

UTLC Paper No. 2/2015
Enhanced Measure for
Deterring Delayed Follow-up of Rejected Completion Notice

Purpose of the Paper

This paper aims at proposing enhanced measure on top of the current demerit point mechanism in respect of delayed rectification of rejected completion notice ('CN') to further strengthen the action to be taken against permittees who fail to carry out such rectification in a timely manner.

Background

2. To ensure that public roads are properly reinstated after affected by road excavations, Highways Department ('HyD') carries out inspection upon receiving CNs. Should there be any defect and/or unsatisfactory workmanship found in the backfilling to excavation and/or permanent reinstatement, the respective CN will be rejected for the permittee's remedial works to be carried out as necessary. However, for various reasons, some permittees are not enthusiastic to carry out the remedial works. In spite of repeated reminders from HyD through different channels such as monthly ROCC meetings and direct notification, significant amount of rejected CNs remain outstanding over the past few years.

3. In order to tighten up control to prevent undue delay in carrying out required remedial works, Excavation Permit Condition 39(D)/Emergency Excavation Permit Condition 37(D) was introduced and inserted into the set of permit conditions for excavation permits issued on or after 18 April 2011, specifying that, in case of CN rejection, 'the Permittee shall register and apply..., if required, within 2 months from the date of rejection... for a new permit to carry out such remedial works'. Should there be non-compliance with the above condition, with the establishment of the demerit point system (under trial in 2011 and formally launched in August 2012), a demerit point will be assigned to the permittee in combination with the relevant contractor. The performance of the permittee in combination with the relevant contractor in this aspect is quantified and monitored against the relevant demerit point level, namely DPL 2A. The definition of DPL 2A is shown below for easy reference:

$$\text{DPL 2A} = \frac{\Sigma \text{ Rolling 3-month cumulative demerit point of the responsible party combination contravened the relevant XP condition for delayed rectification of rejected permanent reinstatement} \times \text{Risk Weighting}}{\text{Total no of rejected Completion Notices assessed on that responsible party's permits within the 3-month period}}$$

where the risk weighting is a weighting factor set to be 1

Sanctioning measure will be imposed based on the overall demerit point level (i.e. summation of demerit point levels of all different aspects) in accordance with the details given in Paragraph 9 in Section 2, Chapter 9 of the Excavation Permit Processing Manual.

4. In respect of the implementation of the above measures, improvement of the

situation was observed. The following table shows the overall performance on applying new permits for rectification within 2 months from the date of the CN rejection.

Year of the rejected CN	Nos. of new permits applications within 2 months of CN rejections/Nos. of rejected CNs		
	Kowloon Office	Hong Kong Office	New Territories Region
2011	273/1085 (25.2%)	258/877 (29.4%)	149/571 (26.1%)
2012	560/1405 (39.9%)	582/1700 (34.2%)	482/1167 (41.3%)
2013	825/1864 (44.3%)	468/1053 (44.4%)	437/968 (45.1%)
2014	1272/2472 (51.5%)	393/727 (54.1%)	534/960 (55.6%)
2015 (Up to June)	557/1261 (44.2%)	196/369 (53.1%)	203/411 (49.4%)

Notwithstanding the above, the improvement is still insufficient and the rectification progress remains slow. The following table shows the amount of outstanding rejected CNs (status as at September 2015), in which there are outstanding cases back to 2011 or before.

Year of the rejected CN	Nos. of outstanding rejected CNs		
	Kowloon Office	Hong Kong Office	New Territories Region
2011 or before	173	193	109
2012	162	212	118
2013	279	67	104
2014	465	144	133
2015 (Up to June)	387	113	103
TOTAL	1466	729	567

5. For each excavation permit, since reporting of CN is a one-off operation, only one demerit point will be generated according to the current practice when delayed rectification is observed. Provided that the permittee puts aside a rejected CN without rectification at all, neither an amplified weighting factor will be applied nor any further demerit point will be generated for the same permit. The only one demerit point so generated will be automatically excluded from the calculation of DPL 2A when the respective rolling 3-month period has passed, even though the rejected CN may remain outstanding. Besides, as the sanctioning measure was only implemented since 2012, there is no retrospective action taken against outstanding cases rejected before then, which led to little motivation for permittees to rectify these outstanding cases which are not regarded as non-compliance cases.

Proposed Enhancements

6. To tackle the undesired situation discussed above, the existing DPL 2A is proposed to be modified and a new demerit point level (namely DPL 2AA) is proposed to be added to the overall demerit point level with respect to the following principles. The current sanction triggering level remains unchanged.

