

## POLLUTION INSURANCE - METHODS, COVERAGE AND BENEFICIARIES

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### 1. Environmental legal aspects (answer is optional)

#### 1.1. Which are the major general rules on civil liability arising from environmental damages in your country?

Environmental liability in Italy has been developing since the 80s', and in particular with Law 349/1986, which set up the Ministry of the Environment and Territory. Italy has developed legislation on the remediation of environmental damage which, starting with law of 1986, has evolved into legal and technical regulations for the remediation of contaminated sites (with a Legislative Decree of 1997, and, therefore, with a ministerial decree of 1999), also extended to polluted sites in the epoch preceding the entry into force of the regulation.

After many years of debate, the European Union decided to adopt as far as possible a "delimited" environmental liability regime, with an approach that wants to be experimental and "gradual", not only in accordance with the principles of subsidiarity and proportionality, but above all, in order to achieve a first step, which represents a "minimum" threshold. Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 "on environmental liability with regard to the prevention and remedying of environmental damage" establish a framework of environmental liability based on the "polluter-pays" principle, to prevent and remedy environmental damage.

According to the Directive, reduction and gradual method combines the system of liability (strict and guilt-based) as an "integrated" system with the privileged protection of the public environmental interest that the competent authorities must ensure in the effective exercise of national environmental policies.

Another guideline of the Directive is to define the (reasonable) cost of prevention and repair measures in a timely manner, by integrating legal and technical definitions in order to make more precise quantification of environmental damage and to allow the development (as in the US) of an

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insurance market in Europe, warned of the risks to "cover". This allows "operators to use financial guarantees to discharge their responsibilities under this Directive".

Directive 2004/35/CE was transposed into Italian law by Legislative Decree no. 152/2006. The Decree has collected and updated all previous environmental legislation, abolishing the 1986 law which was "outdated", and was therefore named "Single Text of the Environment".

## 1.2. Please describe the main characteristics and objectives of environmental civil liability in the light of national legislation and court precedents.

### 1.2.1. How are environmental damages described under the law?

As described by Directive 2004/35/CE, which has been transposed into Italian Law by Legislative Decree no. 152/2006, damage means a measurable adverse change in a natural resource or measurable impairment of a natural resource service which may occur directly or indirectly.

As a consequence, environmental damage is to be intended as:

- a) damage to protected species and natural habitats, which is any damage that has significant adverse effects on reaching or maintaining the favorable conservation status of such habitats or species;
- b) water damage, which is any damage that significantly adversely affects the ecological, chemical and/or quantitative status and/or ecological potential;
- c) land damage, which is any land contamination that creates a significant risk of human health being adversely affected as a result of the direct or indirect introduction, in, on or under land, of substances, preparations, organisms or micro-organisms.

### 1.2.2. Who may be (either directly or indirectly) made liable?

For environmental damages, the "operator" who carries out an 'occupational activity' in the course of an economic activity, a business or an undertaking -irrespectively of its private or public, profit or non-profit character- shall be considered directly liable. "Operator" means any natural or legal, private or public person who operates or controls the occupational activity or to whom decisive economic power over the technical functioning of such an activity has been delegated, including the holder of a permit or authorization for such an activity or the person registering or notifying such an activity.

The responsibility of the owner of the polluted site, who is not guilty of environmental damage, is a topic that has long been debated in Italian law and case-law. In this regard, an important order by the European Court of Justice of 4 March 2015 (Case C-534/13) stated that “*where it is impossible to identify the liable person for the contamination of a site or obtain from the latter the repair measures, the competent authority is not allowed to impose the prevention and repair measures on the not-responsible site owner, who is solely subject to reimbursement of expenditure incurred by the competent authority within the limit of the market value of the site determined after the implementation of such interventions*”. However, according to Italian law, the owner who has incurred the costs of remediation has a recourse right against the liable operator.

