

**URBAN PLANNING AND
ENVIRONMENTAL LAW
QUARTERLY**
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If the government were remotely serious about addressing our waste problem and environmental damage from, particularly, discarded plastic drink containers, it would have introduced container – deposit legislation years ago. In this edition, we consider key elements of container - deposit schemes operating in other countries.

The Editors

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HONG KONG MUST INTRODUCE CONTAINER-DEPOSIT LEGISLATION

Waste disposal problem

It is well known that Hong Kong has a serious environmental (and, indeed, land use) problem as a result of the enormous amount of waste we generate. In 2015, we committed to land-fill more than 3.5 million tonnes of municipal waste. As is also well known, our land-fill sites will reach capacity by next year. Plastic is the most prevalent form of waste; more than 2000 tonnes of plastics is discarded daily.

Of plastic materials, plastic beverage (and other) containers comprise the main component. These containers also make up the largest proportion of plastic (and other) waste wrongfully disposed of, such as being dumped in public areas, the sea and in country parks.

Whilst an informal recycling system has been moderately successful in capturing and recycling metal containers – especially aluminium cans – and a modest glass container recycling programme was introduced by the Environmental Protection Department in November, 2017 (but more than 90% of glass waste still goes to landfill!), virtually all plastic containers are not recycled. For example, in 2014 only 5% of plastic products were recycled (c.f. 25% in 2005).

But the point to be made, and for the EPD to accept and address, is that introduction of a container-deposit scheme is essential and urgently needed if we are to increase significantly the recycling rate for plastic (as well as glass and metal, but we are focussing on plastic) beverage containers.

Container-deposit refund

Since British Columbia enacted the World’s first container-deposit legislation in 1970 to implement a system of a beverage container-deposit/return and refund (“**CDR**”), numerous governments elsewhere have implemented variants of CDR.

A CDR is a statutorily implemented scheme. The scheme’s essential elements are:

- a cash deposit is levied on the drink-container to encourage recycling of the container
- the purchaser pays the deposit as part of the price of the drink
- the deposit is partly or fully refunded on delivery of the empty container to an accredited retailer, designated specialist recycle depot or automated receipt point, (also known as “reverse vending machines” (“**RVM**”))

In some CDRs, the deposit is not fully refunded to the purchaser but instead is paid to the retailer/depot to defray the cost of collecting and recycling the used containers, or is paid to the government as a form of tax to cover the cost of the CDR. Generally, though, the full amount of the deposit (or, at least, a substantial part of it) is paid to the consumer at the point of collection of the used container.

As mentioned, the method of collecting recyclable containers and paying the deposit refund varies between CDRs. As well, each CDR limits the categories of containers accepted for recycling.

Some CDRs refund the deposit to the seller/retailer not the purchaser. Examples of several CDRs are considered below to compare the different key elements of CDRs.

CDR history

It is generally thought that the US state of Oregon implemented the first CDR, when in 1971 it legislated the now famous “Oregon Bottle Bill”. However, a year earlier, Canada’s British Columbia province legislated the first mandatory CDR for soft drinks and beer containers. Today, all of Canada’s provinces and territories (except for Nunavut) have legislated to establish CDRs.

In the United States, nine other states eventually followed Oregon’s lead and introduced CDRs. Unfortunately, that leaves 40 other states which have not done so.

The state of South Australia was the first Australian jurisdiction to introduce a CDR when the *Beverage Container Act* was enacted in 1975. It was not until 2012 that the Northern Territory implemented Australia’s second CDR. Today, all States and Territories — except for Victoria - have introduced or have firm plans to introduce CDR legislation.

More broadly, versions of CDR have been implemented in at least 24 countries, such as Belgium, Estonia, Fiji, Israel and the United Kingdom.

Examples of key elements and recovery rates of CDRs

Canada

British Columbia

The original CDR covered only carbonated soft drinks and beer containers. Later, the deposit legislation expanded to include any ready-to-serve beverage sold in a container that is sealed by its manufacturer (e.g. bottled water, juice, new age drinks, and alcohol), excluding milk and milk substitutes. There are currently two stewardship agencies in BC that carry out deposit-refund obligations on behalf of beverage producers: Encorp Pacific (for non-alcoholic beverages, wine, spirits, some ciders and coolers, and some imported beer) and Brewers Distributor Ltd. (BDL) (for domestic coolers, beers, and ciders). In 2017, BC's CDR recovered over 1 billion containers for an overall return-rate of 75.8%.

Saskatchewan

Established in 1988, Saskatchewan's deposit-return program (SARCAN) applies to all ready-to-serve beverage containers, except those for meal replacements, or dietary supplements. SARCAN also began taking milk and milk substitutes on April 1, 2017. SARCAN Recycling is responsible for administering the program and operates under contract to the Saskatchewan Ministry of Environment. In fiscal 2014 - 2015, a total of 405.6 million beverage containers were returned to SARCAN recycling depots for an overall container return rate of 87%. This CDR is noteworthy in that it accepts a wider range of containers than most, if not all, CDRs.

New Brunswick

This province’s CDR was implemented in 1992 and covers all ready-to-drink, non-refillable beverage containers of 5L and under, including soft-drinks, beer, wine, spirits, flavoured waters, fruit juices, vegetable juices, and low alcohol drinks. Containers for milk and milk products (and substitutes) as well as processed apple cider are exempt. This CDR is somewhat unique in that it operates under a “half-back” model where only half of the original deposit is refunded to the consumer when a container is returned for recycling. The un-refunded portion of the deposit is used to cover the costs of administering the scheme and part of it also goes towards the province's Environmental Trust Fund, which is used for environmental conservation and other provincial initiatives aimed at reducing waste. In 2014, New Brunswick's recycling rate for non-refillable containers was 73%.

USA

Oregon

The only exceptions to containers recyclable under Oregon’s CDR are wine, liquor, dairy or plant-based milk, meal replacement beverages, and infant formula containers. Included are bottles, cans, or jars made of glass, metal, or plastic. Redemption rate has been as high as 94%, but dropped to 83% by 2005 and to 64.5% in 2015. The decline ultimately triggered increase in the deposit to 10¢, effective April 2017. Redemption limit per person, per day is 144 containers (50 containers for stores less than 5,000 sq ft (465 m²)).

