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30 November 2004

Miss Becky YU  
 Clerk to the Establishment Subcommittee  
 Legislative Council Building  
 8 Jackson Road  
 Central  
 Hong Kong

Dear Miss Yu

**Establishment Subcommittee Meeting on 17 November 2004  
Issue Requiring Follow-up Action by the Administration**

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 Ref captioned subject and the request raised by members for  
 follow-up action (Item No EC(2004-05)10), please find attached the  
 information concerning the details of the prosecution cases by the Local  
 Control Division and the circumstances under which cases will be outsourced.

Yours sincerely

*M. Chiou*

(Mike CHIU)

Acting Deputy Director

for Director of Environmental Protection

cc Secretary for Financial Services and the Treasury  
 [Attn : Mr Alfred FOK, PEO(G)]  
 Secretary for the Environment, Transport and Works  
 [Attn : Mr Roy TANG]

MC/rc

**Information requested by Members at the Establishment Subcommittee meeting held on 17 November 2004**

The following were the no. of EPD prosecution cases in the last 3 years:

<b>Year</b>	<b>No. of Cases</b>	<b>Plead Not Guilty (PNG) Cases</b>	<b>PNG Cases Taken Over by D of J</b>
2002	842	171	20
2003	577	88	5
2004 (up to Sept)	458	104	36

These cases were related to the seven environmental ordinances enforced by EPD. The seven ordinances are the Air Pollution Control Ordinance (APCO), the Noise Control Ordinance (NCO), the Waste Disposal Ordinance (WDO), the Water Pollution Control Ordinance (WPCO), the Environmental Impact Assessment Ordinance (EIAO), the Dumping at Sea Ordinance (DASO), and the Ozone Layer Protection Ordinance (OLPO). Involved sectors include factories, construction sites, livestock farmers, restaurants, property management companies, garages and waste traders.

Similar to quite a number of other government departments with prosecution functions, EPD staff are empowered to handle criminal prosecutions, from laying summons to taking plea, etc. As can be seen from the figures above, in most cases the defendants plead guilty. For the plead-not-guilty cases, the Central Prosecution Unit (CPU) of EPD would evaluate the situation, and decide whether to continue to conduct the trial cases. Generally, simple cases and those involving technical issues would be handled by CPU lay prosecutors. Should the case involve complicated issues, in particular on points of law, CPU would request D of J to take over. If D of J considers the request justified, they would take over the case for EPD, which in general would be conducted by appointing a counsel on fiat. CPU staff would then provide the necessary support to the appointed counsel accordingly. CPU also refers to D of J for legal advice, magistrate reviews, appeals, and other legal matters for the department.

There are currently eight staff in CPU, who are responsible for all prosecution matters in EPD. Six of them are in the Environmental Protection Officer grade and the remaining two in the Environmental Protection Inspector grade. CPU is headed by a Senior Environmental Protection Officer, and advised by a well qualified barrister, who is a non-civil service contract staff. Please see the attached Appendix that provides information on the qualification and experience of staff in the CPU.

## Appendix

**Table 1: Qualifications and Experience of CPU Unit Head and Barrister**

	<b>Qualifications</b>	<b>Experience</b>
Barrister	BSc, MSc, LLB, PCLL, PCEd, DipArb	Composition of legal experience: Criminal (including prosecution) 50%; Construction 25%; Companies 15%; Administrative law and others 10%. Has taken trials at Magistrate Courts, Court of First Instance, including Companies Court and Construction & Arbitration Court, and has conducted appeals at Court of Appeal.
	Fellow Member of the Hong Kong Institute of Surveyors (FHKIS); Registered Professional Surveyor	
	Member of the Royal Institution of Chartered Surveyors (MRICS)	
	Fellow Member of the Chartered Institute of Arbitrators (FCIArb)	
	Authorized Person	
Barrister		

**Table 2: Qualifications and Training of CPU Prosecutors**

<b>Prosecutor</b>	<b>Science and Engineering Related Professional Qualifications</b>	<b>Legal Professional Qualifications and Training</b>
PO1	BSc (Chemistry)	Bachelor of Laws (2 <sup>nd</sup> Upper Honours)
	MSc (Environmental Management)	9 months' prosecutor training organized by D of J
PO2	BSc in Environmental Health - Leeds Polytechnic University	Certificate in Laws for Disciplinary Staff - Hong Kong Management Association
	BSc in Food Science and Technology - Hong Kong Polytechnic University	Certificate in Laws - Open University of Hong Kong
	MSc in Environmental Management - University of Hong Kong	5 weeks' prosecutor training course organized by D of J
		Level I to Level IV Prosecution training course organized by D of J for EPD
		Taking individual subjects in LLB course
PO3	BSc - Mechanical Engineering	Level I to Level IV Prosecution training course organized by D of J for EPD
	MSc - Automotive Engines and Vehicle Design Technology	Attachment with Court Prosecutors (approx. 1 week)
	Chartered Engineer	LLB (Year 1 - on-going study)

<b>Prosecutor</b>	<b>Science and Engineering Related Professional Qualifications</b>	<b>Legal Professional Qualifications and Training</b>
PO4	BSc (Civil Engineering)	5 weeks' prosecutor training organized by D of J
	MEnvEngSc	CPE (Year 2)
	MHKIE (Civil), MICE, MIEAust, CPEng (Civil)	
PO5	BEng (Mechanical Engineering)	5 weeks' prosecutor training organized by D of J
	MSc (Environmental Management)	CPE
	Post-experience certificate in occupational health and safety	Studying 3 <sup>rd</sup> year LLB now
PO6	BSc in Applied Physics	5 weeks' prosecutor training organized by D of J
	MSc in Acoustic & Vibration Technology	Currently on Year 1 of CPE at SPACE