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## GARBAGE DAY: WILL ITALY FINALLY TAKE OUT ITS TRASH IN THE LAND OF FIRES?

Jason A. Slaybaugh<sup>†</sup>

*Abstract:* The illegal dumping and burning of waste and toxic waste in southern Italy has caused such immense environmental damage that the disaster is now known as “Italy’s Chernobyl”. In early 2014, the Italian Senate passed the Land of Fires Decree, a sweeping new law aimed at solving a problem that Italy has historically failed to adequately address. Despite the broad grants of power and the new crime created, the lack of political will renders these new tools useless and means little will likely change. Italy can no longer put this fire out by itself. As such, Italy should look to its European neighbors and the EU for help with enforcement. A regional approach enables external accountability and prevents the bad actors from simply shifting the illegal waste disposal activity to a less regulated area like the Balkans.

### INTRODUCTION

Italy’s southwestern region of Campania suffers such immense environmental degradation from the illegal disposal of waste and toxic waste that it has become known as “Italy’s Chernobyl”.<sup>1</sup> Documentation of the illicit activity began in the 1990s,<sup>2</sup> but some accounts indicate that it dates back to at least the early 1980s.<sup>3</sup> A significant source of this conduct can be attributed to mafia activity in the region, specifically the Camorra family.<sup>4</sup> The mob maintains firm control of the waste management industry in southern Italy, and earns substantial profits from it year to year. One study estimates that in 2013, the illegal waste business in Italy as a whole amassed

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<sup>†</sup> Jason A. Slaybaugh is a J.D. candidate at the University of Washington School of Law in the class of 2017. He would like to thank his parents, Annette and Bill, for their continued support throughout this process. He would also like to thank Professor Melissa J. Durkee for her invaluable guidance early on in this project and Professor Sanne Knudsen for her review of an earlier draft. Finally, he would like to thank the *Washington International Law Journal* and its dedicated editorial team whose efforts strengthened and improved the final product.

<sup>1</sup> Christopher Livesay, *Europe’s Biggest Illegal Dump – ‘Italy’s Chernobyl’ – Uncovered in Mafia Heartland*, VICE NEWS (June 19, 2015, 11:30AM), <https://news.vice.com/article/europes-biggest-illegal-dump-italys-chernobyl-uncovered-in-mafia-heartland>.

<sup>2</sup> Ian Birrell, *Mafia, toxic waste and a deadly cover up in an Italian paradise: ‘They’ve poisoned our land and stolen our children’*, THE TELEGRAPH (June 24, 2016, 6:00AM), <http://www.telegraph.co.uk/news/0/mafia-toxic-waste-and-a-deadly-cover-up-in-an-italian-paradise-t/>.

<sup>3</sup> Livesay, *supra* note 1.

<sup>4</sup> Jim Yardley, *A Mafia Legacy Taints the Earth in Southern Italy*, THE NEW YORK TIMES (Jan. 29, 2014), <http://www.nytimes.com/2014/01/30/world/europe/beneath-southern-italy-a-deadly-mob-legacy.html>.

€16.7 billion.<sup>5</sup> After decades of dumping, mob entrenchment makes any substantive change now very difficult. The types of waste disposed of also exacerbate the problem. Not only is domestic waste at issue, but waste from other European countries as well as potentially countries from outside of Europe is also involved.<sup>6</sup>

After decades of polluting, the region now feels the very real effects. For one thing, there is a significantly higher rate of cancer; estimates range anywhere from twenty percent (2008)<sup>7</sup> to eighty percent (2015)<sup>8</sup> higher than the national average. This increased mortality has become so apparent that the three municipalities of Acerra, Nola, and Marigliano, some of the hardest hit in eastern Campania, form an area nicknamed “the triangle of death.”<sup>9</sup> While correlation does not always equal causation, scientific studies have found a higher standardized mortality rate in the “triangle of death” than national and regional averages.<sup>10</sup>

Additionally, there is significant concern, especially with local people,<sup>11</sup> over the impact the pollution has on agriculture. Historically, southern Italy is largely rural, and Campania is no exception.<sup>12</sup> However, agricultural land has become a common place to dump waste.<sup>13</sup> This creates the potential for toxins to leach into and accumulate within the soil, raising a serious concern over the agricultural industry’s sustainability.

Past efforts to address this issue have been very slow to gain traction and proved largely unsuccessful.<sup>14</sup> The most recent attempt is the Italian Senate’s Legislative Decree No. 136 entitled “Urgent Measures Designed to Tackle Environmental and Industrial Emergencies and to Facilitate the Development of the Concerned Areas”.<sup>15</sup> This new law provides an extensive array of new measures and reforms designed to tackle the environmental disaster in the south.

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<sup>5</sup> GIACOMO D’ALISA ET AL., EUROPEAN UNION ACTION TO FIGHT ENVIRONMENTAL CRIME, VICTIMS IN THE “LAND OF FIRES”: A CASE STUDY ON THE CONSEQUENCES OF BURIED AND BURNT WASTE IN CAMPANIA, ITALY 10 (2015).

<sup>6</sup> Livesay, *supra* note 1.

<sup>7</sup> GOMORRAH (Fandango 2008).

<sup>8</sup> Livesay, *supra* note 1.

<sup>9</sup> Maria Triassi et al., *Environmental Pollution from Illegal Waste Disposal and Health Effects: A Review on the “Triangle of Death,”* 12 INT’L J. ENVTL. RES. & PUB. HEALTH 1216, 1217–19 (2015).

<sup>10</sup> Alfredo Mazza et al., *Illegal Dumping of Toxic Waste and Its Effects on Human Health in Campania, Italy,* 12 INT’L J. ENVTL. RES. & PUB. HEALTH 6818, 6820 (2015).

<sup>11</sup> Birrell, *supra* note 2.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Decreto Legge 10 dicembre 2013, n. 136, in G.U. Dec. 10, 2013, n.289 (It.).

The Decree entered into force on December 10, 2013<sup>16</sup> and, due to its subject matter, has since become known as the Land of Fires Decree. The Italian environmental NGO Legambiente originally used the term Land of Fires, or “terra dei fuochi” in Italian, to “refer[] to three municipalities in the province of Naples: Giuliano (*sic*) in Campania, Qualiano and Villaricca, where thousands of tons of toxic wastes have been (buried and) burnt” since the 1980s.<sup>17</sup> Today, it broadly refers to the two regions of Campania and Puglia, which borders northeastern Campania, due to the significant amount of industrial burning there.<sup>18</sup>

This comment will conduct a textual analysis of the Land of Fires Decree to evaluate its potential effectiveness at addressing the illegal disposal of waste in Campania. Due to the Decree’s extensive nature, there is insufficient space here to conduct an exhaustive analysis of every substantive part of it. Instead, this paper focuses on (1) the three provisions most likely to effectuate change: the mapping of waste, the new criminal felony offense enforceable through the armed forces, and the Public Prosecutor’s increased disclosure requirements; and (2) the one provision most likely to undermine progress: the protection of business interests.

This paper argues that despite Italy’s best efforts, the Land of Fires Decree will not be a sufficient solution to its environmental crisis. History shows a severe lack of political will at the national level to even criminalize, and thus enforce, environmental crimes;<sup>19</sup> this is something not likely to change. There is also increasing evidence that a reduction in illegal disposal in southern Italy would simply correspond with a shift in the waste disposal destination from southern Italy to a less regulated area, such as across the Adriatic Sea to the Balkans.<sup>20</sup> If this is indeed the case, the Decree would only move the problem, not solve it. This is not an adequate solution. As such, this comment proposes that an effective solution requires a coordinated regional or EU-based approach where Italy acts with its neighbors and allies to extinguish a fire which has grown too big for Italy to handle by itself.

Part I of this comment will explore in-depth the background of the present environmental disaster in Campania. Part II will then examine the scope and contents of the Land of Fires Decree, with a focus on the most impactful provisions. Part III will argue that although the Land of Fires

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<sup>16</sup> *Id.*

<sup>17</sup> D’ALISA ET AL., *supra* note 5, at 8, 20.

<sup>18</sup> Dante Figueroa, THE LIBRARY OF CONGRESS, ITALY: NEW MEASURES TO RESPOND TO ENVIRONMENTAL EMERGENCIES (2014), <http://www.loc.gov/law/foreign-news/article/italy-new-measures-to-respond-to-environmental-emergencies/>.

<sup>19</sup> D’ALISA ET AL., *supra* note 5, at 24–25.

<sup>20</sup> Yardley, *supra* note 4.

Decree is a noble start, it will not be enough. Finally, Part IV will suggest an alternative, broader approach that will provide a more effective remedy.

