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MANUAL 500-2

SECTION 02.7

PERMIT AND LEASE ENFORCEMENT

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BUREAU OF MANAGEMENT ANALYSIS AND PROJECTS

1. Purpose

The purpose of this procedure is to ensure consistency between Headquarters and Divisions with respect to: the enforcement of delinquent accounts receivables for permit fees and lease payments, lapsed insurance, or other violations of permit and lease terms and conditions.

2. Applicable Law and/or Guidance

New York State Public Authorities Law, Article 2, Title 9, New York State Thruway Authority, Article 9, Title 5-A

New York State Real Property Law

New York State Real Property Actions and Proceedings Law

21 NYCRR §106 Leasing of Facilities

Thruway Real Property Management Policy (25-6-02)

3. Introduction

The Thruway Authority (Authority) is responsible for the financing, construction, reconstruction, improvement, development, maintenance and operation of the highway system known as the Thruway. In accordance with the provisions of Title 9 of the Public Authorities Law, the Authority has the power to acquire and hold real property necessary for its corporate purposes and dispose of real property not necessary for its corporate purposes or whenever the Authority Board shall determine that it is in the interest of the Authority and thus, the interest of the State.

Violations of permits and leases may occur due to nonpayment of fees, lapse of insurance or other violations of permit or lease terms and conditions. Following required notice, the Authority will determine the appropriate response to the violation, which may include revocation of the permit, termination of the lease, removal of encroachments, collection activity, etc.

All permits will contain a provision identifying them as revocable permits. All leases will contain language allowing the Authority the right to terminate the lease for failure of the lessee to perform under the terms of the lease.

4. Procedure

The Authority may need to take appropriate action based on nonpayment, lapse of insurance or other violations of terms and conditions of permits and leases. Following notice, the appropriate response will be determined including permit revocation, lease termination, site visits, emergency action, collection of delinquent accounts, removal of encroachments, etc.

4.1. Delinquent Accounts for Nonpayment

- 4.1.1. The Credit and Collections Unit (CCU) will send annual invoices for permits to permittees one month prior to the permit payment date and periodic invoices for leases per the terms and conditions of the lease. The PERMIT AND LEASE INVOICE¹ will state the consequences of late payment (e.g., applicable interest, collection fees, and possible revocation of the permit or termination of the lease).
- 4.1.2. If payment is not received within 45 days from the date of the original invoice, the CCU will send out a NONPAYMENT DELINQUENCY NOTICE² to the owner of the delinquent account and copy the Division Permit Coordinator (DPC), the Headquarters Permit Coordinator (HQPC) and the appropriate Project Manager where applicable for permits. For leases, copies are sent to the Bureau of Real Property Management (BRPM), the Division Director (DD), and the appropriate Project Manager where applicable (e.g., wireless communication towers, fiber optics, etc.).
- 4.1.3. If payment is not received within 15 days from the date of the delinquency notice, the CCU will send a NONPAYMENT FINAL NOTICE³ to the owner of the delinquent account stating that the permit will be revoked or the lease terminated within 30 days unless full payment, interest and any additional charges assessed to the account are received. A copy of the final notice will be sent to the individuals listed in 4.1.2.
- 4.1.4. If payment is not received within 30 days from the date of the final notice, the CCU will contact the Legal Department and the HQPC for permits or BRPM for leases to identify the appropriate action as described in Section 4.4.
- 4.1.5. If a late payment is received anytime prior to revocation of a permit, see Section 4.4.3.

1 Exhibit 1

2 Exhibit 2

3 Exhibit 3

4.2. Lapsed Insurance

For the protection of Authority assets, it is critical that proper insurance coverage be maintained for all permits and leases. Once notified of lapsed insurance coverage, failure of the permittee/lessee to restore proper insurance coverage will result in the revocation of permits, and the possible termination of leases.

