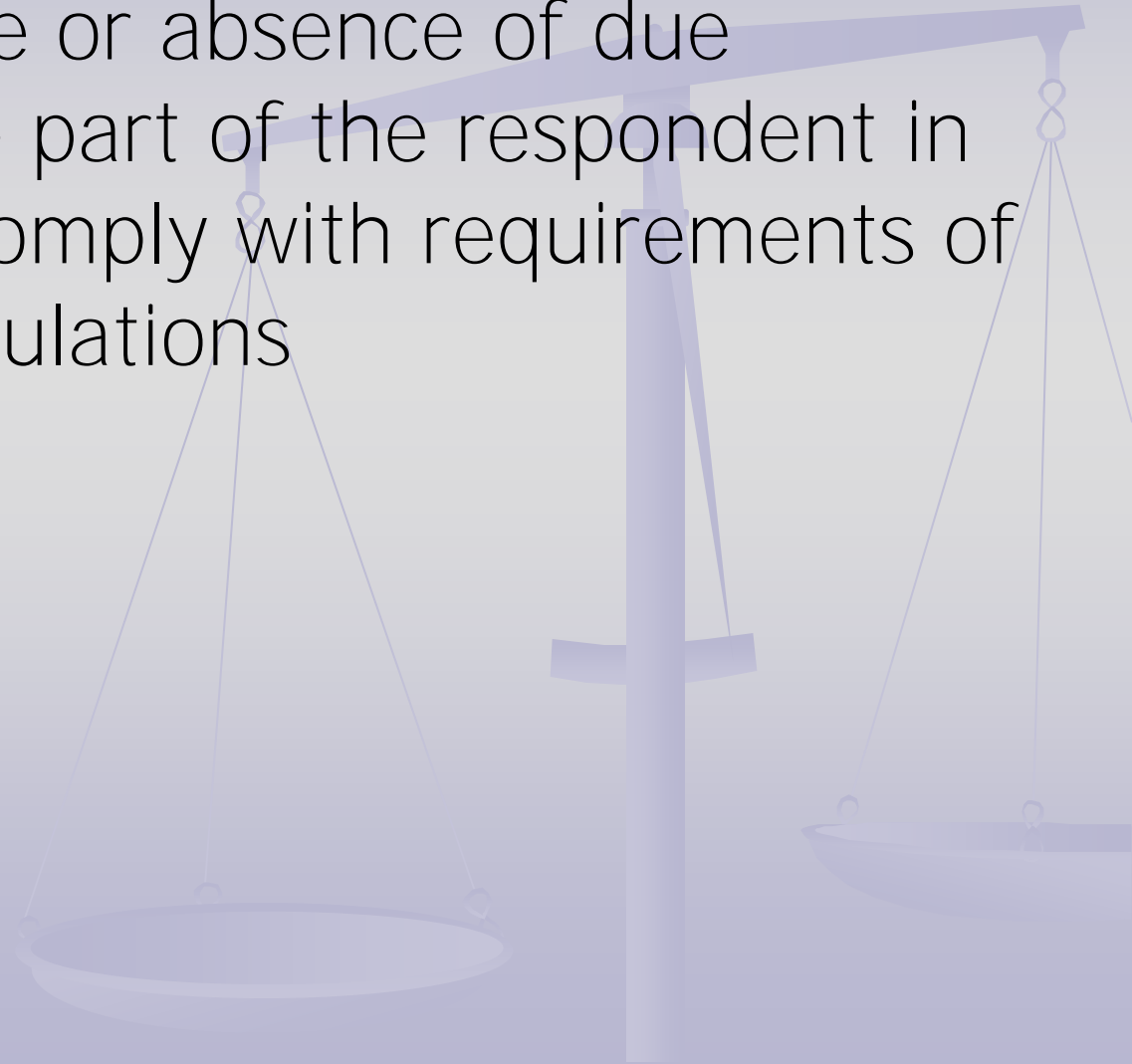
Gravity Of The Violations



- What contaminant or pollutant was discharged?
- Can the inspector document actual harm to the environment (groundwater, surface water, air)?
- If no actual harm, what is the potential harm?
- Did the release or discharge cause adverse health effects (citizen complaints)?
- What are the potential adverse health impacts?
- Examples

