Bird & Bird

Environmental Law

Case law and regulatory updates

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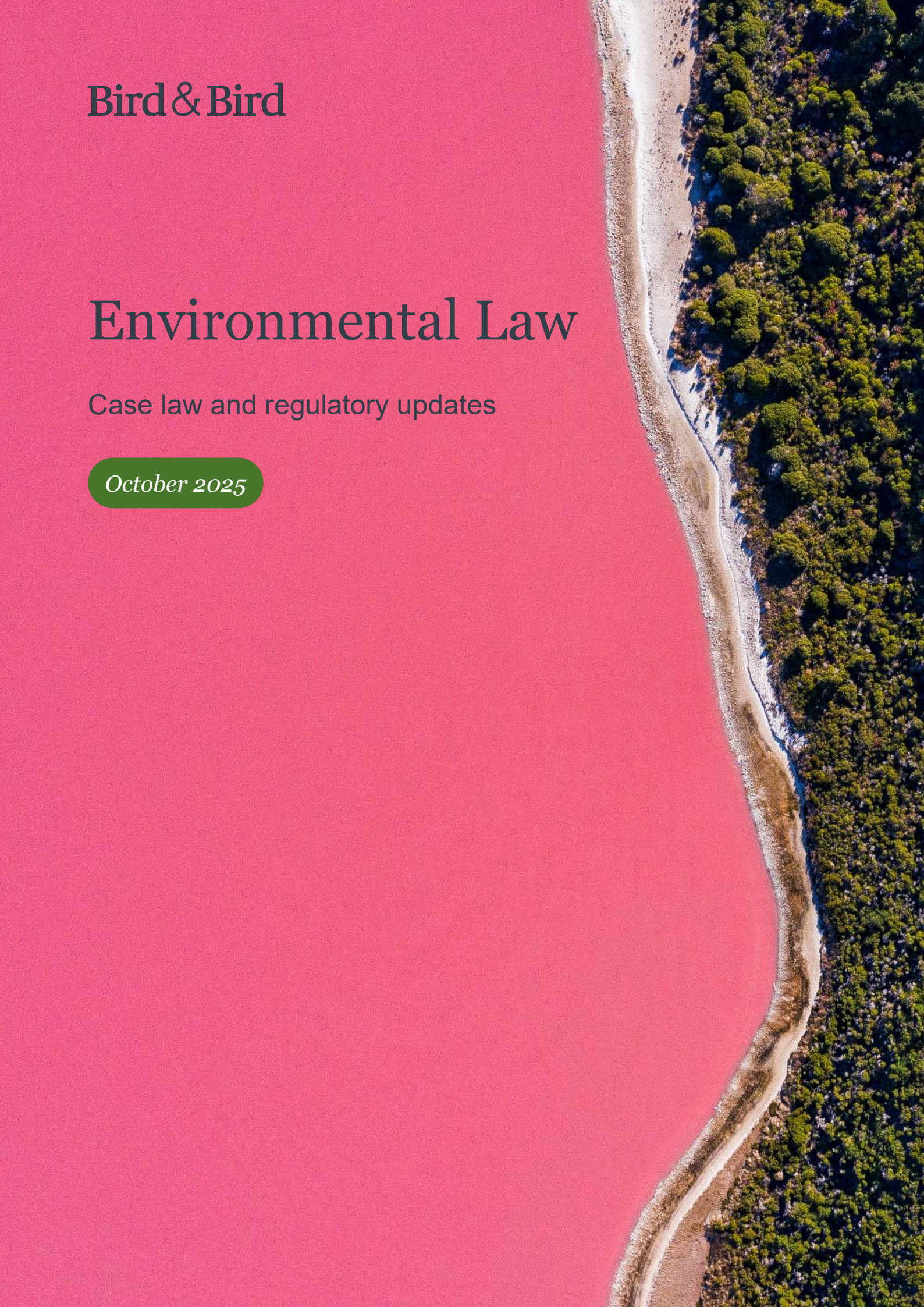

Environmental Law

Case law and regulatory updates

Case law

1. Council of State: identifying the party responsible for contamination is the responsibility of the Province (Judgment No. 7565 of 26 September 2025 – Section IV)

With this decision, the Council of State provided a series of important guidelines on the restoration of contaminated sites.

Firstly, it was reiterated that the identification of the party responsible for the contamination is the responsibility of the Province (see, among others, Council of State Section IV - 01/04/2020, No. 2195, also in the case of Sites of National Interest).

In accordance with the Joint Divisions of the Court of Cassation no. 3077/2023 and the now-established position on this point, the Council of State stated that the "innocent" owner is only required to implement preventive measures[1] (defined in Article 240, paragraph 1, letter i, of Legislative Decree No. 152 of 3 April 2006, hereinafter referred to as the 'Environmental Code'), while they are not obliged to implement emergency safety measures[2] (defined in Article 240, paragraph 1, letter m, of the Environmental Code), the latter being interventions aimed at repairing environmental damage and, as such, falling exclusively on the party responsible for the pollution.