- 4.2.1. The Insurance Compliance Unit (ICU) will identify accounts for which insurance policies will expire in thirty days and send an INSURANCE NOTICE¹ to the account owner. If the insurance information is not received within 15 days, the ICU will send a SECOND INSURANCE NOTICE². A FINAL NOTICE-LAPSED INSURANCE³ will be sent if proof of insurance is not received by the expiration date of the insurance. The ICU will send a copy of the notices to the DPC, the HQPC for permits, and BRPM and DD for leases, and the appropriate project manager where applicable (e.g., wireless communication towers, fiber optics, etc.).
- 4.2.2. If a valid insurance certificate is received, ICU updates PERMITS Plus and places proof of insurance in account folder.
- 4.2.3. If the permittee/lessee fails to provide documentation of insurance before the current policy expires, the ICU will notify the Legal Department, the DPC, the HQPC for permits, and BRPM and DD for leases to determine the appropriate response as described in Section 4.4.

4.3. Other Permit or Lease Violations

- 4.3.1. Through periodic site inspections or other notice, the DPC may identify conflicts between the permitted use of/work on the property and Authority operations, or may identify that the permittee or lessee is not complying with the provisions of the permit or lease including Authority employees/agents/contractors access to the property, exceeding the scope of the permit or lease, if the use and/or work obstructs the maintenance or operation of the Thruway system, or for other reasons. The DPC will notify the DPC, the HQPC for permits or BRPM and DD for leases, of any violations.

1 Exhibit 4

2 Exhibit 5

3 Exhibit 6

- 4.3.2. For lease violations, BRPM, in consultation with the Legal Department and the DD, will coordinate lease violation notices and actions in accordance with the terms and conditions of the lease and determine the appropriate actions as described in Section 4.4.
- 4.3.3. For permit violations, the DPC, in consultation with the DD, will notify the permittee of the violation and establish a timeframe for resolving the issue. If the violation is causing a health, safety, or environmental impact or other emergency conditions requiring immediate action, the Authority may take any required steps to address the emergency immediately.
- 4.3.4. The DPC, in consultation with the DD, may work with the permittee to resolve the issue. This may require the permittee to cure any defects (e.g., remove illegal structure, return the area to its preexisting condition, etc.).
- 4.3.5. If the permittee fails to correct the violation within the established timeframe, the DPC will contact the HQPC to determine the appropriate response as described in Section 4.4.

4.4. Determining the Appropriate Response

- 4.4.1. The HQPC for permits or BRPM for leases will coordinate a review of the proposed permit revocation or lease termination in consultation with staff from the Legal Department, CCU, and others as needed to determine the appropriate action to be taken. This may include revocation of the permit, termination of the lease, removal of encroachments, or referral of the account to collection agencies and/or the Office of the Attorney General (OAG). As needed, the HQPC or BRPM may request that the DPC conduct a site inspection as described in Section 4.5. to assist in determining the appropriate response. Removal of encroachments is discussed in Section 4.6 and collections are described in Section 4.7.
- 4.4.2. If an emergency situation exists which endangers life or the Thruway System, the Legal Department will be notified immediately for guidance on the appropriate actions such as seizure of lands, equipment or supplies necessary to avert such endangerment. The Legal Department may forward these issues to the OAG or take other action as permitted by statute and regulations.

