

Chapter 4

Section 2 - Emergency Excavation Permit Administration Procedure

1.0 Introduction

1.1 Under section 10C of the Land (Miscellaneous Provisions) Ordinance (LMPO), the Director of Highways (DHV) as the Authority or his delegated officers may issue an emergency excavation permit (EXP) authorizing the making and maintaining of emergency excavations lasting not longer than 7 days.

2.0 Legal Requirements for Emergency Excavation Permit

2.1 Section 2 of the LMPO states "...
"emergency excavation" means an excavation that is made or maintained consequential upon the occurrence of an emergency incident;
"emergency excavation permit" means an emergency excavation permit issued under section 10C;
"emergency incident" means an incident the occurrence of which reasonably requires an immediate excavation for the purpose of –

- (a) the prevention of injury of any person;
- (b) the saving of life of any person;
- (c) the prevention of damage to any property; or
- (d) the prevention of serious interruption or disruption to any public transport system or utility services."

2.2 Section 10C of the LMPO states "

- (1) The Authority may, subject to such conditions as he thinks fit, issue an emergency excavation permit, authorizing the making and maintaining of emergency excavations.
- (2) An emergency excavation permit shall be valid for 6 months unless it is terminated under section 10K.
- (3) During the period for which an emergency excavation permit is valid, the permittee of the permit may, subject to the conditions specified in the permit, make and maintain an emergency excavation for each emergency incident during a period ("initial period") of 7 days from the date of the report of the incident to the Authority.
- (4) The Authority may require a permittee to pay the appropriate prescribed fee for an emergency excavation made or maintained during the initial period either before or after the expiration of the

- initial period.
- (5) For the purpose of calculation of the appropriate prescribed fee, the duration of an emergency excavation which can be completed within the initial period shall be-
 - (a) the number of days commencing from the date of the report of the emergency incident to the Authority and expiring on the date of the report of the completion of the excavation to the Authority ; or
 - (b) 7 days if there is no report of the completion of the excavation to the Authority.
 - (6) Subject to section 10L, any prescribed fee paid under subsection (4) is not refundable.
 - (7) Where-
 - (a) the Authority issued an emergency excavation permit for an excavation; and
 - (b) the permittee of the permit is unable to have access to a reasonably substantial portion of the land concerned for the purpose of making or maintaining the excavation, after the date of the report of the emergency incident concerned to the Authority under subsection (3) but before the commencement of the excavation, for reason other than the fault of the permittee, the contractor for the excavation or their employees, the Authority may, without payment of any prescribed fee or any part thereof (other than that required to be paid under subsection (4)), extend the initial period by the number of days for which the permittee is so unable to have access to the land.”

3.0 Issue of Emergency Excavation Permit

- 3.1 The Engineer/ Chief Technical Officer (E/CTO) of the respective Highways Department (HyD) Regional Office, under the delegated authority of DHy, may issue an EXP upon application. The EXP may be issued to parties such as utility undertakings, Drainage Services Department, Civil Engineering and Development Department, Highways Department, Water Supplies Department and other works departments, which should have a genuine need to carry out emergency excavation.
- 3.2 Applicants of EXP shall submit their applications through the Excavation Permit Management System (XPMS).

3.3 Before issuing an EXP, the E/CTO should be satisfied that the applicant:

- (i) is fit and proper to make and maintain any excavation; and
- (ii) can comply with the conditions imposed under the permit.

Otherwise, the E/CTO shall refuse the issue of an EXP by exercising powers under section 10E of the LMPO. Details are described in Section 9 - Refusal of Issue of Excavation Permit Administration Procedure.

3.4 Apart from the legal interpretation of the term “emergency incident” stated in para. 2.1 above, EXP permittees may also refer to the List of Emergency Excavations shown in Appendix 4.2.2 to determine when their EXP can be used. The List of Emergency Excavations was endorsed by the Utilities Technical Liaison Committee (UTLC) chaired by the Deputy Director of Highways (DDHy). For addition/deletion of emergency excavation items to/from the list, utilities undertakings or government departments should submit their proposed amendments to the Chief Highway Engineer/Research and Development (CHE/R&D) of HyD for consideration first. If CHE/R&D has no objection to the proposed amendment, he will put forward the proposal to UTLC for endorsement.

Any person who makes and maintains an excavation by abusing the EXP may contravene the LMPO. Suspected case of abuse of EXP will be referred to HyD’s enforcement team. Justifications to the satisfaction of the relevant HyD Offices shall be provided in the following situations:-

- (a) Use EOs one after another within 1 month for the same location/successive locations by the same permittee;
- (b) Not commence excavation work immediately after the report of the emergency incident; and
- (c) Not an emergency incident. The permittee may refer to the list of Emergency Excavations in Appendix 4.2.2.

