



SUMMARY OF CASE LAW ON WASTE PRODUCER LIABILITY IN EUROPE

ITALY

Name of case: [Tar Veneto](#) Ric. n. 2309/06

Country and court: Regional Administrative Court of Veneto, Italy

Date of holding: January 14, 2009

Summary of facts:

A location was operated as a chemical storage facility while the authorization for disposal and treatment had not been granted. The wastes included waste oils and tanks. The Mayor of Sona commissioned a technical opinion which “showed a real and immediate risk of the spread of the pollutants with serious danger to public health and the environment.” The mayor ordered all holders and the original waste producers jointly and severally to remove the wastes and to test it for assurance that it was properly removed and treated at another location. The mayor based his order on Article 192 of [Decree No. 152 of 2006](#)¹ and 54, paragraph 2, of Legislative Decree no. 267 of 2000.²

Legal basis for holding waste generator or producer liable:

The Court agreed with the authority of the mayor and cited Italian law on the responsibility of the waste producer. “*Article 188 of Legislative Decree no. 152 of 2006, which, in relation to the burden on producers and holders of waste that: 1. The expense related to the disposal shall be borne by the holder who has [transported it] to an*

¹ **Art. 192:** [1] The abandonment and uncontrolled deposit of waste on and in the soil are prohibited. [2] It is also the placing of waste of any kind, in solid or liquid surface water groundwater. [3] Without prejudice to the penalties provided for in Articles 255 and 256, anyone who violates the prohibitions referred to in paragraphs 1 and 2 is required to proceed with the removal, start to recovery or disposal of waste and the restoration of the rule of places jointly with the owner and with the owners of real or personal enjoyment of the area, to which this violation is caused by way of intent or gross, according to the findings, in with the parties concerned, the control supervisors. The Mayor has by order of the operations necessary for this purpose and term within which the applicant, after which execution proceeds to the detriment of the parties responsible and the recovery of the amounts advanced.”

² The authority of mayors to order wastes removed was previously upheld. The jurisdiction of the mayor to issue the orders for removing waste: Council of State, Decision No. 4061 of 25 August 2008; State Council, Opinion no. 2231 of 7 November 2007; Tar Puglia, Lecce, judgment no. 1084 of 7 November 2007.

authorized collection point or to a person who carries out the disposal operations, as well as the previous holders or the producer of the waste.” The Court noted that the required authorization and confirmation of authorized disposal by the vendors had not been obtained. But more generally, the court found that: *“the delivery of waste to the intermediaries who have authorization ... does not transfer to them the responsibility for the proper disposal and therefore, the manufacturer is not allowed to neglect the final destination of the waste.”* The court referred to this as *“the obligations of due diligence by the producer or holder of waste.”*³

Scope of damages or relief ordered:

Removal of the material. Since the records allowed for allocation by identifying the sources of the material, the Court rejected joint and several liability as the injury was not proven to be “indivisible.” The assumption in future cases must be that “indivisible injuries” will allow for joint and several liability.

Note: Nothing in the waste law transposed into national law supersedes, replaces or negates potential liability under the Environmental Liability Directive or the Industrial Emissions Directive (IPPC). Both of which have been applied to waste producers.

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³ In some cases, Italian courts have construed failure of exercise diligence as criminal conduct. See Cass. Sec. III no. 13025 of 20 March 2014 (December 17, 2013), Pres. Mannino East. Andronio Ric. Radin. Manufacturer's liability in case of initial delivery to third parties. *“The original producer of the waste which deliver this waste to another entity that takes it up, even in part, the treatment retains responsibility for the entire processing chain, it being understood that it also exists in the case in which the waste is transferred to the pre-treatment to any individual stakeholders. In other words, the one who gives their waste to third parties for recovery or disposal has a duty to ensure that they are duly authorized to perform the operations, with the result that non-compliance with this rule of caution is appropriate business to configure the responsibility for the crime of illegal waste management in competition with those who have received without the prescribed qualifying title...”*