

A NEW CLARIFICATION ON THE PLACE OF TEMPORARY STORAGE OF WASTE

A very recent clarification from the Ministry of the Environment and Energetic Security contributes to an increasingly comprehensive interpretation of waste regulations. In particular, the General Directorate for Circular Economy, on February 1, 2024, expressed its opinion on a question regarding the first stages of waste management from the maintenance of public green areas. Therefore, we take this opportunity to illustrate to market operators the content of this further clarification on the topic, in a slow process of full resolution of all the interpretative problems posed by a rather complex and disharmonious regulatory system.

The question

The Municipality of Brovello-Carpugnino - which put the case - develops on an area mainly covered by woods and green lands and directly takes care of the maintenance of these areas. Lacking a collection and disposal center and regularly producing green waste, the Municipality made a request for clarification to the Ministry regarding the first phases of management of this waste.

In fact, the Municipality is required, like any other waste producer, to comply with environmental legislation and therefore to correctly manage waste resulting from maintenance operations of the green areas. In particular, it was asked to specify whether the place in which it is possible to deposit the waste temporarily should mean only the specific area in which the waste itself is produced or, on the contrary, it could mean the entire surface of the municipal territory. Consequently, it was asked whether it would be possible to entrust the management of waste after the storage to the company entrusted with the public green waste collection service for private citizens.

The place of the deposit

Firstly, in the clarification, the relevant legislation is cited, *i.e.* artt. 183 and 185-*bis* of the legislative decree no. 152 of April 3, 2006: the first defines the temporary storage, while the second regulates the methods and limits of it. The place where it is possible to set a temporary waste storage, as provided for in the aforementioned art. 185-*bis*, is identified in the *"entire area in which the activity that led to the production of waste takes place"*. A specification to a greater extent of this notion is given by the jurisprudence of legitimacy, which carries out an extensive interpretation. In fact, it is clarified that the production place of waste must be meant *"not (...) only as the place where the waste is produced but also the one available to the producing company and in which it is deposited, as long as it is functionally connected to the place of production"* (Cass. Pen. no. 41056 of September 22, 2015, and Cass. Pen. no. 16441 of March 31, 2017).

However, the Ministry points out that the place to which the law refers cannot correspond to the entire municipal territory, but rather must *"be identified*

in the single area (e.g. street, playground) in which the vegetable waste is produced or in an area functionally connected to the latter, available to the manufacturer and equipped with the necessary safety measures". Then, the Authority's freedom to identify the area in order to set a temporary storage is guaranteed, as long as it complies with the regulatory requirements mentioned. Therefore, it must be:

- in the availability of the manufacturer;
- functionally connected to the production site;
- identified in compliance with urban planning regulations.

Furthermore, the storage must be made in a space:

- equipped with the necessary safety devices;
- in compliance with the conditions and limits of the art. 185-*bis* of the aforementioned Environmental Code.

Finally, it is specified that the collection of waste, its transport and the start of disposal may be entrusted to the company entrusted with the service guaranteed for private individuals or to another agencies, always in compliance not only with environmental legislation, but also with public contracts regulations.

Conclusions

In light of this further interpretative piece, the following conclusions of general interest can be deduced, in order to adequately fulfill the duties of waste producers. The area in which it's possible to create a temporary waste storage can be identified by the waste producer according to the extensive criterion of functionality in relation to the specific production site; however, this notion cannot be extended to overlap a notion of mere availability or possession.

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