#### I. BACKGROUND TO THE ENVIRONMENTAL DISASTER IN CAMPANIA

The origin of southern Italy's waste disposal problem traces back to mafia activity beginning in at least the early 1980s.<sup>21</sup> One of the hardest hit areas is Campania, a southwestern region on the Mediterranean coast and home to the city of Naples. "Since 1980, waste management in Campania has been characterized by crisis," which "has resulted in the widely documented illegal disposal of urban, toxic and industrial waste" and is associated with deleterious environmental impacts on land, surface and ground water, and air quality.<sup>22</sup>

"Campania has become the main target zone" for illegal waste disposal, especially hazardous waste, and is "the biggest final dumping ground in Italy."<sup>23</sup> Today, the eastern part of Campania, specifically the area between the municipalities of Acerra, Nola, and Marigliano, comprise the "triangle of death" (see Figure 1 below), a name derived from having "one of the worst records of illegal waste dumping practices" and higher rates of cancer mortality.<sup>24</sup>

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<sup>21</sup> Livesay, *supra* note 1.

<sup>22</sup> Triassi et al., *supra* note 9, at 1217.

<sup>23</sup> D'ALISA ET AL., *supra* note 5, at 19.

<sup>24</sup> Triassi et al., *supra* note 9, at 1217–1220.

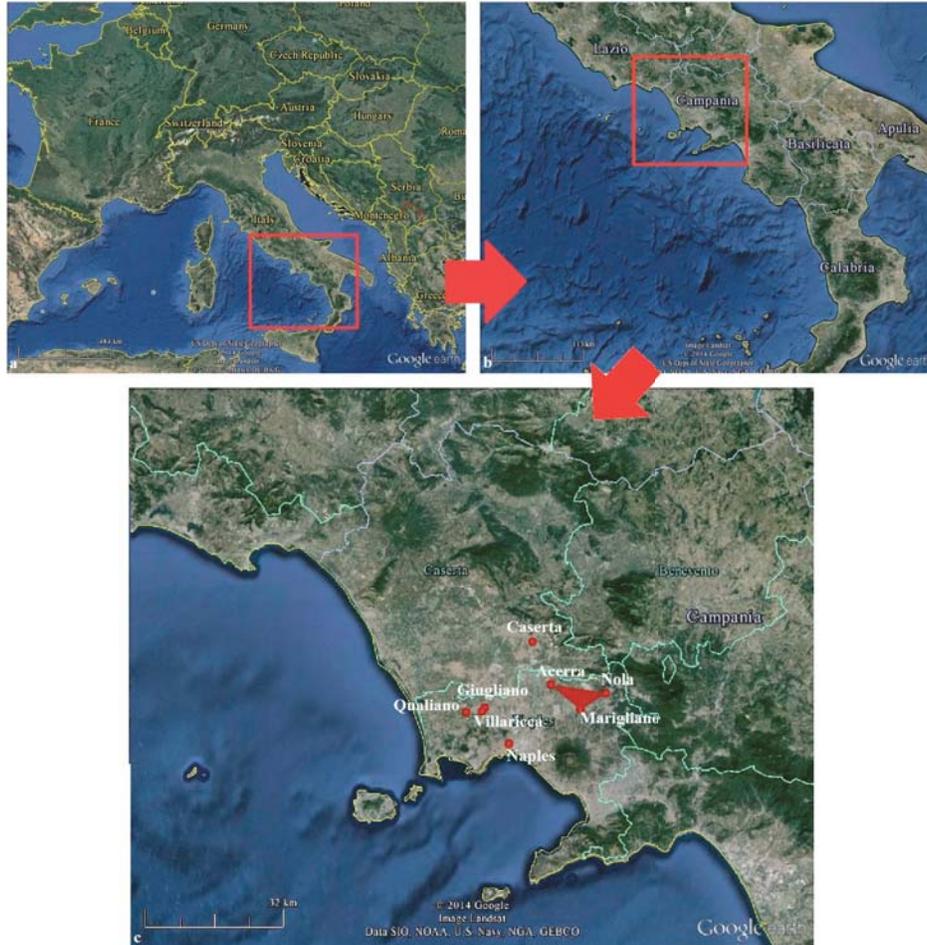


Figure 1: Maps showing Campania's location and the "triangle of death".<sup>25</sup>

Moreover, the area became officially known as the Land of Fires in 2004 due to the severe and constant burning of waste.<sup>26</sup>

In order to better understand how the waste management problems have devolved to their present form, there is an important feature of Italian law that needs to be understood: decentralization. According to a 2013 Organisation for Economic Co-operation and Development (OECD) Environmental Performance Review of Italy:

<sup>25</sup> *Id.* at 1219.

<sup>26</sup> D'ALISA ET AL., *supra* note 5, at 22.

Italy's environmental management system has also evolved in the context of a major devolution of legislative and administrative responsibilities to subnational levels of government . . . . [T]he devolution process also created ambiguities about the respective roles of national and regional levels of government, and tended to increase gaps and inconsistencies in the transposition of EU environmental directives.<sup>27</sup>

This system, in turn, has “undermined the efficiency and effectiveness of national policies” in areas such as waste management.<sup>28</sup>

Furthermore, when examining the Italian waste sector, it is notable that in southern Italy the role of utilities has been limited.<sup>29</sup> The south instead must rely on the private provision of these services, which results in a wide variety of local service quality.<sup>30</sup> Additional characteristics of this system include weak competition, weak regulatory oversight, and local conflicts of interest.<sup>31</sup> Consequently, Italy's “environmental policy has remained fragmented, largely driven by emergencies, and with a short-term focus.”<sup>32</sup>

#### A. *The Players*

While the mafia is certainly the most well-known player in Italy's illegal waste disposal business, it is not the only one. Others include both white collar criminals, as well as locals resorting to self-help.

“In Italy in the last 30 years, mafia families have been increasingly involved in environmentally disruptive businesses.”<sup>33</sup> The waste business specifically has proven to be very attractive because it offers a two-fold incentive of high profitability and loose sanctions.<sup>34</sup> The organizations that operate in this manner have earned the title Ecomafia, and stand in stark contrast to the traditional mafia business of trafficking drugs, weapons, and people.<sup>35</sup> Additionally, “Campania has been the region where Ecomafia has

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<sup>27</sup> ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, ENVIRONMENTAL PERFORMANCE REVIEWS ITALY 2013 ASSESSMENT AND RECOMMENDATIONS 3 (2013) [hereinafter OECD].

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 6.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 3.

<sup>33</sup> D'ALISA ET AL., *supra* note 5, at 22.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 23.

been mostly active in the last 20 years, particularly in regard to illegal waste trafficking.”<sup>36</sup>

Here the Camorra family dominates.<sup>37</sup> Roberto Saviano, an expert on the Camorra criminal organization, detailed his investigation into organized crime in Naples in his groundbreaking book *Gomorra*.<sup>38</sup> According to him, “the Camorra control[led] the entire cycle of garbage disposal in Campania, running the dumps, waste transport companies and other businesses, raking in what anti-mafia prosecutors estimate is \$880 million per year” in 2008.<sup>39</sup>

Another major actor is white collar criminals in the form of corporations, looking to cut costs.<sup>40</sup> In recent years, there have been increasing efforts to expand the public’s perception of illegal waste trafficking to include corporations, who “much more often commit waste related environmental crimes with no mafia organization relations.”<sup>41</sup> In fact, Europol (the EU’s law enforcement agency)<sup>42</sup> found that “illegal waste trafficking generates high profits and it is a low risk activity, which both, organized mafia-like groups and legal companies, engage with; the latter increasingly asking for illicit disposal services to the former in all European Member States.”<sup>43</sup>

Finally, there are local residents who are sometimes forced to resort to self-help.<sup>44</sup> Due to the poor garbage collection job by Camorra waste companies<sup>45</sup> and the overflow of local dumps, garbage piles up in the city streets of, for instance, Naples.<sup>46</sup> The garbage can become such an impediment that angry and frustrated residents resort to burning it

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<sup>36</sup> *Id.* at 10.

<sup>37</sup> *Naples’ trash crisis tied to mob, toxic waste*, NBC NEWS (Jan. 9, 2008 12:59 PM), [http://www.nbcnews.com/id/22573281/ns/world\\_news-world\\_environment/t/naples-trash-crisis-tied-mob-toxic-waste/#.V8oKjJMrJsM](http://www.nbcnews.com/id/22573281/ns/world_news-world_environment/t/naples-trash-crisis-tied-mob-toxic-waste/#.V8oKjJMrJsM).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> D’ALISA ET AL., *supra* note 5, at 23–24; Livesay, *supra* note 1; Birrell, *supra* note 2. *Cf. Italian Shipping Company Fined \$2.75 Million for Environmental Crimes*, DEP’T OF JUST. (Mar. 6, 2015), <https://www.justice.gov/opa/pr/italian-shipping-company-fined-275-million-environmental-crimes>.

<sup>41</sup> D’ALISA ET AL., *supra* note 5, at 23.

