

confirm use of bulldozer and excavator in that area at [the] beginning of January 1988 " Pls ' Exs , Tab V, tbl 3 2

These items cannot support a finding of post-inspection landfill usage insofar as a conclusion predicated on them would amount to mere guesswork or conjecture. Not every issue of fact or conflicting inference presents a genuine issue of material fact. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-50 (1986) ("[T]here is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." (internal citations omitted)). The evidence here is not significantly probative on the issue of post-inspection landfill usage so as to create a genuine issue of material fact requiring denial of summary judgment.

Therefore, in terms of the violation of law analysis, this Court will proceed on the basis of no post-inspection landfill usage, *i.e.*, that no on-site dumping occurred after regulators confirmed closure of the landfills at the Orzinuovi plant in April of 1984.

2 Alleged Violations of Italian Law

Each side offers the opinion of a foreign legal expert concerning issues of Italian law relevant to the case. With respect to their violation of law contentions, Plaintiffs submit the report of their Italian law expert, Gianfranco Amendola. In his report, Professor Amendola renders an opinion on the extent to which the landfills at the Orzinuovi plant violated Italian law as of the closing dates of the 1988 Purchase Agreement and the 1989 Purchase Agreement. Professor Amendola concludes that these landfills may have been out of compliance with the following Italian regulations: (1) Articles 216 and 217 of the Consolidated Health Act of July 27, 1934, (2) Articles 674, 440, 452 and 635 of the Italian Penal Code ("Penal Code"), (3) Lombardy Regional Law no. 94 of June 7, 1980 ("LRL"), and (4) DPR no. 915 of September 10, 1982 ("DPR"). In response, Defendants offer the opinion of their Italian legal expert, Gian Luigi Tosato. Professor Tosato's report concludes that the Orzinuovi plant did not, at any time, violate the Italian regulations cited by Plaintiffs with respect to the landfills located at that facility.

a Determinations of Italian Law

*16 Federal Rule of Civil Procedure 44.1 controls determinations of foreign law in federal court. Rule 44.1 gives a district court wide latitude in resolving issues of foreign law. "The court in determining foreign

law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence. The court's determination shall be treated as a ruling on a question of law." Fed. R. Civ. P. 44.1. Because of this latitude, a court may reject even uncontradicted expert testimony and reach its own decisions on the basis of independent examination of foreign legal authorities. See Curtis v. Beatrice Foods Co., 481 F.Supp. 1275, 1285 (S.D.N.Y.), *aff'd*, 633 F.2d 203 (2d Cir. 1980). Moreover, disagreement among legal experts on content, applicability, or interpretation of foreign law, as here, does not create genuine issues of material fact for summary judgment purposes. See Banco de Credito Indus., S.A. v. Tesoreria General, 990 F.2d 827, 838 (5th Cir. 1993), *see also* Bassis v. Universal Line, S.A., 436 F.2d 64, 68 (2d Cir. 1970), Kashfi v. Phibro-Salomon, Inc., 628 F.Supp. 727, 737 (S.D.N.Y. 1986).

Each side submitted a report by an expert in Italian environmental law to support its position and the parties provided the Court with English translations of relevant Italian law. Based on the foregoing guidelines, the Court intends to determine whether the landfills violated applicable Italian law as of the closing dates of the agreements by consulting the expert opinions and by conducting independent analysis of Italian regulations and authorities.

b Consolidated Health Act of July 27, 1934

First, Professor Amendola concludes that the presence of landfills at the Orzinuovi plant violated articles 216 and 217 of the Consolidated Health Act of July 27, 1934 ("CHA"), which, although passed during the Fascist era, is apparently still in effect. Article 216 classifies manufacturing facilities into two categories, *i.e.*, the first category and the second category. See Declaration of Massimo Coccia ("Coccia Decl."), Tab 12 (English translation of article 216). For purposes of this dispute, the experts agree that manufacturing plants that use or produce asbestos, like the Orzinuovi plant, fall within the first category. See Pls' Ex. U, Amendola Rpt., p. 9, Pls' Ex. W, Tosato Rpt., p. 6. Article 216 imposes two requirements on an operator of a manufacturing plant within the first category, namely, a notice requirement and a location requirement. Under article 216's notice requirement, plant officials must give written notice to the Mayor prior to the commencement of operations at the facility. See Coccia Decl., Tab 12. With respect to this requirement, on January 23, 1970, based upon an application filed by Frendo officials, the Mayor of Orzinuovi granted authority to construct and operate the Orzinuovi plant. See Roberts Aff. ¶ 18, Ex. Q. In light of this, the Court