### 1.2.3. How is the determination of causal link of environmental damages?

In a judgment of 9 March 2010 in Case C-378/08106, the European Court of Justice provides interesting ideas regarding the interpretation of the provisions of Directive 2004/35/EC, focusing on the question of the causal link. In the judgment, the Court reiterates that the system established by Directive 2004/35/EC is based on the principle of strict liability, with reference to the activities considered to be the most environmentally hazardous and listed in the Directive. Such a system of strict liability therefore allows the competent authorities to impose preventive and repair measures on operators without the need to demonstrate the existence of malicious or culpable behavior. In order to attribute environmental damage repair measures, the competent authority will have to assess with sufficient degree of likelihood that the damage was caused by actions or omissions of a plurality of operators.

### 1.2.4. Does your legislation provide for strict or fault-based environmental liability?

Neither in the recitals nor in the text of the Directive the type of liability is expressly recognized. Only in the document entitled "Motivations of the Council" it is provided that, for certain professional activities involving risks to all types of environmental damages, strict responsibility is contemplated. However, for some unlisted professional activities which could only damage species and protected habitats, either willful or culpable misconduct of the operator legitimize the compensation.

Our Legislative Decree n. 152 of 2006 set up fault-based liability (due to negligence or imprudence) as an alternative to strict liability. The provision says: “anyone who, realizing an illicit act or

omitting any activities or behaviors that are in breach of law, regulation, or administrative order, negligence, imperfection, imprudence or violation of technical standards, causes harm to the environment, is obliged at his own expense to effectively restore the previous situation and, failing that, to adopt complementary and compensatory repair measures.

### 1.3. Are there peculiarities regarding environmental damages resulting from pollution? If so, are there differences in the legal treatment to air, soil or water pollution?

As a fact, Directive 2004/35/CE deals with water, land and natural-protected species damage. The three of them have the same provisions, prevention and remediation measures, regardless to the type of damage. However, air pollution is not even mentioned in the directive -unless this has no impact on soil, water or natural species- so that the framework regulation on air pollution control is represented by Legislative Decree no. 155/2010. Legislative Decree No.155/2010 contains the definitions of limit value, objective value, alert threshold and threshold, critical levels, long-term goals and objective values. The Decree identifies the list of pollutants to monitor (NO<sub>2</sub>, NO<sub>x</sub>, SO<sub>2</sub>, CO, O<sub>3</sub>, PM<sub>10</sub>, PM<sub>2.5</sub>, Benzene, Benzo (a) pyrene, Lead, Arsenic, Cadmium, Nickel, Mercury, ozone precursors) and establishes the transmission mode and the content of air quality information to be sent to the Ministry of the Environment.

### 1.4. Which are the governmental entities in charge of authorizing and supervising activities that produce environmental impacts or pollution?

The Minister for the Environment and Territorial Protection, in application of the precautionary principle, has the right to take preventive measures at any time.

Moreover, the Minister of the Environment and the Protection of Territory, at any time, has the right to:

- (a) ask the operator to provide information on any imminent threat of environmental damage or suspected cases of such imminent threat;
- b) order the operator to take the specific preventive measures considered necessary, specifying the methodologies to be followed;
- c) to adopt the necessary preventive measures.

In addition to The Minister of Environment, regional agencies for environmental protection (ARPA) aim at supervising activities that have an impact on environment. These agencies are an Italian public administration body run by the Italian regions. Beside the traditional "control and

vigilance" functions, Law 61/1994 entrusts the "environmental agency system" with monitoring, compilation and dissemination of environmental data functions as well as elaboration of technical proposals: acceptance limits, standards, ecologically compatible technologies, verifying the "technical" effectiveness of environmental regulations, etc.

#### 1.4.1 What is the scope of activity of these entities?

The Ministry of the Environment has environmental, ecosystem, marine, atmospheric, environmental impact assessment, strategic environmental assessment and integrated environmental authorization. It has expertise in soil protection from desertification as well as hydrogeological heritage. It coordinates and oversees the functions of the so-called Environmental Code, i.e. Legislative Decree no. 152/2006, laying down environmental standards.

#### 1.4.2. How do they operate, and on which legal grounds?

The Ministry of the Environment was set up by Law 349 in 1986 and since its establishment its main duty is to ensure, in an organic framework, the promotion, conservation and recovery of environmental conditions in accordance with the fundamental interests of the community and the quality of life, as well as the conservation and enhancement of national natural heritage and the defense of the natural from pollution.