- 4.4.3. In some cases the delinquent payment may be received prior to a determination to revoke the permit or terminate the lease has been made.
- 4.4.3.1. For permits, if a late payment (including interest and penalties) is received anytime prior to revocation of a permit, the CCU will take the account out of delinquency and notify the DPC, HQPC, and the Legal Department. The HQPC, in consultation with the DPC, the Legal Department and the CCU, may (a) continue the permit revocation; (b) stop the permit revocation; or (c) take other action as needed. A record of late payment will be maintained by the CCU in the account file.
- 4.4.3.2. For leases, if delinquent lease amounts are paid in full (including any interest and penalties) prior to lease termination, CCU will take the account out of delinquency and notify the DD, BRPM and the Legal Department. BRPM, in consultation with the Legal Department and the CCU, may (a) continue the lease termination process; (b) stop the lease termination process; or (c) take other action as needed. A record of late payment will be maintained by the CCU in the account file.
- 4.4.4. If the permit is to be revoked or the lease terminated the following steps will be taken:
- 4.4.4.1. For permits that are being revoked for nonpayment or lack of insurance, the CCU will send a CANCELLATION NOTICE⁺ notifying the permittee that the permit is revoked and that a site inspection will be conducted within 21 days. A copy of the notice will be sent to the DPC and the HQPC.
- 4.4.4.2. For other types of permit violations resulting in permit revocation, the DPC will send a CANCELLATION NOTICE notifying the permittee that the permit is revoked and that a site inspection will be conducted within 21 days. A copy of the notice will be sent to the HQPC and the CCU.
- 4.4.4.3. For lease termination, the Legal Department will coordinate the termination of the lease including termination notices and notify the Contracting Officer, BRPM, DD and CCU of the proposed termination. The Authority Board will be notified of the proposed lease termination by the Contracting Officer.

- 4.4.4.4. No refunds will be given for revoked permits or terminated leases unless the permit conditions or lease terms require otherwise.
- 4.4.5. If permit account payment has been received after a permit has been revoked or the account closed, the CCU will notify the DPC and the HQPC. The HQPC, in consultation with the DPC, the Legal Department, and the CCU as needed, may direct that a new permit be issued or the old permit reinstated.
- 4.4.6. The DPC will conduct a site inspection within 21 days of notice of the permit revocation or lease termination in accordance with Section 4.5. to determine further action that may need to be taken. The DIVISION INSPECTION REPORT⁺ report will be forwarded to the individuals listed in 4.4.1 to determine the appropriate response and actions needed (e.g. removal of encroachments, site restoration, referral to collection for nonpayment and/or restoration costs, etc.). Removal of encroachments is described in Section 4.6. and collections in Section 4.7.

4.5. Division Site Inspections

- 4.5.1. The DPC will conduct site inspections within 21 days of notice of a permit revocation or lease termination, or as needed.
- 4.5.2. The DPC will conduct a site visit using the DIVISION INSPECTION REPORT to verify the address and inspect the site to ensure that the property has been vacated, no actions are required to rectify a potential environmental or navigation problem, and that the property has been restored to the same or better condition as existed prior to issuance of the permit/lease.
- 4.5.3. If the property has not been restored, the DPC will identify any work that is required or structures that should be removed. In the event the property has not been restored, and a structure remains on the property, follow Section 4.6. for encroachments.
- 4.5.4. The DPC will provide the HQPC for permits or BRPM for leases with a completed REPORT documenting the site visit and noting any required follow-up action. This report will become part of the Transaction Record and be used to determine the appropriate actions to be taken in accordance with Section 4.4.

4.6. Encroachments

- 4.6.1. During the site inspection or through other notice, the DPC may become aware of encroachments on Authority real property. Encroachments exist in two scenarios: A building, structure, or other personal property or parts of these erected, placed, maintained, or otherwise occupying Authority property as a result of (1) a revoked permit or terminated lease, or (2) an illegal occupation not covered by a permit or lease.
- 4.6.2. If environmental degradation is noticed or potentially could occur, then the DPC will contact the HQPC for permits or BRPM for leases for guidance on other appropriate actions. Code Compliance personnel may also be contacted by the DPC to identify structural issues that may exist. The Division Environmental Specialist will assist in identifying environmental issues associated with encroachments.
- 4.6.3. The DPC will notify the Legal Department of the encroachment and copy the HQPC for permits and BRPM for leases. The Legal Department will coordinate notices, service of notices, and actions related to encroachments. The Legal Department will keep the DPC, HQPC for permits and BRPM for leases, apprised of the status and action taken, including any further collection activity or other responses needed by others.

