

Chapter 4

Section 3 - Emergency Excavation (longer than 7 days) Administration Procedure

1.0 Introduction

1.1 Under section 10C of the Land (Miscellaneous Provisions) Ordinance (LMPO), the Director of Highways (DHy) as the Authority or his delegated officers may issue an emergency excavation permit (EXP) authorizing the making and maintaining of emergency excavations within the validity period with maximum 7 days.

1.2 In accordance with section 10D of the LMPO, if the EXP permittee anticipates that he has to make or maintain an emergency excavation for more than 7 days, the EXP permittee shall apply to DHy or his delegated officers for the issue of an excavation permit (XP) before the expiry of the initial period (7 days) of the emergency excavation.

2.0 Legal Requirements for Emergency Excavation which lasts for more than 7 days

2.1 Section 10D of the LMPO states

“(1) If the permittee of an emergency excavation permit anticipates that he has to make or maintain an emergency excavation for more than 7 days, the permittee shall apply to the Authority for the issue of an excavation permit before the expiry of the initial period of the excavation.

(2) Upon receipt of an application mentioned in subsection (1)-

(a) an excavation permit is deemed to be issued to the permittee of an emergency excavation permit-

(i) on the same terms and conditions as an emergency excavation permit; and

(ii) commencing from the date of the commencement of the emergency incident to which an emergency excavation permit relates and expiring on the date of the notification of the result of the application; and

(b) the initial period under an emergency excavation permit is deemed to be extinguished.

(3) The Authority shall determine the period for which an excavation permit deemed to be issued under subsection (2)(a) shall be valid and may revise the expiry date of the permit to a date which is later than

the original expiry date.

- (4) If the period determined by the Authority under subsection (3) is shorter than the period applied for by the permittee under subsection (1), the Authority may, in respect of an excavation permit deemed to be issued under subsection (2)(a), grant an extension for a period commencing from a date next following the expiry of the permit and expiring on the last day of the period applied for by the permittee.
- (5) The Authority may require a permittee to pay the appropriate prescribed fee for an excavation permit deemed to be issued and an extension granted under this section.”

3.0 Application and Processing of Excavation Permit for Emergency Excavation lasting longer than 7 days

- 3.1 When the EXP permittee anticipates that he has to make or maintain an emergency excavation for more than 7 days, he shall submit a completion notice (CN) for the current emergency excavation opening (EO) and state that a Continuing Emergency Excavation Permit (CEXP) is required for continuing the emergency excavation works before the expiry of the initial 7 days period. The Excavation Permit Management System (XPMS) will automatically register a CEXP for continuing the incomplete emergency excavation works. In accordance with section 10D(2) of the LMPO, an XP is deemed to be issued to the EXP permittee for the concerned EO upon the registration of the CEXP for such EO. He is thereby authorized to continue to excavate or maintain the subject emergency excavation until the E/CTO notifies him of the result of his application in the manners as laid down under section 10V of the LMPO. As part of the application, the EXP permittee shall submit documents to substantiate the permit period that he is applying for. At the same time, the EXP permittee shall consult and seek comment from the Hong Kong Police Force, Transport Department, Environmental Protection Department (where necessary) for temporary traffic diversion measures and construction noise permit (if necessary) separately. The E/CTO shall in accordance with section 10D(3) of the LMPO determine the period for which an XP deemed to be issued shall be valid and may revise the expiry date of the permit to a date which is later than the original expiry date. The processing procedures are as follows:-

Registration Stage

- (a) Under section 10D(1) of LMPO, if the EXP permittee anticipates that he has to make or maintain an emergency excavation for more than 7 days, he shall apply to the Authority for the issue of an XP before the expiry of the initial period of the originating EO. To make such an application, the EXP permittee has to submit an XP application form to HyD.
- (b) Under XPMS, a CEXP plan is created by opting for such when processing the completion of an EO plan, after which the EO plan would be ended. However, the corresponding XP application form is only regarded as submitted when the created CEXP plan is registered.
- (c) For CEXP plans created in XPMS but not yet registered, the EXP permittee may opt to cancel the CEXP plans anytime within the initial 7 days' period. However, if the created CEXP plans are not registered before expiry of the originating EOs, these plans would be mandatory cancelled by the system automatically (section 10D(1) of LMPO refers).
- (d) For CEXP plans cancelled under (c) above, the originating EO plans would be restored and processed accordingly.