Vermont

The *Beverage Container Law* of 1973 established Vermont’s CDR. The scheme covers beer, malt, soda, mixed wine drinks, liquor containers and covers bottles, cans, jars, or cartons composed of glass, metal, paper, plastic, or a combination of these. Deposit is 5¢ or 15¢ for a liquor bottle; redemption rate is 85%.

Michigan

The *Beverage Container Act* of 1976 established Michigan's CDR for containers of beer, pop, carbonated and mineral water and wine coolers; canned cocktails are also accepted. The scheme applies to containers made of metal, glass, paper, or plastic under 1 U.S. gal (3.79 L). Ninety-seven percent redemption rate Escheated deposits are divided as follows: 75% to the State Cleanup and Redevelopment Trust Fund, and 25% returned to retailers.

In 2017, the recovery rates for beverage containers in the CDR states was significantly better than in the non-CDR states:

- aluminium – 84% (CDR) 39% (non-CDR)
- plastic – 48% - 20%
- glass – 65% - 25%

Australia

South Australia

South Australia's recycling history stretches back to the late 19th century when beer and soft drink companies operated their own informal recycling scheme, whereby customers returned containers which were refilled. They used refillable bottles to enable this voluntary scheme to work.

South Australia's CDR commenced operation in January 1977, covering metal, plastic and glass beverage containers (but not wine or spirit containers). The initial deposit of 5¢ was increased to 10¢ in 2008.

Under South Australia's scheme, recyclable containers are taken to licensed collection depots (historically known as "marine dealers") which refund the deposits. The dealers earn revenue by on-selling the containers for re-use, or to be reconstituted as new containers.

The scheme has wide public support and has been generally very effective in reducing litter and other environmental problems caused by dumping of used beverage containers.

In 2005, a total of 423 million containers were recycled in SA. This increased to 613 million in 2018. In 2016-2017, the recovery rates for different categories of containers were:

- aluminium – 84%
- plastic – 74%
- glass – 85%

New South Wales

CDR was not introduced in New South Wales until December 2017. Their scheme – known as *Return and Earn* – has the following key features:

- most NSW beverage containers between 150 millilitres and 3 litres in volume are eligible for a 10-cent refund, with some exceptions
- beverage suppliers (manufacturers, importers, wholesalers or retailers) that first supply eligible drink containers in NSW are responsible for funding refunds and associated Scheme costs
- more than 500 collection points will be established by the Network Operator, TOMRA Cleanaway, and rolled out across the State, including priority collection areas in metropolitan and regional locations
- the state has been divided into seven zones, and the Network Operator is responsible for meeting collection targets in each zone
- collection points will include more than 800 RVMS, and may also include local shops, depot sites and recycling centres.

Croatia

Since 2006, a refundable deposit of 0.5 HRK (Croatian Kuna) has been levied on non-refillable containers (except dairy products) of a minimum volume of 200ml. Retailers are obliged to take-back containers. Collection is mostly manual, although some collection occurs through RVMS. Retailers must sort containers by material type (PET bottles, aluminum/steel cans, and glass bottles). The scheme is government operated and there is a collection target of 95%. In 2015, the scheme covered up to 90% of all non-refillable containers placed on the Croatia market.

Czech Republic

In the Czech Republic most beer is sold in returnable glass bottles that carry a CZK 3 deposit. These bottles are collected by shops and supermarkets. RVMS have mostly replaced human staff. There is also a CZK 100 deposit on plastic beer crates with a 20 bottle capacity. Most RVMS accept an entire crate full of empty bottles, returning CZK 160. There is no deposit on other containers.

Estonia

Estonia has had a CDR since 2005. The scheme covers one-time and refillable containers for water, beer, cider, juice, juice concentrates, nectars, and low-ethanol alcoholic beverages (up to 6% volume). It does not include containers of strong alcoholic beverages -- such as wine or vodka -- glass jars, or Tetra Paks. The deposit is €0.10 on all metal, plastic, and glass beverage containers of all sizes. The CDR is operated by Eesti Pandipakend OU, which is a producer responsibility organisation representing the Estonian Association of Brewers, the Association of Producers of Soft Drinks, the Association of Importers of Soft Drinks and Beer, and the Estonian Retailers Association. In 2015, 90% of all

PET bottles, 70% of all aluminum cans and 87% of all glass bottles sold in Estonian were returned for recycling and/or reuse. The overall return rate was 82.3%.

Conclusion

These are just a few examples of CDRs operating in other countries. Without exception, all CDRs reduce significantly the volume of beverage containers discarded in the environment or dumped in landfills. There is the added benefit that, by and large, collected containers are reused or productively applied in some way or another.

Surely – in the year 2020 – our administrators can see the obvious urgent need for a Hong Kong CDR!

TOWN PLANNING

Approved Tseung Kwan O Outline Zoning Plan amended

The Town Planning Board announced amendments to the Tseung Kwan O Outline Zoning Plan (“**OZP**”).

The amendments mainly involve the rezoning of a site at Chiu Shun Road from an area shown as "MTR Pak Shing Kok Ventilation Building" and "Green Belt" to "Residential (Group A)8" to allow for proposed residential development, and rezoning of a strip of land along Chiu Shun Road from an area shown as "MTR Pak Shing Kok Ventilation Building" to "Road" to form part of the future footpath. Amendments were also made to the Notes and Explanatory Statement of the OZP to update general information regarding various land use zonings and the planning area.

The draft amended Tseung Kwan O OZP No. S/TKO/27 is now available for public inspection.

[*Town Planning Board Press Release, 19/06/2020*]

Approved Tung Chung Town Centre Area Outline Zoning Plan amended

The Town Planning Board announced amendments to the Tung Chung Town Centre Area Outline Zoning Plan (“**OZP**”).