<sup>42</sup> *About Europol*, EUROPOL, <https://www.europol.europa.eu/about-europol>.

<sup>43</sup> D’ALISA ET AL., *supra* note 5 at 24.

<sup>44</sup> *Life amid the waste piles of Naples*, BBC NEWS (Jan. 7, 2008, 3:01 PM), <http://news.bbc.co.uk/2/hi/europe/7174987.stm>.

<sup>45</sup> Michelle Tsai, *Why the Mafia Loves Garbage*, SLATE (Jan. 11, 2008, 3:56 PM), [http://www.slate.com/articles/news\\_and\\_politics/explainer/2008/01/why\\_the\\_mafia\\_loves\\_garbage.html](http://www.slate.com/articles/news_and_politics/explainer/2008/01/why_the_mafia_loves_garbage.html).

<sup>46</sup> Barbie Nadeau, *Italy: Naples Still Trash City*, NEWSWEEK (Jan. 13, 2008, 7:00 PM), <http://www.newsweek.com/italy-naples-still-trash-city-87463>.

themselves.<sup>47</sup> This of course only serves to further increase the health hazards and perpetuate the cycle of illegal waste disposal.<sup>48</sup>

### B. *The Sources of Waste*

There are three major sources of illegal waste present in Campania: local waste, waste from northern Italy, and waste from Europe.<sup>49</sup> As previously described, the local waste collection services in Campania are severely lacking.<sup>50</sup> This enables what would otherwise be legal waste to find its way into the illegal waste disposal system. The region is constantly in a waste-related state of emergency, which then enables less-than-reputable companies to obtain city disposal contracts that would otherwise be subject to scrutiny under Italy's anti-racketeering legislation.<sup>51</sup> These companies then dispose of the waste either out in the open or at the city dumps, regardless of capacity.<sup>52</sup>

The second major source of illegal waste comes from northern Italy. Historically, Italy has been divided between the industrial north and the rural south.<sup>53</sup> One of the obvious side effects of industrial production is waste. In turn, "[t]he industrial waste market is a major sector of organized crime activity given the smaller infrastructure needed and the high profits gained from it."<sup>54</sup> It is no secret that due to its nature, such toxic waste can be expensive to properly, as well as legally, treat and dispose. As a result, it comes as no surprise that some enterprising individuals would try to create a cheaper solution outside the prescribed legal disposal framework.

The third source of illegal waste comes from Europe.<sup>55</sup> The Campania regional command of the forestry police has unearthed illegally buried waste, "some of which bore labels from a variety of European countries."<sup>56</sup> One mafia kingpin has even stated that trucks travelled from Germany to

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<sup>47</sup> *Life amid the waste piles of Naples*, *supra* note 44.

<sup>48</sup> For more on the health hazards of burning garbage see *Open Burning of Garbage*, ENVIRONMENT AND CLIMATE CHANGE CANADA, [https://www.ec.gc.ca/gdd-mw/default.asp?lang=En&n=684B44DD-1; Human Health, U.S. ENVTL. PROT. AGENCY, https://archive.epa.gov/epawaste/nonhaz/municipal/web/html/health.html](https://www.ec.gc.ca/gdd-mw/default.asp?lang=En&n=684B44DD-1;Human+Health,U.S.+ENVTL.+PROT.+AGENCY,https://archive.epa.gov/epawaste/nonhaz/municipal/web/html/health.html).

<sup>49</sup> D'ALISA ET AL., *supra* note 5, at 23.

<sup>50</sup> Tsai, *supra* note 45; Nadeau, *supra* note 46.

<sup>51</sup> Alessio Vinci, *Why Naples is drowning in garbage*, CNN (Jan. 8, 2008, 8:51 PM), <http://edition.cnn.com/2008/WORLD/europe/01/07/naples.rubbish.background/>.

<sup>52</sup> *Id.*

<sup>53</sup> Thayer Watkins, *The Regions of Italy*, SAN JOSE STATE UNIV. (last visited Nov. 1, 2016), <http://www.sjsu.edu/faculty/watkins/italyreg.htm>.

<sup>54</sup> D'ALISA ET AL., *supra* note 5, at 10.

<sup>55</sup> Livesay, *supra* note 1; Nadeau, *supra* note 46.

<sup>56</sup> Livesay, *supra* note 1.

Campania to dump nuclear waste.<sup>57</sup> Consequently, it is evident that this is not just an Italian problem, but a much larger European problem.

People also now suspect that countries outside Europe are playing a role in this dirty business. Europol warns that “Italy has also become a transit point for e-waste (second-hand electrical and electronic equipment) en route to Africa and Asia.”<sup>58</sup> One potential culprit, for example, is Somalia.<sup>59</sup> Targeted assassinations and former mobster confessions suggest the existence of, at least during the 1990s, a toxic waste ring between Somalia and Italy.<sup>60</sup> As such, the potential reach of the illegal waste disposal racket is quite unsettling and bears serious implications for any effective solution Italy attempts to craft on its own.

C. *The Consequences of Illegal Waste Disposal: The “Triangle of Death”*

Typical methods of illegal waste disposal in Campania include dumping, burning, or burying waste.<sup>61</sup> More specifically, this can involve dumping it directly into the countryside, illegal quarries, or construction sites of public works, as well as burning it in the countryside or along low-traffic roads.<sup>62</sup> It is also common to mix toxic waste with domestic waste, allowing it to be disposed of in legal landfills and incinerators which prohibit toxic waste.<sup>63</sup>

In general, illegal waste disposal can negatively impact human health as well as land, water (both ground and surface), and air quality.<sup>64</sup> Some of the short-term effects on human health are “congenital anomalies, asthma and respiratory infection.”<sup>65</sup> Symptoms can include “stress, anxiety, headache, dizziness, nausea, [and] eye and respiratory irritation . . . .”<sup>66</sup>

<sup>57</sup> Birrell, *supra* note 2.

<sup>58</sup> *Europol Warns of Increase in Illegal Waste Dumping*, EUROPOL, <https://www.europol.europa.eu/newsroom/news/europol-warns-of-increase-in-illegal-waste-dumping>.

<sup>59</sup> Livesay, *supra* note 1.

<sup>60</sup> *Id.* (“In 1994, Italian broadcast journalist Ilaria Alpi and Slovenian cameraman Miran Hrovatin were ambushed and shot dead in their jeep in [the Somali capital of] Mogadishu by a commando unit.” Alpi’s parents subsequently published a book in 1999 which “alleged they were killed to stop them from revealing an international arms and toxic-waste ring, implicating high-level political and military figures in both Italy and Somalia.” These allegations were confirmed a decade later by a former mobster who claimed the pair were targeted because they witnessed a shipment of toxic waste from the powerful southern Italian ‘Ndrangheta syndicate to Somalia.)

<sup>61</sup> D’ALISA ET AL., *supra* note 5, at 19.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> Triassi et al., *supra* note 9, at 1217.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

There are also potential long-term effects such as “chronic respiratory and cardiovascular diseases, cancer and even brain, nerves, liver, lymphohematopoietic or kidneys (*sic*) diseases.”<sup>67</sup>

Italian researchers and the Italian Institute of Health have both conducted scientific studies which have found a higher standardized mortality rate in the “triangle of death” than national and regional averages.<sup>68</sup> Stefano Ciafani, the vice president of the NGO Legambiente, has reported Campania’s cancer rate as being eighty percent higher than Italy’s national average.<sup>69</sup> While he directly attributes this disparity to illegal waste disposal in Campania,<sup>70</sup> the scientific community is more hesitant to conclude a causal relationship.<sup>71</sup> Still, “historical mortality data show that overall cancer mortality rates of the Campania region in the 1990s were lower than the Italian average values, while they are [now] currently higher than the national rates....”<sup>72</sup>

There is also increasing evidence that harmful chemicals are getting into the food chain.<sup>73</sup> Groundwater samples appear to be contaminated with hazardous chemicals, causing local authorities to prohibit the use of agricultural water wells in several areas within Campania.<sup>74</sup> However, this should hardly come as a surprise anymore. When considering the illegal dumping of industrial toxic and urban solid waste in Campania over the last several decades, researchers note:

[T]ons of waste have been dumped in agricultural areas and illegally burned, usually during the night, releasing a number of dangerous chemicals, including dioxins, a large family of chlorinate compounds with 17 highly toxic molecules, including the 2,3,7,8-tetraclhorodibenzo-*p*-dioxins (*sic*) (TCDD), which has been recently classified as carcinogenic in both animals and humans by the International Agency for Research on Cancer (IARC).<sup>75</sup>

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<sup>67</sup> *Id.*

<sup>68</sup> Mazza et al., *supra* note 10, at 6820.

<sup>69</sup> Livesay, *supra* note 1.