3.5 An EXP will be valid for 6 months and cover the maintenance districts under the respective Chief Highway Engineer (CHE). For renewal of an EXP, the applicant should submit the application through XPMS one month in advance of the expiry date of the current EXP to the respective CHE. The applicant is allowed to apply for more than one EXP within the same HyD Region for each of his emergency work contractor.

3.6 The applicant may nominate his contractor as a nominated permittee for

the EXP in accordance with section 10H of the LMPO. The E/CTO of the respective HyD Regional Office shall approve or disapprove the nomination and notify the applicant accordingly. Details of nomination procedure are described in Section 7 - Nominated Permittee Approval/ Withdrawal/ Removal Procedure.

4.0 Administration of Emergency Excavation Permit

4.1 When the need for an emergency excavation arises, the EXP permittee shall immediately obtain an emergency serial number from HyD by one of the following means as stipulated in Conditions of EXP:-

- (i) via XPMS; or
- (ii) reporting to the Integrated Call Centre (ICC) at 2926 4111. The ICC will ask for the following information for verification of the caller's identity:
 - valid XPMS user identity under the EXP permittee;
 - the permit number of the EXP to be used; and
 - the telephone number/e-mail address of the aforementioned XPMS user.

After verification, ICC will immediately input the emergency incident to XPMS which will automatically create an incomplete plan and send messages to the Permit Clerk or Technical Officer of the respective HyD Regional Office ICC. ICC will then inform the caller the emergency serial number generated by XPMS.

[Note:

1. *Whenever possible, EXP permittees should obtain the emergency serial number via XPMS. EXP permittees should only obtain the emergency serial number via ICC when the XPMS is unavailable.*
2. *EXP permittees shall describe the EO location clearly (either via XPMS or ICC) when obtaining the emergency serial number. EXP permittees may input the nearest lighting pole number if description of the EO location is found difficult.*
3. *It is not necessary for the permittee to input the start time for counting the initial period in the XPMS. XPMS will record the time of the report of the emergency incident as the start time of the EO according to section 10C of the LMPO.*
4. *It is not uncommon that EXP permittees would assume all unleased lands are maintained by HyD. As a result, wrongly registered emergency plans are often found. In order to save both HyD's and*

EXP permittees' effort on dealing with cancellation of wrongly registered emergency plans, all EXP permittees are strongly recommended to verify whether the location is maintained by HyD through XPMS before obtaining the emergency serial number.]

- 4.2 Whenever an emergency incident is reported by the EXP permittee, he shall complete the emergency plan registration before 4:00 p.m. on the working day following the emergency incident. To complete the registration, he is required to digitize in XPMS the alignment of the trench/excavation and mark the area where the EXP is to cover. For any plan which is rejected by XPMS during spatial check, he should submit by hand within 2 working days from the commencement of the emergency excavation works to the E/CTO of the respective HyD Regional Office.

The permittee is also required to provide justification with supporting documents to prove that the emergency incident is a genuine case as described in para 3.4 above. After the completion of emergency plan registration, if the Inspector of Works (IOW) of the respective HyD Regional Office is satisfied that the emergency plan is a genuine emergency incident and the excavation work is on streets maintained by HyD, IOW will process and check the button "Approve Registration" in XPMS.

- 4.3 The EXP permittee should keep photographs showing the location and nature of the excavation works under the emergency incident. These photographs should be produced for inspection upon request by the E/CTO.
- 4.4 When the EXP permittee reports completion of works through XPMS within 7 days from the date of reporting the emergency incident, or 7 days have elapsed since the report of the emergency incident, XPMS will issue a demand note to the EXP permittee or deduct fees from the permittee's deposit account. The charging mechanism for emergency incidents is detailed in Appendix 4.2.1.
- 4.5 XPMS will generate a monthly report of emergency excavation for payment verification. Apart from the report on monthly basis, a function in XPMS would allow the EXP permittee to generate at any time a financial

report for a certain period requested by him.

4.6 XPMS will keep track of any outstanding emergency plan registration and payment and send reminding e-mail to the respective EXP permittees. An emergency plan registration is outstanding if the required textual information or required graphical alignment is not input, including cases for which EXP permittee requests HyD to digitize the plan alignment. A payment is outstanding if the demand note is not settled within 7 working days, excluding Sunday and Public Holidays. Outstanding plan is defined as any plan with outstanding registration or payment.

4.7 When the number of outstanding plans exceeds a predetermined baseline level of 10 nos. for more than 1 calendar month, XPMS will issue e-mail to alert:-

- (i) Senior Treasury Accountant (STA), HyD Headquarters if any outstanding payment is involved and the EXP permittee has a deposit account with HyD. STA should urge the EXP permittee to top up his deposit account immediately;
- (ii) The E/CTO and Account Section of the respective HyD Regional Office if any outstanding payment is involved and the EXP does not have a deposit account with HyD. Account Section should urge the EXP permittee to settle the demand note immediately; and/or
- (iii) The E/CTO of the respective HyD Regional Office if any outstanding plan is involved. The E/CTO should urge the EXP permittee to complete the outstanding emergency plan registration immediately.