The amendments involve the rezoning of a site currently occupied by the Tung Chung Traction Substation and its adjoining government land from "Other Specified Uses" annotated "Traction Substation cum Portal" ("OU(Traction Substation cum Portal)"), "Government, Institution or Community" ("G/IC") and areas shown as "Road" to "Residential (Group A)8" for proposed residential development. There will also be rezoning of a strip of land along Man Tung Road from "OU(Traction Substation cum Portal)" to an area shown as "Road" to reflect the existing roadside amenity area.

The draft amended Tung Chung Town Centre Area OZP No. S/I-TCTC/23, is now available for public inspection.

[*Town Planning Board Press Release, 19/06/2020*]

Approved Tai Tong Outline Zoning Plan amended

The Town Planning Board announced amendments to the Tai Tong Outline Zoning Plan (“**OZP**”).

The amendments will implement Stages 1 and 2 of the Yuen Long South (“**YLS**”) Development under the Revised Recommended Outline Development Plan of the "Planning and Engineering Study for Housing Sites in YLS - Investigation" (the “**YLS Study**”). The amendments involve rezoning a site to the east of Kiu Hing Road from "Other Specified Uses" annotated "Rural Use" (“**OU(RU)**”) and "Agriculture" to "Government, Institution or Community (1)" to support the YLS Development, rezoning of a site to the east of Kiu Hing Road from "OU(RU)" to "Residential (Group D)". There will also be rezoning of a site to the east of Pak Sha Shan Road from "OU(RU)" to "Village Type Development(1)" for re-provisioning of village houses affected by government projects.

The draft Tai Tong OZP No. S/YL-TT/17, with the amendments is now available for public inspection.

[*Town Planning Board Press Release, 10/07/2020*]

Three approved outline zoning plans referred back for amendment

The Town Planning Board announced on 4 September 2020 that the Chief Executive in Council (“**CEC**”) has referred the Board’s approved Lau Fau Shan and Tsim Bei Tsui Outline Zoning Plan (“**OZP**”), the approved Tin Shui Wai OZP and the approved Kwu Tung South OZP to the Board for amendment to reflect the latest land use proposals.

Each OZP, incorporating the respective amendments, will be exhibited for public inspection.

The Lau Fau Shan and Tsim Bei Tsui OZP and the Tin Shui Wai OZP were last approved by the CEC in October 2018, and the Kwu Tung South OZP was last approved by the CEC in January 2018.

[*Town Planning Board Press Release, 04/09/2020*]

LEGISLATION DIGEST

Legislative Amendments to implement the latest requirements under the International Convention for the Prevention of Pollution from Ships

The Secretary for Transport and Housing has made the regulations of (a) the Merchant Shipping (Prevention of Oil Pollution) (Amendment) (No.2) Regulation 2020; (b) the Merchant Shipping (Prevention of Pollution by Garbage) (Amendment) Regulation 2020; and (c) the Merchant Shipping (Prevention of Air Pollution) (Amendment) (No.2) Regulation 2020, in order to implement the latest requirements under the International Convention for the Prevention of Pollution from Ships (“**MARPOL**”) of the International Maritime Organisation (“**IMO**”) relating to the use of electronic record books on board ships and the fuel efficiency requirement for certain ships navigating in Polar Waters.

MARPOL seeks to protect the marine environment and minimise pollution arising from ship operations and set out the requirements to prevent pollution by oil, garbage and air pollutants from ships.

(i) Use of electronic record books on board ships

This legislative amendment seeks to amend Annexes I, V and VI of the MARPOL to allow the use of electronic record books as an alternative to traditional hard copy record books and allow administrations to accept electronic record books, which are deemed to have same status as those in paper form. The amendments will come into force globally on 1 October 2020.

To allow the use of electronic record books as an alternative to hard copy record books is expected to benefit the shipping industry by saving time and costs in the processing and transmission of paper documents in ship operations and also corresponding to the broader trend of transacting shipping business by electronic means.

(ii) Application of Energy Efficiency Design Index requirements to ships having ice-breaking capabilities

The IMO established a technical measure, namely the Energy Efficiency Design Index (“**EEDI**”) to reduce pollution caused by fuel combustion emissions from ships. Cargo ships having ice-breaking capabilities are currently exempted from EEDI requirements in view of the extra engine power they need to navigate through icy waters.

This legislative amendment seeks to incorporate the IMO’s latest requirements with regard to the scope of application of the EEDI requirements. The amendment offers an objective set of criteria to ascertain which ships are having ice-breaking capabilities and to be exempted from the EEDI requirements. The amendments will come into force globally on 1 October 2020.

[*Legislative Council Brief*, 06/2020]

WEST KOWLOON CULTURAL DISTRICT

Financial crisis affects West Kowloon Cultural District

This year, the US-China trade war and COVID-19 have seriously impacted the development of the West Kowloon Cultural District.

Tenders for the Art, Commerce and Exhibitions (“**ACE**”) project, next to the Hong Kong Palace Museum, were to be finalised a couple of months ago. Yet, on 6 August 2020, the West Kowloon Cultural District Authority’s (“**WKCD**”) CEO, Duncan Pescod, announced the withdrawal of the planned tender. A new tender date has not been set. The WKCD explained that the decision was prompted by developers’ cool response to the tender terms.

The WKCD estimates that the WKCD is suffering from an unaudited operating deficit. Hong Kong is now and will be still facing huge challenges in the foreseeable future; so it is reasonable to assume that the development of ACE will be postponed until there is a significant improvement in Hong Kong’s economy.

As engineering sector lawmaker (also a WKCD board member) Lo Wai-kwok, once said, the earlier ACE could be completed, the earlier it could generate a handsome income for the WKCD. This means further development of the WKCD may also hinge on completion of ACE.

[*South China Morning Post*, 16/08/2020; *Stand News*, 07/08/2020]

What to expect in the West Kowloon Cultural District in 2021?

M+ Museum

M+ museum has been designed by Herzog & de Meuron and is located in the southern side of the West Kowloon Cultural District (“**WKCD**”).

