

## The Site Waste Management Plans Regulations 2008: A Summary

In a bid to divert waste from landfill and to improve resource efficiency, the strategy set a target of halving the amount of construction, demolition and excavation waste going to landfill by 2012. This is to be achieved by minimising the amount of waste being produced and by re-using, recycling and otherwise recovering any waste that is produced before being disposed of.

The Site Waste Management Plans Regulations (“2008 Regulations”) came into force on 6 April 2008 and require any person intending to carry out a construction project in England with an estimated cost greater than £300,000 to prepare a site waste management plan (“SWMP”), before construction work begins. This is one of the tools employed to reduce the amount of waste currently ensuing from the construction sector. Whilst the DTI had introduced a voluntary code of practice in July 2004 requiring the use of SWMPs, the 2008 Regulations make them mandatory for all projects falling within the scope of the 2008 Regulations.

The requirement for a SWMP encourages a resource efficient approach to construction projects. Not only is this favourable to the environment, but it will also help make cost savings by better managing materials. For example when procuring materials, developers will need to ensure that a careful evaluation of materials has been made so that over-ordering and site wastage is reduced. Therefore it is expected that SWMPs will deliver considerable cost savings to each project.

### **When is a SWMP required?**

By Clause 5 (1), any client who intends to carry out a project on any one construction site with an estimated cost greater than £300,000 excluding VAT must prepare a site waste management plan conforming to these Regulations before construction work begins.

The client is defined as a person who in the “course of business” seeks or accepts the services of another (contractor) in the carrying out of a project, or a person who carries out a project on their own behalf. To fall within the scope of the 2008 Regulations, the project needs to be carried out in the course of business. Thus, a person planning a project in relation to their own home will not require an SWMP.

A project for the purposes of the 2008 Regulations includes all planning, design, management or other work involved in the construction until the end of the construction phase.

Construction work refers to any building, civil engineering or engineering work and includes site clearance works, constructing, altering, converting or fitting out a structure, commissioning and de-commissioning or demolition of the same. This is not an exhaustive list.

In summary, the 2008 Regulations will apply in circumstances where:

1. The construction work is carried out in the course of business;
2. The specific work undertaken falls within the definition of “construction works”;

3. The estimated cost of the construction work is greater than £300,000 excluding VAT. The cost will be the price of the tender or, if there no tender, the cumulative cost of labour, plant, materials, overheads and profit; and
4. The construction work is not exempt from the 2008 Regulations. Exempt works includes works taking place at a Part A installation under the Environment Permitting (England and Wales) Regulations 2007 since these sites already meet pollution prevention controls and works at a nuclear licensed site which has an “Integrated Waste Strategy”. These are the only exemptions.

#### **Who is responsible for preparing the SWMP?**

The client, the client’s principal contractor and or site consultant (if employed) will be responsible for preparing the SWMP. To knowingly or recklessly make false or misleading statements in the SWMP is an offence and the party/parties responsible for drafting a knowingly false or misleading SWMP will be liable to conviction (see below).

Other than the preparation of the SWMP, all other obligations within the 2008 Regulations fall on the client or its principal contractor. If no principal contractor is employed, all obligations fall on the client.

#### **What does the SWMP consist of?**

Whilst there is no requirement for the SWMP to be in a particular format, it must contain the following information:

1. details of the client, principal contractor (if any) and person who designed the SWMP;
2. location of the proposed construction work and its cost;
3. outline any decisions that were made before which have the aim of minimising the quantity of waste produced;
4. describe each waste type expected to be produced in the course of the project and the quantity of each different waste type expected to be produced;
5. identify the waste management action proposed for each different waste type, including re-using, recycling, recovery and disposal; and
6. a declaration that the client and the principal contractor (if any) will take all reasonable steps to ensure that all waste from the site is dealt with in accordance with the waste duty of care in section 34 of the Environmental Protection Act 1990 and the Environmental Protection (Duty of Care) Regulations 1991 and that all waste materials will be handled efficiently and managed appropriately.

#### **What is the Waste "duty of care"?**

According to Environment Agency statistics, one fifth of all fly tipped waste is generated by the construction industry. Under section 34 of the Environmental Protection Act 1990 and the Environmental Protection (Duty of Care) Regulations 1991, all persons who produce or handle waste from demolition or construction activities have a duty of care for its safekeeping, transport and subsequent recovery or disposal. Failure to comply with the duty may result in an unlimited fine.

The duty of care requires you to take care of waste on site, and that when it is removed, to give it to an authorised person. Examples of authorised persons include council waste collectors, registered waste carriers or holders of a waste management licence. This should ensure that waste is removed by authorised persons to specific locations rather than being fly tipped.

