

LCQ10: Work safety in confined spaces

Following is a question by the Hon Kwok Wai-keung and a written reply by the Secretary for Labour and Welfare, Mr Chris Sun, in the Legislative Council today (March 20):

Question:

It has been reported that in a fatal industrial accident which happened at Tsim Sha Tsui Austin Road West on September 24 last year, two male workers in their sixties were suspected to have been poisoned to death after inhaling a high concentration of hydrogen sulphide in an underground cooling main. In this connection, will the Government inform this Council:

(1) of the measures in place to prevent the recurrence of similar industrial accidents in confined spaces; whether the authorities will conduct regular inspections of workplaces where confined space works are carried out, so as to ensure the protection of workers' occupational safety and health;

(2) given that the Labour Department is revising the "Code of Practice – Safety and Health at Work in Confined Spaces" (CoP), of the relevant work progress; how the Government ensures that the industry and workers will practically implement the CoP upon completion of the revision work;

(3) whether it will consider subsidising the industry to adopt advanced technology and equipment for confined spaces works, such as installing closed-circuit television cameras, continuous air quality checking systems and locking alarm systems in large-scale confined spaces, as well as introducing machines that can replace workers to carry out works in confined spaces, so as to minimise the risk of accidents; and

(4) whether it will consider enacting legislation to require that tenders involving confined spaces works must specify clearly that the relevant works involve working in confined spaces, to make it mandatory for contractors to comply with the CoP, and to institute prosecutions against contractors or subcontractors who are non-compliant with the CoP?

Reply:

President,

The Labour Department (LD) is highly concerned about the fatal industrial accident that occurred at a construction site on Austin Road West in September 2023. The accident caused the death of two workers. The LD is deeply saddened by the accident and once again expresses our deepest sympathy to the bereaved families.

My reply to the Hon Kwok's question is as follows:

(1) Upon notification of the accident, the LD's officers immediately commenced on-site investigation and will complete the investigation as soon

as practicable. The LD is following up on the accident seriously. Shortly after the accident, the LD issued suspension notices to stop the works concerned. The duty holders need to submit safe method statements for the LD's consideration and the work can only be resumed upon the LD's permission. If there is adequate evidence, the LD will prosecute against those having violated the occupational safety and health (OSH) legislation.

According to the information available at the moment, the accident involved extremely serious OSH contraventions, i.e. involving extremely high culpability or severe negligence and leading to serious consequences of the death of two workers. The LD is working closely with the Department of Justice and actively considering to prosecute against duty holders through indictment with a maximum fine of \$10 million and imprisonment for two years according to the newly amended OSH legislation. Moreover, the Police have charged two persons involved with manslaughter.

The LD is very concerned about OSH in confined space work and carries out surprise inspections of workplaces carrying out confined space work from time to time and checks relevant work processes and equipment to ensure workers' OSH is safeguarded. After the accident, the LD launched a two-week special inspection exercise from September 25 to October 6, 2023 targeting the confined space work in construction sites over the territory to curb unsafe work practices and ensure the safety of workers. During the exercise, the LD's officers paid special attention to check whether the duty holders have complied with the requirements on confined space work, including conduction of risk assessments, formulation of appropriate safe work systems, provision of personal protective equipment, etc. During this special inspection exercise, the LD inspected 190 construction sites, issued one improvement notice and 88 written warnings.

(2) In light of the past experience gathered from the investigation of accidents involving confined space works, the LD is revising the "Code of Practice – Safety and Health at Work in Confined Spaces" to strengthen the protection of the safety and health of relevant workers. The LD consulted relevant stakeholders on this matter in November and December 2023, and refined the content of the Code according to the opinions received. Advice from the Department of Justice is being sought. We expect the revision will be completed by the first half of 2024 and the revised Code will be implemented as soon as possible after a suitable time frame for necessary preparation by the industry.

The LD has all along adopted the combination of legislation and enforcement, education and training, and publicity and promotion to prevent the occurrence of work accidents. On the education, publicity and promotion front, the LD organises seminars and OSH training courses regularly, together with various promotional activities, to raise stakeholders' OSH awareness in confined spaces. Moreover, in OSH inspections, the LD will pay attention to the qualification of confined space workers and remind them to cooperate with contractors and employers by implementing OSH measures related to confined spaces to avoid endangering themselves and others.

(3) The LD has all along encouraged the proprietors or contractors to use new

technology, as far as reasonably practicable, thus avoiding workers from entering confined spaces for work, e.g. inspecting the internal part of a sewer by remote control monitoring, using suitable equipment and tools to perform sampling and cleaning work from outside of the confined space, etc.

Since 2022, the LD and the Occupational Safety and Health Council have rolled out the "OSH Star Enterprise – Confined Space Safety Accreditation Scheme". The Scheme provides a series of free-of-charge services to the participating organisations, including training courses related to confined space work, OSH consultancy services and safety management certification. Moreover, the scheme provides subsidies for purchasing safety equipment suitable for working in confined spaces such as safety rescue harnesses, tripods and winches, and approved breathing apparatus to heighten OSH level of the participating organisations.

(4) The Factories and Industrial Undertakings (Confined Spaces) Regulation (Confined Spaces Regulation) has a clear definition of confined space which means any place in which, by virtue of its enclosed nature, there arises a reasonably foreseeable specified risk. Moreover, the Confined Spaces Regulation stipulates that the proprietors or contractors shall take safety precautions, including appointing a competent person to carry out an assessment of the working conditions in the confined space and make recommendations on necessary measures to be taken, providing an effective forced ventilation, using approved breathing apparatus and safety harness when conducting underground pipework, formulating and implementing appropriate procedures to handle emergency situations, etc. Hence, no matter whether a tender indicates confined space work involved or not, the relevant proprietors, contractors and duty holders must comply with these legal requirements.

The LD has issued the "Code of Practice – Safety and Health at Work in Confined Spaces" to provide practical guidance and technical information in relation to confined space works for proprietors, contractors and relevant persons of industrial undertakings. As each workplace has its individual uniqueness, proprietors or contractors might not be able to adopt the recommendations and safety guidance in the Code fully. Therefore, it may not be reasonable and practicable to require the proprietors or contractors to comply with the Code compulsorily.

Nevertheless, the Code is issued by the Commissioner for Labour under section 7A of the Factories and Industrial Undertakings Ordinance. The Code has a special legal status. Failure to observe any provision of the Code may be taken by a court in criminal proceedings as a relevant factor in determining whether or not a person has breached the relevant safety and health legislation under the Ordinance.