The anchor-shaped M+ museum comprises a vertical-plane structure sitting on top of a horizontal-plane structure. Both structures serve different purposes. The horizontal-plane structure is designed to host exhibitions and to provide performance spaces and theatres; whereas the vertical-plane structure is designed to contain a library, office space and restaurants. The front of the museum could house a large LED monitor to display various kinds of artwork.

Hong Kong Palace Museum (the “HKPM”)

The HKPM is situated on the western side of WKCD, north of Art Park and south of Nursery Park. The architectural design of this structure combines both Eastern and Western cultures.

In contrast to the M+ museum, the HKPM has been designed for the sole purpose of displaying artwork. The HKPM will house a selection of art pieces, including ancient and traditional Chinese ceramics, paintings and many more. In addition, the HKPM will also exhibit art works from other countries.

Although these facilities are scheduled to be opened in 2021, whether they can be completed duly on time remains uncertain, as the project is now besieged by various problems, such as cost overrun and COVID-19.

[*AHK Hong Kong News*, 17/08/2020]

HONG KONG BRIEFING

Hong Kong waste charging scheme halted

Hong Kong Legislative Council Bills Committee has declined to progress the proposed Bill to impose a Waste Disposal Levy that was first proposed and discussed in November 2018. Under the bill, households and businesses would pay a mandatory waste disposal charge for the collection and disposal of their rubbish, either through purchasing special s bags or paying a fee based on the weight of the rubbish taken to disposal facilities.

Waste disposal rates have continued to rise year-on-year and have recently reached the highest levels since 1991. The proposed bill was aimed to reduce average waste per capita to 0.8kg per day, so as to alleviate the mounting pressure on Hong Kong’s overflowing landfills and aimed to reduce the city’s greenhouse gas emissions.

Each day, 1.53 kg of trash per person is sent to landfill. A monitoring report reveals that the majority of items placed in the recycling bins were not properly recycled and 90% of Hong Kong’s small and medium plastic recyclers have also ceased operations amid shrinking demand for their product. This has sent a worrying signal regarding our current recycling system in the city and put further strain on existing waste disposal facilities in Hong Kong.

[*South China Morning Post*, 22/06/2020; *The Standard*, 23/06/2020; *Green Queen*, 23/06/2020]

Launch of WWF’s ‘Sharkulator’

On 14 July 2020, World Wildlife Fund Hong Kong (WWF HK) announced the launch of the ‘Sharkulator’, which is an accounting tool that estimates the number of sharks that can be saved when consumers choose not to consume shark fin products. The tool is based upon a new scientific methodology that accounts for the amount of shark fin served in Hong Kong’s hotel and restaurants, shark species, sizes of individuals, types of fin, and the different fin cuts used, for example, 100 bowls of shark fin soup not consumed will save approximately 12 sharks.

Hong Kong’s shameful tradition of eating shark fin have made it one of the biggest global hubs for the shark fin trade, as well as one of the largest consumers of shark fin per capita. In 2019, there was a 40% decrease in shark fin imports and in January-May 2020, a 60% decline compared to the same period in 2019. To protect the ecological balance of the ocean and halt the alarming decrease in shark populations globally, WWF continues to actively promote fin-free and alternative seafood sustainable options.

[*World Wildlife Fund Hong Kong (WWF HK)*, 14/07/2020]

Airport Authority gets green light to proceed with “Airport City Link”

Airport Authority Hong Kong (“AAHK”) intends to build “Airport City Link” (航天走廊) (the “Project”), which will be an 850-metre long connection bridge linking SKYCITY and Hong Kong Port Passenger Clearance Building. The marine section will be 400 metres long and the land section will be 450 metres long. Construction of the Project will tentatively commence in late 2021, and the completion date will be late 2023 to early 2024.

Since the Project involves building a road bridge of more than 100 metres in length and reclaiming which results in a 5% decrease in cross sectional area in the sea channel, the Project is classified as a Designated Project under the *Environmental Impact Assessment Ordinance* (Cap. 499)(“EIAO”), which requires a proponent of a Designated Project apply to the Director of Environmental Protection for an environmental permit to proceed with the proposal.

AAHK submitted its application to the Director on 27 July 2020. On 31 August 2020, a permit , with conditions, was granted to AAHK.

According to the application document (i.e. the Project Profile), the alignment of the marine section of the Project will run along the immediate south of another previously approved project of AAHK, “ITT Bonded Vehicular Bridge” (ITT-BVB Project). The construction method of the two projects would also be similar. AAHK therefore proposed to adopt the mitigation measures recommended under the approved ITT-BVB Project in this Project.

It is important to minimise environmental impacts to, water quality (as well as the rest of the affected environment) during construction, as there are a number of bathing beaches, ecological resources, and marine parks that could be impacted by the Project.

Various mitigation measures were proposed to minimise the impacts to the water quality. As far as construction of the viaduct deck was concerned, the mitigation measures would include the use of a precast construction method, by which deck segments precast off-site would be transported to the site. Where on-site construction is necessary, no on-site concrete batching activity would be carried out. Instead, the concrete would be delivered from off-site concrete batching plants.

As for the construction of the viaduct foundation, which would involve the use of piling equipment on site, the proposed mitigation measure would be the installation of a silt curtain. Pile construction would then be carried out within the silt curtain. This could minimise the release of suspended solids into water columns and reduce the risk of disturbance to the seabed and adjacent marine environment.

The Environmental Protection Department has granted AAHK an environmental permit with conditions. Those conditions require, among others, mitigation measures described in the Project Profile be fully implemented.

[*Environmental Protection Department, 31/08/2020; Airport Authority Hong Kong, 07/2020*]

Hong Kong records the hottest summer in 2020

On 2 September, the Hong Kong Observatory announced that Hong Kong experienced the hottest summer on record from June to August. Mean maximum temperature of 32.6 °C was recorded for the period. A minimum temperature of 27.7 °C was also the highest on record for the period.

Temperature above 33 °C has been classified by the Hong Kong Observatory as very hot. For the record, there have already been 43 very hot days in 2020 compared to the previous record of 38 hot days in 2016.

