

waste disposal procedures at the Orzinuovi plant conflicted with provisions of the LRL as of its entry into force and all times thereafter. See Pls' Ex U, Amendola Rpt, p 13. In making his argument, the Professor cobbles together a compendium of duties for waste producers by selectively picking provisions of the LRL and charges that the Orzinuovi plant operator did not adequately meet these obligations. See *id* at 13-14. He summarizes the obligations as follows: "whomever had disposed in the past of industrial waste by dumping it (or burying it), was under a duty to notify the Region and to indicate the location of the closed dumps. If the person disposing of the waste was managing a waste disposal facility, it was obliged to apply for authorization to continue its activity, subject to the use of appropriate facilities and the adoption of all necessary precautions." *Id* at 14. His report then lists various reasons why Frendo's actions failed to properly comply with the LRL. See *id* at 15-18.

The fatal flaw in the Professor's argument, however, is that on April 30, 1984, regulatory authorities formally recognized the cessation of landfill usage at the Orzinuovi plant and Frendo's compliance with the LRL. As discussed earlier, on October 1, 1980, regional officials received formal notification, pursuant to the LRL, from Frendo regarding waste disposal activities at the plant. After an April 19, 1984 on-site inspection of the plant, on April 30, 1984, the Province issued a decree verifying compliance with the LRL regulatory scheme.

*20 Hobbled by this (*ie*, the official confirmation of compliance with the LRL as of April 30, 1984), Professor Amendola (and Plaintiffs' environmental expert, Mr. Marcoaldi) challenges that edict by nit-picking the notification approach taken by Frendo and by charging that Frendo failed to disclose all of the landfills in the notification reports filed in accordance with the LRL. The fact remains that the Italian regulators charged with enforcement of the LRL had the opportunity--and availed themselves of it--to explore the bases for and quality of Frendo's reporting with respect to waste disposal activities at the plant by conducting an on-site inspection. This Court therefore refuses to belatedly second-guess the determinations of a foreign agency exercising its regulatory function. Accordingly, the Court finds that Frendo was in full compliance with the LRL as of April 30, 1984, the date on which the Region issued its official pronouncement. Moreover, because of the lack of a material issue of fact as to post-inspection dumping, the Court concludes that the Orzinuovi plant operator was in full compliance with the LRL as of the closing dates of the 1988 Purchase Agreement and the 1989 Purchase Agreement.

e (Presidential Decree) no 915 of September 10, 1982.

The DPR (Presidential Decree) no 915 of September 10, 1982 (the "DPR") represents the first national statute governing, among other things, toxic and dangerous waste disposal in Italy. See Pls' Ex U, Amendola Rpt, p 18; Pls' Ex W, Tosato Rpt, p 17. The DPR requires producers of special waste, including toxic and dangerous waste, to obtain authorization for the operation of any landfill. See Pls' Ex U, Amendola Rpt, p 18. Professor Amendola argues that by virtue of the DPR, Frendo had a statutory obligation to remove landfills closed prior to the effective date of the statute. This construction of the DPR, however, conflicts with case law construing the statute and with the prohibition against retroactive rules. See Pls' Ex W, Tosato Rpt, pp 18-21.

Based on the language of the statute and the *ex post facto* principle, this regulatory scheme imposes no retroactive obligations with respect to landfills that ceased operation prior to the effective date of the DPR. See *id* at 18. The DPR was approved on September 10, 1982, but according to Italian authorities, this statute only became effective on September 13, 1984, the publication date of the resolution called for under the DPR. See *id* at 23. ("It is clear that until September 13, 1984, date of publication of the resolution named by Article 4, all the administrative and penal rules on the disposal of toxic and dangerous waste were consequently not applicable (quoting Pretura Bassano del Grappa, decision of Nov 15, 1985)). What is more, the Province of Brescia's official chronology confirms that at the time the DPR went into effect, Frendo had permanently closed the landfills. See Roberts Aff ¶ 3, Ex H, p 3. Additionally, back in May of 1991, Plaintiffs' counsel, in connection with the DPR, concluded that "compliance with this law depends upon the actual behavior of Frendo after April 1984, *ie* after the inspection of the site made by the province of Brescia as a consequence of Frendo's decision to abandon their application for authorization." Defs' Exs, Tab 52.

*21 Consequently, because the evidence in this case indicates that Frendo permanently closed the landfills at the Orzinuovi site by April 1984, prior to the DPR's effective date, September 13, 1984, the Court concludes that Frendo was not in violation of the DPR as of the closing date of either the 1988 Purchase Agreement or the 1989 Purchase Agreement, given the lack of evidence of post-inspection dumping.

Based on the foregoing, the Court finds as a matter of law that Plaintiff cannot establish Frendo's non-compliance with applicable environmental law or