

# CONSULTATION RESPONSE



Defra consultation on SWMPs

6 July 2007

## Consultation on site waste management plans for the construction industry

The Home Builders Federation (HBF) is the principal trade organisation representing the interests of house builders in England and Wales. Our members include companies of all sizes, ranging from multi-national household names through regionally based businesses and small local companies. They are responsible for more than 80% of the new homes built every year.

HBF is concerned about the purpose of this proposal. Many of our members already draw up site waste management plans; others will do so to achieve points in the Code for Sustainable Homes. Our understanding was that the point of this consultation was to introduce a more effective and efficient means of managing waste from construction sites. HBF has for some years been advocating proposals to do just that.

However, we are also given to understand that the EA is particularly concerned to prevent an increase in fly tipping resulting from the ever-increasing costs of dealing with waste. The suggestion of setting criteria for a SWMP would exclude the smaller sites particularly DIY jobs, which are more likely to involve people with less knowledge and more incentive to try and bypass the correct procedures.

We are therefore apprehensive that this is another attempt by government to add an additional tier of regulation to impose resource management on the construction industry. We are aware that there is a mistaken belief in some quarters that it would be possible to reach a point in the short term where no waste goes to landfill (and cannot emphasise too strongly that this is **not** achievable in the foreseeable future).

The EA obviously believes that SWMPs offer some confirmation of the certainty of use for some secondary materials/by-products that would normally be defined as waste, for example the re-use of risk-assessed excavation arisings. This lends credence to the assumption that a waste management license will be required for certain conventional civil engineering construction processes. As we have explained previously this is not an acceptable approach.

Since HBF believes that we do not need regulations our response to Question 1 is 'No'. So we have not answered the subsequent questions individually. However we would make the following comments which we believe cover most of the significant points.

The effectiveness of any Site Waste Management Plan, voluntary, Code required, or compulsory will depend on the UK Government reaching a decision on a legal definition of "waste" which it has so far failed to do (Defra had advised us that a

definition would be in place in early 2005). Without such a definition, how can a developer (or a regulator) decide if the product generated is waste or a secondary raw material and/or by-product? Traditionally building sites have reused excavation arisings for landscaping and to raise levels, form gardens etc, avoiding the need to dispose of this material in landfill. There is now a suggestion that this activity requires a WML thereby blighting any such site and encouraging developers to import acceptable materials and dispose of the previously recycled materials instead of reusing them.

Again it is evident that those preparing this draft have a limited understanding of the house-building and construction process. The proposal as drafted will inevitably lead to further delays, as an acceptable SWMP is unlikely to be sufficiently accurate until after planning consent is granted and exemptions agreed with the EA - the former takes an average of 9 months the latter 3.

The definition of 'construction' and 'project' used in this consultation appear to relate to the superseded 2004 CDM Regulations and are not consistent with Annex A of PPS 1. The Design Coordinator under CDM2007 is unlikely to be the person responsible for preparing the SWMP.

Our industry is already over-regulated and subject to delay. A developer already has to agree remediation protocols as an integral part of the planning process, prepare validation reports, ensure waste transfer notes are in place with registered waste carriers, endure EA audits and provide robust evidence in support of their applications for contaminated land tax relief. There is already more than enough regulatory control in place and it would be more helpful to the Government's house building targets if existing overlapping regulation could be simplified rather than increased.

We are also concerned that the number of projects quoted in paragraph 108 of the consultation document seems to be a significant under-estimation. Also, over 50% of these consents are householder applications, which are far more likely to result in fly tipping by small building companies with narrow profit margins. There are many offenders who would sooner pay a fixed penalty fine of £300 because that is cheaper than disposing of their waste legally. If SWMPs are to be introduced, they should cover all construction projects. This would have enormous resource implications for the enforcers.

While there is no mandatory requirement to submit a SWMP, the fact that it has to be retained on site, open for inspection at all times yet also evolve will mean that the person preparing and updating the SWMP will have to have a high level of expertise in waste specification. As would any person undertaking an audit. This is not reflected in the costs cited in the consultation.

The preparation of any final reports may not be possible within the timescale advocated - this needs to be extended. Also, formally recording 'lessons learnt' would seem unnecessarily bureaucratic and serve no useful purpose.

The term 'any waste' in schedule 1 (Additional Duties) Paragraph 1 would imply that ALL waste must be recycled. As we know, certain materials/soils cannot be recycled and landfill remains the only option for these. The proposed document would require considerable amendments to become a valid and practicable legal document.

In summary, the current proposals do not offer significant scope for improvement as far as major developers and contractors are concerned. Many of the

recommendations are already being implemented on a voluntary basis so the need to make such a requirement mandatory is doubtful and would merely add additional costs. Requiring such regulation for larger sites would be superfluous since the vast majority of such sites would already be managing their waste as best they can given the lack of adequate definitions and the inconsistency of the Environment Agency in terms of required enforcement. The only reason to make it mandatory would be to target every site and it seems clear that resources would not be available to do this. In which case it is difficult to see how it would address the fly tipping issue.

HBF believes that many of the proposed objectives of this proposal are achieved already voluntarily or under other legislation. Others could not be achieved by the imposition of such a regulation. We have advocated improvements to the UK's waste management system that we believe would offer substantial benefits without imposing additional regulation and we are disappointed that the Government declines to take this route in favour of yet another consultation on more regulation.

HBF also believes that this consultation makes unreasonably negative assumptions about attitudes in the construction industry. There have been many changes in recent years and the majority of developers have a responsible attitude to waste management that would include far more recycling if the Government could make a decision on a definition of what was waste and when a WML is or is not required.