5.0 Site Audit Inspections of Excavation Sites

5.1 Once an emergency incident is registered in XPMS, XPMS will automatically send messages to the Permit Clerk or Technical Officer of the respective HyD Regional Office and the Audit Inspection Team (AIT) of the Research and Development Division of HyD. Staff of the AIT will conduct site audit inspections after receipt of this message.

6.0 Completion of Works

6.1 If the works are completed within the 7-day allowable EXP period, the permittee should report completion through XPMS.

- 6.2 If the permittee anticipates that the emergency works will not be finished within the 7-day allowable EXP period, he shall submit a completion notice (CN) for the current EXP and state that a continuing emergency XP (CEXP) is required for continuing the emergency excavation works before the expiry of the initial 7-day period. For details, please see Chapter 4, Section 3 of this manual.
- 6.3 If the 7-day allowable EXP period is completely used to finish up the works, report completion through XPMS is not necessary and XPMS will report the completion automatically on permittees' behalf when the permit expires. The respective HyD Regional Office will arrange a reinstatement inspection within 7 working days after the expiry of the 7-day allowable EXP period. However, if any one the following situations is encountered, the permittee should report completion before expiry of the 7-day allowable EXP period through XPMS (*Note: For emergency works to be continued after the 7-day allowable period, the EXP permittee should refer to Section 3 of this Chapter 4 to apply for the continuing emergency XP*):
- (i) Permanent Reinstatement (PR) carried out by other. If PR is carried out by other permittee (e.g. emergency works due to damage of utility services during excavation by another permittee), the EXP permittee has to specify the XP number under which the PR is carried out, and his contact person. If the PR is planned to be carried out by a Small Scale Works (SSW) XP or a rectification permit (e.g. PR has been rejected and needs rectification), the permittee must indicate on the CN that the outstanding defects will be rectified by either a SSW job/rectification permit in order to have a record for HyD to follow up. The CN of the original EXP will then be accepted. For details, see paragraph 6.3 of this section;
 - (ii) PR carried out by HyD at the permittee's own cost. Only select this reinstatement type if the PR is carried out by HyD's contractor at the permittee's own cost;
 - (iii) Temporary structure/ installation pending removal. If the permittee has carried out erection of temporary structure or installation of equipment which will only be removed a certain period after the expiry of the XP, then this reinstatement type should be chosen. The permittee has to indicate the date when such

- temporary structure/ equipment/ installation will be removed; and
- (iv) There has been a CN rejected before.

Note: If no excavation has been carried out, the permittee shall cancel the EO by providing justifications to the satisfaction of HyD's Regional Offices.

To facilitate the checking of reinstatement works, the permittee must also choose either one of the following check boxes on the screen of CN for the respective HyD Regional Office's reference:

- (i) *“use the approved plan alignment to check the reinstatement works”*; or
- (ii) *“use the attached sketch(es) of reinstatement extent to check the reinstatement works”*.

As a simple guideline, the option (2) mentioned in the above should only be chosen when the actual excavation extent is less than the approved excavation extent. In addition, if the permittee chooses option (2) in the screen of CN, he must submit the sketch(es) of actual excavation extent immediately via XPMS. If the sketch is not received or the attached sketch does not provide sufficient information, the E/CTO of the respective HyD Regional Office may reject the CN. The sketch(es) should have simple indications/measurements to roughly indicate the reinstatement extent and location. The file of the sketch(es) should be in “pdf”, “jpg”, “jpe”, or “jpeg” format and the file size should not exceed 1 mega byte. In case XPMS is not available or the registration of the respective emergency incident has not been completed, the EXP permittee should notify the E/CTO the completion of works by fax in order to record down the actual date of submission of CN. As this is just a temporary measure, information about reinstatement type is not required to be stated in the fax. Once XPMS is recovered, the EXP permittee should complete the process of submission of CN through XPMS. As a hard copy CN has already been submitted, in the CN reporting screen of XPMS, the EXP permittee should check the box “A CN has already been submitted by fax” and provide the CN submission date for HyD's reference. After verification, the respective HyD Regional Office should date back the CN submission date to the hard copy CN fax-in date.