Penalties: Mitigating Factors

- (2) the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations



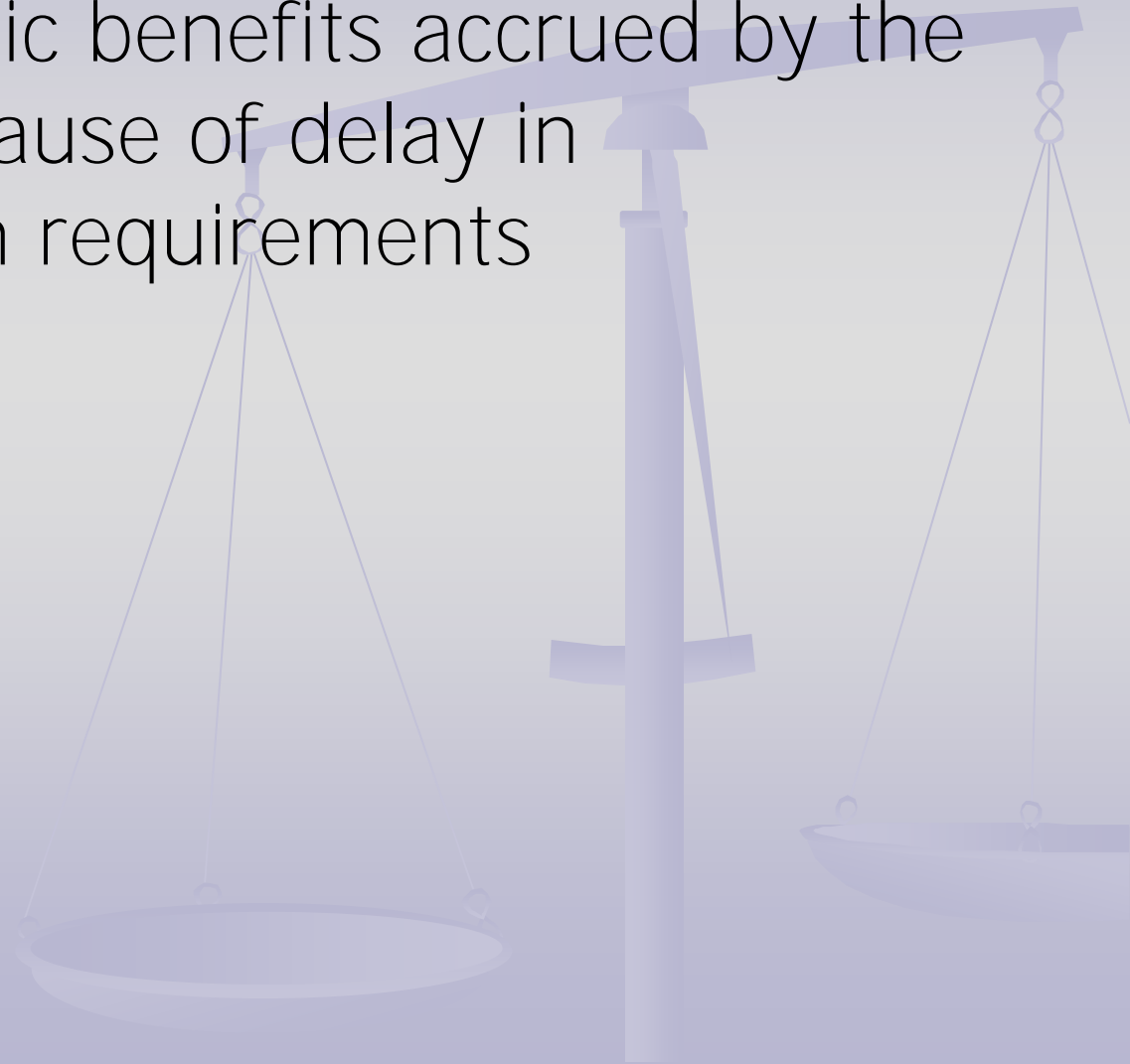
Lack Of Diligence



- Did the inspector inform the owner/operator of the violations? How many times? Over what period of time?
- Did the owner/operator acknowledge the violations?
- Did the owner/operator agree to take the necessary corrective action?
- Has the owner/operator done so?
- Shows failure to act, or lack of diligence, even though the o/o was on notice

Penalties: Mitigating Factors

- (3) any economic benefits accrued by the respondent because of delay in compliance with requirements