Permit Application and Approval Stage

- (a) After the CEXP plan is registered, the *PPA would be carried out together with permit application approval. IOW should assess and make recommendation on the permit period for E/CTO's approval.
- (b) During the processing of PPA, IOW and E/CTO may revise the proposed end date applied by the EXP permittee to a date later than the date of notification of the result of the application (sections 10D(2)(a)(ii) and (3) LMPO refer).
- (c) In processing the application, IOW may comment on the permit period and request for the EXP permittee's response, which may include but not limited to requesting for further information or giving

advice on revision of the PPA. The EXP permittee shall respond by completing a “Permit Period Assessment Response” task within 7 calendar days from and including the date of such request.

- (d) Once the EXP permittee has completed the “Permit Period Assessment Response” task, HyD’s XPPT will receive a notification email.
- (e) If the EXP permittee does not complete the “Permit Period Assessment Response” task within the above-mentioned period, the task will be ended by the system automatically and IOW & E/CTO may approve or revise the permit expiry date, as the case may be, and issue the CEXP accordingly.
- (f) For each CEXP application, the maximum number of “Permit Period Assessment Response” tasks allowed is two (2).
- (g) Upon receipt of IOW’s recommendation on the permit period, E/CTO should process the corresponding application.

*Note: For different duration of proposed works period, the processing procedures are different as described in the following paragraphs:-

(i) Where excavation is anticipated to be completed within 14 working days from the expiry date of the date of the initial 7 days period, submission of the substantiation for the applied permit period is waived. The E/CTO will issue an XP commencing from the date of the commencement of the emergency incident and expiring on the date applied for by the EXP permittee.

(ii) Where excavation is anticipated not to be completed within 14 working days from the expiry date of the date of the initial 7 days period and the period of the XP determined by the E/CTO is same or longer than the period applied by the EXP permittee, the E/CTO will, upon payment of the prescribed fees, issue an XP with the period applied for under section 10A of the LMPO to the EXP permittee. The XP deemed to be issued shall expire on the date of the E/CTO’s

notification in accordance with section 10D(2)(a)(ii) of the LMPO.

(iii) Where excavation is anticipated not to be completed within 14 working days from the expiry date of the date of the initial 7-day period and the period of the XP determined by the E/CTO is shorter than the period applied by the EXP permittee, the E/CTO will, upon payment of the prescribed fees, issue an XP with the period determined by him. If the permittee considers that the permit period is not long enough to complete the works and apply for an extension, the E/CTO may, upon payment of appropriate prescribed fees including economic costs (if applicable) for the extended period, grant an extension for a period commencing from a date next following the expiry of the XP and expiring on the last day of the period applied for by the permittee.

The flow chart of the application of CEXP is shown in Appendix 4.3.1.

- 3.2 Subject to submitted information is in order, the E/CTO of the respective HyD Regional Office, under the delegated authority of DHy, will process the application within 5 working days, excluding 3 working days for issue of demand note. The E/CTO shall assess the permit period and the duration of any extended period as empowered by section 10M(1)(e) and notify the EXP permittee the results of his application as required by section 10M(2) of the LMPO.
- 3.3 For EXP permittee who has a deposit account with HyD, XPMS will automatically work out the permit fee and deduct the corresponding amount from the deposit account. The XP will then be issued to the EXP permittee via XPMS simultaneously with the notification.
- 3.4 The EXP permittee may nominate his contractor as a nominated permittee for the XP 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 Site Audit Inspections of Excavation Sites

4.1 Once the EXP permittee submits an application for an XP for excavation beyond the initial period through XPMS, XPMS will send a message to the E/CTO of the respective HyD Regional Office for XP processing and the Audit Inspection Team (AIT) of the Research and Development Division for site audit inspections.

4.2 When an XP is issued to the EXP permittee by the E/CTO of the respective HyD Regional Office, XPMS will record down details of the XP. The AIT shall obtain the necessary information from XPMS and schedule site audit inspections accordingly.

5.0 Completion of Works and Reinstatement of Works within Defects Liability Period

5.1 As the works are continued under an XP instead of an EXP, the procedures in respect of completion of works and reinstatement of works within defects liability period described in Section 1 – Excavation Permit Administration Procedure should be followed.

5.2 In case XPMS is not available or the application of the CEXP has not been approved, the 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 or the CEXP has been approved, the 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.