<sup>70</sup> *Id.*

<sup>71</sup> Mazza et al., *supra* note 10, at 6821, 6826–28. The hesitancy to conclude a direct causal relationship between waste disposal and health impairments in Campania is based on the limited number of studies available and the overall downward trend in cancer rates in Campania from 1990 to 2012.

<sup>72</sup> *Id.* at 6823.

<sup>73</sup> *Id.* at 6827.

<sup>74</sup> *Id.* at 6828.

<sup>75</sup> *Id.* at 6819.

Not only does this level of exposure pose a serious risk for the people living in Campania, but it also threatens the region's economic stability. Italy is traditionally split in half; the north tends to be industrial while the south is generally rural.<sup>76</sup> The U.S. Department of Agriculture notes that “[a]griculture is one of Italy’s key economic sectors, accounting for around 2% of GDP.”<sup>77</sup> It also identifies Italy as “one of the largest agricultural producer and food processors in the European Union” with the south tending to specialize in products such as fruits, vegetables, olive oil, wine, and durum wheat.<sup>78</sup> Consequently, hazardous chemicals getting into the food chain would severely damage the region’s economy and hurt the country as a whole.

Additionally, water management in Italy is already complicated due to uneven distribution.<sup>79</sup> “While northern Italy enjoys an abundance of water, the south experiences water shortages which are compensated by the increasing use of groundwater (often above the replenishment rate) and water transfers between regions.”<sup>80</sup> Because Italy is viewed as a “water-stressed country”, increasing competition for water resources as well as challenges associated with climate change will only serve to intensify the problem.<sup>81</sup> The polluted regions then will foreseeably become more dependent on their existing supplies of water, such as groundwater, the consequences of which become astronomical when toxins are leaching into it.

Although researchers have been hesitant to conclude a direct causal link between waste disposal and health impairments,<sup>82</sup> this has not prevented them from concluding that the available evidence still shows a need for mitigation and improvement of waste management practices.<sup>83</sup> Moreover, some have noticed a significant disparity between the experience of local people and the conclusions of official government studies.<sup>84</sup> On the one hand, the reverend in Marigliano (see Figure 1 above) has seen cancer seriously affect his Parish.<sup>85</sup> Yet on the other, “[r]ecent studies

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<sup>76</sup> Watkins, *supra* note 53.

<sup>77</sup> DANA BIASETTI, USDA, 2015 ITALY EXPORTER GUIDE 3 (2015); THE WORLD BANK, <http://data.worldbank.org/indicator/NV.AGR.TOTL.ZS?locations=IT> (stating the added value of agriculture as 2.3% of GDP).

<sup>78</sup> BIASETTI, *supra* note 77.

<sup>79</sup> OECD, *supra* note 27, at 8.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> Mazza et al., *supra* note 10, at 6821, 6826–28.

<sup>83</sup> *Id.* at 6828.

<sup>84</sup> D’ALISA ET AL., *supra* note 5, at 12.

<sup>85</sup> Yardley, *supra* note 4.

commissioned by the national government reaffirm that the causal link between health and illegal waste dumping is not demonstrable”.<sup>86</sup> Some have even suggested that lifestyle choices are to blame for the unhealthy condition afflicting people in Campania.<sup>87</sup> “[H]owever, this does not explain why thousands of sheep in the province of Naples have been slaughtered due to contamination, even if they neither smoke cigarettes nor drank alcohol.”<sup>88</sup>

*D. A Brief Overview of Italy’s Prior Environmental Regulation Framework*

Although the Italian Constitution does not contain explicit provisions providing for the protection of the environment as a whole, it does include five articles which enhance different aspects of environmental protection: Article 9, Article 32, Article 41, Article 42, and Article 117.<sup>89</sup> First, Article 9 delegates the Republic of Italy the responsibility of “safeguard[ing] natural landscape . . . .”<sup>90</sup> This article makes a strong argument for constitutionally mandated environmental protection, but suffers from language that seems to suggest concern with only visual aesthetics. Second, Article 32 provides that the Republic will “safeguard[] health as a fundamental right of the individual . . . .”<sup>91</sup> Human health and environmental protection can often overlap, as indeed they seem to do in Campania, but this provision still falls short of a blanket declaration to protect the environment. Third, Article 41 states that “[p]rivate economic enterprise is free” but that “[i]t may not be carried out against the common good or in such a manner that could damage safety, liberty and human dignity.”<sup>92</sup> This article shares a similar overlap with the environment found in Article 32, but also suffers from the same limitations. Fourth, Article 42 recognizes and guarantees private property.<sup>93</sup> This can be applicable to the extent that, for instance, a farmer’s land is compromised by a waste disposer’s pollution. But, it too is not enough. Finally, Article 117(s) provides that “[t]he state has exclusive legislative powers in the following matters . . . protection of the environment, the ecosystem and

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<sup>86</sup> D’ALISA ET AL., *supra* note 5, at 12.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> Elena Falletti, *Environmental Law in Italy*, in COMP. ENVTL. L. & REG. 3 (Elizabeth Burleson et al. eds., 2015).

<sup>90</sup> Art. 9 Costituzione [Cost.] (It.).

<sup>91</sup> *Id.* at Art. 32.

<sup>92</sup> *Id.* at Art. 41.

<sup>93</sup> *Id.* at Art. 42.

cultural heritage.”<sup>94</sup> While this clearly grants the national government the power to legislate on environmental matters, it is a far cry from a command to protect the environment. The Court of Cassation, the Italian Supreme Court of final instance for infringement of the law,<sup>95</sup> has gone beyond these confines and “recognised a wider constitutional protection of the environment through the combined provisions of the above mentioned Articles with Article 2 (protection of fundamental rights), and Article 3 (equality of all citizens in front of the law).”<sup>96</sup>

The Italian legal system has also inherited some environmental principles from the EU courtesy of the Treaty of Lisbon, specifically Article 191(2) of the Treaty on the Functioning of the European Union (TFEU).<sup>97</sup> These include: the precautionary principle (prevention); the “polluter pays” principle; the principle of remediation (rehabilitation); the principle of democratic decision-making and social responsibility; and the principle of implementation of environmental assumptions in public policy.<sup>98</sup> These are all noble guiding principles. However, because they are only principles and not more binding, implementation of EU directives or regulations at the ground level is not necessarily guaranteed.<sup>99</sup>

In 2001, the Italian government passed Law 93/2001 and created the first waste-related environmental crime: the organized activity of illicit

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<sup>94</sup> *Id.* at Art. 117(s). The subsequent paragraph states: “Concurring legislation applies to the following subject matters: international and EU relations of the Regions; . . . enhancement of cultural and environmental properties . . .” This indicates a recognition of the EU’s role in Italian environmental law.

<sup>95</sup> *Le funzioni della Corte*, CORTE SUPREMA DI CASSAZIONE, [http://www.cortedicassazione.it/corte-di-cassazione/it/funzioni\\_corte.page](http://www.cortedicassazione.it/corte-di-cassazione/it/funzioni_corte.page); *Judicial Systems in Member States – Italy*, EUROPEAN E-JUSTICE, [https://e-justice.europa.eu/content\\_judicial\\_systems\\_in\\_member\\_states-16-it-en.do?member=1](https://e-justice.europa.eu/content_judicial_systems_in_member_states-16-it-en.do?member=1). The Court of Cassation is not to be confused with Italy’s other Supreme Court, the Constitutional Court, *infra* note 170.

<sup>96</sup> Falletti, *supra* note 89.

<sup>97</sup> *Id.* at 6. The Treaty of Lisbon is the governing document of the European Union and includes the Treaty on European Union (TEU), as well as the Treaty on the Functioning of the European Union (TFEU). The internal governing documents of the EU create a more complex landscape. *See* ROSAS & ARMATI, *infra* note 99.

<sup>98</sup> *Id.*

<sup>99</sup> *See, e.g.*, ALLAN ROSAS & LORNA ARMATI, EU CONSTITUTIONAL LAW: AN INTRODUCTION 19, 62 (2d revised ed., 2012) (discussing the principles of conferral, subsidiarity, and proportionality as well as comparing directives and regulations). The principle of conferral “implies that the Union only enjoys the competences attributed to it.” The principle of subsidiarity “instructs the Union, in areas which do not fall within its exclusive competence, to act only when the objectives of a proposed action cannot be sufficiently achieved by the Member States but can rather be better achieved at the Union level.” The principle of proportionality “provides that the content and form of Union action shall not exceed that which is necessary to achieve the objectives of the Treaties.” The convergence of these three principles creates a power struggle between the Union and its Member States over the amount of direct control the Union can exercise. As a result, Union actions, like regulations and directives, are more binding and are more likely to effectuate policies than a mere principle.

waste trafficking.<sup>100</sup> Deterrence considerations aside, this is hugely significant from a larger enforcement point of view. Before Law 93/2001 was passed, waste-related environmental offenses were misdemeanors. Under Italian law, a person cannot be charged with association with the mafia if the offense is only a misdemeanor.<sup>101</sup> So, before 2001 it would have been incredibly difficult to crack down on the mafia's role in illegal waste disposal. This also means that because serious enforcement was not even available until 2001, the mafia had more than a decade to entrench itself in the waste disposal business.

