

Executive Summary

Direct Investigation Report

Government's Handling of Misconnection of Private Building Sewers to Stormwater Collection System

Introduction

According to the Environmental Protection Department's ("EPD") data, the misconnection of building sewers to the building or communal stormwater drainage system (hereinafter referred to as "sewer misconnection") is one of the major pollution sources affecting the quality of Hong Kong coastal waters. The resultant inflow of untreated sewage into the sea causes pollution and foul odours. EPD estimated that sewer misconnection accounted for about 30% of the total pollution discharge into the coastal waters across the territory.

2. To tackle sewer misconnection cases, EPD and the Buildings Department ("BD") commence investigations according to the Water Pollution Control Ordinance ("WPCO") and the Buildings Ordinance ("BO") respectively and institute prosecutions where necessary. The Drainage Services Department ("DSD"), playing a supportive role, assists in the investigations of EPD and BD from time to time.

3. The Ombudsman launched a direct investigation to examine the handling of sewer misconnection cases by EPD, BD and DSD with a view to ascertaining their effectiveness in tracing the source of misconnection, calling offenders to account and implementing mitigating measures.

4. In sum, we consider DSD to have properly performed its duties in investigating and referring sewer misconnection cases, as well as implementing mitigating measures. Our comments regarding the handling of sewer misconnection cases by EPD and BD are as follows.

EPD

(I) EPD should endeavour to collect evidence and take enforcement action

5. Under the WPCO, the burden is on EPD to adduce evidence to prove the suspect

to have discharged wastewater into the stormwater collection system in order to substantiate a charge against him or her. EPD officers must enter the suspected premises and search for wastewater discharging on the spot. The officers need to collect wastewater samples for testing and conduct dye-tracing tests immediately to establish the link between the inlet and outlet of discharge. However, it would be impossible for EPD officers to collect wastewater samples and take follow-up actions pursuant to the WPCO if the suspect stops using relevant facilities in the presence of the officers. We acknowledge the practical difficulties facing EPD in enforcing the WPCO. Nevertheless, EPD should endeavour to take enforcement action against offenders under the WPCO, so as to contain coastal water pollution caused by the inflow of untreated sewage.

6. EPD asserted that, given the complexity of drainage connections of buildings in Hong Kong, it is often impossible to trace pollution sources or locations of sewer misconnection by mere observation of the drainage pipes at the building's external wall without referring to the drainage plans. In the circumstance, it would not be possible to meet the requirements for applying to the court for a warrant to enter the premises ("Warrant of Entry"). Moreover, experience reveals that it is unlikely possible for officers to gather useful evidence upon entry onto the suspected premises for investigation with the consent of the residents or under a Warrant of Entry. EPD, therefore, generally will not apply to the court for a Warrant of Entry. We have reservation on EPD's understanding of the standard of proof regarding the application for a Warrant of Entry.

7. In our view, where sewer misconnection of a premises can be seen from the outside, it is highly probable that wastewater is being discharged by its residents into the building's stormwater manhole continuously. If EPD can identify sewer misconnection on the building's external wall and obtain wastewater samples from the building's stormwater manhole, such *prima facie* evidence, though not conclusive for establishing an offence under the WPCO, should be able to facilitate the application for a Warrant of Entry for further investigation. We recommend EPD seek the Department of Justice's ("DoJ") advice to explore the possibility of using circumstantial evidence for warrant applications to facilitate in-depth investigation and evidence gathering regarding suspected sewer misconnection cases causing illegal discharge of wastewater.

8. We note that the items of unauthorised building works ("UBW") associated with sewer misconnection are categorised as actionable items. Pursuant to the BO, BD is empowered to enter relevant premises to ascertain whether its provisions have been

complied with. In case the occupant of the premises is uncooperative or refuses BD officers' entry for investigation, BD may apply to the magistrate for a Warrant of Entry, which will be issued if the latter is satisfied there are reasonable grounds for suspecting that the drains or sewers of the premises are in a defective or insanitary condition. For cases involving difficulties entering the premises, we recommend that, in addition to applying to the court for a Warrant of Entry by itself, EPD also consider taking joint action with BD to increase success of entering such premises for investigation.