The ruling also highlighted that the burden of proving liability for environmental contamination lies with the proceeding administration, which must demonstrate the causal link between the subject's activity and the pollution found according to the "*more likely than not*" standard of proof, based on serious, precise and consistent evidence. The principles of European and national law on environmental liability, in fact, place the burden on the administration to prove that - in concrete terms - the owner has behaved in a manner that is at least negligent.

The Council of State has specified that mere ownership of the polluted area is not sufficient, nor is the abstract compatibility between the production cycle carried out and the type of contamination detected, to establish the liability of a company. In the case in question, the absence of contamination at the site owned by the operator was taken into account, as well as the absence of a contamination gradient – *i.e.* a variation in the concentration of a contaminant agent – that would prove that the pollution originated from the site itself, concluding that the required standard of proof had not been met.

[1] Pursuant to Article 240, paragraph 1, letter i) of the Environmental Code, preventive measures are: "*initiatives to counteract an event, act or omission that has created an imminent threat to health or the environment, understood as a sufficiently probable risk of damage to health or the environment occurring in the near future, in order to prevent or minimise the occurrence of such a threat*;".

[2] Pursuant to Art. 240, paragraph 1, letter m) of the Environmental Code, emergency safety measures are: "*any immediate or short-term intervention to be implemented in the emergency conditions referred to in letter t) in the event of sudden contamination events of any kind, designed to contain the spread of the primary sources of contamination, prevent their contact with other matrices present on the site and remove them, pending any further remediation or operational or permanent safety measures;".*

2. Regional Administrative Court of Veneto: End of Waste "case by case" – Tw types of secondary raw materials admitted (Judgment 25 September 2025, No. 1618 – Section IV)

In the absence of EU or ministerial provisions, the authorisation for waste recovery can define the specific conditions under which waste ceases to qualify as such and is reclassified as secondary raw material. These cases are known in practice as "*case-by-case*" *end-of-waste*, pursuant to Article 184-*ter*, paragraph 3, of the Environmental Code, for which an authorisation is issued by the competent authority after obtaining the mandatory and binding opinion of the competent regional environmental protection agency (Arpa).

With decision no. 1618 of 25 September 2025, the Regional Administrative Court of Veneto ruled that, with regard to "*case-by-case*" *end-of-waste*, the authorisation for recovery on contaminated sites may legitimately cover two distinct types of secondary raw materials, differentiated according to the intended use of the site itself:

(i) one complying with the contamination threshold concentrations (CSC) of Column A of Annex 5 to Part IV of the Environmental Code for sites intended for public, private and residential green use, and

(ii) one complying with the CSC of Column B for sites intended for commercial and industrial use.

No rule prohibits the qualitative characteristics of secondary raw materials from being determined in relation to the features of the site where they are to be used, given that Article 184-*ter*, paragraph 1, letter c) requires that the substance meet "*the technical requirements for the specific purposes*", which may indeed vary depending on the site of use.

This interpretation by the Regional Administrative Court of Veneto is confirmed by Ministerial Decree No. 127 of June 28, 2024. The decree establishes different concentration limits for "*recovered aggregates*" depending on the intended use of the individual *end-of-waste* batches.

3. Council of State: the exclusive competence of the Province or Metropolitan City responsible for the AUA (Judgement No. 7291/2025 – Section IV)

With regard to the sole environmental authorisation ("**AUA**"), the issuance, renewal, modification and cancellation of the measure are the exclusive responsibility of the Province or Metropolitan City pursuant to Presidential Decree No. 59 of 13 March 2013.

The Single Desk for Productive Activities (SUAP) of the Municipality has a purely coordinating and interfacing role with private individuals, as it is only responsible for the *physica*l issue of the permit already adopted by the competent authority, without any discretionary power over the content of the measure. Therefore, in application of the principle of *contrarius actus,* the SUAP cannot independently revoke or cancel the AUA issued by the Metropolitan City, even in the event of a negative opinion on urban compatibility, but must instead involve the competent authority that adopted the first-instance measure so that it can assess, at its discretion - in compliance with procedural guarantees and legal requirements - the possible exercise of the power of self-protection pursuant to Article 21-*nonies* of Law No. 241 of 7 August 1990.

4. Council of State: environmental certification does not automatically cease upon expiry (Judgment No. 6884 of 4 August 2025 – Section IV)

With this judgement, the Council of State clarified an important aspect of the simplified regime for the renewal of authorisations to operate a plant, based on self-certification of requirements by the operator in the presence of ISO 14001 environmental certification or EMAS registration pursuant to Article 209 of the Environmental Code.