4.7. Collections of Delinquent Accounts and Other Costs

- 4.7.1. When it has been determined by the Legal Department, the CCU, and HQPC for permits or BRPM for leases, that an account should be referred for collection, the CCU will prepare a collection file. Collections may include delinquent accounts as well as other costs such as costs to remove encroachments, restore a site, etc.
- 4.7.2. The CCU will coordinate the collection of the account with the contracted collection agency and notify the Legal Department of the collection activity, or forward the collection file to the Legal Department for handling or for forwarding to the OAG for action. At a minimum, the collection file should contain:
 - Copy of the terminated lease or revoked permit

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- Total amount of the delinquency (rents/fees, interest, additional fines, restoration costs, etc.)
 - Current contact information (name, address, phone number)
 - Copy of invoices and letters sent
 - Copy of DIVISION INSPECTION REPORT⁺
 - Documentation of any other attempts or information regarding collection
 - Other information pertinent to the permit/lease, such as environmental issues, encroachments or other structures, noncompliance or issues.
- 4.7.3. The Legal Department or the CCU will receive reports from collection agencies and/or the OAG regarding accounts that have been turned over to them for collection. Each department will keep the other informed as to the status of collection activity.
- 4.7.4. The CCU will receive checks collected by collection agencies and the OAG, and may also receive payment directly from former account holders after the accounts have been turned over for collection. The CCU will notify the Legal Department and the DPC, the HQPC for permits or BRPM for leases of any checks received. The Legal Department will review the individual case and approve the check, and provide notification that the check has been approved for deposit.
- 4.7.5. If the matter is deemed uncollectible by a collection agency or the OAG, the matter will be referred to the Legal Department for determination of further appropriate action.

5. Responsibilities

BRPM will review Division Inspection Report (for leases) and assist in determining the appropriate action when the violation involves a lease or when a lease will be terminated.

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The CCU is responsible for invoicing permittees and lessees and sending delinquency, final, and cancellation notices for nonpayment and accounts with lapsed insurance. The Unit will maintain the account files and prepare collection files for delinquent account and work with contract collection agencies.

The DD will consult with the DPC to resolve permit issues.

The DPC will conduct site inspections and coordinate resolution of permit violations, and oversee the encroachment notice and service.

The Division Code and Compliance personnel may assist in identifying structural or other issues affecting an encroachment.