9. We do not agree with EPD that since it is not empowered by the WPCO to compel the responsible person to rectify sewer misconnection, the problem could only be rectified by BD compelling the responsible person to carry out remedial works pursuant to the BO. We do not consider EPD's enforcement against illegal discharge of wastewater at odds with BD's enforcement against UBW but complementary action. In addition to referral of sewer misconnection cases to BD, EPD should also endeavour to take enforcement action against illegal discharge of wastewater under the WPCO.

10. In the long run, EPD should review the WPCO and consider making legislative amendments to enhance its enforcement effectiveness.

BD

11. Cases (2) to (5) in Chapter 3 of our investigation report are the sewer misconnection cases handled by BD.

(II) Serious delay in handling sewer misconnection cases

12. As shown in Cases (2) and (4), BD received the referral of sewer misconnection cases in October 2009. However, the problem in both cases had remained unrectified for more than 11 years as at December 2020. In Case (3), BD got the referred sewer misconnection case in November 2009. It was not until more than a decade later that the problem was resolved in 2020. In Case (5), BD received this sewer misconnection case by referral in November 2012. The problem was only due to be resolved after seven years and a half in May 2020, as the building concerned was scheduled for demolition and all its units had been vacated. The above cases revealed serious delay on the part of BD in handling sewer misconnection cases. BD should take effective measures to avoid recurrence of similar incidents. Reasons for delay, as far as we know, are as follows:

(III) Case monitoring mechanism not effective

13. BD officers monitor the progress of case handling via the department's Building Condition Information System. Its Progress Monitoring Committee (including its directorate grade officers as members) also monitors and follows up the status of outstanding statutory orders on a regular basis. While BD has established the monitoring mechanism at different levels, some of the statutory orders were only complied with, or remained outstanding, years after issuance. This reflects that the mechanism is not effective as expected.

(IV) Failing to initiate investigation swiftly

14. As shown in Case (2), after receiving the referral of sewer misconnection case in October 2009, BD only proceeded to conduct inspection and dye-tracing tests at the building concerned in March 2010 (i.e. after five months). In Case (4), BD received the referral of sewer misconnection case in October 2009. While BD issued an advisory letter to the building's owners in March 2010 (i.e. five months later), it was not until January 2013 (i.e. three years after receiving the referral) that it conducted inspection and dye-tracing tests jointly with EPD. In Case (5), BD received the referral of sewer misconnection case in November 2012. It was not until August 2013 (i.e. after nine months) that it conducted inspection and dye-tracing tests jointly with EPD and DSD. We are of the view that upon receiving complaints or referrals of sewer misconnection cases, BD should swiftly initiate investigation to ascertain whether the problem exists, so that corresponding enforcement actions can be taken to prevent aggravation of the problem.

(V) Failing to properly allocate manpower for handling sewer misconnection cases, resulting in cases held in abeyance for years

15. We noticed that no apparent progress was made by BD over several years in following up Cases (2) to (5) during different periods. In response, BD explained that it was mainly because the responsible case officers were required to attend to other more urgent cases involving building safety, and the department was facing persistent case backlogs. Since BD needed to deploy manpower to perform special duties to address critical building safety issues, the progress of other cases was conceivably affected. Nevertheless, as those cases were without progress for years, it calls into question whether BD has properly allocated manpower to handle sewer misconnection cases. In fact, given that UBW items in sewer misconnection cases are categorised as actionable

items under BD's enforcement policy against UBW, it is highly unsatisfactory that such cases were held in abeyance for years. We urge BD to learn from this experience that it should, whilst addressing critical building safety issues, deploy manpower to continuously process and resolve other cases involving actionable UBW items.

(VI) Indecisive enforcement action

16. As shown in Case (3), after the repair order was served on the owners' corporation ("OC") in July 2010, BD conducted nine compliance inspections subsequently and all these inspections revealed that the sewer misconnection had not been rectified. It was not until November 2015 (i.e. five years after serving the repair order) that it issued a warning letter to the OC. In Case (4), following a compliance inspection where BD found that the sewer misconnection was still unrectified, it was after six months that it issued a warning letter to all of the owners of the building concerned. We are of the view that if the problem persists upon expiry of the period specified in the statutory order, BD should take decisive action to urge for the owners' speedy rectification of sewer misconnection.