The aforementioned provision stipulates that the operator's self-certification of its organisation's compliance with the environmental parameters required for license renewal, together with a valid environmental certification and the notification of continued activity, replaces the environmental authorisation for all purposes. The replacement effect is maintained for up to 180 days from the date the interested party is notified of the expiration of the environmental registration or certification, which could occur for any reason.

In this case, the company announced its intention to resume operations in December 2022, after suspending operations for plant maintenance. However, the Province refused to approve the resumption because the ISO 14001 certification had expired in the meantime, and a new certification was not obtained until January 2023. According to the Province, the temporary interruption automatically invalidated the authorisation.

The Regional Administrative Court of Apulia upheld the administration's argument, distinguishing between “physiological” (predictable) and “pathological” (unpredictable) expiration dates for certification and recognising only the possibility of benefiting from an additional 180 days of effectiveness for the latter.

In early August, the Council of State overturned the court of first instance's interpretation, stating that Article 209 of the Environmental Code does not allow for any distinction. Regardless of the cause of the environmental certification's (ISO 14001 or EMAS) expiration, the authorization does not automatically lapse. The administration must formally notify the operator of the expiration, and the operator then has 180 days to renew the certification and regularize their position.

Regulations

1. Increased penalties for offences in the matter of "waste"

Starting 8 October 2025, the increased penalties for illegal waste activities introduced by Decree-Law No. 116 of 8 August 2025 and confirmed by Conversion Law No. 147/2025 will take effect.

This measure has increased the penalties for littering and illegal dumping, illegal burning, irregular cross-border shipments and unauthorised waste management. Penalties are higher when violations pose a risk to people or the ecosystem or occur at potentially contaminated sites.

Among the main changes are new additional penalties for individuals convicted of serious environmental crimes. These penalties include disqualification up to five years from licences, concessions, public subsidies and contracts with the public administration.

New penalties have also been introduced for distributors of electrical and electronic equipment who fail to report data on received WEEE.

With regard to the administrative liability of entities under Legislative Decree No. 231 of 8 June 2001, Article 25-undecies has been extended to include a series of new environmental predicate offences. These include the abandonment of hazardous and non-hazardous waste (Articles 255-*bis* and 255-*ter* of the Environmental Code) and the illegal combustion of hazardous and non-hazardous waste (Article 256-bis, paragraph 1, Environmental Code). Finally, cases in which disqualification sanctions apply when an entity is convicted for certain environmental offences under Article 25-undecies have been expanded.

2. New ISPRA guidelines for drafting environmental impact studies for agrivoltaic and photovoltaic systems

At the request of the Directorate-General for Environmental Assessment of the Ministry of the Environment and Energy Security ("**MASE**"), the Higher Institute for Environmental Protection and Research and the National System for Environmental Protection, have adopted guidelines for the preparation of environmental impact studies ("**EIS**") relating to agrivoltaic and photovoltaic plants.

These provide guidance to proponents on the information required for preparing an EIS to be included in a dedicated IT platform.

As stated in the introduction, the guidlelines provide detailed information (parameters, indices, indicators, etc.) relating to the content that an EIS must have for each environmental issue of interest to photovoltaic and agrivoltaic plants, such as biodiversity, soil and subsoil, geology and others. The guidelines aim to achieve:

(i) a correct characterisation of the project's area/location;
(ii) a precise assessment of potential project impacts and relevant mitigation measures; and
(iii) the development of a comprehensive environmental monitoring project, a technical tool that tracks the evolution of the project's environmental effects over time.

The online platform will also collect data and documents that can be used to expand the territory's knowledge base.

Practice

1. MASE response to a request for information on EIA and EIA screening, ref. 191749 of 16 October 2025

MASE was asked which authority would be competent in the event of an Environmental Impact Assessment (EIA)/Regional Auhorization Sole Measure (PAUR) application pursuant to Article 27-*bis* of the Environmental Code for projects with a single EIA screening threshold or with a value above the EIA screening threshold but below the EIA threshold.

In the first case, when the submitted project falls within a category of works for which only one threshold exists for the EIA eligibility assessment (e.g. agrivoltaic plants - 12 MW - or waste plants with R5 activities), the proponent cannot submit an EIA application directly. However, MASE clarified that the EIA is a procedure initiated by the party concerned. Since the proponent itself, can assess that the project's potential significant and negative impacts while drafting the environmental impact study, it can decide to submit its project directly to an EIA. In this case, the competent authority is the one where the screening procedure would have been initiated.

Even in the other case, when the project falls within a category for which there are thresholds both for the screening and EIA procedures, but with different competent authorities (e.g., regional screening and state EIA), MASE held that nothing prevents the proponent from choosing to submit the project to the EIA procedure. In this case, the competent authority is the one where the screening procedure would have been initiated based on the project type.

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