- 6.4 Upon receipt of the CN, the E/CTO of the respective maintenance district in the HyD Regional Office should arrange site inspection to confirm

completion of works and acceptance of reinstatement within 7 working days. After site inspection, the responsible IOW will inform the permittee via XPMS whether he agrees that the reinstatement have been satisfactorily completed. If the IOW agrees that the reinstatement have been satisfactorily completed, the E/CTO will confirm the date of completion in XPMS which will automatically calculate the amount of prescribed fee to be paid by the EXP permittee. If the IOW considers that the reinstatement have not been satisfactorily completed, he will inform the permittee via XPMS about which items do not comply with the requirements/specifications and request the permittee to rectify. The processing procedures are different in the following three situations:-

- (i) Where the remaining time of the 7-day EXP permit is sufficient for the permittee to complete the rectification works, the permittee should continue to carry out the works under the permit. When the IOW confirms completion of works, the date of re-submission of CN through XPMS would be taken as the completion date of the XP, for which refund of daily fees or economic cost, if any, would be based on.
- (ii) Where the permittee considers that the remaining time of the EXP permit is insufficient for completion of rectification works, he may apply for a rectification permit to complete the rectification works. The permittee may also choose to carry out the rectification works under block permit for small scale works (SSW) provided that the rectification works satisfy the requirements of SSW as stated in Section 5 – Block Permit for Small Scale Works Administration Procedure.
- (iii) Where the 7-day EXP period has expired before receipt of the IOW's notification, the permittee should register a SSW job under a block permit for SSW or apply for a rectification permit for carrying out the rectification works.

For any one of the situations mentioned in the above, re-submission of CN is required. For situations (ii) and (iii), the permittee must indicate on the CN that the defects will be rectified by either a SSW job or a rectification permit in order to have a record for HyD to follow up. The CN of the original permit will then be accepted. However, the permittee should note that despite the CN is accepted, the defect liability period (DLP) of the permit will remain “not started” until all outstanding defects are rectified. The DLP period of the original permit will start when the CN

of the SSW job/rectification permit is accepted by the IOW. The start date will be the submission date of the CN of the SSW job/rectification permit.

6.5 The E/CTO should keep record of photographs taken by the site staff at the time of inspection, checklist completed by the site staff and any report prepared by the site staff. The reference number of the file keeping all these records or any supporting documents should be recorded in XPMS.

6.6 The EXP permittee shall keep all as-built records in respect of level and alignment of the underground services and installations laid or placed for 7 years from the date of submission of CN. These records shall be certified by a recognized professional. The EXP permittee shall provide the certified as-built records upon request by the E/CTO of the respective HyD Regional Office. The professional qualifications recognized by the Authority to certify the as-built records include:-

- (i) member of the Hong Kong Institution of Engineers or equivalent professional qualification;
- (ii) member of the Hong Kong Institute of Architects or equivalent professional qualification;
- (iii) member of the Hong Kong Institute of Landscape Architects or equivalent professional qualification; and
- (iv) member of the Hong Kong Institute of Surveyors or equivalent professional qualification

The EXP permittee shall submit to the E/CTO on or before the date of submission of CN the details (i.e. the name, his relation with the permittee etc.) of such professional.

6.7 In order to demonstrate compliance with the minimum depth requirements, the permittee is required to submit record photographs showing that the underground services installed under XP is at sufficient depth in association with CN submission with that XP. For details of the photograph submission criteria and measurement arrangement, please refer to **Appendix 4.1.4**.

6.8 Excavation should be reinstated to the conditions before commencement of works. The permittee is required to submit the certified true copy of the material delivery slip or document for the reinstatement of bituminous

surfacing on submission of CN.

7.0 Submission of Test Results

7.1 The EXP permittee shall submit to the E/CTO of the respective HyD Regional Office, within 2 months from the date of submission of CN, the original copy or certified true copy of the necessary soil/ others materials test certificate/ report as required under the permit conditions unless exempted in the approved work list by the Authority.

8.0 Reinstatement of Works within Defects Liability Period

8.1 In the case of permanent reinstatement by the Authority, the permittee shall remain fully responsible for the maintenance of the backfilling and the temporary reinstatement until a period of 7 working days has elapsed from the date of submission of CN. In the case of subsidence of the permanently reinstated pavement (permanent reinstatement by either the Authority or the permittee) or deterioration in the permanent reinstatement itself (permanent reinstatement by the permittee) within 12 months from the date of submission of CN / the date of the last day of the EXP period (whichever is the earlier), the permittee shall carry out the necessary remedial works at his own expense, unless the permittee can prove that the defect was caused by a third party. Where necessary, the Authority will carry out the remedial work and the permittee shall pay all expenses incurred by the Authority pursuant to section 10Q of the LMPO. The responsible IOW of the respective maintenance district in the HyD Regional Office should arrange inspection to identify any defects associated with the reinstatement before the end of the liability period. The permittee will be required to make good the defects if any.

8.2 If the permittee declines to make good the defects, the E/CTO of the respective maintenance district in the HyD Regional Office will issue a Works Order to the HyD term contractor to rectify the defects. In accordance with section 10Q of the LMPO, the respective HyD Regional Office will recover the cost from the permittee.