### **Construction**

Only once the SWMP has been prepared, can construction works begin. If a Principal Contractor has been appointed it is their responsibility for recording on the SWMP all instances of waste being removed from the site. If not, the responsibility rests with the client. For the purpose of this summary we will assume a principal contractor has been appointed.

For projects valued at between £300,000 and £500,000, the principal contractor must record on the SWMP the identity of the person removing the waste, what type of waste is removed and its intended destination.

If the value of the project is more than £500,000, the principal contractor has additional recording duties when waste is removed. They must record on the SWMP the waste carrier's registration number (waste management license number), details of the site that the waste is being taken to and whether the operator of that site holds a permit to deal with that waste under the Environmental Permitting (England and Wales) Regulations 2007. They must also ensure that the SWMP continually reflects waste management on the site and if not, that the SWMP is updated accordingly.

At least every six months throughout the project, the SWMP must be reviewed and all types of waste produced be recorded, together with details of what has been re-used, re-cycled, sent to landfill or otherwise disposed of. Failure to update the SWMP accordingly is an offence.

Together with keeping the SWMP updated with the requisite information throughout the construction phase, the Principal Contractor is also responsible for the following, so far as is reasonably practicable;

1. ensuring that the SWMP is kept at the site office (if there is one and if not, at the site);
2. that the SWMP is available to any contractor carrying out work described in the plan;
3. make arrangements so that all contractors and workers engaged with the construction work co-operate effectively in promoting and developing measures to ensure that any waste arising on site is managed within the terms of the site waste management plan and in checking the effectiveness of such measures;
4. so far as is reasonably practicable, ensure every worker on the site is provided with a suitable site induction and that waste produced during construction is re-used, recycled or recovered; and
5. together with the client, take reasonable steps to ensure that sufficient site security measures are in place to prevent the illegal disposal of waste from the site.

### **Post Construction**

Within 3 months of the construction phase being completed, the principal contractor must add to the SWMP confirmation that the plan was regularly monitored and updated where necessary. If the SWMP has been deviated from, an explanation of why must also be provided. This applies to projects where the cost is more than £300,000 but less than £500,000.

With projects where the cost is greater than £500,000, the principal contractor must in addition to the above confirmation, add to the SWMP a comparison of the estimated quantities of each waste type against the actual quantities produced and an estimate of the cost savings that have been achieved by completing and implementing the plan. The SWMP must be kept by the principal contractor for two years following completion. It is an offence

to fail in completing the final recording duties or to dispose of the SWMP before the end of the two year period.

#### **Enforcement and Penalties**

The Environment Agency and local authority officers are responsible for enforcing the 2008 Regulations. The possible offences under the 2008 Regulations are as follows:

1. failing to complete a SWMP for a project falling within the scope of the regulation before commencing works - client and principal contractor liable.
2. failing to update the SWMP accordingly during the construction phase - principal contractor liable (or client if no principal contractor employed);
3. failure to make the SWMP available on site - principal contractor liable (or client if no principal contractor employed);
4. failure to keep SWMPs available for 2 years following completion of the construction - principal contractor liable (or client if no principal contractor employed);
5. to make knowingly or recklessly false or misleading statements in the SWMP or furnishing the Environment Agency or local authority officers with the same - client and or principal contractor liable;
6. intentionally or without reasonable cause obstructing any person acting in the execution of the 2008 Regulations - client and or principal contractor liable; and
7. failing to produce a SWMP when required to do so by an enforcement officer - client and or principal contractor liable.

If the principal contractor or client (depending on whether a principal contractor is employed) is guilty of any of the above offences, he will be liable on summary conviction to a fine not exceeding £50,000 or if convicted on indictment, to a fine. If the liable party is a corporate entity, the company's director, manager or secretary may also be found to be guilty of the offence personally, subject to it being proved that the said Director, Manager or Secretary consented to the neglect of the company in failing to meet its obligations.

Should the client or principal contractor fall foul of offence number 7 above, the enforcing body can also serve a fixed penalty notice on the "offender" in the sum of £300.00. Provided the penalty is paid within 14 days of the receipt of the notice, the "offender" will not be convicted for the failure to produce a SWMP to an enforcement officer.

#### **Summary**

The 2008 Regulations are not only about legal compliance, but also resource efficiency and cost benefits and a prudent developer would be wise to consider implementing a SWMP for all projects; not only those where the 2008 Regulations apply. Clearly, only by adopting the spirit of the legislation can the full environmental and cost benefits be realised.

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