



Article by Justin Mendelle

## **THE SITE WASTE MANAGEMENT PLANS REGULATIONS 2008 (“THE REGULATIONS”)**

This note sets out a brief overview of the Regulations, providing a summary of the key legal and practical considerations.

### **Background**

The Regulations came into force on 6 April 2008 and aim to address two key issues:

- Improving efficiency by decreasing the volume of waste disposed of and increasing recovery; and
- Reducing fly-tipping and illegal disposal.

The Regulations apply to clients who carry out a project on any one construction site with an estimated cost greater than £300,000 (excluding VAT)<sup>1</sup>. Accordingly, a project undertaken over multiple sites which are each below the threshold will not be caught by the Regulations, notwithstanding the fact that the overall value of the project could exceed £300,000. The Regulations apply to all aspects of construction work, including demolition and excavation works.

### **The site waste management plan**

A site waste management plan (“SWMP”) must be prepared before construction work begins. If the project is started without a SWMP, both the client and the principal contractor are guilty of breaching the Regulations.

Regulation 2 defines a client as “a person who in the course of business (a) seeks or accepts the services of another which may be used in the carrying out of a project for that person; or (b) carries out a project on their own behalf”. The client cannot opt out of the Regulations, nor elect another party to act as client.

The SWMP must:

- identify the client, the principal contractor<sup>2</sup> and the person who drafted it;
- describe the construction work proposed, including the location of the site and the estimated cost of the project;
- record any decision taken before the SWMP was drafted on the nature of the project, its design, construction method or materials employed in order to minimise the quantity of waste produced on site;

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<sup>1</sup> The Regulations don’t apply to a project relating to a Part A installation as defined in the Environmental Permitting (England and Wales) Regulations 2007, since these sites must already meet pollution prevention controls that include waste minimisation.

<sup>2</sup> A client who uses one or more contractors must appoint a principal contractor. It is important to note that if the client doesn’t use a contractor, all obligations placed on the principal contractor by the Regulations have to be carried out by the client instead.

- describe each waste type expected to be produced in the course of the project;
- estimate the quantity of each different waste type expected to be produced;
- identify the waste management action proposed for each different waste type, including re-using, recycling, recovery and disposal; and
- contain a declaration that the client and the principal contractor will take all reasonable steps to ensure that all waste from the site is dealt with in accordance with the waste duty of care imposed by the Environmental Protection Act 1990 and the Environmental Protection (Duty of Care) Regulations 1991 and that materials will be handled efficiently and waste managed appropriately.

WIDP have issued supplementary guidance on construction waste clauses in the standard Output Specification. A copy of the guidance (which includes suggested drafting) is set out in the appendix to this note.

### **Updating the SWMP**

If a project has an estimated worth of £500,000 or less, whenever waste is removed from the site, the principal contractor must record on the SWMP details of:

- the identity of the person or firm that will remove the waste;
- the different types of waste to be removed from the site; and
- the site that the waste will be taken to.

Within three months of the work being completed, the principal contractor must add his confirmation to the SWMP that it has been monitored and updated on a regular basis to ensure that work is progressing according to the plan. He must also provide an explanation of any deviation from the plan.

For projects with an estimated worth of more than £500,000, whenever waste is removed from the site, the principal contractor must record on the SWMP details of:

- the identity of the person removing the waste;
- the waste carrier registration number;
- a copy of, or reference to, the written description of the waste required by section 34 of the Environmental Protection Act 1990; and
- the environmental permit or exemption held by the site where the material will be taken to.

The SWMP should be a “living” document and updated as often as is required to give an accurate picture of how work is progressing against the waste estimates contained in the plan. In any event, not less than every six months, the principal contractor must:

- review the plan;

- record the types and quantities of waste produced;
- record the types and quantities of waste that have been re-used, recycled, sent for another form of recovery, sent to landfill or otherwise disposed of; and
- update the plan to reflect the progress of the project.