In 2004, the government enacted Law 6/2004 which institutionalized the Land of Fires' geographic area and systematized intervention.<sup>102</sup> Through a Ministerial Directive in 2013, the area expanded to include fifty-seven municipalities and cover 1,076 km<sup>2</sup>.<sup>103</sup> Of these municipalities, thirty-three are located in the Province of Naples while the other twenty-four are found in the Province of Caserta.<sup>104</sup> Geographically, these two provinces abut and together form the northwestern part of Campania.

The enforcement authorities include the national police corps, the Environmental Protection Command of Carabinieri, the Central Investigative Unit of the Forest and Environment Police of the State Forest Corps, and the Customs and Monopoly Agency.<sup>105</sup> These institutions do not act independently, but rather all collaborate with the National Anti-Mafia District (DNA), "the pool of prosecutors that coordinate investigations on mafia organizations in Italy."<sup>106</sup> In 2010, the DNA became the primary investigative body responsible for prosecuting organized illicit waste trafficking.<sup>107</sup>

In 2012, the Minister of Internal Affairs designated a special commissioner, the Commissioner of the Land of Fires, to manage the waste burning in Campania.<sup>108</sup> The Commissioner's primary responsibility is to "steer the police, the prefectures of Naples and Caserta and other interested authorities."<sup>109</sup> The creation of this position coincided with a national

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<sup>100</sup> D'ALISA ET AL., *supra* note 5, at 24–25.

<sup>101</sup> *Id.* at 25.

<sup>102</sup> *Id.* at 22.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at 25.

<sup>106</sup> *Id.* at 26.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* at 21.

<sup>109</sup> *Id.* at 21–22.

recognition of the need for a coordinated effort against the toxic smoke in Campania.<sup>110</sup>

Finally, there are three express legal remedies available for environmental enforcement.<sup>111</sup> The first is “a petition of citizens affected by administrative decisions in administrative courts . . . in order to challenge permits, such as the EIA [Impact Assessment Evaluation] if environmental interests are at stake.”<sup>112</sup> The second is the present legal interpretation of Article 18, which provides qualifying local associations standing to bring an environmental protection action.<sup>113</sup> Third, “with regard to criminal law, the penal provisions relating to the environment are provided for in the Penal Code as special regulations for the sector . . . .However, the Legislative Decree 152/2006 has given priority to administrative penalties compared to the traditional protection of the criminal law.”<sup>114</sup>

#### E. *Italy is Failing its EU Obligations*

On December 2, 2014, the European Court of Justice (ECJ) issued a significant judgment against Italy in the case of *Commission v. Italy* (2014).<sup>115</sup> “The Court of Justice interprets EU law to make sure it is applied the same way in all EU countries, and settles legal disputes between national governments and EU institutions.”<sup>116</sup> Under certain circumstances, the ECJ can “be used by individuals, companies or organisations to take action against an EU institution . . . .”<sup>117</sup> This case was the fourth time in a decade that the ECJ had fined Italy for environmental failings.<sup>118</sup> However, in order to fully understand this judgment, it is important to take a step back and examine its predecessor: *Commission v. Italy* (2007).

In *Commission v. Italy* (2007), the ECJ found that Italy had failed to ensure: (1) that waste is recovered or disposed of in a manner that does not endanger human health or the environment, as well as prohibit its abandonment, dumping, or uncontrollable disposal; (2) that handlers of waste follow Council Directive 75/442/EEC on waste; (3) that waste

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<sup>110</sup> *Id.* at 21.

<sup>111</sup> Falletti, *supra* note 89, at 12.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* at 12–13.

<sup>114</sup> *Id.* at 13.

<sup>115</sup> Case C-196/13, *Comm’n v. Italy*, 2014 ECLI: 2407, at 1. The European Commission may bring suit in the ECJ to enforce EU law. See ABOUT THE EUROPEAN COMMISSION, [http://ec.europa.eu/about/index\\_en.htm](http://ec.europa.eu/about/index_en.htm).

<sup>116</sup> COURT OF JUSTICE OF THE EUROPEAN UNION (Nov. 1, 2016) [https://europa.eu/european-union/about-eu/institutions-bodies/court-justice\\_en](https://europa.eu/european-union/about-eu/institutions-bodies/court-justice_en).

<sup>117</sup> *Id.*

<sup>118</sup> Livesay, *supra* note 1.

disposal establishments obtain proper permits; (4) that sites that discharge hazardous waste record and identify it; and (5) that landfills go through the proper permitting procedures.<sup>119</sup> Because of these shortcomings, the ECJ declared that:

[T]he Italian Republic had failed, generally and persistently, to fulfill its waste management obligations under Articles 4, 8 and 9 of Directive 75/442 [waste management], Article 2(1) of Directive 91/689 [hazardous waste management] and Article 14(a) to (c) of Directive 1999/31 [landfill permitting] by failing to adopt all the measures necessary to implement those provisions.<sup>120</sup>

This then set the stage for *Commission v. Italy* (2014). The Commission instituted compliance monitoring to guarantee Italy's conformity with the 2007 judgment against it.<sup>121</sup> However, the Commission found Italy's compliance efforts lacking.<sup>122</sup> Specifically, the Commission reviewed the information Italy had submitted to it and determined that Italy "had not yet adopted all the measures necessary to comply with the judgment in *Commission v. Italy* (EU:C:2007:250), since 218 sites in eighteen of the twenty Italian regions were not in conformity with Articles 4 and 8 of Directive 75/442."<sup>123</sup> The Commission then inferred that the "218 illegal sites . . . must be sites operating without a permit, in breach of Article 9 [of Directive 75/442]".<sup>124</sup> Finally, it found that sixteen of them "contained hazardous waste, in breach of . . . Article 2(1) of Directive 91/689" and that Italy failed to provide evidence for five of them in response to criteria in Article 14 of Directive 1999/31.<sup>125</sup> As a result, the Commission brought another enforcement action against Italy in what would become *Commission v. Italy* (2014).<sup>126</sup>

On December 2, 2014, in *Commission v. Italy* (2014) the ECJ found that "the Italian Republic has failed to fulfill its obligations under Article 260(1) TFEU" because it "fail[ed] to adopt all the measures necessary to ensure compliance with the [2007] judgment in *Commission v. Italy* (C-

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<sup>119</sup> Case C-135/05, *Comm'n v. Italy*, 2007, E.C.R. I-3478, 3502-04.

<sup>120</sup> Case C-196/13, *supra* note 115, at 2-4.

<sup>121</sup> *Id.* at 4.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at 5.

135/05, EU:C:2007:250) . . . .”<sup>127</sup> Article 260(1) of the TFEU provides, “[i]f the [ECJ] finds that a Member State has failed to fulfill an obligation under the Treaties, the State shall be required to take the necessary measures to comply with the judgment of the Court.”<sup>128</sup>

As a result of Italy failing to comply with the prior judgment against it, the ECJ ordered it to pay a six-month recurring penalty payment of €42,800,000 from which €400,000 could be deducted for each hazardous waste site and €200,000 for every other site that is brought into conformity with *Commission v. Italy* (2007).<sup>129</sup> Furthermore, the ECJ imposed an additional lump sum penalty of €40,000,000 on Italy because it “repeatedly engage[d] in unlawful conduct in a specific sector governed by EU rules . . . .”<sup>130</sup> In particular, the ECJ was aggrieved by the general and persistent nature of the infringement, the widespread nature of the violations (there is infringement in almost every Italian region), and the fact that some of the sites pose a high level of danger to both human health and the environment due to the hazardous waste present.<sup>131</sup> Finally, because the ECJ found Italy to have failed to fulfill its obligations, it had to pay the Commission’s costs as well.<sup>132</sup>

## II. THE SCOPE AND CONTENTS OF THE LAND OF FIRES DECREE

As discussed, Campania has become known as the Land of Fires due to the continuous burning of waste in the region. In response to this environmental catastrophe, the Italian Senate passed Legislative Decree No. 136, “Urgent Measures Designed to Tackle Environmental and Industrial Emergencies and to Facilitate the Development of the Concerned Areas”. Originally Law Decree 136/2013, it entered into force December 10, 2013.<sup>133</sup> It was subsequently converted with amendments by Law 6/2014, on February 8, 2014, which provided additional details to the mapping provisions in Article 1.<sup>134</sup> On June 24, 2014, it received its third update through the broad economic growth Law 91/2014 (later converted with

<sup>127</sup> *Id.* at 2.