The Minister is composed of five General Directorates, coordinated by the Secretary-General. The General Secretariat is divided into five non-general executive level offices and constitutes the center of administrative responsibility.

The Directorates-General are the followings:

- Directorate-General for Personnel and Personnel;
- DG for the protection of the territory and of the water resources;
- DG for the protection of nature and the sea;
- DG for Sustainable Development, Climate and Energy;
- DG for Environmental Assessments.

The Minister of the Environment and Territorial Protection may, for the purpose of detecting the facts, identify offenders, implement environmental protection measures and compensation for damages, may delegate the competent Prefect to the territory and also to use, through special agreements, the collaboration of District Attorneys of the State, the State Forestry Corps,

Carabinieri Army, the State Police, Guardia di Finanza and any other public entity with appropriate expertise.

### 1.5. Is there a legal system of procedural mechanisms in case of environmental offenses?

Where environmental damage has occurred the operator shall, without delay, inform the Ministry of the Environment of all relevant aspects of the situation and take immediately remedial measures; the competent authority may give instructions to the operator to be followed on the necessary remedial measures to be taken, or may itself take the necessary remedial measures.

In the second case, the Ministry can decide whether or, orders those who, on the basis of a technical assessment, are responsible for the fact, environmental restoration in compensation in a specific form within a fixed period by an immediate executive order. Otherwise, the Ministry can exercise civil action in criminal proceedings, for the compensation of environmental damage in a specific form and, if necessary, by means of capital equivalents.

#### 1.5.1. Who is in charge of keeping the environmental protection?

The National Network for Environmental Protection (SNPA) is a reality starting from January 14, 2017, the date of entry into force of the National Network for the Protection of the Environment and the discipline of Istituto Superiore per la Protezione Ambientale (ISPRA). The law attributes to the new subject fundamental tasks such as:

- inspection activities within the scope of environmental control functions;
- monitoring of the state of the environment;
- control of sources and pollution factors;
- research activities aimed at supporting its functions;
- technical-scientific support to the activities of state, regional and local bodies that have active environmental management tasks;
- collection, organization and dissemination of environmental data which, together with the statistical information derived from the aforementioned activities, will constitute an official technical reference for use in the activities of the public administration.

#### 1.5.2. How does this system work?

Through the Council of SNPA, the System expresses its binding opinion on the technical measures of the Government on environmental matters and reports to the Ministry of the Environment and to the Permanent Conference on Relations between the State, the Regions and the Autonomous Provinces of Trento and Bolzano, opportunities for action, including legislation, in pursuit of the objectives of sustainable development, reduction of soil consumption, safeguarding and promoting the quality of the environment and the protection of natural resources.

## 2. Legal aspects on environmental insurance policies (answer is required)

2.1. Is there a specific legal framework to regulate environment insurance policies? If so, please describe such legislation, as well as the major features thereof.

There is no specific legal framework (nor administrative rule) to regulate in general environment insurance policies.

2.2. In the event of a negative response to the question 2.1, please inform if there is any administrative rule, or any other kind of legal regulation that applies to environmental insurance policies. In this case, please describe such regulation, as well as the major features thereof.

There is no such administrative rule.

2.3. Does the law provide for compulsory environmental insurance?

2.3.1. If so, which would be the relevant risks, covered items and limits?

2.4. In case of a legal requirement or regulation, when should an environmental insurance policy be obtained?

Joint answer to 2.3, 2.3.1. and 2.4.

In Italy, there is no general legal requirement to insure against environmental incidents and/or damages. However, operators that carry out waste management and disposal activities or specific dangerous activities (such as the production and distribution of gas and the management of nuclear plants) can be obligated to take out insurance and/ or performance bonds.

Mandatory environmental insurance is sometimes provided by international treaties.

An important example is given by the International Convention on Civil Liability for Bunker Oil Pollution Damage (BUNKER) (Adoption: 23 March 2001; Entry into force: 21 November 2008- Italy ratified the Convention in 2010).