- (a) For purpose of the proposed DPL 2A, a rejected CN is regarded as outstanding unless and until: (i) a CN approval is subsequently obtained under the same permit; or (ii) any new permit is registered and applied, if required, for carrying out the required remedial works, regardless of the result of such application. The definition of DPL 2A shall remain the same, whereas the risk weighting is proposed to be amplified from 1 to 2 and from 2 to 3 provided that the rejected CN remains outstanding for more than 3 and 4 months respectively. Rectification made after the amplification would not lead to reduction of the corresponding risk weighting within the rolling 3-month period. Any rejected CN outstanding for more than 5 months from the rejection will be excluded from the DPL 2A calculation as it will be taken care by the new DPL 2AA as described in the following paragraph.
- (b) For purpose of the proposed DPL 2AA, a rejected CN is regarded as outstanding unless and until: (i) a CN approval is subsequently obtained under the same permit; or (ii) any new permit is registered and applied, if required, for carrying out the required remedial works, and a CN approval is obtained under such permit. Provided that a rejected CN is outstanding for more than 5 months from the rejection, a demerit point shall be assigned according to the following table to take into account the duration of the outstanding time. DPL 2AA shall equal the sum of all demerit points due to rejected CNs outstanding for more than 5 months from the rejection of the same permittee, and equally apply to the overall DPL of each and every party combination of the same permittee regardless of the involvement of the permittee's different divisions/contractors. Only successful rectification of the unsatisfactory reinstatement prescribed under the rejected CN would lead to elimination of the corresponding demerit point assigned.

Outstanding time of the rejected CN	More than 5 months but not more than 1 year	More than 1 year but not more than 2 years	More than 2 years
Demerit point of each outstanding rejected CN	0.0005	0.0008	0.0012

* Example: There are 200, 300 and 400 rejected CNs outstanding for more than 5 months, 1 year and 2 years from the date of the rejection involving different divisions/contractors of the same permittee P1 respectively. Thus, DPL 2AA for each and every party combination of P1 = $200 \times 0.0005 + 300 \times 0.0008 + 400 \times 0.0012 = 0.820$

7. The proposed introduction of the above amplified weighting for DPL 2A is to emphasise the need and importance of carrying out the required actions as soon as possible. Besides, to introduce incentive to permittees to follow up and rectify unsatisfactory reinstatement prescribed under their outstanding rejected CNs as soon as possible, a 'catch-all' approach is adopted in the proposed DPL 2AA so that each permittee should be accountable to all his outstanding rejected CNs. The demerit points for DPL 2AA are carefully selected to deter delayed follow-up of rejected CNs while allow opportunities for permittees to rectify the situation without unnecessary impact on their own operational needs. We estimated that with the current outstanding rejected CNs, the demerit points DPL 2AA for different members are ranging from 0 to 0.87 with unweighted average of 0.12. Therefore, it should not cause undue impact on the majority of the members who follow up on most of the rejected CNs within a reasonable time frame.

Way Forward

8. Members' support on the proposed enhancement measures described in paragraph 6 above is hereby solicited. Details of the proposed measures will be formulated for further consultation upon members' in-principle agreement.

9. We will closely monitor the effectiveness of the proposed enhancement measures in paragraph 6 above after the implementation and review the mechanism later if necessary.

October 2015

Research and Development Division, Highways Department

Qualifying notes to paragraphs 6 and 7:

1. After deliberating the proposed enhancement measures in UTLC meetings held in November 2015 and February 2016, the proposal in paragraphs 6 and 7 were revised and finalised in **Appendix**. It was agreed that the proposal would be implemented subject to a 6-month grace period and, upon review, any required amendment.
2. The first monthly reports were issued to major utility undertakings and government departments in early April 2016. Subsequent monthly reports will be issued, tentatively, in the first week of each reporting month.

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Proposed Enhancements

Proposed Modification to the Demerit Point System

In the calculation of the overall demerit point level ('DPL') for each Permittee-Division-Contractor combination, the existing DPL 2A is proposed to be modified and a new demerit point level, namely DPL 2AA, is proposed to be added. Other details of the current sanctioning mechanism (e.g. triggering level, abstention period, sanctioning measure, etc.) shall remain unchanged. Therefore, the proposed overall DPL is defined as follows:-

$$\text{Overall DPL} = \text{DPL 1} + \text{DPL 2}$$

where

- DPL 1 = Demerit point level arising from audit inspections [no proposed change]
 DPL 2 = Demerit point level arising from non-compliances identified on the administration of the XP as required under the XP conditions
 = DPL 2A + DPL 2AA + DPL 2B + DPL 2C
 DPL2A = Demerit point level arising from delayed rectification of rejected permanent reinstatement
 DPL2AA= Demerit point level arising from rejected permanent reinstatement of the Permittee, irrespective of any different Division/Contractor involved, remaining outstanding for prolonged period and not yet satisfactorily rectified
 DPL2B = Demerit point level arising from missing of certified as-built records submission upon request [no proposed change]
 DPL2C = Demerit point level arising from overdue submission of test certificate/report after CN [no proposed change]