At completion of the project, the SWMP must be reviewed and where there are variations from the original SWMP, reasons must be recorded to account for this. In particular, within three months of the work being completed, the principal contractor must add to the SWMP:

- confirmation that the plan has been monitored on a regular basis to ensure that work is progressing according to the plan and that it was regularly updated;
- a comparison of the estimated quantities of each waste type against the actual quantities of each waste type;
- an explanation of any deviation from the SWMP; and
- an estimate of the cost savings that have been achieved by completing and implementing the SWMP.

#### **Availability and storage of the SWMP**

The principal contractor must ensure that the SWMP is kept at the site office or, if there is no such office, at the site. He must keep the plan for two years after the completion of the project at his principal place of business or at the site of the project.

#### **Penalties**

Failure to comply with the Regulations can result in a conviction and a fine of up to £50,000. As an alternative to prosecution, failure to produce a SWMP can result in a fixed penalty notice of £300 being issued.

Justin Mendelle is a Solicitor in Sharpe Pritchard's Projects department. Justin can be contacted on 020 7405 4600 or [jmendelle@sharpepritchard.co.uk](mailto:jmendelle@sharpepritchard.co.uk).

**This note is intended to provide a brief overview of the legal principles under discussion.  
It is not intended to be a comprehensive guide or to constitute legal advice.**

## Appendix

### Waste Infrastructure Delivery Programme Residual Waste Procurement Pack Module 5 Part II, Output Specification drafting

### Supplementary guidance on the inclusion of clauses on construction waste in the PR1 Works Requirements

July 2009

#### 1. Introduction

In PR1 (Works Requirements) of the Output Specification Schedule (WIDP Procurement Pack: Module 5 Part II), paragraphs have been added to encourage contractors to reduce the quantity of construction, demolition and excavation waste sent to landfill during construction of the Works. See Box 1 for the guidance drafting.

#### **Box1: WIDP Procurement Pack, Module 5 Part II, "Output Specification Drafting"**

##### **Part A, Performance Requirements: PR1, Works Requirements**

##### **Additional paragraphs on Construction Waste Management:**

*1.46 The Contractor shall in respect of the Works:*

- a) implement a Site Waste Management Plan<sup>3</sup> throughout the design and construction period in compliance with the Site Waste Management Plans Regulations 2008, but also include in such plan project-specific targets for waste recovery and reused and recycled content set out in paragraphs (c) and (d) below and for waste reduction;*
- b) measure and report<sup>4</sup> the quantity of waste produced and the quantity of waste sent to landfill (tonnes per £100k of construction spend);*
- c) recover [up to [ ]%]<sup>5</sup> and at least a minimum of 80% of construction and demolition materials; and*
- d) ensure that [up to [ ]%]<sup>6</sup> and at least a minimum of 15% of total material value derives from reused and recycled content in new build, select the top opportunities to exceed this figure without increasing the cost of materials, and report actual performance.*

<sup>3</sup> The term "Site Waste Management Plan" should be included in the list of Definitions for the Output Specification Schedule as "the plan to be developed by the Contractor in accordance with PR1".

<sup>4</sup> Following the method for construction waste measurement and reporting agreed by the UK Contractors Group, available at [http://www.wrap.org.uk/construction/tools\\_and\\_guidance/reporting\\_portal.html](http://www.wrap.org.uk/construction/tools_and_guidance/reporting_portal.html)

<sup>5</sup> This is a bid back item.

<sup>6</sup> This is a bid back item.