The Convention was adopted, within the IMO; to ensure that adequate, prompt, and effective compensation is available to persons who suffer damage caused by spills of oil, when carried as fuel in ships' bunkers.

The Convention applies to damage caused on the territory, including the territorial sea, and in exclusive economic zones of States Parties.

The bunkers convention provides a free-standing instrument covering pollution damage only.

"Pollution damage" means:

(a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of bunker oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and

(b) the costs of preventive measures and further loss or damage caused by preventive measures.

The convention is modelled on the International Convention on Civil Liability for Oil Pollution Damage, 1969. As with that convention, a key requirement in the bunkers convention is the need for the registered owner of a vessel to maintain compulsory insurance cover.

Another key provision is the requirement for direct action - this would allow a claim for compensation for pollution damage to be brought directly against an insurer.

The Convention requires ships over 1,000 gross tonnage to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover the liability of the registered owner for pollution damage in an amount equal to the limits of liability under the applicable national or international limitation regime, but in all cases, not exceeding an amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

The Regione Veneto, an important and industrialized region of the north east of the country has introduced a compulsory pollution insurance on waste disposal. In addition each polluting industry has to provide a performance bond as guarantee of clean up and restoration costs.

**2.4.1. In which step of a venture should such policy be submitted under the law?**



With reference to the Bunker Convention the relevant certificate is issued by the competent authority, which is that of the State of registration, where the ship is registered here.

### 3. Operational methods for pollution insurance (answer is required)

#### 3.1. Which are the pollution insurance's modalities that are offered in the market? Performance bonds or civil liability insurance?

Civil liability insurance prevails.

However one has to mention the special legal framework concerning the Integrated Environmental Authorization (AIA). This is the authorization that some enterprises need to comply with the principles of integrated pollution prevention and control (IPPC) dictated by the European Union since 1996. Since then, the regulatory framework for the AIA is common across Europe: it was initially established with Directive 96/61/ EC, rewritten by Directive 2008/1 / EC and then incorporated into the Industrial Emissions Directive (IED, Directive 2010/75 / EU). These directives establish that certain types of production installations can no longer operate without AIA; the productive activities that are subject to these authorization procedures are those most relevant to the environment. In order to obtain the AIA a performance bond (garanzia finanziaria) has to be granted by the enterprise to the public authority. These "garanzie finanziarie" also called "cauzioni" are activated by the public authority if there is the necessity of for exemple a clean up or restoration and the enterprise does not pay for it. Obviously these "garanzie finanziarie" do not rule out the necessity of insurance, as for example they do not cover damages to third parties. "Cauzioni" are commercialized both by banks and insurance companies.

##### 3.1.1. What kinds of risks should be covered thereunder?

This is not directly defined by the law (the definition of which risks have to be covered takes place exclusively in cases of compulsory environmental insurance).

#### 3.2. Does the law or administrative rule define upper limits for losses or coverage?

No, there are no such legal limits.

##### 3.2.1. Which are the criteria that should apply to limits' definition?

No legal criteria on this.

### 3.3. Is there any difference in the legal treatment of state-owned and private ventures?

No, in principle there is no difference: under EU law and Italian law implementing EU law public and private ventures are on a same footing,

### 3.4. Is there any difference in the legal treatment to fixed and mobile facilities?

No difference.

### 3.5. Is there any difference in the legal treatment to underground works, mines or underground quarries?

As a principle no. However, operators that carry out specific dangerous activities can be obligated to take out insurance.

### 3.6. Do insurers usually insert pre-contractual provisions in the policy (pre-contractual disclosure)?

Pre-contractual disclosure is obtained through questionnaires that the enterprise seeking insurance coverage is obliged to fulfill and submit to the insurer.

Under headings like “INFORMATION ON OCCURRENCES AND PREVIOUS INSURANCE” you may find questions as:

“Over the last five years there have been circumstances and consequences that have been given place third parties for claims for damages or prejudices resulting from the pollution of the environment caused by the activity carried out?”

“Over the last five years there have been circumstances and consequences that have given rise to complaints of violations of laws, regulations or standards concerning the protection OF THE ENVIRONMENT?”.

