

## Environment - Italy

### Contaminated site regulation in Italy

Contributed by **B&P Avvocati**

February 17 2014

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#### Introduction

Those wishing to invest in Italy need to know the extent of their potential environmental liabilities in advance. When the investment involves the acquisition of an industrial area, the main environmental liability to consider is site contamination.

Remediation of contaminated sites is one of the few areas of environmental law in which the European legislation does not provide binding standards, although some general principles can be taken from EU Directive 2004/35/EC with regard to the prevention and remediation of environmental damage.

#### Contamination criteria

The Italian legislation (Articles 239 to 253 of Decree-Law 152/2006) provides a set of screening threshold limits for both soil and groundwater. Where such limits are not met, a site-specific risk analysis must be undertaken to define the (normally higher) risk threshold limits, which can reduce the environmental risk to a reasonable standard. These risk threshold limits become the target of the remediation to be carried out in the contaminated area.

Industrial areas fall into one of three contamination categories:

- The site is not contaminated where the screening threshold limits are met for both soil and groundwater.
- The site is potentially contaminated where the screening threshold limits are not met and a site-specific risk analysis must be undertaken in order to define the risk threshold limits.
- The site is contaminated where – after the risk analysis – it emerges that the risk threshold limits are not met.

#### Remediation measures

When a site is contaminated, the law requires the following measures to be implemented:

- preventive measures to avoid an imminent threat to the environment;
- emergency measures to eliminate or reduce the spread of ongoing contamination;  
and
- complete remediation to meet the risk threshold limits in full.

A less rigid approach is allowed where the contaminated area is part of a site with ongoing industrial activity. In this case, provisional and partial remediation is possible and complete remediation can be delayed.

#### Liability

Whenever preventive or emergency measures – as well as complete remediation – must be implemented, the main legal issue faced by the Italian courts concerns cost allocation, particularly when the present site owner is not the polluter. In short, the Italian legal regime provides as follows:

- All parties involved (ie, both the polluter and site owner) must carry out, where necessary, the proper preventive measures.
- In principle, only the polluter has the duty to implement the emergency measures and undertake complete remediation.

However, if the polluter cannot be identified – which often happens when the contamination took place many years or even decades previously – the remediation must be undertaken by the local authorities, which can seek reimbursement from the site owner for costs up to the equivalent of the site's value.

#### **Comment**

This legal regime implies that significant precautions should be taken when buying an Italian industrial site. A preliminary investigation of soil and groundwater – as well as careful drafting of the environmental liability clauses in the contract – should be considered in order to prevent unwanted liabilities.

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