

UTLC Paper No. 1/2017
Enhancements to Demerit Point System and Sanctioning Measure for
Road Excavation Works

I. Purpose

This paper aims at proposing enhancements to the current demerit point system to tighten control on long outstanding rectifications of rejected permanent reinstatements, shallow depth services installed under public roads, delayed rectifications of damaged/deteriorated manhole and drawpit covers, and abuse of emergency excavation permit. Enhancement to the current sanctioning measure is also proposed to raise the deterrent effect.

II. Background

2. In August 2012, the demerit point system with sanctioning measure was formally implemented to enhance control on road opening works. In October 2016, Demerit Point Level (DPL) 2AA was introduced to tackle the long outstanding rectifications of rejected permanent reinstatements (see UTLC Paper No. 2/2015). In the recent review, it is noted that the performance of some utility undertakings (UUs) was not satisfactory in the areas detailed in the following paragraphs.

A. Long outstanding rectifications of rejected permanent reinstatements

3. The amount of long outstanding rectifications of rejected permanent reinstatements from 2012 to 2015 (excluding the completion notices (CNs) rejected in 2016 for clarity) as at September, October, November and December 2016 are listed below:

| Up to the Month | Nos. of long outstanding rectifications of rejected permanent reinstatements | | | | |
|------------------------|---|-------------|-------------|-------------|-------------|
| | Total (2012-2015) | 2015 | 2014 | 2013 | 2012 |
| September 2016 | 1,900 | 805 | 472 | 328 | 295 |
| October 2016 | 1,808 | 750 | 455 | 319 | 284 |
| November 2016 | 1,729 | 710 | 435 | 308 | 276 |
| December 2016 | 1,669 | 677 | 428 | 300 | 264 |

Although the number of long outstanding rectifications of rejected permanent reinstatements is still high, almost none of the party-combinations have been sanctioned. It reflects that the risk weightings for the DPL 2AA require further increase to reflect the actual situation in order to serve the purpose.

B. Shallow depth services installed under public roads

4. In early 2012, HyD received numerous complaints from practitioners of the industry and media enquiries on shallow depth services. These complaints covered the defective locations scattered over the territory. HyD required the responsible permittees to carry out rectifications works promptly. This incident shows that some of the permittees had not exercised adequate supervision on their contractors to ensure compliance with the requirements. Since then, HyD has strengthened the measure requiring the permittees to submit record photographs in association with CN to show their services installed at sufficient depth (see UTLC Paper No. 1/2012). DPL 2B was also introduced at that moment for reflecting the permittee's performance in submission of as-built records for the services installed. Up to the end of 2016 which is more than 4 years after the incident, there are still 16 defective locations (i.e about 7% of the total) not yet been rectified by the responsible permittees. The pace of such rectification works is too slow. It reflects that there is a need to step up control on shallow depth services.

C. Delayed rectifications of damaged/deteriorated manhole and drawpit covers

5. HyD received a considerable number of complaints regarding damaged/deteriorated manhole and drawpit covers from the public. Under the current practice, HyD will refer the defects to the responsible parties for prompt rectification and monitor the progress of rectifications until their completion. In 2016, there were 499 cases where the defects were not rectified timely by the responsible UUs. This figure was high and plainly unsatisfactory. As the damaged/deteriorated manhole and drawpit covers could pose safety concern to the public, there is a need to step up the control on delayed rectifications of damaged/deteriorated manhole and drawpit covers.

D. Abuse of emergency excavation permit

6. Under section 2 of the Land (Miscellaneous Provisions) Ordinance (LMPO), "emergency excavation" means an excavation that is made or maintained consequential upon the occurrence of an emergency incident; and "emergency incident" means an incident the occurrence of which reasonably requires an immediate excavation for the purpose of (a) the prevention of injury to 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 utilities services.

7. Under section 10C of the LMPO, HyD may issue an emergency excavation permit authorizing the making and maintaining of emergency excavations. The permittee may make and maintain an emergency excavation for each emergency incident during an initial period of 7 days from the date of the report of the incident to HyD. Under section 10D of the LMPO, if the permittee anticipates that he has to make or maintain an emergency excavation for more than 7 days, the permittee shall apply to HyD for the issue of an excavation permit before the expiry of the initial period of the excavation.

