**Practical Exercise #3**

You have a week to prepare for the sentencing of an offender who has pleaded guilty to a water pollution crime - illegally discharging industrial wastes to the city’s sanitary sewer system and submitting false reports to the government. Read the fact pattern and questions below, and decide how to proceed at next week’s sentencing hearing:

Facts of the Case

The Green Company is an environmental services company. Mr. J.Z. Abat has owned and operated the Green Company for the past 15 years. The Green Company has about 35 employees.

For a fee, the Green Company collects petroleum-contaminated wastewater for treatment. The wastewater is trucked to the Green Company’s treatment facility and pumped into above-ground tanks. The wastewater is pumped into a wastewater treatment tank and a chemical and heat treatment process is used to separate the oil from the wastewater. The oil removed from the wastewater is transferred to an oil storage tank for further treatment, and is eventually sold for industrial use.

The remaining wastewater is pumped to another tank known as the QC tank and given additional treatment as needed. The Green Company is allowed to discharge the wastewater in the QC tank to the sanitary sewer, if it meets certain requirements of an industrial user permit from the city’s Wastewater Treatment Authority (WTA). Among other restrictions, the permit contained (1) a “by-pass” prohibition – that is, the company was strictly prohibited from discharging any wastewater to the sewer system that had not been properly treated; and (2) a prohibition on discharging any potentially explosive materials to the sewer system.

The QC tank was old and constantly breaking down. Engineers for the company advised Mr. Abat that they could no longer find replacement parts for the tank and that it needed to be replaced but Mr. Abat refused to approve the purchase of a new tank. When the treatment system in the tank stopped working altogether, he directed a small crew of workers to bypass the QC tank and discharge untreated wastewater directly to the sewer. He directed the workers to discharge in the evening when the city inspector would not be around. On some days the fumes from the untreated wastewater was so strong the workers complained of headaches and a burning sensation in their eyes. When any of the workers complained, Mr. Abat told him - “You work for me, it’s your job, just don’t get caught”.

Under the terms of its discharge permit from the city, the Green Company was required to file semiannual reports confirming that the wastewater discharged from the facility had been properly treated and met the limitations listed in its permit prior to discharging the waste to the city sewer system. From January 2016 through June 2017, the period that the system was not working, the Green Company submitted a false semiannual report to the WTA stating that the wastewater discharged to the sewer system was in compliance with the company’s permit. Mr. Abat’s sister, Beth Abat, worked at the facility on weekends and would manage the company when her brother was away on business or holidays. When needed she would sign and submit the reports for the company. (See Exhibits A, B & C)

Between January 2016 and June 2017 several weeks of daily bypasses occurred at the WTA treatment plant, and one day a particularly high-volume discharge caused an “upset” at the treatment plant. For three days, the plant was unable to properly treat the wastewater and had to discharge it directly to the river. Hundreds of fish were found dead downstream of the discharge point. (See Exhibit D)

 A WTA inspector drove by Mr. Abat’s facility and saw hoses stretched across the parking lot from the QC tank to a sewer drain. She stopped and took a sample of the material being discharged. The inspector tried to speak to the workers onsite but they refuse to speak her out of fear of losing their job. The inspector transported the sample to the WTA laboratory for an analysis with a chain of custody form but forgot to obtain the signature of the laboratory assistant who accepted the sample. An Analysis of the sample determined that the discharge contained high concentrations of petroleum compounds, several of which are known carcinogens.

The WTA referred the matter to your office. The city is extremely upset with the defendant’s conduct and has spent over $200,000 in cleanup cost. Initially, Mr. Abat denied having any knowledge about the bypass and blamed any misconduct on his “lazy workers”. The day before the case was scheduled for trial/hearing Mr. Abat agreed to plead guilty to a water pollution crime and submitting false documents. He also agreed to reimburse the WTA for all of its cleanup cost.

Mr. Abat is a wealthy businessman who owns several other businesses in the city. He has a degree from the country’s top university and served in the military. He has no prior criminal record but has several judgments for failing to pay taxes due from the operation of his many businesses.

**Discussion Questions**

1. What facts about the criminal offense do you want to bring to the court’s attention? What, if any exhibits will you use?
2. Should anyone else be charged?
3. What facts about the offender do you want to bring to the court’s attention?
4. What arguments do you expect from prosecution or defense counsel, and what is your planned response?
5. What type(s) of sentence will you seek from the judge? (Possible penalties are listed below)

**Possible Penalties for this Offense**

* Sentence to jail no more than 5 years in jail **or** placed on probation for no more than 5 years (he can only be placed in jail or given probation)
* Ordered to pay a fine
* Ordered to implement a compliance program at the facility to prevent future violations
* Ordered to pay restitution to any victims
* Any other special conditions you feel are appropriate

 **EXHIBIT A**

 Discharge Monitoring Certification Report

**Name of Facility:** The Green Company

**Permit No.:** ABC987789

**Reporting Period:** January 2016 – June 2016

All wastewater discharged from The Green Company between 1 January 2016 and 30 June 2016, was discharges in compliance with the terms of The Green Company’s WTA’s users permit, including restrictions that, the (1) the company was strictly prohibited from discharging any wastewater to the sewer system that had not been properly treated; and (2) a prohibition on discharging any potentially explosive materials to the sewer system.

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

Print Name: J.Z. Abat

Print Title: Owner

Signature: J.Z. Abat

Date: 15 July 2016

Phone No.: 123-456-7890

**EXHIBIT B**

Discharge Monitoring Certification Report

**Name of Facility:** The Green Company

**Permit No.:** ABC987789

**Reporting Period:** July 2016 – December 2016

All wastewater discharged from The Green Company between 1 January 2017 and 30 June 2017, was discharges in compliance with the terms of The Green Company’s WTA’s users permit, including restrictions that, the (1) the company was strictly prohibited from discharging any wastewater to the sewer system that had not been properly treated; and (2) a prohibition on discharging any potentially explosive materials to the sewer system.

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

Print Name: Beth Abat

Print Title: Owner

Signature: Bet Abat

Date: 18 January 2017

Phone No.: 123-456-7890

**EXHIBIT C**

Discharge Monitoring Certification Report

**Name of Facility:** The Green Company

**Permit No.:** ABC987789

**Reporting Period:** January 2017 – June 2017

All wastewater discharged from The Green Company between 1 January 2017 and 30 June 2017, was discharges in compliance with the terms of The Green Company’s WTA’s users permit, including restrictions that, the (1) the company was strictly prohibited from discharging any wastewater to the sewer system that had not been properly treated; and (2) a prohibition on discharging any potentially explosive materials to the sewer system.

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

Print Name: J.Z. Abat

Print Title: Owner

Signature: J.Z. Abat

Date: 8 July 2017

Phone No.: 123-456-7890

 **EXHIBIT D**