(a) **Proposed DPL 2A**

For purpose of the proposed DPL 2A, a rejected CN is regarded as outstanding unless and until: (i) a CN approval is subsequently obtained under the same permit; or (ii) any new permit is registered and applied, if required, for carrying out the required remedial works, regardless of the result of such application.

The proposed DPL 2A is to be calculated according to the following formula. Provided that a rejected CN is outstanding for more than 2 months but not more than 9 months from the date of rejection, a demerit point shall be assigned and a corresponding risk weighting shall be applied. This risk weighting shall be amplified according to the duration of the outstanding time as shown in the following table as to emphasise the need and importance of carrying out the required actions as soon as possible. Late application of new permit for rectification or late CN approval obtained would not lead to cancel nor reduction of the corresponding risk weighting. Any rejected CN outstanding for more than 9 months from the rejection will be excluded from the DPL 2A calculation as it will be taken care by DPL 2AA as described in paragraph (b) below.

$$DPL\ 2A = \frac{\sum \left\{ \begin{array}{l} \text{Rolling 7-month cumulative demerit point of the responsible} \\ \text{party combination contravened the relevant XP condition for} \\ \text{delayed rectification of rejected permanent reinstatement} \\ \times \text{ corresponding Risk Weighting} \end{array} \right\}}{\text{Total number of rejected permits with rejected permanent reinstatement} \\ \text{assessed on that responsible party's permits within the 7-month period}}$$

Outstanding time for submitting application for new permit to carry out remedial works	Risk weighting
More than 2 months but not more than 3 months	1
More than 3 months but not more than 5 months	1.1
More than 5 months but not more than 6 months	1.2
More than 6 months but not more than 7 months	1.3
More than 7 months but not more than 8 months	1.4
More than 8 months but not more than 9 months	1.5

A demonstration is shown in the enclosed **Annex**.

(b) Proposed DPL 2AA

For purpose of the proposed DPL 2AA, a rejected CN is regarded as outstanding unless and until: (i) a CN approval is subsequently obtained under the same permit; or (ii) any new permit is registered and applied, if required, for carrying out the required remedial works, and a CN approval is obtained under such permit.

The proposed DPL 2AA is to be calculated according to the following formula. Provided that a rejected CN is outstanding for prolonged period (i.e. more than 9 months from the date of rejection), a demerit point shall be assigned and a corresponding risk weighting shall be applied. This risk weighting shall be amplified according to the duration of the outstanding time as shown in the following table as to emphasise the need and importance of carrying out the required actions as soon as possible. To introduce incentive to permittees to follow up and rectify unsatisfactory reinstatement prescribed under their outstanding rejected CNs as soon as possible, a ‘catch-all’ approach is adopted. In this regard, DPL 2AA shall equally apply to the overall DPL of each and every party combination of the same permittee regardless of the involvement of the permittee’s different divisions/different contractors. Only successful rectification of the unsatisfactory reinstatement prescribed under the rejected CN would lead to elimination of the corresponding demerit point assigned.

$$DPL\ 2AA = \sum \left\{ \begin{array}{l} \text{Cumulative demerit point of the responsible permittee,} \\ \text{irrespective of any different Division/Contractor involved,} \\ \text{for rejected permanent reinstatement remaining} \\ \text{outstanding for prolonged period and not yet satisfactorily} \\ \text{rectified} \times \text{ corresponding Risk Weighting} \end{array} \right\}$$

Prolonged period	Risk weighting
More than 9 months but not more than 12 months	0.0003
More than 12 months but not more than 24 months	0.0004
More than 24 months	0.0006

A demonstration is shown in the enclosed **Annex**.

(c) Grace Period

A grace period starting from March 2016 for a period of 6 months is proposed to allow concerned parties to get familiar with the proposed modification. During the grace period, the existing demerit point system will continue to operate as usual without incorporating the proposed modification, while the proposed DPL calculation will be manually issued to the relevant parties on monthly basis for reference and review. Regular reviews on the overall performance and individual performance of all combinations and the effectiveness of the proposed modification (e.g. choices of the proposed risk weighting factors) will be carried out. Subject to the review results, the proposed modification will be formally implemented upon the expiry of the grace period.