8. In 2016, there were a considerable number of cases as shown in the table below where some permittees apparently have used emergency excavation permit for their planned works. It is considered such cases constitute as “abuses” of the emergency excavation permit.

| | Suspected Abuses of emergency excavation permit | Number of cases in 2016 |
|------------|---|--------------------------------|
| (a) | The start time reported by the permittee after the report of the emergency incident | |
| | (i) more than 2 days | 338 |
| | (ii) more than 7 days | 69 |
| (b) | Use EOs one after another for the same location/ successive locations by the same permittee | |
| | (i) within 1 day from the end of the preceding EO | 363 (involved 850 EOs) |
| | (ii) within 3 days from the end of the preceding EO | 417 (involved 998 EOs) |

9. HyD has repeatedly highlighted to the UUs in many occasions through various channels on not to abuse the use of emergency excavation permit which shall only be used for emergency incidents. However, the number of suspected abuses remains high and the situation reflects that there is a need to step up control on abuses of emergency excavation permit.

E. Sanctioning measure

10. Under the current sanctioning mechanism, sanctioning measure will be imposed on the responsible party combination when the overall DPL is continuously maintained at or above 4.0 for more than 1 month. The contractor of the responsible party combination will be temporarily removed from the pre-approved nominated contractor (NP) list under the relevant division of the relevant permittee. In this regard, any new application for nomination of NP submitted during the sanctioning period will not be automatically

approved, though any previously approved nomination will not be affected. However, new application should still be allowable, and may be approved provided that sound justifications and the required information are submitted to the satisfaction of the respective HyD Regional Offices. The situations described in the points above indicate that the present sanctioning mechanism requires revision so as to drive necessary improvements of the UUs in these areas.

III. Proposed Enhancements

A. Long outstanding rectifications of rejected permanent reinstatements

11. In view of the large backlog of long outstanding rectifications of rejected permanent reinstatements to be done by the responsible permittees, it is proposed to increase the risk weightings for DPL 2AA progressively in six stages in 15 months starting from the prolonged period of over 5 years as set out in the table below. The responsible permittees should take prompt actions to rectify the long outstanding rejected permanent reinstatements without further delay.

| Stages | Risk weightings for different prolonged periods of outstanding rectifications of rejected permanent reinstatements | | | | | |
|----------------------------|---|--|---|---|---|-----------------|
| | more than 9 months but not more than 1 year | more than 1 year but not more than 2 years | more than 2 years but not more than 3 years | more than 3 years but not more than 4 years | more than 4 years but not more than 5 years | over 5 years |
| Existing | 0.0003 | 0.0004 | 0.0006 | | | |
| Stage 1 1st – 3rd mth | 0.0003 | 0.0004 | 0.0006 | 0.0006 | 0.0006 | <u>0.002</u> |
| Stage 2 4th – 6th mth | 0.0003 | 0.0004 | 0.0006 | 0.0006 | <u>0.002</u> | <u>0.003</u> |
| Stage 3 7th – 9th mth | 0.0003 | 0.0004 | 0.0006 | <u>0.002</u> | <u>0.003</u> | <u>0.004</u> |
| Stage 4 10th – 12th mth | 0.0003 | 0.0004 | <u>0.002</u> | <u>0.003</u> | <u>0.004</u> | <u>0.005</u> |
| Stage 5 13th – 15th mth | <u>0.001</u> | <u>0.002</u> | <u>0.003</u> | <u>0.004</u> | <u>0.005</u> | 0.005 |
| Stage 6 Beyond 15th mth | <u>0.002</u> | <u>0.003</u> | <u>0.004</u> | <u>0.005</u> | 0.005 | 0.005 |

Remark: The changes over stages are underlined for easy reference.

B. Shallow depth services installed under public roads

12. A new DPL 2D is proposed to add in the demerit point system for reflecting the permittees' performance in compliance with minimum depth requirements. A demerit point will be assigned

- (a) for each confirmed case of non-compliance with minimum depth requirements notified by the respective HyD Regional Offices, and
- (b) for each successful prosecution case of non-compliance with minimum depth requirements notified by Enforcement Team which has not been notified by HyD Regional Offices before,

unless it is rectified to the satisfaction of the HyD within the initial rectification period of 9 months from the date of notification from HyD. The risk weightings for different prolonged periods of outstanding rectifications are set out in the table below.

| Risk weightings for different prolonged periods of outstanding rectifications of shallow depth services | | |
|--|---|--|
| 1st to 3rd month after the initial rectification period | 4th to 15th month after the initial rectification period | Beyond 15th month after the initial rectification period |
| 0.2 | 0.5 | 2.0 |

The details of workflow for this aspect are set out in **Appendix A**. This new DPL 2D will not apply to those shallow depth cases (i) identified before the implementation of this measure or (ii) with waivers from HyD.