#### 3.6.1. Which are the most usual ones?

Please, see the answer above under 3.6.

## 4. Coverage under pollution insurance (answer is required)

#### 4.1. Which are the major covered risks relating to civil liability arising from pollution?

Operators can insure themselves against environmental incidents and/or damage in the following two ways:

Through a dedicated policy for pollution damage (that is, a "stand-alone policy" (RC Inquinamento)).

Through the extension "accidental pollution" on a general liability insurance policy (RC Generale).

The stand-alone policy, although not widely available in the market, provides more advantages than the general liability policy because in principle it can cover all of the following:

Any kind of environmental liability, including for damage caused in the absence of negligence or fault of the operator and for the legal expenses and the costs spent by the insured operator to assess the causes of the damaging event for the purpose of excluding its liability.

The damages suffered by the operator in addition to damages suffered by third parties.

The specific environmental liability of the insured operator, which can be claimed by the state under Article 300 of the Legislative Decree no. 152 of 3 April 2006 (Italian Environmental Code).

However, the general liability policy usually only covers damages to third parties as a consequence of certain specific events listed in the policy (for example, breakdown of plants or pipelines) caused by the negligence of the insured operator, and the maximum insured amount is often not enough to cover the entire damage.

In Italy there are several single insurance companies which operate on the market and cover pollution risks.

Apart from single players which are active in the market, a special mention merits the Pool INQUINAMENTO as it is of peculiar relevance in this sector.

The Italian Pool is a co-reinsurance consortium that was born in 1979. The members of the Pool are: Insurance Companies and Reinsurance Companies

The main reasons for setting up the Pool were:

1. need of high capabilities: given the often catastrophic dimensions of environmental damages, there is a need to offer maximum coverage consisting of high amounts that can normally not be made available by a single insurance undertaking;
2. full coverage for gradual and sudden pollution: one of the main peculiarities of the policy proposed by the Pool is that it covers not only events of a sudden and accidental nature, as in the past, but also those of a gradual nature.

3. environmental know-how: the unpredictable and sporadic nature of environmental damages caused by pollution entails that insurance undertakings do not have on their own the "critical mass" to analyse the frequency and the average costs of damages for the purposes of determining the terms and conditions of the coverage (in addition, there are different environmental rules, different rules on clean-up, different concepts of liability in different Member States).

The main activity of the Pool is the provision of civil and environmental liability insurance against the following kind of damages:

- A. death and bodily injuries;
- B. direct and material damage to property;
- C. discontinuance or temporary interruption of industrial activities;
- D. first and third party clean up and restoration.
- E. remedial actions taken under the Directive 2004/35/CE

The policies currently offered by the Pool Inquinamento are:

- 01. Civil and Environmental Liability for Damages caused by Pollution for Plants
- 02. Civil and Environmental Liability for Damages caused by Pollution for Contractors
- 03. Civil and Environmental Liability for Damages caused by Pollution in connection with loading and unloading operations performed with vehicles' mechanical devices
- 04. Civil and Environmental Liability for Damages caused by Pollution arising from commissioning the transport of hazardous goods

The capacity of the pool for each single risk is 50 M Euro.

The Pool carries out its activities in the following main areas:

- 01. technical examination of risks;
- 02. evaluation of risks;
- 03. taking-over and allocating ceded risks;
- 04. technical examination, management and settlement of claims;
- 05. research and study work for prevention and protection purposes (see also Art. 1);
- 06. participation in public or private events (conferences, seminars, national and/or international study commissions, etc.) where the representation of this particular sector is required.

#### 4.2. Which are the major covered guarantees for events arising from pollution?

In the event that the company does not warn a particular risk of pollution, the requirement should be limited to the purchase of the pollution liability extension provided for the civil liability contract. It

covers damages caused to third parties as a result of death or personal injuries, direct or material damage to property, interruption or suspension of industrial, commercial, agricultural or service activities, and, in general, the impossibility of using the goods that are in the affected environment, whether due to an accidental fact, that is, an abnormal and sudden event.