As the average temperature has increased, air pollution in the city has also soared. The hottest summer on record has sent a worrying signal concerning Hong Kong's unresolved air pollution problem. According to Tong Hang Wai, scientific officer at the Hong Kong Observatory, urbanisation, climate change and stronger than normal subtropical heat are the key contributors to the high-temperatures.

The Environmental Protection Department (EPD), says that a higher than average pollution levels has been recorded since the beginning of this month, and from EPD's forecast, air quality level may reach "serious" — the highest level. Hot weather, together with light winds, hinders the effective dispersion of air pollutants.

[*South China Morning Post, 01/09/2020*]

Waste at coronavirus testing facilities

To combat the coronavirus outbreak, the government has implemented a one-off free universal testing scheme which commenced on 1st September, 2020. The scheme aims to identify silent carriers of the coronavirus so as to minimise the risk of community transmission. The government has set up 141 testing centres across the city's 18 districts with each facility open from 8 am to 8 pm.

Protective equipment such as gowns, surgical masks and gloves was given to medical staff that collects the samples. Medical workers involved in taking samples are required to replace their gloves after taking test samples from each person, as well as after cleaning and disinfecting areas. It has been reported that about 126,000 Hong Kong residents participated at the deep throat saliva test on the first day of screening, so a substantial amount of used protective equipment was generated, requiring disposal within Hong Kong's already stretched waste disposal system.

The hefty volumes of waste generated from the testing centres have put further strain on the current waste disposal system in Hong Kong. Many medical experts have raised concerns as to the disposal procedures where it should be treated as clinical waste and only be handled by licensed medical waste collectors.

Joan Marc Simon, an executive director of Zero Waste Europe, has also pointed out that gloves are made of latex rubber, a natural product, which was not an eco-friendly choice, and some may have chemical additives used in production that may harm the environment during decomposition.

A week since the coronavirus testing commenced, it has been reported that some of the waste such as used gloves, was found in residential areas. Johnny Chung Lai Him, a Sha Tin district councilor, said that the current system for handling the centres' rubbish "creates a feeling of discomfort" among residents.

Despite experts' opinion and public concerns, on 2 September 2020, in accordance with advice from experts of the Centre for Health Protection (CHP), a government spokesman announced that waste at the community testing centres is not clinical waste and was no different from household waste.

Up to 2 September, the CHP guidelines on the collection and handling of waste from community testing centres were:-

- Waste must be properly packed in a plastic garbage bag;
- The packed waste should be temporarily placed at a designated waste collection area inside community testing centres;
- The designated waste collection area should be disinfected with 1:49 diluted bleach;
- Cleansing service contractors will each day transport waste to refuse transfer stations by dedicated vehicles.

[*South China Morning Post*, 02/09/2020; *News Gov HK*, 02/09/2020]

Court blocks plan for flats in Yuen Long wetlands

A judicial review application was made six years ago by Roy Tam Hoi Pong from the group Green Sense concerning the decision of the Town Planning Board to allow Mutual Luck Investment Limited, a subsidiary of major developer Cheung Kong, to build homes at Fung Lok Wai, Yuen Long.

The development would provide 19 residential blocks with 1,958 units on a wetland habitat within the Deep Bay Area, which is a natural habitat for a variety of species of waterfowl and is also a stopover point for thousands of migratory birds. The Inner Deep Bay Area has been listed a Wetland of International Importance under the 1995 *Ramsar Convention*.

On 4 September 2020, the court decided in favour of Roy Tam and ruled that the Town Planning B illegally approved the development project. High Court justice Thomas Au said that the Board has overstepped its powers in approving the proposal, as the Board may approve projects in ecologically-sensitive wetland areas only if there are sustainable plans and monitoring mechanisms to conserve and enhance the ecological value and functions of the subject area.

The Court also found that the development proposal lacked the details required for public scrutiny and consultation, and directed that development proposal be sent back to the Board for reconsideration. This decision has acknowledged the importance of the city's natural habitats over urban development and reinforced the Board's scope of power when approving development plans.

[*South China Morning Post*, 05/09/2020]

ADVISORY COUNCIL ON THE ENVIRONMENT (ACE)

Summary of Minutes of the 240th Meeting of the ACE held on 11 May 2020

The main item considered at the meeting was a review on the implementation of the Hong Kong Biodiversity Strategy and Action Plan ("BSAP") 2016-2021.

Measuring effectiveness

The current BSAP would be ended in 2021, it is important to review the effectiveness of different actions carried out under the BSAP. Further, the outcomes and impact of actions on biodiversity conservation should be reviewed and the lessons learned would be useful to improve on-going and future initiatives for the next BSAP.

The government suggested that objectives and timeframes should be set for each of the specific actions and an Inter-departmental Working Group on BSAP (IWGB) should meet regularly to facilitate timely monitoring of the implementation programme.

It is also considered that the effectiveness in species conservation should be one of the parameters in measuring the effectiveness of BSAP in biodiversity conservation. In response to that the government should commission a baseline survey to assess the changes in attitude and level of knowledge of the general public towards biodiversity upon the conclusion of the first BSAP in 2021. A member further replied that the baseline survey would be conducted again before the end of the first BSAP with a view to evaluating the effectiveness of the education programmes conducted under BSAP.

Knowledge building and transfer

A member suggested that the government should share the findings and reports of the studies after their completion with different stakeholders in order to promote knowledge building on biodiversity conservation. The government replied that some completed studies conducted under BSAP had already been uploaded to the government's website and be available for public information. The government added that further studies were being conducted for some of the projects and hence the data would be consolidated and shared with the public subsequently.

In addition, the government had been organising different kinds of education activities and partnering with different non-governmental organisations ("NGOs") to conduct education programmes with a view to disseminating easily comprehensible messages to promote biodiversity to the general public.

Shareholder engagement

A member pointed out that the government and other departments should organise a face-to-face session, for example a workshop, for reporting the implementation progress to the stakeholders who had contributed to the formulation and implementation of BSAP, as well as collecting their views for the formulation of the next BSAP.