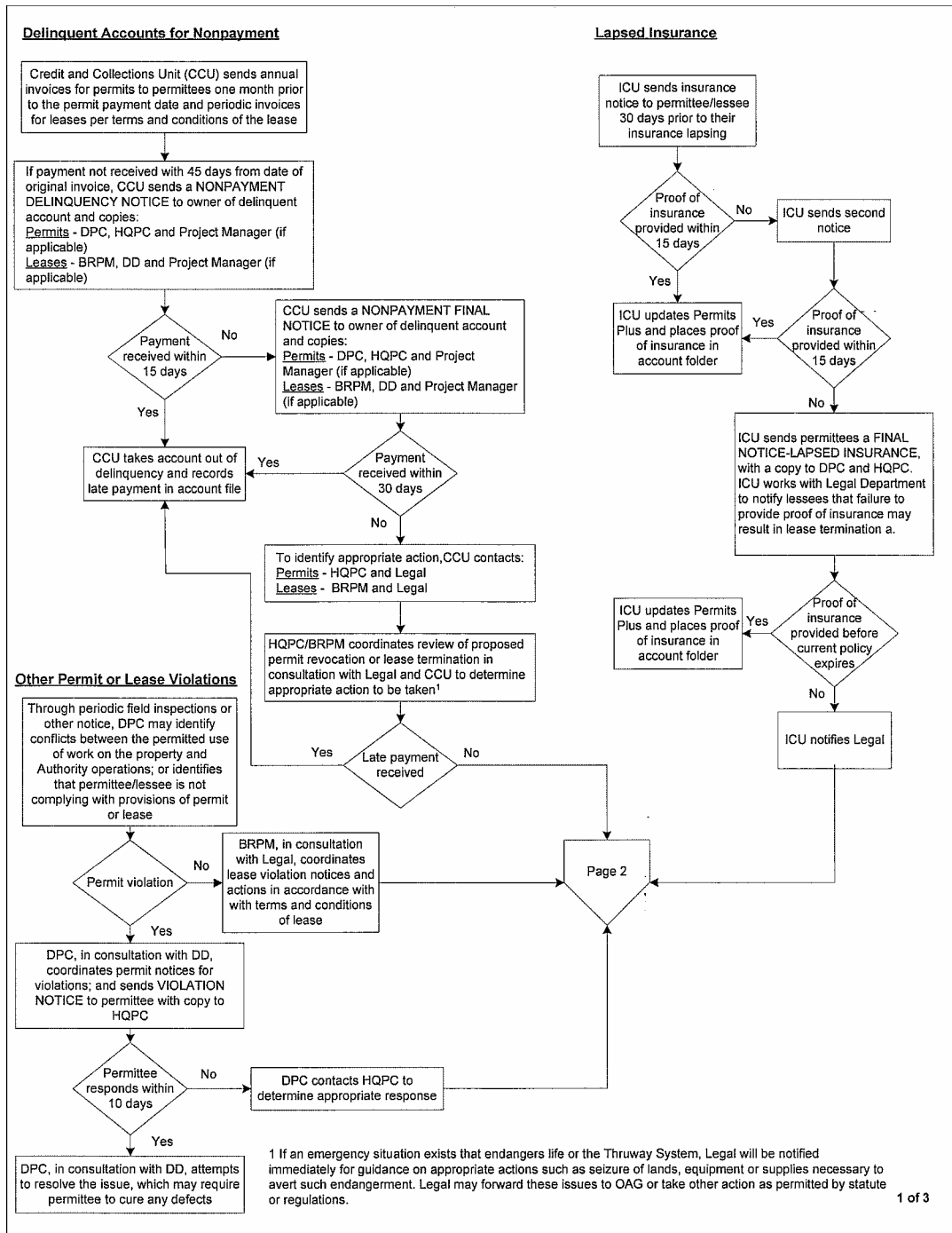
The Division Environmental Specialist will assist in identifying environmental issues associated with encroachments.