In the possibility instead of using an autonomous coverage dedicated to the risk of pollution, it is possible to activate a cover, with a dedicated ceiling, aimed at ensuring the enterprise against sudden, accidental and even gradual release, in the long run, of polluting substances.

It is also possible to extend these policies to cover:

- remediation and restoration costs, both within and outside the company site;
- damages caused by the interruption of the activity (also of the insured itself);
- harm to the environment;
- advertising and communication costs, often entrusted to specialized companies;
- post-remedial monitoring costs to check that the pollutant values remain under control.

We can also mention the following insurance products:

> RC inquinamento accidentale (civil liability for accidental pollution)

This insurance policy keeps the insured person indemnified from and against all liabilities for damages that he or she is obliged to pay as a result of claims filed for the first time against him during the policy period (claims made model) resulting from pollution events initiated after the date of coverage. The definition of damage includes, in addition to bodily injuries and material damage, legal fees and neutralization costs and security charges. Policies offered by some insurance markets also cover from pollution damage within the site (possibly up to the limit of the ceiling) and offer the possibility of extending the coverage even to radioactivity events.

> RC inquinamento graduale (civil liability for gradual pollution)

This policy, very similar to the version for accidental contamination, with which it often forms a common policy object, covers potential and future liability associated with pre-existing contamination. The Insurer undertakes to keep the Insured free of liabilities for damages that he is obliged to pay because of pollution events that are initiated before the date of the policy. Also for this type of coverage it is possible to cover the costs incurred by the Insured for the restoration of the site.

> Responsabilità per inquinamento a carico dell'appaltatore (contractor's responsibility for pollution)

This coverage has been designed to provide liability protection for contractor activities (including asbestos removals), both when they come from new cases of pollution and when the extension of contaminations is already in place. Coverage may be extended to damages related to disruption of work, such as costs resulting from the delayed delivery of a work in the case of projects under construction.

> Responsabilità per danni ambientali a seguito di inquinamento pregresso (Responsibility for environmental damage as a result of previous pollution)

Environmental damage coverage can provide protection for potential liability related to pre-existing pollution from past activities, both for the benefit of the polluter enterprise and for the current owner of the site, as well as for a builder and/or buyer who has inherited the risk within a sales contract. The insurance cover may refer to the remediation costs on its own site or to the reclamation required for damage to third parties, material or corporal damage caused by the pollution, and the legal defense costs deriving from the accident. Policies can provide durations of the contract up to 10 years.

> Costi "certi" per operazioni di bonifica (Remediation costs)

These insurance programs can be structured in order to provide protection against unexpected and outside the budget costs in clean-up projects of polluted sites. Coverage for certain costs mitigates financial risk by providing funds to complete the project in case of overcoming the estimated costs caused by accidental events such as a more extensive or rooted pollution degree. Insurance can be combined with sophisticated funding techniques to help the company make the best use of its financial resources.

#### 4.3. Which are the major covered operational risks arising from pollution?

Environmental risks and associated third-party responsibilities have never been such a threat to the businesses' financial stability. Different factors – for example a related increasing legal sensitivity, high costs for businesses,

investors, buyers and sellers' needs for a good management both of the environmental factor and its risks management, an increased awareness and perception of environmental problems – are the driving force behind pressure to properly assessing and managing environmental risks.

Activities interested in insurance solutions for environmental risks:

- Manufacturing Industrial Facility
- Stockpiling Area and Warehouse

- Industrial Waste Treatment and Waste-Disposal
- Disused and/or Convertible Industrial Areas
- Real Estate and Private Equity Companies
- Dredging and Reclamation Companies
- Commercial and Residential Sites
- Companies Dealing with Acquisitions and Mergers
- Companies Dealing with Problems bound up with Verified Responsibilities
- Companies Dealing with Implementing Dredging and Reclamation Activities on Their Own Areas

In recent times, environmental issues have been becoming more and more important: they are both subject of debate and source of concern for legislators and public opinion. Industrial activities can badly impact on natural resources and biodiversity: in consequence, new requirements entail introducing strict regulations in order to make some environmental management measures mandatory, penalizing polluters.