(VII) Need for proactive assistance to "three-nil" buildings

17. The buildings involved in Cases (4) and (5) were without OCs. To deal with the sewer misconnection problem of the buildings, BD issued to the owners concerned various documents, including advisory letters, repair orders, warning letters and/or letters regarding default works for their buildings, but the owners did not respond. We acknowledge that it was not easy for owners of a building without OC to coordinate among themselves to comply with BD's statutory order. BD indicated to us that a referral to the Home Affairs Department ("HAD") would be made if the owners of the building with sewer misconnection problem so wished, so as to assist them to form an OC, which would in turn enable better planning and coordination of drainage rectification works. However, in Cases (4) and (5), BD only mentioned in the warning letters issued to all the owners of the buildings concerned that they could make enquiries with BD or HAD if they need further guidance or assistance for complying with the order, and failed to proactively refer the cases to HAD just because the owners had not indicated a wish to form OC or had faced difficulties forming it. Simply leaving it to the owners to approach HAD, and referring their cases to HAD if they so wished, BD was far from proactive. BD should, when communicating with the owners concerned, proactively introduce the service of HAD regarding OC formation.

18. Given that sewer misconnection can constitute a serious hygienic or environmental nuisance, we recommend that BD take the initiative to refer to HAD the sewer misconnection cases involving “three-nil” buildings (i.e. buildings without an OC, any form of residents’ organisation or engaging a property management company). It is similar to how BD assists the owners of “three-nil” buildings to comply with fire safety directives. This would facilitate HAD to assist the owners to form an OC and advising them on matters of compliance with the statutory order. BD should also arrange its in-house Social Services Teams to assist the owners on a need basis. Moreover, we recommend that BD step up prosecution against the owners of “three-nil” buildings not complying with its statutory orders, thereby prompting them to arrange for remedial works as soon as possible. BD should also consider commissioning default works at an early stage for those buildings that have posed serious nuisance and risks to environmental hygiene and have had little progress in renovation, such that the sewer misconnection problem can be eliminated at the soonest.

Other Aspect

(VIII) Need for resolution of sewer misconnection problem at source

19. The discharge of wastewater into the sea via the stormwater collection system would impact on the quality of coastal waters and cause odours. To improve the situation, EPD has constructed, through DSD, dry weather flow interceptors to prevent polluted discharge from entering coastal waters via the stormwater collection system, and divert the wastewater collected to sewage treatment works for purification. DSD would also place odour control hydrogel in drainage systems as needed. But these are merely relief measures. We reckon that the most effective way is to root out the problem of sewer misconnection at source. We urge EPD, BD and DSD to continue with their efforts in vigorous detection of sewer misconnection, proactive enforcement against confirmed cases of misconnection, and launching publicity and education campaigns in a bid to strike the problem at the root.

Recommendations

20. In light of the above, The Ombudsman makes the following recommendations to EPD and BD respectively:

EPD

- (1) seeking legal advice from DoJ to explore the possibility of adducing circumstantial evidence for warrant applications;
- (2) considering taking joint action with BD for cases with difficulties in gaining entry onto the premises, so as to increase the success rate of entering such premises for investigation;
- (3) reviewing the WPCO and considering making legislative amendments to enhance its enforcement effectiveness;

BD

- (4) reviewing cases with outstanding statutory orders with a schedule drawn up for backlog clearance; and considering, where necessary, requesting allocation of more resources from the Government to address the persistent issue of resource constraints;
- (5) improving the mechanism for monitoring case progress, and conducting site inspections swiftly and taking enforcement actions decisively;
- (6) considering proactively referring those sewer misconnection cases involving “three-nil” buildings to HAD, and arranging BD’s in-house Social Services Teams to assist the owners on a need basis;
- (7) stepping up prosecution against the owners of “three-nil” buildings not complying with its statutory orders; and
- (8) considering promptly commissioning default works for those buildings that have posed serious nuisance and risks to environmental hygiene and have had little progress in renovation.