<sup>128</sup> Consolidated Version of the Treaty on the Functioning of the European Union art. 260(1), Oct. 26, 2012, 2012 O.J. (C 326) 47 [hereinafter TFEU].

<sup>129</sup> Case C-196/13, *supra* note 115, at 18.

<sup>130</sup> *Id.* at 17.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.* at 18.

<sup>133</sup> D.L. n. 136/2013 (It.), *supra* note 15.

<sup>134</sup> NORMATTIVA, Aggiornamenti all’articolo, <http://www.normattiva.it/do/atto/vediAggiornamentiAllArticolo?art.dataPubblicazioneGazzetta=2013-12-10&art.codiceRedazionale=13G00180&art.flagTipoArticolo=0&art.idArticolo=1&art.idSottoArticolo=1&art.idSottoArticolo1=10&art.versione=1>.

amendments by Law 116/2014), this time primarily concerning the hydrogeological provisions in Article 6.<sup>135</sup> Law Decree 136/2013, together with all of its subsequent amendments, forms the Land of Fires Decree.

The Land of Fires Decree brings a laundry list of reforms into law. These changes include provisions for the mapping of agricultural lands, monitoring and oversight, urgent remediation, a new criminal offense of illegal waste combustion enforceable by the military, increased disclosure requirements for the national Public Prosecutor for the prosecution of environmental offenses in Campania, a streamlined approval process for environmental and health protection measures in the region, and the preservation of business interests.<sup>136</sup> Due to a lack of space, not all of these new developments can be discussed here. Instead, this paper focuses on four key provisions: the three most likely to help abate the problem and the one with the potential for undermining the entire Decree.

A. *Article 1: Mapping Agricultural Lands*

Article 1.1 of the Land of Fires Decree provides that “technical investigations for mapping, as well as through remote sensing instruments, the land of the Campania Region intended for agriculture, in order to ascertain the possible existence of effects of contaminants due to unlawful spills and disposal as well as through combustion.”<sup>137</sup> This provision might not seem like much at first, but in reality it is one of the most fundamental pieces for addressing the devastating waste problem in Campania. The reason is simple: because this waste is illegal, it is by its very nature difficult to locate.<sup>138</sup> Consequently, it is impossible to treat and remediate it without a clear understanding of where it has been disposed.

Additionally, Article 1 contains measures to restore the public’s trust in agricultural products. Section 6 states, “Within fifteen days following the presentation of the survey results . . . the Ministers of Agriculture, Food and Forestry Policy; the Environment and the Protection of Land and Sea; and Health indicate . . . the land of the Campania region that may not be intended for agricultural production . . . .”<sup>139</sup> The ministers “may also indicate the land intended only for certain agricultural food production.”<sup>140</sup> The ministers may also, by decree, indicate “land to be allocated only to certain

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<sup>135</sup> *Id.*

<sup>136</sup> Figueroa, *supra* note 18.

<sup>137</sup> D.L. n. 136/2013 (It.), *supra* note 15, at Art. 1.1.

<sup>138</sup> Triassi et al., *supra* note 9, at 1229.

<sup>139</sup> D.L. n. 136/2013 (It.), *supra* note 15, at Art. 1.6.

<sup>140</sup> *Id.*

agricultural production.”<sup>141</sup> Together, these two pieces of Article 1.6 allow the government to classify soils which are safe for food and ban those which are unsafe from production. This is hugely important for overcoming any apprehension to buying and selling Campania agri-food industry products.<sup>142</sup> The public’s trust in the health of the land and the quality of its produce is remarkably low.<sup>143</sup> This attitude exists regardless of the actual safety of any given parcel; safe and unsafe parcels get lumped together, which damages both farmers and the local economy.<sup>144</sup> As a result, clear classification can help distinguish between safe and unsafe land, which in turn will help restore some faith in the agricultural industry and bolster a significant piece of the local economy.

### B. Article 3: Illegal Waste Combustion

A second crucial piece of the Land of Fires Decree is Article 3, which creates a new criminal offense for the illegal burning of waste.<sup>145</sup> Article 3 specifically states, “Unless the act constitutes a more serious crime, anyone who sets fire to waste abandoned or deposited uncontrollably is punished with imprisonment from two to five years.”<sup>146</sup> Furthermore, “In the event in which a person sets fire to hazardous waste, the punishment of imprisonment from three to six years applies.”<sup>147</sup> Furthermore, “In the event that they set fire to hazardous waste, the punishment of imprisonment from three to six years shall apply.”<sup>148</sup> The enforcing authorities also have the power to confiscate the means of committing the crime as well.<sup>149</sup> Surprisingly, this is only the second waste-related environmental crime Italy has created.<sup>150</sup>

Importantly, this new criminal offense increases punishment by a third for either membership in organized crime<sup>151</sup> or the contamination of an area that already is, or has recently been, in a state of emergency.<sup>152</sup> The former is notable because, as mentioned above, a significant amount of the current

<sup>141</sup> *Id.*

<sup>142</sup> Triassi et al., *supra* note 9, at 1231.

<sup>143</sup> Birrell, *supra* note 2.

<sup>144</sup> Maurizio Molinari, *Italian Farmers Reclaim the “Land of Fire”*, EQUAL TIMES (Apr. 28, 2014), <https://www.equaltimes.org/italian-farmers-reclaim-the-land?lang=en#.WBkkV-ErLR0>; Tom Kington, *Italian tomato firm’s adverts provoke north-south row*, THE GUARDIAN (Nov. 4, 2013), <https://www.theguardian.com/world/2013/nov/04/italian-tomato-firm-adverts-row>.

<sup>145</sup> D.L. n. 136/2013 (It.), *supra* note 15, at Art. 3.

<sup>146</sup> *Id.* at Art. 3.1.

<sup>147</sup> *Id.* at Art. 3.1.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.* at Art. 3.5.

<sup>150</sup> D’ALISA ET AL., *supra* note 5, at 24–25.

<sup>151</sup> D.L. n. 136/2013 (It.), *supra* note 15, at Art. 3.3.

<sup>152</sup> *Id.* at Art. 3.4.

problem can be tied to mafia elements in the region. By making membership in organized crime an aggravating factor, the state can be seen as explicitly targeting one of the main underlying sources of the waste problem. The latter is significant because Campania now seems to be perpetually in a state of emergency, and yet serious quantities of waste continue to be illegally disposed of in the region. Consequently, these two factors dramatically heighten risks associated with what had traditionally been a low risk activity. Some believe that by raising the punishment from a slap on the wrist to actual jail time, offenders who would otherwise continue to commit the same crime over and over again will now think twice.<sup>153</sup> Whether the Land of Fires Decree sufficiently tips the balance between risk and reward to make illegal disposal less appealing remains to be seen.

Perhaps the most drastic piece of Article 3 is the provincial Prefects' newfound ability to call in the national armed forces to enforce the new criminal provision. A Prefect governs a province and can generally be thought of as its "Minister."<sup>154</sup> Article 3.6(2) provides:

Notwithstanding applicable provisions, the Prefects of the provinces of the Campania region, as part of operations to secure and control the territory. . . aimed at the prevention of crimes of criminal organizations and the environment, are authorized to use, in the scope of available financial resources, . . . the military personnel of the Armed Forces [. . .].<sup>155</sup>

Without a doubt, this amounts to a serious grant of power to the local authorities on the front lines of the waste issue. This degree of enforcement capability likely gives Italy the tools it needs to act on its worst environmental woes. Now all that remains is for the local governments to utilize them.

However, there is a possibility that this new crime could in fact do more harm than good to the residents it is designed to protect. As previously described, locals frustrated with living in a sea of garbage sometimes resort to self-help and burn their trash themselves. The criminal offense, however, is targeted first and foremost at unauthorized waste combustion; the mafia component is only an aggravating factor. As such, it is possible that the

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<sup>153</sup> Livesay, *supra* note 1.

<sup>154</sup> Gaetano Armao, *The Role of the Prefect in the Italian Legal System*, 1 IALS STUDENT L. REV. 49, 49 (2014).

<sup>155</sup> D.L. n. 136/2013 (It.), *supra* note 15, at Art. 3.6(2).

local people, the biggest victims of the illegal waste disposal in Campania, could be swept up in this new crime. Depending on how the law gets applied, it could unfairly target the victims instead of the more serious perpetrators at the root of the problem (the mafia and white-collar criminals). Indeed, it is easily conceivable that it would be much easier to prosecute an average individual, as opposed to a powerful person or company involved with a criminal organization. How this ultimately plays out will likely fall to prosecutorial discretion.

It is also possible that instead of deterring people, this law will encourage the illegal dumping operations to move elsewhere, perhaps simply out of Campania or maybe even to a nearby country with less strict enforcement. As previously mentioned, there is some evidence that networks to move toxic waste out of Italy already exist.<sup>156</sup> Consequently, it is possible the illegal disposers will just begin to lean more heavily on these other relationships. While this may move the problem out of Campania, it cannot be considered an actual solution.