Use of Bituminous Materials for Reinstatement in Concrete Carriageway

Some project proponents may require carrying out works at different locations over a wide area with need of multiple excavation permits. Sometimes, repeated excavations programmed at the same location at different time may be required due to special need of the project for overriding benefit of the public and the traffic.

In the above regard, other than following the current procedures during the permit application process (e.g. coordination of works, application for repeated opening waiver, etc.), the project proponent, having obtained an excavation permit and carried out his excavation under such permit, is required to carry out permanent reinstatement to the excavation for completion. He is not allowed to complete his excavation by temporary reinstatement unless and until a fact is established and agreed by the respective HyD Regional Office that there will be another excavation subsequently and immediately carried out by him or another party at the same location under another issued excavation permit, and that he has committed or has agreed with that party (as the case may be) that permanent reinstatement will be carried out at the end for overall completion.

Nonetheless, the project proponent may sometimes encounter difficulties in balancing the need of upholding the above requirements on one hand and the need of the public and the traffic on the other hand. There could be a scenario that the project proponent has to carry out repeated excavations in concrete carriageway with time gap in between. In this regard, provided that the initial excavation should be permanently reinstated (i.e. concrete pavement should be reconstructed), there would be repeated impact on both the public and the traffic upon the subsequent excavation to be carried out on the reconstructed concrete pavement. For the above scenario, the use of bituminous materials for the reinstatement to the initial excavation may be more beneficial to the public and the traffic in overall as the impact due to breaking up of the reconstructed pavement could be significantly reduced. A new option for reporting CN is hereby proposed with respect to the above scenario as follows.

For excavation in concrete carriageway, provided that the permittee is able to justify a genuine need of another excavation to be subsequently but not immediately carried out in his

overall project planning with exercise of reasonable judgment and effort and with due regard to the public and the traffic; has completed the reinstatement, notwithstanding the use of bituminous materials instead of concrete materials, with the serviceability up to all required standards, and commits that the subsequent excavation will be carried out and completed by the originally required permanent reinstatement within a reasonable period but not more than 9 months, he may submit his justification and commitment together with any relevant substantiation as part of his CN submission for consideration of the respective HyD Regional Office.

Upon receipt of the CN submission, the respective HyD Regional Office will assess the submitted justification with reference to the submitted substantiation and regard to various factors including but not limited to the following:

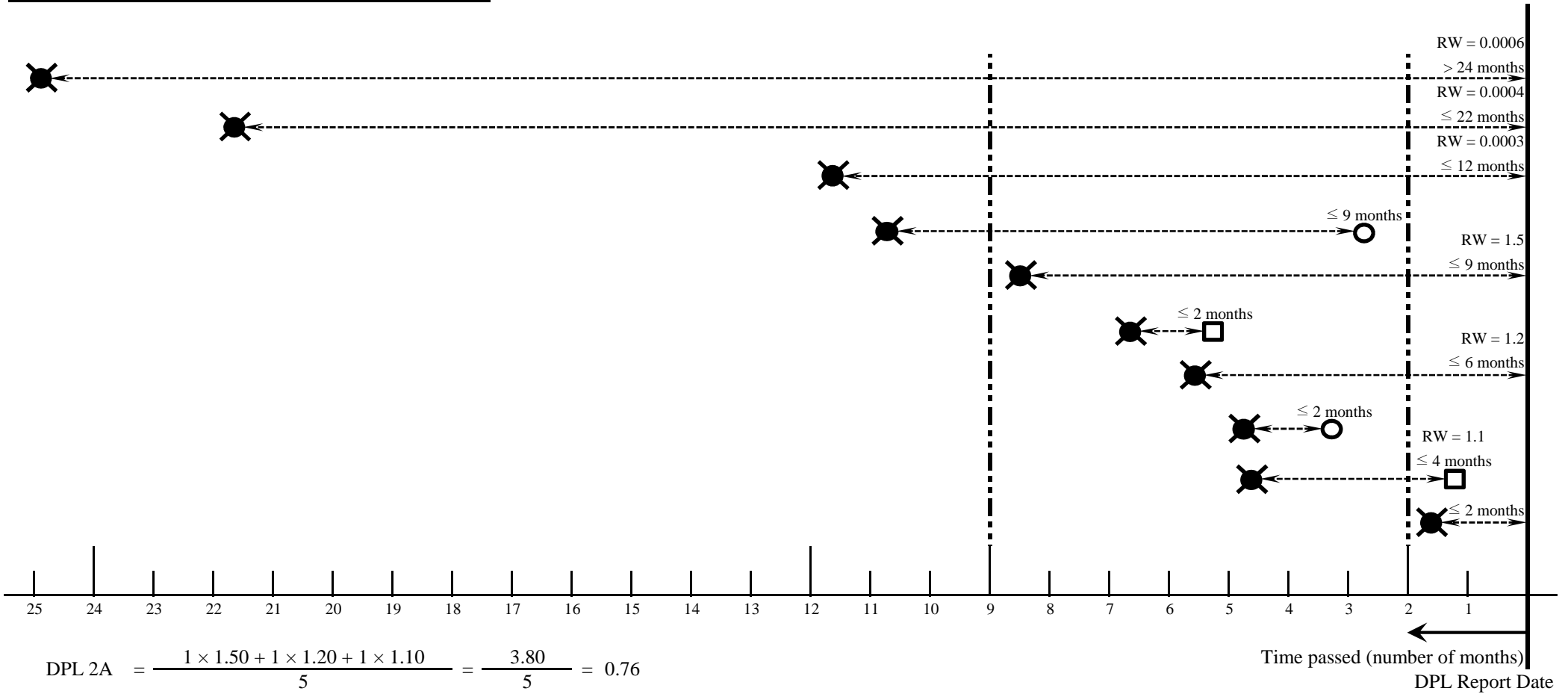
- Whether or not there is a genuine need of another excavation to be subsequently but not immediately carried out at the same location in the overall project planning of the permittee who should have exercised reasonable judgement and spent reasonable effort to minimise impact on the public and the traffic;
- Whether or not there will be substantial impact on the public and the traffic if the subsequent excavation will require breaking up of concrete pavement at the same location;
- Whether or not there will be substantial reduction in the impact on the public and the traffic if the subsequent excavation will require breaking up of bituminous pavement but not concrete pavement at the same location;
- Upon site inspection, whether or not the reinstatement, notwithstanding the use of bituminous materials instead of concrete materials, is free of any other defect and unsatisfactory workmanship;
- Whether or not the subsequent excavation has been scheduled for completion within a reasonable period but not more than 9 months.

Should the respective HyD Regional Office consider the submission appropriate, the CN will neither be accepted nor rejected, but frozen until the satisfactory completion of the permanent reinstatement under the permit of the subsequent excavation, or until the expiry of the committed time, whichever is earlier. Frozen CN is not regarded as rejected CN for purpose of DPL 2A and DPL 2AA. Upon unfrozen, the respective HyD Regional Office will arrange site inspection. The unfrozen CN will be accepted or otherwise rejected subject to the inspection result of the permanent reinstatement under the permit of the subsequent excavation.

The above reinstatement option is proposed to be implemented with immediate effect. The Excavation Permit Management System will be modified with details to be separately announced. Meanwhile the modification is in process, concerned parties who select this option should submit the required information to the respective HyD Regional Office in writing or by fax. Nonetheless, prior to the completion of the modification of the System, any CN acceptable to be regarded as frozen CN will still be displayed as rejected CN in the System. However, the frozen status will be remarked in the System for indication and neither DPL 2A and DPL 2AA will be operated during the frozen period.

Note: Notwithstanding the above proposed reinstatement option, there is no exemption to the repeated opening restriction. If waiver is required, application should be submitted for approval of the respective HyD Regional Office.

Illustration of Proposed DPL 2A and DPL 2AA



$$DPL\ 2A = \frac{1 \times 1.50 + 1 \times 1.20 + 1 \times 1.10}{5} = \frac{3.80}{5} = 0.76$$

$$DPL\ 2AA = 1 \times 0.0006 + 1 \times 0.0004 + 1 \times 0.0003 = 0.0013$$

Outstanding time for new permit application or CN approval		Weighting factor for DPL 2A
More than	Not more than	
2	3	1.00
3	4	1.10
4	5	1.10
5	6	1.20
6	7	1.30
7	8	1.40
8	9	1.50

Outstanding time for CN approval		Weighting factor for DPL 2AA
More than	Not more than	
9	12	0.0003
12	24	0.0004
24	-	0.0006

Legend

- CN Submission by the Permittee - with subsequent CN Approval by the Authority
- CN Rejection by the Authority
- New permit application by the Permittee by:
 - either - for 'Rectification Permit' (normal type XP) as 'new permit' complete the task of 'Permit Application Submission'
 - or - for 'Small Scale Works Job' (if allowed by the Authority) as 'new permit' complete the task of 'SSW Job Registration'
- Outstanding time