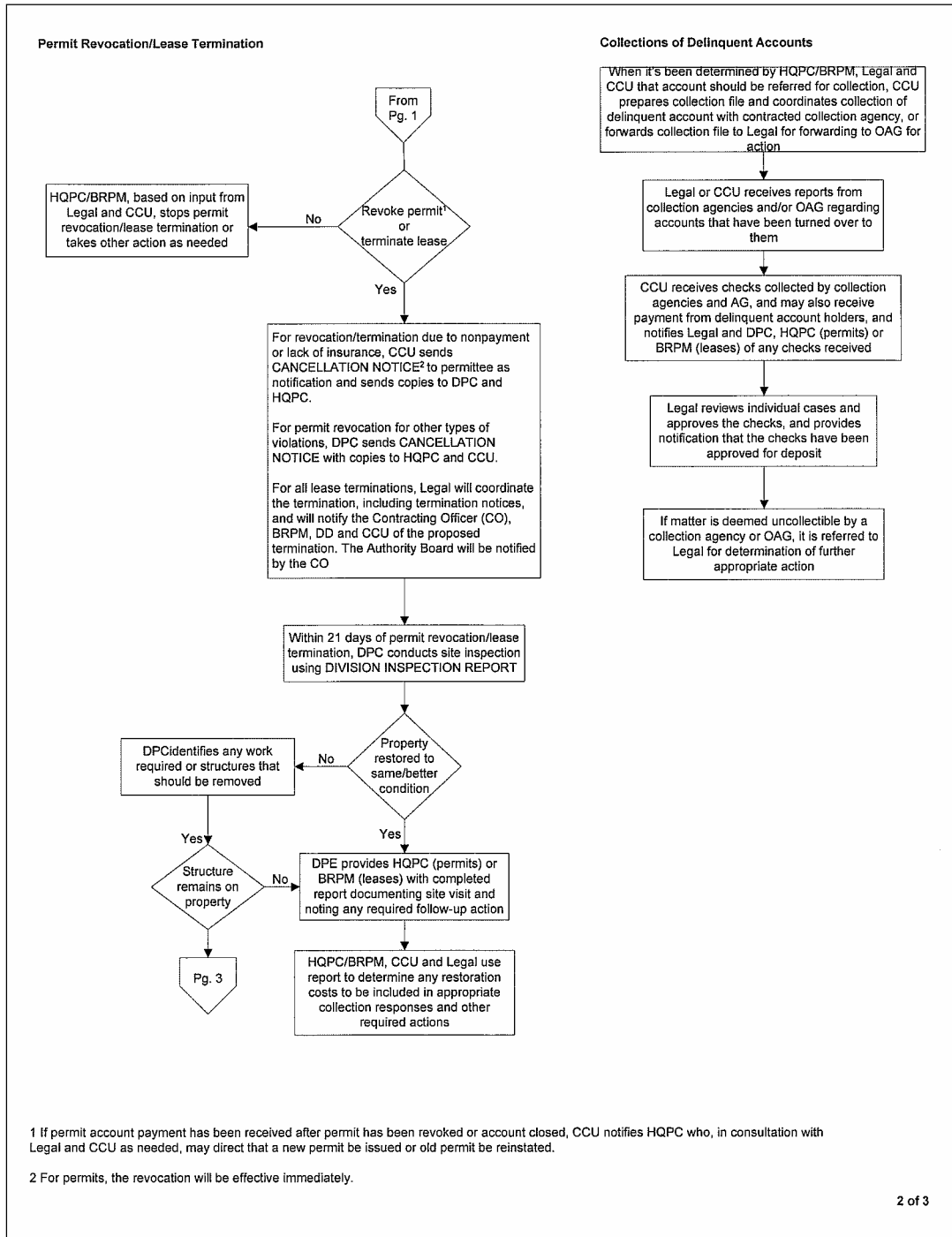
The HQPC will review Division Inspection Report (for permits) and assist in determining the appropriate action when the violation involves a permit or when a permit will be revoked.