*C. Article 4: Increased Disclosure Requirements for the Public Prosecutor*

The Public Prosecutor has a special investigatory role in Italian law. “Once the prosecutor has received notice of a crime, he assumes control of the investigation and has the duty to take all necessary steps to determine whether a crime has, in fact, been committed and whether there is enough evidence to prosecute the crime.”<sup>157</sup> Article 4 of the Land of Fires Decree adds to the Public Prosecutor’s responsibilities by mandating that when he or she prosecutes offenses “involving a danger or injury to the environment, the public prosecutor will inform the Ministry of the Environment and Protection of the Land and Sea and the region in whose territory the event occurred.”<sup>158</sup> Additionally, “Where criminal offenses referred to in the first part constitute a concrete danger to the protection of health or food safety, a prosecutor will also inform the Ministry of Health or the Ministry of Agriculture, Food, and Forestry Policies.”<sup>159</sup> When making his or her report,

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<sup>156</sup> Livesay, *supra* note 1; *Europol Warns*, *supra* note 58; Yardley, *supra* note 4.

<sup>157</sup> Michele Caianiello, *The Italian Public Prosecutor: An Inquisitorial Figure in Adversarial Proceedings?*, in *TRANSNATIONAL PERSPECTIVES ON PROSECUTORIAL POWER* 8 (Erik Luna & Marianne Wade eds., 2011).

<sup>158</sup> D.L. n. 136/2013 (It.), *supra* note 15, at Art. 4.1.

<sup>159</sup> *Id.*

the prosecutor is required to “indicate the rules of law that are assumed to be violated . . . .”<sup>160</sup>

This article serves an incredibly important purpose because there is a lot of public distrust of the government due to its handling of the environmental disaster in Campania thus far. By increasing the prosecutor’s disclosure requirements, the public can see whether or not the law is in fact being enforced. This in turn creates some accountability in a place where it has historically been lacking.

Furthermore, this Article encourages victim participation. There is increasing credibility to the argument that victims of environmental harms have an important role to play in solving the problems that affect them.<sup>161</sup> Here, the disclosure requirements create necessary transparency mechanisms that enable greater victim participation in combating the situation they are forced to live with every day. Additionally, these disclosure requirements help the grassroots movements, which have been hugely impactful in bringing this issue to the forefront,<sup>162</sup> maintain momentum.

#### *D. Article 9: The Protection of Business Interests*

Interestingly, the Land of Fires Decree also promises to protect business interests.<sup>163</sup> Article 9 allows a special commission “to regulate, by agreement with the purchaser of a company or respective business units (subject to ministerial approval), appropriate management mechanisms to favor the preservation and continuity of business and employment levels pending the issuance of a bankruptcy decision by the appropriate court.”<sup>164</sup> While the other provisions of the Land of Fires Decree undoubtedly work to better the situation in Campania, this provision has the potential to undermine the progress being made. On its face, it seems to be something good; no one advocates putting people out of work. However, this belies the true implications of the provision. Suppose that a business illegally pollutes the environment to cut costs. If coming into compliance with the law forces that business to cut jobs and/or go into bankruptcy, that is arguably a good thing. Businesses that cannot stay afloat when forced to internalize their negative environmental externalities should not be operating in the first place.

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<sup>160</sup> *Id.*

<sup>161</sup> D’ALISA ET AL., *supra* note 5, at 33–34.

<sup>162</sup> *Id.*

<sup>163</sup> D.L. n. 136/2013 (It.), *supra* note 15, at Art. 9.

<sup>164</sup> Figueroa, *supra* note 18.

The protections in Article 9 could make it possible for a business to manipulate the law and subvert environmental regulations. The term “appropriate management mechanisms” suggests that the special commission has wide discretion to act in the context of a bankruptcy sale/purchase. The statutory direction to preserve business, its continuity, and its employment levels could be used to prioritize corporate interests over environmental and human health interests. So, if a business went bankrupt because, for example, it started complying with environmental regulations and was subsequently sold, then it is conceivable that the special commission could allow that business to ignore the environmental regulations that put it out of business in order to preserve the business, ensure its continuity, and maintain its employment levels, at least until bankruptcy proceedings were completed. In the extreme instance, such a scenario could possibly be carried out in an infinite loop of bankruptcy sales and purchases. Moreover, while ministerial approval is supposed to act as a check, no minister wants to be known as a job or business killer. As such, ministerial oversight might prove rather weak.

There are two potential outcomes for Article 9. It could be narrowly applied, with ministerial approval serving as a sufficient check. In this case, the Article would become a non-issue. Alternatively, it could provide bad actors with an easy out and undermine Italy’s environmental regulations. How this Article’s application develops will significantly bear upon the Land of Fires Decree’s overall success.

### III. THE LAND OF FIRES DECREE WILL NOT BE ENOUGH

Ultimately, the Land of Fires Decree will not be enough to solve “Italy’s Chernobyl.” To be sure, it provides some excellent tools to address the problem. However, tools without action cannot create change.

All things considered, it appears enforcing the law will accomplish little more than a pseudo-solution of moving the problem somewhere else. There is already talk within the mafia of moving the dumping location from Campania to the Balkan States, which are just a short trip across the Adriatic Sea to the east.<sup>165</sup> This is problematic for two reasons. First, the problem still exists; waste is still being illegally disposed of in Europe, and one of the main causes is still in southern Italy. Second, the fact that a majority of the operation will have moved does not mean that the problem will suddenly come to a complete stop in Campania. Rather, the region will be stuck with the terrible after effects of illegal waste disposal for many years to come.

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<sup>165</sup> Yardley, *supra* note 4.

This raises another issue: practical enforcement. Environmental crime enforcement in Italy has been historically very weak.<sup>166</sup> Part of this is attributable to weak legislation in the past, which has handicapped enforcement authorities and prevented them from making a meaningful impact.<sup>167</sup> Another wrench in the system is that “for most environmental offences enforcement authorities cannot use investigation techniques, which are fundamental to inquire into organized crime cases.”<sup>168</sup> Given these limitations, it is not entirely surprising the problem has become what it is today.

One need only look to Italy’s repeated appearances in the European Court of Justice, detailed above, to confirm its poor track record of enforcing environmental laws. Consequently, just because the local governments have all of these new expansive powers in no way guarantees that they will use them. Italy will need to break from its past practices to achieve real, substantial change.

One limitation of this analysis, however, is that it is near impossible to concretely determine the specific number of times the Land of Fires Decree has been utilized so far. Records and use statistics are not widely available, perhaps in part due to the Decree’s recent enactment and the slow wheels of the judicial system.<sup>169</sup> There is one instance of the Decree appearing in Italian courts: Judgment No. 17 of Year 2015. This case came before the Italian Constitutional Court<sup>170</sup> and involved a constitutional challenge to Article 6.1-*bis* on hydrogeological mitigation.<sup>171</sup> The Court ultimately terminated the litigation because it found that supervening legislation substantively changed the provision at issue in such a way that it no longer presented a problem and that, regardless, the contested provision would never have been applied.<sup>172</sup> This does little to settle the constitutionality of the Land of Fires Decree. Consequently, one can likely expect further legal challenges to the Decree’s provisions.

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<sup>166</sup> D’ALISA ET AL., *supra* note 5, at 3.

<sup>167</sup> *Id.* at 28.

<sup>168</sup> *Id.* at 25.

<sup>169</sup> The website for the Italian environmental NGO Legambiente (<http://www.legambiente.it/>) generally contains useful environmental data and is one place where such information may be available in the future.

<sup>170</sup> *La Corte costituzionale*, CORTE COSTITUZIONALE, <http://www.cortecostituzionale.it/jsp/consulta/istituzioni/lacorte.do>; CONSULTA ONLINE, <http://www.giurcost.org/traduzioni/inglese.html>. The Italian Constitutional Court is the court of last instance for constitutional issues. Italy’s other Supreme Court, the Court of Cassation is discussed above, *supra* note 95.

<sup>171</sup> Corte Cost., 27 gennaio 2015, n. 17 (It.), <http://www.giurcost.org/decisioni/2015/0017s-15.html>.

<sup>172</sup> *Id.* at Legal considerations §§ 2–2.2.

Finally, there is one criticism that must be dispelled, namely that if the Land of Fires Decree were actually effective, then Italy would not have failed, or would not have failed so seriously, its EU obligations in *Commission v. Italy* (2014). However, the ECJ makes no specific mention of the Decree in its opinion. There is also no indication that Italy alerted the ECJ or the Commission to the Decree's enactment during the proceedings. As such, it cannot be conclusively stated whether the Court considered the Decree and to what extent it may have played a mitigating role.