The government said that they had engaged a number of stakeholders in the formulation of the first BSAP, through the BSAP Steering Committee, Working Groups and Focus Groups, and they had provided useful input that facilitated the publication of a comprehensive BSAP.

Enhancing conservation measures

A member observed that hikers often climbed onto rock formations for photos and caused damage to rock surfaces. It is considered that many of the rock formations were valuable geological assets, so it is suggested that the government should enact legislation to prohibit people from causing damages to the rock formations.

The chairman further said that many hikers, in particular young people, took photos to crave validation from social media, which was highly unlikely that they would be discouraged from doing so by legislation. Also, it would be very labour intensive with regard to enforcement actions given a large number of geological attractions in Hong Kong.

Education and promotion

A member opined that increasing number of people went hiking during the COVID-19 epidemic and some of their improper behaviour, including littering and climbing onto rocks for photos, reflected badly our public awareness on environmental conservation. The member further expressed that education and publicity were of paramount importance to enhance public understanding and take concerted efforts on biodiversity conservation.

The chairman agreed and suggested that the government and NGOs should jointly organise eco-tours to promote the biodiversity of Hong Kong and knowledge building among the general public.

CLIMATE CHANGE

Mauritius oil spill in the Indian Ocean

Each year thousands of oil spills occur and causes immense disruption to wildlife habitat. The most recent oil spill in Mauritius has taken place near two environmentally protected marine ecosystems and the Blue Bay Marine Park reserve, which is a wetland of international importance.

The location of the spill is causing great concern about its potentially serious environmental impact, as the stunning turquoise waters of the blue lagoon are now stained black and brown.

The *MV Wakashio* ran aground at Pointe d'Esny in late July, and oil leaked from the ship. Satellite images show the oil spill stretched out between the mainland at Pointe D'Esny and the island of Ile-aux-Aigrettes.

It is estimated that more than 1,000 tonnes of oil have been discharged into the lagoon. A huge clean-up operation has been launched with many local people volunteering to help.

On 7 August, nearly two weeks after the shipwreck, the Mauritian government declared the incident a national emergency.

Biodiversity hotspot

Mauritius is a biodiversity hotspot with a high concentration of plants and animals which are indigenous to the region.

According to the UN *Convention on Biological Diversity*, the Mauritian marine environment is home to 1,700 species of fauna, including approximately 800 fish species, 17 kinds of marine mammals and two species of turtles.

One of the major concerns has been for coral reefs in the lagoon. Approximately 25% of fish in the ocean depend on healthy coral reefs. Coral reefs also protect coastlines from storms and erosion. Coral reefs and the marine ecosystems are the major pillars of Mauritian tourism, which serves as a major part of the country's economy.

Mauritian waters are extraordinarily rich in biodiversity, as they have large populations of coral reefs, and seagrasses as well as mangrove forests.

Despite bad weather, Prime Minister Pravind Jugnauth said all the oil has now been removed from the ship's fuel reservoirs, although a small amount remains on board elsewhere. There had been fears that the ship could break up, spilling even more oil into the sea.

Fuel has been transferred to shore by helicopter and to another ship owned by the same Japanese firm, Nagashiki Shipping.

Reasons that the ship came so close to the lagoon are unclear and the incident is still under investigation by police.

[BBC, 12/08/2020]

Wildfires scorch 1,400 square miles of Oregon

At least 1,400 square miles of Oregon have burned in wildfires. Winds continued to drive fires into populated areas, especially in Clackamas County, where fires threaten the towns of Molalla and Estacada; and the cities of Canby and Oregon City are now being told to prepare to evacuate. That total damage—900,000 acres scorched in fires raging across the Cascades, which divide Oregon's western coast and drier eastern regions—has tripled in figures since 3 days ago.

The Oregon State Fire Marshal had hoped that winds would die down enough to get some of the fires under control. Instead, the winds continued to push blazes across Clackamas County, one of the three most populous counties in the Portland area. Conditions became so unsafe that firefighters were forced to retreat from the blazes. Two of that county's largest cities, Oregon City and Canby, are being told to prepare to evacuate.

State and local officials said they still didn't know if the notice warning people to prepare to evacuate would extend into the southeastern edges of Portland. They said that decision would depend on the wind. Around 30,000 to 40,000 Oregonians have been evacuated and more continue to be evacuated by the hour.

While the 94 major blazes are burning mostly in rural and forested areas, major cities along the West Coast -- Los Angeles, San Francisco, Seattle and Portland--- are also feeling the impact.

Smoke from the blazes is making air quality unhealthy; smoke can irritate lungs, cause inflammation and affect the immune system, heightening the risk of lung infections, such as the coronavirus.

In Oakland, California, where many businesses and facilities are closed due to statewide Covid-19 precautions, officials have opened them up as "clean air centers" for those with nowhere else to go".

[CNN, 14/09/2020]

REGIONAL & INTERNATIONAL

CHINA

Stability of the Three Gorges Dam under threat

Massive floods have impacted more than 63 million people and destroyed 54,000 homes across China, said Zhou Xuewen, the secretary general of China's flood control headquarters, at a briefing in Beijing in mid-August.

The floods began in southern China, when powerful rains swelled the lower reaches of Yangtze River. Heavy rains are normal in southern China during the summer, but this year's rainfall was higher and longer than usual. The incessant rain may have been caused by climate change. According to a study titled "*Global implications of 1.5 °C and 2 °C warmer worlds on extreme river flows*" published in *Environmental Research Letters*, if temperatures rise by 2 degrees Celsius, extreme river flows will happen once every 25 to 35 years in China.

The volume of water flowing into one major reservoir in the region reached 75 million litres a second as of 19 August, according to the Ministry of Water Resources (三峡水库将发生建库以来最大洪水 水利部科学调度全力应对). This raises concerns as to whether the heavy rains could cause the Three Gorges Dam to overflow. Even though the giant dam is capable of handling inflows of as much as 83.7 million litres per second, experts have warned that the dam might not be able to withstand future extreme weather events.