Pollution hazard exposes enterprises to civil liability. This aspect became more important with the adoption of Directive 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage. This Directive introduced a keynote: polluter is required by the law to take corrective measures or to pay a financial compensation for repairing the environment damage caused to the environment and to the community.

In solving major environmental issues for the enterprises, it is necessary to adopt sophisticated risk management techniques, by using appropriate/well-chosen insurance tools and/or by using alternative risk financing mechanisms. Insurance is a key aspect and plays a leading role in managing environmental risk.

#### 4.4. Does the insurance cover fines?

No, fines may not be insured: Art. 12 of the Private Insurance Code (legislative decree no. 209 of 2005).

#### 4.5. Is there coverage for individual moral damages, being understood as such any physical or psychological suffering experienced by the victim and/or injury against his/her honor or personality?

No there is no such coverage,

4.6. Is there coverage for collective moral damages, being understood as such any moral injury undergone by a group of certain persons who are interconnected by a fundamental legal relationship or by a same event experienced by all of them, or any injury to non-determinable trans-individual rights?

No there is no such coverage,

4.7. Is there coverage for punitive damages, being understood as such any penalty levied on the agent of the illicit conduct, in addition to the compensation of damages themselves?

In principle punitive damages are not provided for by Italian law. In any case Italian legal doctrine largely maintains that punitive damages are not insurable according to Italian law. Otherwise they would lose their deterrent effect.

## 5. Beneficiaries (answer is required)

5.1. Who is entitled to be beneficiary of losses recoverable under pollution insurance? Any individuals, legal entities, state-owned or private institutions, collectivities?

Any of these subjects may potentially be entitled. The concrete beneficiary will depend from the wording of the policy.

## 6. Market status (answer is required)

6.1. What is the percentage of participation of environmental insurance at the insurance market in its whole?

There are no official data published by ANIA (The Italian association of insurers). However the enterprises are very reluctant to take insurance covering pollution risks. There is a very low perception of the importance of pollution insurance and on the huge risk deriving from the choice of not insuring. We can suppose that the yearly premiums are only circa 40 million euros. So it is an infinitesimal percentage of the insurance market as a whole.



6.1.1 As regards the figures thereof, what is the yearly participation of premiums collected under environmental insurance?

Please, see answer above 6.1.

6.2. Which are the sectors of economic activity that use to obtain environmental insurance?

See the answer to 4.3 above. We can specify that 50 % are enterprises active in the Industrial Waste Treatment and Waste-Disposal. As the Regione Veneto has introduced a compulsory pollution insurance on waste disposal this 50% stems from the enterprises located in Veneto.

6.3. During the last 5 (five) years, what is the sum of losses paid by virtue of environmental damages?

Approximately 75 million euros losses.

6.3.1. What percentage of the aforesaid losses was covered under insurance?

Below 10%.

## 7. Academic development (answer is required)

7.1 Are there research institutes focused on the study of environmental insurance? Please identify them.

There are no research institutes. However the already mentioned POOL INQUINAMENTO publishes on its well organized web site a lot of informative documents and also specific studies on pollution insurance in a dedicated Journal. (see [www.poolinquinamento.it](http://www.poolinquinamento.it)).

7.2 Are there academic and scientific works produced in the fields of law, economy, environment or other similar area, that specialize in environmental insurance? Please indicate some reference legal manuscripts and books, and the main authors thereof.

> A. D. CANDIAN, *Responsabilità civile per danno ambientale e assicurazione*, in *La parabola del danno ambientale*, Milano, Giuffrè, 1994;

> D. DE STROBEL, *Problemi di assicurazione del danno ambientale*, in *L'impresa ambiente*, 1990, n. 4, p. 109.

- > D. DE STROBEL, *Il danno ambientale fra legislazione precedente e attuale*, in *Diritto ed Economia dell'Assicurazione*, 2009, n.1, pp. 241-256;
- > A. MONTI, *Environmental Risk: A Comparative Law and Economics Approach to Liability and Insurance*, 2001, 9, *Eur. Rev. Private L.* 51