

## Chapter 10

### Section 1 - Enforcement Principles

Both Research & Development Division (R&DD) and Quality Management Unit (QMU) are independent of permit issuing and works related offices of HyD, whereas Department of Justice (DoJ) is responsible for conducting prosecutions in court.

In exercise controls in all excavations:-

- I. R&DD will be responsible for:
  1. conducting audit inspections,
  2. uploading audit inspection results to Audit Inspection Management System for the Permittees or the Nominated Permittees to access the result through XPMS to check and rectify the non-compliances,
  3. issuing advisory letters along the following principles:
    - (a) For contravention of permit conditions, except for (d) and (e) below, to be complied with by the Permittee, advisory letter will be addressed to the Permittee, and copied to the Nominated Permittee or the Contractor where there is no Nominated Permittee. The case will be referred to QMU for follow-up action.
    - (b) For contravention of permit conditions, except for (d) and (e) below, to be complied with by the Nominated Permittee, advisory letter will be addressed to the Nominated Permittee and copied to the Permittee. The case will be referred to QMU for follow-up action.
    - (c) For contravention of permit conditions, except for (d) and (e) below, to be complied with by both the Permittee and the Nominated Permittee, advisory letter will be addressed to both the Permittee and the Nominated Permittee. The case will be referred to QMU for follow-up action.
    - (d) For suspected contravention of permit condition 18 regarding minimum depth requirement on service installation identified, no advisory letter will be issued to both the Permittee and Nominated Permittee. Instead, the audit inspection record of the suspected contravention will be referred to QMU direct for reference and consideration of follow-up action as necessary. Since non-compliance with minimum depth

requirement can only be confirmed legitimately upon HyD's receipt of the CN submission, any follow-up action, if deemed necessary, would only be initiated upon HyD's receipt of the CN submission on the corresponding permit.

- (e) For contravention of non-severe items classified as immediately rectifiable in the site audit checklist of the permit conditions, if the contravention is rectified shortly after receipt of AIT's instant notification to the satisfaction of HyD, no advisory letter will be issued. Notwithstanding, records of the instant notifications sent out to Permittees and Nominated Permittees will be kept. UUs are encouraged to rectify those immediately rectifiable NC items revealed during audit inspection to avoid receiving advisory letters.
- (f) For suspected case of contravention of Section 10T of Land (Miscellaneous Provisions) Ordinance Cap 28 (the Ordinance), advisory letter will be addressed to both the Permittee and the Nominated Permittee. Where there is no Nominated Permittee, advisory letter will be addressed to the Permittee and copied to the Contractor. The case will be referred to QMU for follow-up action.
- (g) For suspected case of contravention of Sections 10(1)(a) and 10(2) of the Ordinance, advisory letter, if appropriate, will be addressed to the suspected offender(s) who may be the ex-Permittee, ex-Nominated Permittee, Contractor or the most probable site occupier at the time of offence. The case will be referred to QMU for follow-up action.

II. QMU is responsible for enforcing the Ordinance, and shall, upon receipt of referral from R&DD:-

1. undertake site visits and investigations of suspected offences,
2. collect evidence,
3. make recommendations to Prosecution Division of Department of Justice (DoJ) for instituting prosecutions, or in the case of government department involving in contraventions, inform the Assistant Director/Technical (AD/T) and assist in the fact finding and reporting in accordance with the Reporting Procedures under Section 2A promulgated by the then Secretary for the Environment,

Transport and Works in memo dated 29 July 2004. Under the existing Ordinance with version date of 1 July 2007, the case should be reported to the Secretary for Development.

4. ensure sufficient evidence to be collected in order to satisfy DoJ's requirements for securing a successful prosecution and
5. being a witness to give evidence in court.

III. DoJ will be responsible for:-

1. making final decisions of prosecution, and
2. conducting prosecutions in court, and
3. following-up plead-not-guilty cases.