Additionally, the timeline here is illustrative. The Commission initiated its enforcement action against Italy on April 16, 2013.<sup>173</sup> The Decree did not enter into force until December 10, 2013.<sup>174</sup> On April 10, 2014, the ECJ requested that both Italy and the Commission provide it with updated information on Italy's compliance with *Commission v. Italy* (2007) by May 16, 2014.<sup>175</sup> This means that the Decree only had a brief five-month window from when it became law to make an impact on the case. Consequently, it would be unreasonable to expect it to play a role in *Commission v. Italy* (2014).

#### IV. A BIGGER SOLUTION – A REGIONAL OR EU APPROACH

The Land of Fires Decree is a solid first step,<sup>176</sup> but this problem has become too big for Italy to deal with on its own. As such, a bigger solution is needed. The one constant in the battle to stop the extensive environmental destruction in Campania has been pressure from Europe. Since change seems reluctant to come from within Italy, it must come from Europe. This could be in the form of EU-wide action or regional action under the provisions for enhanced cooperation in Article 20 of the Treaty on European Union (TEU). Regardless of the form, any such agreement would need to provide for: a) containment, b) remediation, and potentially c) EU military intervention.

##### A. Containment

Just like responding to any environmental disaster, such as an oil spill, the first action that Europe must take is containment. This means locking down the problem in Italy and preventing it from spreading to surrounding states that are easy targets for illegal waste disposers. Unfortunately, the

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<sup>173</sup> Case C-196/13, *supra* note 115, at 5.

<sup>174</sup> D.L. n. 136/2013 (It.), *supra* note 15.

<sup>175</sup> Case C-196/13, *supra* note 115, at 5.

<sup>176</sup> *See also* Triassi et al., *supra* note 9, at 1231.

European Union is limited in this regard. Many of these potential targets, for instance Albania, are not members of the EU. As such, the EU's power to police these regions is very limited. It could, however, create or help lay the foundation for an agreement between the EU and the Balkan states. There is no doubt that this would be difficult, especially establishing an enforcement mechanism. But, it is not impossible. Various EU benefits could be leveraged, such as trade relations or progress on any pending EU membership applications. Regardless of the method, the illegal waste racket must be contained in southern Italy to prevent contaminating the rest of the continent. Of course, the solution becomes exponentially more difficult if the new destination for waste is someplace outside of Europe, like Africa or Asia. Naturally, the further the waste gets from Europe, the harder it will be for the EU to control it.

Containment does raise an ethical concern though about subjecting the people living in Campania to further pollution. The thought is that by foreclosing the release valve of waste moving to other areas instead of Campania, the EU would effectively be forcing people in Campania to endure more waste and thus worse health effects. This, however, is a false argument. It is quite possible that the current illegal waste operations would not change locations or lessen their local impact in the absence of a broad European agreement to block its transport. As such, playing this "what if" game distracts from addressing the real issue at hand.

Unfortunately, the longer Italy and its neighbors delay working together to fight this problem, the more illegal waste networks can branch out and the harder the problem becomes to solve. Evidence already exists of waste being illegally exported to countries around the world. In 2012, Italian harbors seized 14,000 tons of waste destined for countries like South Korea, China, Indonesia, India, and Turkey.<sup>177</sup> Consequently, widespread action is needed today, not at some unknown time in the future.

### *B. Remediation*

The next step the EU and/or Italy's neighbors must take is remediation. Environmental remediation refers to the process of reducing exposure to contaminants, eliminating contamination sources, and protecting against the harmful effect of exposure.<sup>178</sup> While the EU cannot physically compel Italy to crack down on the corruption in the waste disposal industry

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<sup>177</sup> D'ALISA ET AL., *supra* note 5, at 10.

<sup>178</sup> *Getting to the Core of Environmental Remediation*, INT'L ATOMIC ENERGY AGENCY 2, [https://www.iaea.org/OurWork/ST/NE/NEFW/\\_nefw-documents/Environmental\\_Remediation.pdf](https://www.iaea.org/OurWork/ST/NE/NEFW/_nefw-documents/Environmental_Remediation.pdf).

plaguing the south, they can and must continue to keep the pressure on Italy to fix this problem. Italy has very clear environmental obligations under the Treaty of Lisbon.<sup>179</sup> The European Court of Justice must continue to hold Italy's feet to this toxic dumpster fire and enforce the collection of its penalty decrees. The EU also will likely need to go one step further and demand that at this point in the saga, mere compliance with EU directives is no longer sufficient and that Italy must begin remediating the waste problem as well in order to satisfactorily uphold its treaty obligations. Without compliance, meaningful remediation cannot be achieved and the people in Campania will continue to suffer.

Some will argue that it is simply too cost-prohibitive to fully remedy the situation in Campania. However, a 2009 study published in *Environmental Health* suggests that this is simply not true.<sup>180</sup> The study's results estimated that exposure to toxic waste in Naples and Caserta, two provinces in the Campania region, resulted in 848 cases of premature mortality and 403 cases of fatal cancer per year.<sup>181</sup> Relying on European Commission estimates for environmental cost-benefit analysis, reclaiming waste sites in Naples and Caserta would yield health benefits with a present value of €1.6 billion.<sup>182</sup> On the other hand, the Italian Department of Environmental Safety has estimated that only a €43 million investment is needed to reclaim the area with the majority of hazardous waste sites.<sup>183</sup> Therefore, remediation should not be viewed as a cost, but rather as a substantial economic benefit.

### C. *EU Military Intervention*

Should the Italian government feel it does not have the power or ability to literally fight the mafia over this issue on its own, one option it could consider is coordinating an EU-based military force. There is no doubt that this is a drastic solution, but it is legally available and as such should be explored. Article 222(2) of the TFEU states, "The Union shall mobilise all the instruments at its disposal, including military resources made available by the Member States, to...assist a Member State in its territory, at the request of its political authorities, in the event of a natural or

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<sup>179</sup> See, e.g., TFEU, *supra* note 128, at art. 191; Charter of the Fundamental Rights of the European Union art. 37, Dec. 18, 2000, 2000 O.J. (C 364) 1.

<sup>180</sup> Carla Guerriero & John Cairns, *The potential monetary benefits of reclaiming hazardous waste sites in the Campania region: an economic evaluation*, 8:28 ENVTL. HEALTH 1, 1 (2009).

<sup>181</sup> *Id.*

<sup>182</sup> *Id.* at 7.

<sup>183</sup> *Id.* at 9.

man-made disaster.”<sup>184</sup> While this provision generally sits in the context of a terrorist attack, it does make a special note for the types of circumstances essentially afflicting Campania: man-made natural disasters.

Additionally, if this provision were not enough, as a member of the EU, Italy is a party to the common security and defence policy. Article 42(7) of the TEU provides,

If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter [right of individual or collective self-defence].<sup>185</sup>

Given the legacy of violence surrounding the mafia and the quantity of Italian land being ruined, it is not a stretch of the imagination to characterize the illegal disposal of waste in southern Italy as an armed aggression on Italian territory. “In Europe the Camorra has killed more than all other criminal organizations: 4000 deaths in the last thirty years. One every three days.”<sup>186</sup> Consequently, Italy and the EU seem to have the legal right to undertake joint military action should they choose that course of conduct.

The clear downside of this approach is that it requires a tremendous amount of political will from both the Member States and the EU as a whole. Given limited resources and the myriad of issues currently facing the EU,<sup>187</sup> it is unlikely that this option would ever be exercised.

## V. CONCLUSION

This comment asserts the claim that despite Italy’s best efforts, the Land of Fires Decree will likely prove to be another link in the long chain of Italian environmental law disappointments, especially those dealing with waste in Campania. It likely goes far enough in terms of the powers it grants and the criminal offense it creates to have an impact. Unfortunately, passing a law is not the same as enforcing a law. Weak enforcement will continue to act as a barricade to any real change.

Holding Italy accountable is essential to any forward progress. To this extent, the European Court of Justice judgments against Italy are a good start. Building on the pressure from Europe, a broader EU or regional

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<sup>184</sup> TFEU, *supra* note 128, at art. 222(1)(b).

<sup>185</sup> Consolidated Version of the Treaty on European Union art. 42, May 9, 2008, 2008 O.J. (C 115) 15.

<sup>186</sup> GOMORRAH, *supra* note 7.

<sup>187</sup> For example, the current refugee crisis.

framework focused on containment, remediation, and potentially even military intervention could finally help provide some relief to Campania and the people living in southern Italy. While such an approach carries its own difficulties, for example international coordination and integration of policies, it is increasingly looking like the best option, as the will to act in Campania is likely to remain weak.

Whether Italy is acting on its own behalf or at the behest of its neighbors, at the end of the day something must be done. The Campania region has become desperately sick, worthy of the nicknames “triangle of death” and “Land of Fires.” The Italian government would be committing a grave injustice to its people living there if it fails to act to the best of its ability to solve this problem.