

Chapter 4

Section 8 - Termination of Excavation Permit or Emergency Excavation Permit Procedure

1.0 Introduction

1.1 Under section 10K of the Land (Miscellaneous Provisions) Ordinance (LMPO), the Director of Highways (DH_y) as the Authority or his delegates may terminate the permit if there is a breach of any condition of an excavation permit (XP) or emergency excavation permit (EXP) especially when the permittee and/or its nominated permittee fail(s) to perform and such course of action is in the interest of the public.

2.0 Breach of Condition of XP or EXP

2.1 Usually, the offences, which would endanger the public interest (e.g. site safety issue), are observed by Audit Inspection Team (AIT) of Research and Development Division or District and Maintenance Team (D&M) of Regional Office or by Enforcement Team (ET) during case investigations. When AIT observes this offence, it should immediately inform ET and the Engineer/Chief Technical Officer (E/CTO) of the respective Excavation Permit Processing Team (XPPT). When D&M observes this offence, it should immediately inform the E/CTO of the respective XPPT and the E/CTO should immediately relay the information to ET and AIT. Upon receipt of the notification form from AIT or E/CTO, ET should investigate and collect evidence for prosecution. However, if the offence is revealed by ET, ET should inform the E/CTO of the respective XPPT and AIT immediately. No matter whether the notification is received from AIT, D&M or ET, the Chief Highway Engineer (CHE) of that respective Regional Office should assess the site situation and decide whether a suspension instruction should be issued to the permittee to temporarily suspend the work under Clause 7B(II) of Conditions of Permit. The CHE should inform AIT and ET immediately after issue of such instruction. The CHE should request the permittee and the nominated permittee (if any) to take immediate action to rectify the situation. The CHE should uplift the suspension instruction if he is satisfied that the permittee and the nominated permittee (if any) have adopted all necessary safety precautions to protect the public or any person making or maintaining an excavation to which the permit relates from any danger or injury; provide adequate support for the structural stability of buildings, roads, slopes, structures, pipes, lighting posts, utility services or similar installation adjacent to the excavation so as to prevent the public or any

person from being endangered by a fall or displacement of earth, rock or other material.

- 2.2 If the permittee or the nominated permittee (if any) fails to rectify the imminently dangerous situation promptly or as advised by AIT during their follow-up site audit on sites with major non-compliance, the CHE of the respective Regional Office should consider immediately terminating the XP pursuant to Section 10K of the LMPO and carrying out the rectification.
- 2.3 When the permittee and/or the nominated permittee contravenes safety requirements and is convicted by the Court, ET should relay the relevant information to the CHE of the respective HyD Regional Offices, from which that XP or EXP is issued, for consideration of termination of that XP or EXP.
- 2.4 Upon receipt of information from ET, the respective CHE should review the latest performance of the permittee and the nominated permittee with reference to site audit inspection records kept in the Excavation Permit Management System (XPMS). If there is no sign of improvement, then the CHE should terminate the XP or EXP.

3.0 Notification of Termination

- 3.1 To terminate an XP or EXP, the respective CHE is required to seek approval of the Deputy Director of Highways (DDHy) via the Assistant Director/ Technical. After receipt of an approval of DDHy, CHE should, in accordance with section 10K(1) of the LMPO,
- (i) serve a notice of the termination, in the manner in accordance with section 10V of the LMPO, to the permittee and the nominated permittee (if any) in relation to the permit; and
 - (ii) post a notice of the termination at a conspicuous place on the unleased land to which the permit relates.
- 3.2 Upon the termination of the XP or EXP, the E/CTO of the respective HyD Regional Office should enter the date of termination of the permit and the reason for such termination in XPMS.