DPL 2D = cumulative demerit point of the responsible party combination
contravened the minimum depth requirements

C. Delayed rectifications of damaged/deteriorated manhole and drawpit covers

13. A new DPL 2E is proposed to add in the demerit point system for reflecting permittees' performance in the rectifications of damaged/deteriorated manhole and drawpit covers. Mismatch of paving block patterns and graffiti on manhole and drawpit covers are not counted. It shall be calculated according to the following:

- For each case of damaged/deteriorated manhole and drawpit covers, the respective HyD Regional Office or their maintenance contractors will request the responsible permittee to carry out necessary rectifications to the satisfaction of HyD Regional Office within a specific time period as defined in the table below. The specific time period for rectification will begin on the next day after the day of notification. Where the responsible permittee fails to satisfactorily complete the rectifications within the specified period as set out below without any reason which is acceptable to the HyD Regional Office, a demerit point of “0.1” will be assigned for each case upon notification by the HyD Regional Office until the defect has been rectified to the satisfaction of the HyD Regional Office. The details of workflow for this aspect are set out in **Appendix B**.

| | Defects | Time period for rectification |
|------------|---|--|
| (a) | <p>Normal situation (involve –</p> <p>(i) replacement of the damaged/deteriorated manhole/drawpit cover</p> <p>(ii) repair/replacement of the damaged/deteriorated paving blocks in the manhole/drawpit cover</p> <p>(iii) repair/replacement of the damaged/deteriorated frame of the manhole/drawpit cover)</p> <p>For footpath or cycle track</p> <p>For carriageway other than Red Routes, Pink Routes and day-time ban roads</p> <p>For roads other than above</p> | <p>7 working days* from the day of notification from relevant HyD Regional Office or their maintenance contractors</p> <p>45 calendar days from the day of notification from relevant HyD Regional Office or their maintenance contractors</p> <p>A reasonable time period as determined by relevant HyD Regional Office</p> |
| (b) | Special situation | A reasonable time period as determined by relevant HyD Regional Office |

* For the purpose of the Demerit Point System, a working day means a day other than a Sunday or a General Holiday.

DPL 2E shall equally apply to the overall DPL of each party combination of the same permittee regardless of the involvement of the permittee's different divisions/different contractors. This new DPL 2E will not apply to those delayed rectifications of damaged/deteriorated manhole and drawpit covers happened before the implementation of this measure.

cumulative demerit point of the responsible permittee, irrespective of any
DPL 2E = different Division/contractor involved, for confirmed case of delayed
rectifications of damaged/deteriorated manhole or drawpit covers

D. Abuse of emergency excavation permit

14. It is not necessary to allow the permittee to input the "start date" for counting the initial period in the XPMS as the initial period of 7 days for the emergency opening (EO) for each emergency incident shall always be from the date of the report of the incident to HyD according to section 10C of the LMPO. HyD has made modification to the XPMS in May 2017 to reflect this. With the modification, permittee cannot input the "start date" for each EO, i.e. the system will automatically fill in the "start date" upon the report of an emergency incident.

15. In parallel, a new DPL 2F is proposed to add in the demerit point system for reflecting permittee's performance in the use of emergency excavation permit. It shall be calculated according to the following rationale.

Rolling 3-month cumulative demerit point of the responsible party
DPL 2F = combination for confirmed case of abuse of emergency excavation
permit revealed from audit inspections

- For each case on the abuse of use of emergency excavation permit as revealed by the Audit Inspection Team (AIT) of HyD, a demerit point of "1" shall be assigned. This new DPL 2F will not apply to those cases happened before the implementation of this measure.
- DPL 2F will apply to the following situations except with justifications provided to the satisfaction of AIT:

- (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 to Section 2, Chapter 4 of Excavation Permit Processing Manual.

- The details of workflow for this aspect are set out in **Appendix C**.