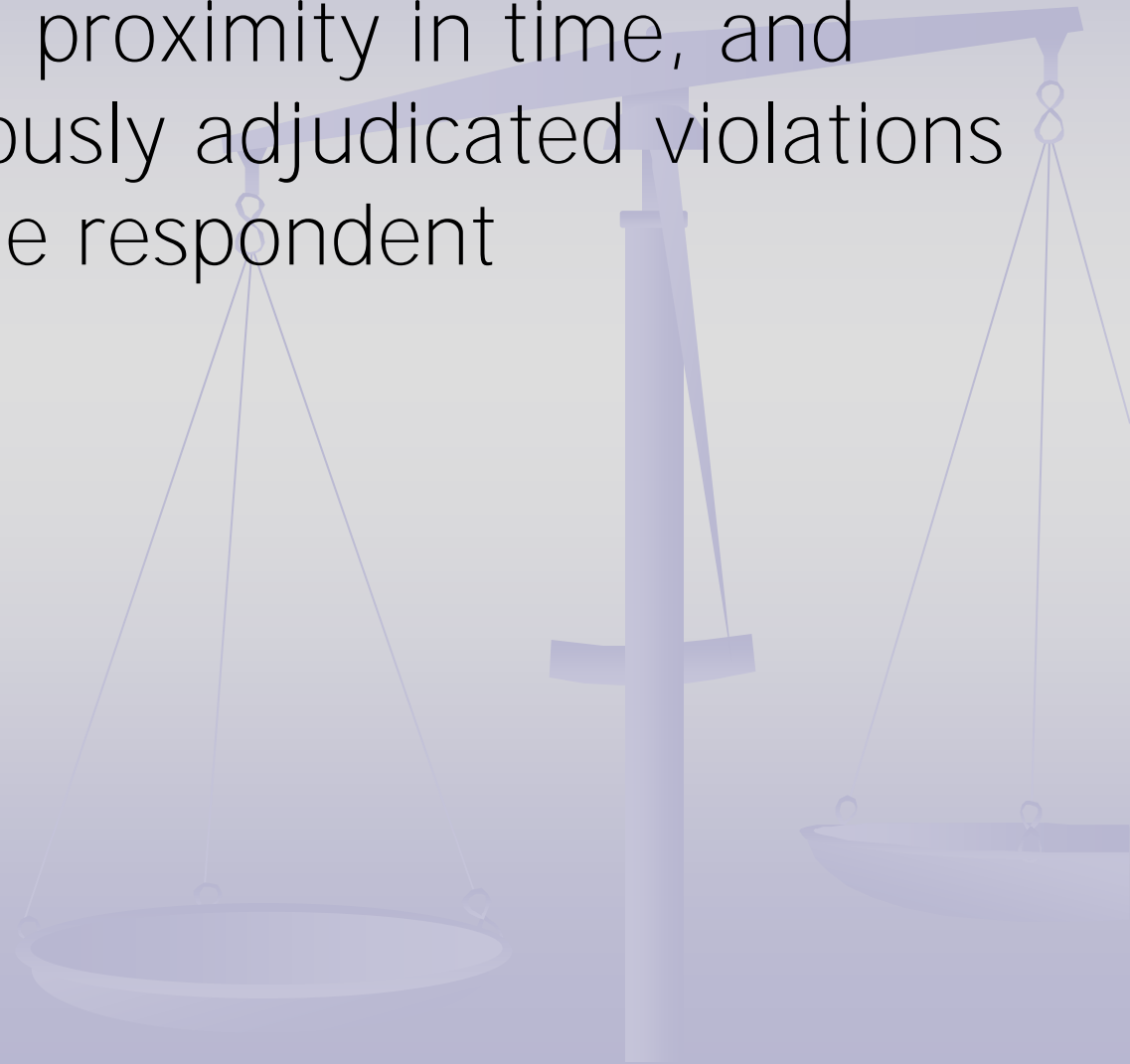


Economic Benefit

- How much would it have cost the defendant to come into compliance when it/he should have, months or years ago?
 - Install a well at a public water supply
 - Install a thermal oxidizer at a coating facility
 - Go through closure at a landfill or a RCRA site
 - Removal and disposal costs
 - Other examples

Penalties: Mitigating Factors

- (5) the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent



Prior Adjudicated Violations

- The inspector should document anything showing a history of noncompliance with environmental requirements
 - Have there been previous violations at the facility?
 - Or previous violations by the owner/operator?
- 