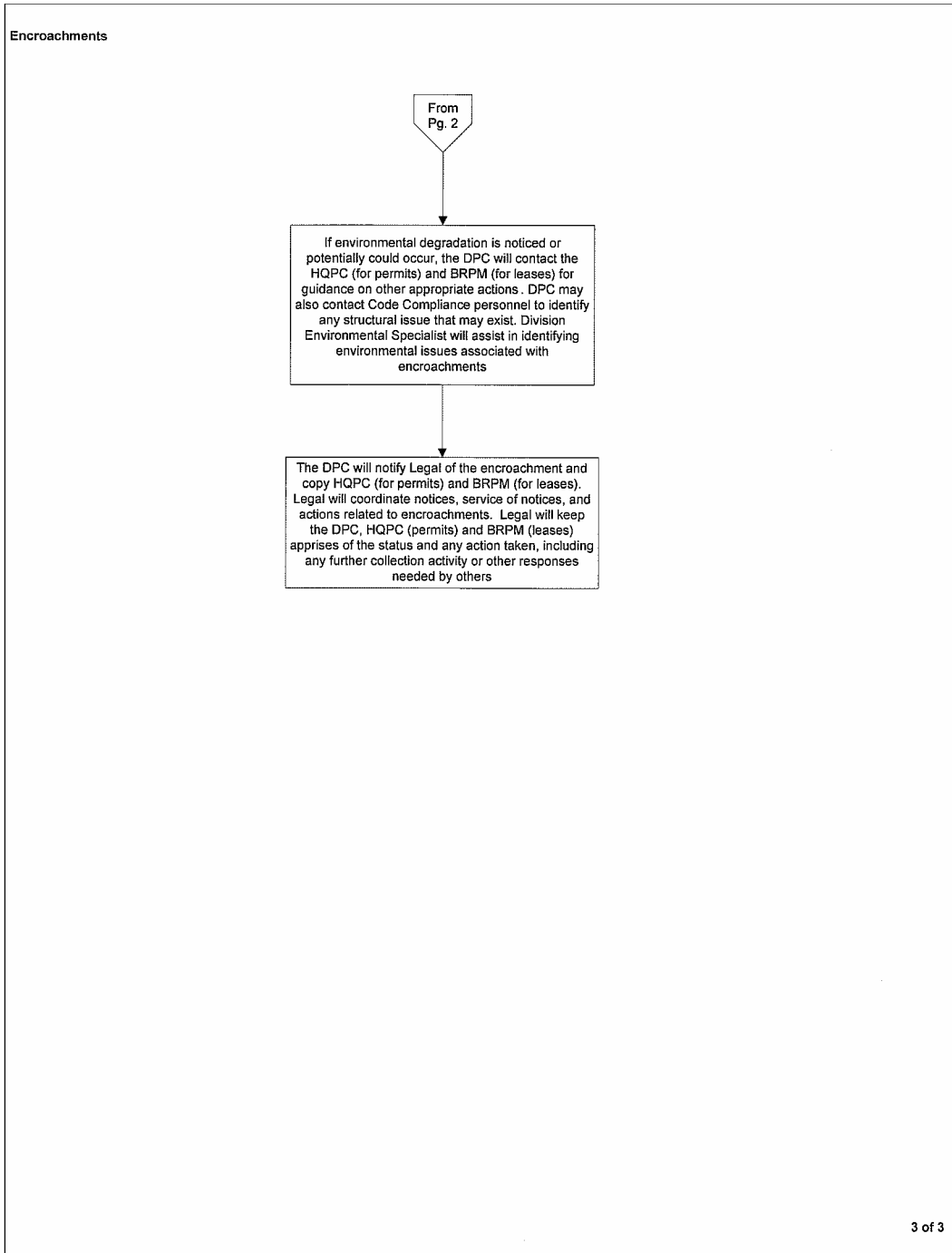
The ICU will determine if permittees and lessees have proper insurance coverage and notify applicants that do not have insurance coverage.

The Legal Department will assist the HQPC/BRPM in determining the appropriate response to permit and lease violations and coordinate OAG assistance and the collections process.

7. Flowcharts







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EXHIBIT 1
SAMPLE PERMIT AND LEASE INVOICE

This form will be used by the CCU for annual permit and lease invoices.

Content under development

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EXHIBIT 2
NONPAYMENT DELINQUENCY NOTICE

The notice will be sent by the CCU to a permittee/lessee when payment has not been received within 45 days from the date of the original invoice.

Content under development

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EXHIBIT 3
NONPAYMENT FINAL NOTICE

The final notice will be sent by the CCU to a permittee/lessee within 15 days of the nonpayment delinquency notice if payment has not been received.

Content under development

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EXHIBIT 4
INSURANCE NOTICE

The ICU will use this notice to notify account owners when insurance will expire in 30 days.

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EXHIBIT 5
SECOND NOTICE – INSURANCE

The ICU will use this notice to notify account owners when there has been no response to the first notice and insurance will expire in 15 days.

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EXHIBIT 6
FINAL NOTICE –INSURANCE

If a permittee has not provided documentation of insurance by the termination date of the insurance, the ICU will send the permit revocation notice for lapsed insurance.

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EXHIBIT 7
CANCELLATION NOTICE

Upon a determination to revoke a permit or terminate a lease, a cancellation notice will be sent.

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EXHIBIT 8
DIVISION INSPECTION REPORT

This report will be used to document a site inspection by Division personnel.

Content under development