Hydro-climatologist, Peter Gleick, a member of the U.S. National Academy of Sciences, told reporters that climate change is increasing the risk of extreme rainfall events, making it "even more likely that dams like the Three Gorges will be unable to prevent the worst flooding from occurring in the future".

Chinese water-management officials now worry that abnormally heavy rainfall and consequential flooding, are likely to happen in the Yellow River catchment. According to the official Xinhua News Agency, on 18 August Yellow River Conservancy Commission of the Ministry of Water Resources declared the start of a new flooding event.

[Bloomberg, 28/08/2020; The New York Times, 21/08/2020; The Wall Street Journal, 21/07/2020 & 25/07/2020; & Xinhua, 18/08/2020]

INDIA

Madras High Court delivers double blow to notorious polluter

A team of ELAW partners, including Adv. T. Mohan and Adv. A. Yogeshwaran, with senior Adv. R. Vaigai as lead counsel, along with other Chennai-based lawyers, successfully challenged an attempt by Sterlite Copper, a unit of global mining conglomerate Vedanta Ltd., to re-open its plant, which was ordered closed in 2018 after many years of toxic operations. In the 10 years that ELAW has been involved in the campaign, other partners have also contributed to the efforts to expose the company's polluting ways.

The Madras High Court denied the company's application for permission to recommence operations and the Court had found Vedanta-Sterlite responsible for a disastrous sulphur dioxide (SO₂) leak in 2013 which affected thousands of residents in Thoothukudi, a port city on the Gulf of Mannar in Tamil Nadu.

Nityanand Jayaraman, who has been part of the campaign to hold Vedanta accountable for 16 years writes: "Thank you to ELAW for the technical critiques and expert opinions, analysis and presentation of international best practices, and legal memos on various aspects of case law relating to closure of polluting units. Please know how much your contributions over more than 10 years have helped people here!"

This judgment was hard won, coming after 24 years of litigation, advocacy and strong community resistance. In May 2018, tens of thousands of community members protested to demand an end to Sterlite's operations which were poisoning them. Police opened fire on protesters, killing 13 and injuring hundreds. The facility, whose license renewal was denied by the Tamil Nadu Pollution Control Board (TNPCB), was

ordered to be permanently closed by the Tamil Nadu Government. Sterlite responded by mounting a major litigation campaign to re-open the plant.

The High Court proceedings marked a key moment in the community's long fight against Sterlite. Those challenging Sterlite had to make a strong case that the TNPCB's response was justified, given Sterlite's long history of flouting environmental protection standards. ELAW Staff Attorneys provided court decisions from other countries upholding closures of highly polluting facilities, rather than simply imposing a fine, and decisions emphasizing that industries must comply with conditions designed to protect the environment and public health. The High Court agreed with these principles, declaring that the TNPCB and state officials were "fully justified" in ordering closure based on Sterlite's long history of non-compliance.

The High Court also criticized Sterlite and the TNPCB for failing to ensure that an adequately-sized buffer zone (green belt) was established around the facility and sufficiently planted with trees. Green belts are so important, according to the Court, that authorities would have been justified in closing the Sterlite plant based solely on the company's failure to maintain a buffer zone.

Most importantly, the High Court decision reinforces a theme that runs through decades of Indian jurisprudence: the environment must be protected for future generations.

[*Elaw Press Release*, 10/09/2020]

UNITED KINGDOM

UK carbon pricing options at a crossroads

Under the terms of the *UK-EU Withdrawal Agreement*, the UK will remain in the *EU Emissions Trading System* ("EU ETS") until the end of the Brexit transition period on 31 December 2020.

As stated in "*The Future Relationship with the EU: The UK's Approach to Negotiations*" published on 27 February 2020, the UK government has been planning to establish a UK *Emissions Trading System* ("UK ETS") and to link it with the EU ETS after 1 January 2021. However, if the negotiations between the EU and the UK fail to yield this link, the UK government will implement either of the two fallback options: to operate the UK ETS as a standalone system, or to implement a carbon emissions tax.

Emissions trading systems ("ETS") and carbon emissions tax are two well-established carbon pricing instruments for greenhouse gas emissions reductions. An ETS works on the principle of "cap-and-trade". The government imposes an upper limit on emissions and companies are obliged to hold one permit for every tonne of emissions they release. The emission permits are either auctioned out or distributed for free. On the other hand, with a carbon emissions tax, the government sets a tax rate for each year and companies covered by the tax are obliged to pay the amount for every tonne exceeding the allowance.

The OECD notes that ETS contributes to economic efficiency as it facilitates emission reductions where it is cheapest to achieve them. Polluters who would find it costly to reduce their emissions are allowed to buy emission permits from polluters that can abate at lower costs.

According to the consultation report on "*The Future of UK Carbon Pricing*" published on 1 June 2020, a large proportion of responses expressed a preference to link a UK ETS to the EU ETS. In fact, linking a national emissions trading system with the EU ETS is not unprecedented; Switzerland successfully linked its emissions trading system to the EU ETS from 1 January 2020 onwards. From an economics perspective, a UK ETS that links with the EU ETS would provide for mutual recognition of allowances, therefore increase the availability of reduction opportunities and enhance the cost-efficiency of emissions trading.

Carbon pricing policies in the UK after December this year remain uncertain. As the consultation on "*Carbon Emissions Tax*" will close on 29 September 2020, carbon market participants have to await the release of the consultation outcome to adjust their plans.

[*Linklaters*, 28/07/2020; *International Carbon Action Partnership*; 04/2019; *OECD*, undated; *Government of the United Kingdom*, 02/2020; *Government of the United Kingdom*, 06/2020; *Government of the United Kingdom*, 21/07/2020]

USA

Fires raging in Oregon

The northwest part of Oregon in the Pacific Northwest is usually much wetter, but has dried out this year, enabling flames driven by powerful winds to "just explode down these canyons."