E. Sanctioning measure

16. It is proposed that once a party combination is sanctioned, the relevant contractor will not be approved as a NP in any new application for nomination of NP. The previously approved nominations will remain not affected. The conditions where sanctioning measure will be imposed are set out in the table below:

| | Conditions where sanctioning measure will be imposed | Sanctioning period |
|-----|--|--|
| (a) | Overall DPL at or above 4.0 | At least three months and until the overall DPL drops below 4.0. |
| (b) | Long outstanding rectifications of: <ul style="list-style-type: none"> (i) rejected permanent reinstatements with prolonged period over 2 years (see remark below) (ii) shallow depth services with prolonged period over 15 months after the initial rectification period | At least three months and until there is no rejected permanent reinstatement with prolonged period over 2 years, and no shallow depth service with prolonged period over 15 months after the initial rectification period, to the satisfaction of the relevant HyD Regional Office |

Remark: The item (b)(i) above will take effect from the Stage 6 onwards.

The details of workflow for this aspect are set out in **Appendix D**.

IV. Way Forward

17. The above proposed enhancements to maintain the effectiveness of the demerit point system will take effect 1 month after the notification from HyD. HyD will keep close monitoring the situation and make adjustments when necessary.

18. Members' view on the above proposed enhancements is hereby sought before its formal implementation.

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Research and Development Division, Highways Department

Workflow for Assigning Demerit Point for Delayed Rectification of Shallow Depth Services

1. For each case of shallow depth services observed, the respective HyD Regional Office will notify the responsible UU for joint site inspection.
2. Once rectifications are considered necessary at the joint site inspection, HyD Regional Office will request the UU by email to complete the rectifications within the initial rectification period of 9 months. If the UU consider that 9 months is not enough, they should notify with justification by email to HyD Regional Office within 9 working days from the date of the notification from HyD Regional Office for review. No request made beyond the above time limit will be entertained. HyD Regional Office will notify the UU by email of the result of their review.
3. Upon completion of the rectifications, the UU shall report to HyD Regional Office by email within 2 working days after the expiry of the specified time period for rectifications. HyD Regional Office will arrange inspections of the rectifications.
4. If (i) the UU fail to report completion of rectifications to HyD Regional Office within the time limit as stated in paragraph 3 above without any reason which is acceptable to HyD Regional Office or (ii) the UU fail to complete the rectifications to the satisfaction of HyD Regional Office within the specified time period without any reason which is acceptable to HyD Regional Office, HyD Regional Office will confirm the case as delayed rectification of shallow depth services with the UU by email.
5. The UU, who do not agree with the result, may notify with justification by email to HyD Regional Office within 9 working days from the date of the case confirmation from HyD Regional Office for review. No request made beyond the above time limit will be entertained. HyD Regional Office will notify the UU by email of the result of their review.
6. Where request for review has not been received within the specified time limit or HyD Regional Office maintains their decision after review, HyD Regional Office will notify the AIT by email to assign demerit point. The AIT will send notifications to the email addresses of the UU, which are registered in XPMS, when there is new record of demerit point for delayed rectification of shallow depth services.
7. Demerit point will be maintained until the defect has been rectified to the satisfaction of the HyD Regional Office as stated in paragraph 12 of the UTLC Paper No. 1/2017. In this regard, HyD Regional Office will notify the AIT once they consider that

the rectifications have been satisfactorily completed.

8. The UUs shall ensure that their contact details provided to HyD Regional Offices and in XPMS are always up to date. The updated contact details can be assessed in the main page of XPMS after login. The UUs shall inform HyD Regional Office once there is any update in their contact details. Not updated contact details should not be a ground for the denial of responsibilities.

Workflow for Assigning Demerit Point for Delayed Rectification of Damaged/Deteriorated Utility Manhole and Drawpit Covers

