

Proportionate liability in contaminated land cases

October 26 2015 | Contributed by [B&P Avvocati](#)

Facts Decision

In a recent decision in a case concerning the remediation of contaminated land, the Council of State explicitly welcomed the principle of proportionate liability in the event of contamination resulting from multiple responsible parties. The ruling represents a major change in interpretation: previous jurisprudence had instead adopted the principle of joint and several liability.

Facts

The July 30 2015 ruling (Decision 3756) concerned an appeal against a remediation order brought by the owners of a building situated in a contaminated area. The court of first instance ordered the appellants and other property owners to proceed with verification activities after the area was found to be contaminated with gas oil.

Citing the polluter pays principle, the appellants argued that the order was illegitimate because:

- they were the former owners of the building, which had been rented for the duration of their ownership, and were therefore not responsible for the pollution; and
- the order did not specify how liability should be shared among the owners of the different buildings in the area in question.

Decision

The ruling focused primarily on the first point, confirming the interpretation that strict liability does not apply to owners. In its reasoning, the Council of State affirmed that the appeal should also consider the second point. The court of first instance should have ordered only execution of the verification activities respectively attributable to each party involved. The Council of State then quoted the European Court of Justice (C-534/13), stating that the duty of remediation burdens operators only with an amount corresponding to their contribution to the pollution or risk of pollution. The polluter pays principle, being a more specific rule, should prevail regarding the general rules on civil liability.

Previously, jurisprudence in the event of contamination due to multiple responsible parties adopted the principle of joint and several liability as expressed by the general rules on civil liability (Article 2055 of the Civil Code). For instance, the Veneto Court of First Instance (2174/2005) affirmed that a remediation order is legitimate if addressed to only one of the responsible parties, arguing that it would be an excessive burden for the public administration to distinguish the diverse amounts of liability. In the court's opinion, the administration's priority should be the restoration of the site. The party that proceeds with the remediation can then sue the others in order to seek recovery.

The same reasoning was applied in a more recent decision of the Lazio Court of First Instance (375/2014).⁽¹⁾ The analysis highlights the importance of the Council of State's change of interpretation, as it reverses the approach adopted in previous case law.

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Endnote

(1) Also see decisions of the Catania Court of First Instance (1254/2007) and the Friuli Court of First Instance (215/2015).

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