The blazes that raced across western Oregon this week could be the most unexpected element in a fire season that's full of surprises: Not just more wildfires, but wildfires in places that don't usually burn.

The forests between Eugene and Portland haven't experienced fires this severe in decades, experts say. What's different this time is that exceptionally dry conditions, combined with unusually strong and hot east winds, have caused wildfires to spiral out of control, threatening neighborhoods that didn't seem vulnerable until now.

"We're seeing fires in places that we don't normally see fires," said Crystal A. Kolden, a professor of fire science at the University of California, Merced. "Normally it's far too wet to burn."

The fires in Oregon, which have led to the evacuation of hundreds of thousands of people and are approaching Portland's suburbs, stand out from what has already been an extraordinary fire season in the West, where global warming, land-use changes and fire management practices have combined to create a hellish mix of smoldering forests, charred homes and choking air.

Before this week, Oregon was grappling with a much more contained problem, a series of smaller fires on both sides of the Cascade Range, which divides the state between east and west.

Fires are common in the east, which is normally dry, according to Philip Mote, a climate scientist at Oregon State University. In some areas of eastern Oregon the "return period," or length of time between major fires, is as little as 20 years, he said.

But the western slope of the Cascades, which catches most of the moisture that blows in from the Pacific Ocean, is normally wetter. "Out here, the return period can be hundreds of years," he said.

That protective moisture has faded, in large part because climate change has altered precipitation and temperature patterns.

Tim Brown, director of the Western Regional Climate Center at the Desert Research Institute in Reno, Nevada said the extreme warmth had caused vegetation to become exceptionally dry and to burn more readily. Temperature, humidity, wind and solar radiation combine to dry out brush and are the key elements for fire. "We call it evaporative demand," he said. And in recent weeks, he added, "the west Cascades have been really dry from the evaporative demand."

Those dry conditions were most likely exacerbated by climate change, according to Meg Krawchuk, a professor at Oregon State's College of Forestry. And they had the effect of "teeing up the landscape" for a wildfire, she said.

The critical moment came on Monday and Tuesday, when a windstorm carried hot air from the high desert in the eastern part of Oregon over the mountains, rapidly spreading the fires in the more populated western part of the state, according to Josh Clark, fire meteorologist at the Washington State Department of Natural Resources.

Those winds were the strongest the state has seen in at least 30 years, Mr. Clark said. And when they crossed the mountains, the winds raced down through river canyons, which compressed the air, warming it further and pushing it westward like a bellows.

As those fires raced west, they met unusually dry conditions, said Dr. Kolden, which in turn allowed the fires that were already burning to spread rapidly. "The fire's able to move very quickly and just explode down these canyons," she said.

The fires now threatening Oregon's cities and towns could be worse than anything in that part of the state in decades, said Cassandra Moseley, chief research officer at the University of Oregon and a professor at its Institute for a Sustainable Environment.

The Tillamook Burn, a series of fires that began in 1933 and destroyed hundreds of thousands of acres, was probably as bad as this week's fires, Dr. Moseley said. It's hard to know for sure, she said, because "no one's alive to tell the tale."

And what's different this time, Dr. Moseley said, is that far fewer people lived in those areas 90 years ago. "Tillamook didn't have people in it," she said. By comparison, this week's fires seem likely to cause large numbers of casualties.

Already, several mountain communities had been destroyed by flames that roared through the surrounding forests. State officials received reports of dozens of missing people. And as some of the largest blazes neared Portland's southern suburbs, the authorities warned residents thinking of staying behind in some communities that there would be no firefighters to protect them.

The lesson of this week is that the state must now prepare for more of the same, said Dr. Mote, the Oregon State climate scientist, who recalled that extreme warmth had also led to a record low snowpack in 2015.

"This situation of large fires, and that low snow year — these are both things that I and my colleagues who've studied climate change in Oregon for 20 years have been saying would happen eventually," he said. "And now they're happening."

[*New York Times*, 12/09/2020]

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Convictions under environmental legislation: June to September 2020 (September 2020 data not available)

[Note: the EPD no longer classifies second (and subsequent) offences.]

The EPD's summary of convictions recorded and fines imposed during the above period is as follows:

June 2020

One hundred and twenty-three convictions were recorded in June 2020 for breaches of legislation enforced by the Environmental Protection Department (EPD).

Sixteen of the convictions were under the Air Pollution Control Ordinance, 25 were under the Noise Control Ordinance, 1 was under the Ozone Layer Protection Ordinance, 49 were under the Public Cleansing and Prevention of Nuisances Regulation, 3 were under the Product Eco-responsibility Ordinance, 28 were under the Waste Disposal Ordinance and 1 was under the Water Pollution Control Ordinance.

Separately, two companies were fined \$40,000, which was the heaviest fine in June, for importing controlled waste without a permit and carrying out prescribed construction works not in accordance with the conditions of a construction noise permit.

July 2020

One hundred and eleven convictions were recorded in July 2020 for breaches of legislation enforced by the Environmental Protection Department (EPD).

Seven of the convictions were under the Air Pollution Control Ordinance, 14 were under the Noise Control Ordinance, 44 were under the Public Cleansing and Prevention of Nuisances Regulation, 3 were under the Product Eco-responsibility Ordinance, 42 were under the Waste Disposal Ordinance and 1 was under the Water Pollution Control Ordinance.

A company was fined for importing controlled waste without a permit and causing another person to import controlled waste without a permit. A \$30,000 fine, which was the heaviest fine in July, was imposed on the company for each of the offences.

August 2020

Forty-one convictions were recorded in August 2020 for breaches of legislation enforced by the Environmental Protection Department (EPD).

Three of the convictions were under the Air Pollution Control Ordinance, 4 were under the Noise Control Ordinance, 22 were under the Public Cleansing and Prevention of Nuisances Regulation, 4 were under the Product Eco-responsibility Ordinance, 6 were under the Waste Disposal Ordinance and 2 were under the Water Pollution Control Ordinance.

A company was fined \$40,000, which was the heaviest fine in August, for using powered mechanical equipment not in accordance with the conditions of a construction noise permit.

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