

## Court draws line between polluter-pays principle and site safety obligations

Contributed by **B&P Avvocati**

May 18 2015

In the context of environmental damage, the polluter-pays principle cannot be invoked as the legal basis to oblige the responsible party to restore the safety of a site that is subject to environmental risks.

This conclusion was reached in a recent case brought before the Liguria Regional Administrative Tribunal.(1) When challenging a municipal order to implement safety measures to avert the risk of landslides at the site where his activity was located, the claimant argued that the municipality should be responsible for implementing these measures. Further, the claimant argued that because the municipality was serving as the site manager at the time that the risk developed, it should bear the obligation to make the site safe, in line with the polluter-pays principle.

The court dismissed the claim that the polluter-pays principle serves a repressive-compensative purpose on the grounds that it:

- is based on the premise that environmental damage has occurred despite the adoption of all necessary preventive measures to avoid it; and
- obliges the person responsible for the damage to bear the costs of its restoration and therefore requires this person to be identified.

On the contrary, the obligation to restore the safety of a site serves a preventive purpose because it:

- is based on the premise that environmental damage has not yet occurred and instead must be avoided or contained; and
- does not require that the person responsible for the damage be identified, as it undisputedly concerns site owners.

The polluter-pays principle is thus incompatible with the premise and scope behind site safety-related obligations and cannot be invoked to impose any responsibility in that respect.

The decision is significant in at least three respects:

- It carefully outlines the meaning of the polluter-pays principle, the circumstances in which it applies and the grounds on which it operates;
- It clarifies the grounds on which a claimant may expect the public authorities to bear the costs of environmentally damaging activities attributable to them; and
- It sheds light on the allocation of obligations for environmental damage between site owners and persons responsible for the damage done.

*For further information on this topic please contact Luciano Butti or Andrea Rizzo at B&P Avvocati by telephone (+39 045 8012901) or email (luciano.butti@buttiandpartners.com or andrea.rizzo@buttiandpartners.com). The B&P Avvocati website can be accessed at [www.buttiandpartners.com](http://www.buttiandpartners.com).*