1. For each case of damaged/deteriorated utility manhole or drawpit covers observed, the respective HyD Regional Office or their maintenance contractor will notify the responsible UU by email. Under the current practice, Defect Notification Form will be used if notification is sent from the maintenance contractors of HyD.
2. The UU shall complete the rectifications within a time period which will be set according to the UTLC Paper No. 1/2017.
3. If permanent rectification is not possible owing to unavailability of the required paving blocks, the UU should notify with justification and proposal by email to HyD Regional Office within 2 working days from the date of the notification from HyD Regional Office or their maintenance contractor for agreement. No request made beyond the above time limit will be entertained. HyD Regional Office will notify the UU by email whether the proposal is acceptable or not. If the proposal is accepted, the UU shall complete the temporary rectifications according to their proposal within the original time period as stated in paragraph 2 above. However, the UU shall still need to complete the necessary permanent rectification within a time period set by HyD Regional Office.
4. Upon completion of the rectification, no matter it is temporary or permanent, the UU shall report to HyD Regional Office by email within 2 working days after the expiry of the specified time period for rectification. HyD Regional Office will arrange inspections of the rectifications.
5. If (i) the UU fail to report completion of rectifications to HyD Regional Office within the time limit as stated in paragraph 4 above without any reason which is acceptable to HyD Regional Office or (ii) the UU fail to complete the temporary or permanent rectifications to the satisfaction of HyD Regional Office within the specified time period without any reason which is acceptable to HyD Regional Office, HyD Regional Office will confirm the case as delayed rectification of damaged/deteriorated utility manhole and drawpit covers with the UU by email.
6. The UU, who do not agree with the result, may notify with justification by email to HyD Regional Office within 9 working days from the date of the case confirmation from HyD Regional Office for review. No request made beyond the above time limit will be entertained. HyD Regional Office will notify the UU by email of the result of their review.

7. Where request for review has not been received within the specified time limit or HyD Regional Office maintains their decision after review, HyD Regional Office will notify the AIT by email to assign demerit point. The AIT will send notifications to the email addresses of the UU, which are registered in XPMS, when there is new record of demerit point for delayed rectification of damaged/deteriorated utility manhole and drawpit covers.

8. Demerit point will be maintained until the defect has been rectified to the satisfaction of the HyD Regional Office as stated in paragraph 13 of the UTLC Paper No. 1/2017. In this regard, HyD Regional Office will notify the AIT once they consider that the rectifications have been satisfactorily completed.

9. The UUs shall ensure that their contact details provided to HyD Regional Office and in XPMS are always up to date. The updated contact details can be assessed in the main page of XPMS after login. The UUs shall inform HyD Regional Office once there is any update in their contact details. Not updated contact details should not be a ground for the denial of responsibilities.

Workflow for Assigning Demerit Point for Abuse of Emergency Excavation Permit

1. For each case on abuse of emergency excavation permit as revealed by the AIT, the AIT will send notifications to the email addresses of the responsible UU, which are registered in XPMS.
2. The UU, who do not agree with the result, may notify by email to the AIT within 9 working days from the date of the notification by the AIT for further review. No request made beyond the above time limit will be entertained. The AIT will notify the UU by email, of the result of their review.
3. Where request for review has not been received within the specified time limit or the AIT maintains their decision after review, the AIT will send email notifications to the UU, when there is new record of demerit point for abuse of emergency excavation permit.
4. The UUs shall ensure that their contact details in XPMS are always up to date. Not updated contact details should not be a ground for the denial of responsibilities.

Workflow for Sanctioning due to long outstanding rectifications of rejected permanent reinstatements with prolonged period over 2 years, or shallow depth services with prolonged period over 15 months after the initial rectification period

1. For each case of
 - (i) any long outstanding rectification of rejected permanent reinstatement with prolonged period over 21 months (i.e. 3 months before over the 24th month) or
 - (ii) any shallow depth services with prolonged period over 12 months after the initial rectification period (i.e. 3 months before over the 15th month),

XPMS will send notifications to the email addresses of the responsible UU, which are registered in XPMS, alerting the UU.

2. The UU, who anticipate that they will not able to complete the rectifications by the 24-month time limit with justification, may notify with justification by email to HyD Regional Office for review. Such submission shall be made at least 14 working days before the 24th month time limit for long outstanding rectification of rejected permanent reinstatement and 15th month time limit for shallow depth services. No submission made beyond the above time limits will be entertained. HyD Regional Office will notify the UU by email of the result of their review. If the justification is accepted by HyD Regional Office, HyD Regional Office will click the check box in the CN submission page in XPMS.

3. When there is any long outstanding rectification of rejected permanent reinstatement with prolonged period over 24 months, or shallow depth services with prolonged period over 15 months after the initial rectification period, sanctioning measure as stated in paragraph 16 of this UTLC Paper will be imposed. The AIT will send notifications to the email addresses of the UU, which are registered in XPMS. However, if the check box under the CN submission page for the corresponding case is clicked, that case will not be counted for the sanctioning mechanism.