- 1.47 *Before starting on Site, the Contractor shall submit to the Authority a copy of the Site Waste Management Plan, identifying the actions to be taken to reduce waste, increase the level of recovery and increase reused and recycled content, and quantifying the resulting changes. The Contractor shall forecast waste quantities and reused and recycled content from an early design stage (for instance by using WRAP's Net Waste Tool<sup>7</sup>).*
- 1.48 *On completion of the Works, the Contractor shall submit to the Authority a copy of the completed Site Waste Management Plan, reporting the forecast and actual performance for waste quantities, disposal routes, and reused and recycled content used in construction.*

These paragraphs will enable Authorities to implement the following request in the Funding Approval letter for WIDP Phase 4 projects – and are also relevant to projects approved previously:

*"As part of its commitment to sustainable construction, WIDP in conjunction with WRAP aims for all successful projects to adopt practices which continuously reduce the quantity of waste arising and increase the recovery of materials for reuse and recycling on all construction projects. ([www.wrap.org.uk/construction](http://www.wrap.org.uk/construction))"*

## 2. Context

The Government has adopted a policy target to halve the amount of construction, demolition and excavation (CD&E) waste going to landfill by 2012 relative to 2008 (Waste Strategy 2007 and Strategy for Sustainable Construction 2008). Defra and WIDP have signed up to a sector-wide voluntary agreement to help achieve this policy goal, and many of the UK's leading construction contractors have also joined this Waste to Landfill Commitment.

The Site Waste Management Plans (SWMP) Regulations 2008 make the client and their principal contractor jointly responsible for compliance, including forecasting quantities of waste and identifying waste management actions. However, to achieve cost savings, it is essential to start the SWMP at an early design stage and use it to identify opportunities to reduce waste and reuse materials. This can cut what you spend on waste disposal and unused/offcut/spoilt materials. Measurement is critical, and the UK Contractors Group has recently agreed a common method and metrics for reporting waste (reflected in the guidance drafting in Box 1).

Authorities should therefore take action by asking for good practice on their PFI project through the procurement process – using the wording provided. Authorities could also sign up to the voluntary agreement for all their local authority construction<sup>8</sup>.

## 3. Why take action?

Reducing CD&E waste to landfill will help to relieve pressure on landfill capacity. Authorities can also benefit from lower construction costs for new waste facilities – particularly when waste is reduced and

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<sup>7</sup> The Net Waste Tool is freely accessible at <http://nwttool.wrap.org.uk/>.

<sup>8</sup> Visit [http://www.wrap.org.uk/construction/halving\\_waste\\_to\\_landfill/index.html](http://www.wrap.org.uk/construction/halving_waste_to_landfill/index.html) for more information on the Waste to Landfill Commitment.

reused. These savings should be reflected in more competitive tender prices if a clear requirement is defined at an early stage of procurement.

As an example, WRAP has analysed the cost-benefit case of going beyond minimum regulatory requirements for site waste management. The following Table highlights the potential cost savings that can be achieved on a new build composting facility<sup>9</sup>:

	<b>Value</b>	<b>Percentage of £3.2m construction cost</b>
Cost saving potential (top opportunities)	£119k (£32k materials cost, £87k disposal cost)	3.7%
Additional costs to achieve these savings	£16k	0.5%
<b>TOTAL POTENTIAL COST SAVING</b>	<b>£103k</b>	<b>3.2%</b>

Other benefits include a reduction in waste to landfill of 1700 tonnes and a saving of 100 tonnes of carbon.

Measuring and reporting on CD&E waste also demonstrates a contribution to the efficiency agenda, corporate responsibility and sustainable procurement.

#### 4. Additional information

For more information on how Authorities can ask for good practice, and how their Contractor and supply chain can respond, visit [www.wrap.org.uk/wasteinfrastructure](http://www.wrap.org.uk/wasteinfrastructure). This includes advice on considering CD&E waste at the following stages of procurement:

- Outline Business Case (OBC);
- Pre-Qualification Questionnaire (PQQ); and
- Invitation to Submit Outline/Detailed Solutions (ISOS/ISDS).

<sup>9</sup> Results are based on analysis of the design of an actual facility, evaluating the savings from achieving good practice wastage rates instead of typical industry baseline wastage. The analysis does not include further savings from more fundamental design changes at an earlier stage, or savings from reuse of demolition and excavation materials. For example, the construction of the MRF at Bidston, Merseyside reused 18,000 tonnes of material and saved over £100,000.

