

**WAS-G-060**

**SEPA guidance: Recovery and disposal of waste in quarries**

Version 2.0 – August 2025

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# Introduction

This guidance provides advice on when the backfill infill or restoration of a quarry using waste is likely to be a recovery or a disposal operation and may be read in conjunction with SEPA’s guidance on waste recovery plans. Although aimed at quarries, the principles in this guidance will apply to other situations where it is important to establish whether an activity is a recovery or disposal activity, for example infilling former reservoirs.

# Definitions

The use of waste to backfill or restore a quarry can be defined as either a recovery operation or a disposal operation and it is important to establish which as this affects how SEPA will authorise the activity. To carry out any kind of activity that involves backfilling of quarries, whether recovery or disposal, a permit is likely to be required due to the scale of the project.

## Definition of backfilling

“Backfilling” means any recovery operation where suitable non-hazardous waste is used for purposes of reclamation in excavated areas or for engineering purposes in landscaping. Waste used for backfilling must substitute non-waste materials, be suitable for the aforementioned purposes, and be limited to the amount strictly necessary to achieve those purposes.

## Definition of recovery

“Recovery” is defined as “any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy.”

For an activity to be considered recovery, it must be shown that the waste is being used instead of other non-waste material, which would otherwise have been used for the same purpose and to the same extent.

## Definition of disposal

“Disposal” in relation to waste, means “any operation which is not recovery even where the operation has as a secondary consequence the reclamation of substances or energy” and includes, but is not limited to, the activities listed in Annex I of the Waste Framework Directive.

If it cannot be shown that the waste is needed to replace non-waste material, the activity will be considered a waste disposal operation. A disposal operation to infill a quarry would be classified as a landfill and would require a different permit.

To be a recovery operation, a two-stage test must be applied (as reiterated by the ECJ in case of Cittá Metropolitana Di Bari v Edilizia Mastrodonato srl Case C-147/15 28 July 2016).

Firstly, would the operator still proceed with the proposed operation even if they had to refrain from using waste in doing so? Secondly, is the waste proposed for use suitable for that use? The responsibility for determining whether the proposed operation satisfies that test lies with the appropriate regulatory agency. To assess whether a proposal to infill a quarry with waste is a recovery or a disposal operation SEPA will take into consideration all the circumstances surrounding the proposed operation.

Scottish Landfill Tax may or may not be applicable to infilling operations at former quarries. This is not a determining factor for SEPA, regarding whether an activity is considered recovery or disposal. However, it may have a significant impact on the operator/applicant, therefore they should be advised to discuss their proposals with Revenue Scotland (www.revenue.scot) to understand any potential tax implications. Revenue Scotland reserve the right to tax any materials used to infill quarries that are not listed in The Scottish Landfill Tax (Qualifying Material) Order 2016.

# Determining whether the proposal is recovery

We will determine whether a proposal constitutes recovery or disposal using the indicators below.

## Do the works need to go ahead?

You should be able to demonstrate the restoration work is necessary. This may include, for example, a condition as part of planning consent. However, the presence of a restoration condition alone is not enough to definitively demonstrate recovery, as this would not guarantee the work will go ahead, or that it would go ahead with non-waste materials. SEPA recognises planning consent for a quarry may require work to be carried out to restore it or make it safe either through conditions or reference to an agreed planning permission. When assessing whether the use of waste for that work amounts to a recovery or disposal operation, we will consider the extent to which the relevant bodies (including SEPA) were directly involved in the design of the restoration proposals when the planning consent was granted and whether there is evidence that the relevant planning authority would be likely to agree to amend the planning consent if an alternative proposal was submitted. Early engagement between SEPA, the planning authority and the operator is encouraged.

There may be requirements under other legislation for specific work to be carried out for a specific purpose. This may be an indicator that the work would be carried out regardless of whether waste is used. However, the extent of the proposed works will be assessed against the extent of the obligated works. An example of this could be a Health and Safety notice requiring stabilisation of the quarry walls. Where multiple consents apply to the same quarry, we will take a holistic approach in considering how these relate to one another, using this to inform our determination.

## Extent of the works

The works proposed should be enough to satisfy the stated aim and no more. Excessive heights/depths and/or unnecessary landforms or slopes may all be indications that the volume of material being brought onto site is a disposal operation. If benefit to agriculture or ecological improvement can be shown, this is likely to help demonstrate a recovery activity. It is also unlikely to be necessary to completely fill a quarry to provide this benefit or improvement.

## Suitability for use

The waste must be suitable for the proposed use. It must have the engineering and environmental properties required (if necessary) and be routinely monitored or tested at an appropriate frequency to ensure continued suitability of use. It should not require additional environmental safeguards (e.g. lining systems) compared to those needed by non-waste material. The suitability of the material is intrinsically linked to the extent of the works and the sensitivity of the site. We will encourage the appropriate use of waste materials in place of natural resources in the interests of sustainable management of resources.

# Viability

There may be cases where the details given regarding the requirements of other regimes, the suitability for use, and the extent of works are not enough for SEPA to determine a proposed activity as recovery. In such cases you may provide other additional information to demonstrate the works would be viable even if non waste materials were used. Evidence could be provided which costs the proposed works utilising non-waste materials and shows the benefits of the works, for example by a prospective increase in land value, expected income or by cost savings e.g. the costs avoided in the installation and operation of equipment. Further detail is provided in Appendix 1.

# Examples

If a project proposes using wastes which would require additional environmental protection measures, then it is unlikely to be determined as recovery. For example, the use of hazardous waste soils in a restoration is unlikely to be considered a recovery operation.

If a project proposes using excessive amounts of material compared to the stated aim, it is unlikely to be determined as a recovery operation. For example, creating a layer of topsoil six metres deep where one metre would be sufficient to recover the land, would be considered a disposal operation.

**Disclaimer**

This guidance is based on the law as it stood when the guidance was published.

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SEPA reserves the right to depart from this guidance and take appropriate action as it considers necessary or appropriate.  Applicants and authorised persons are responsible for ensuring that they are compliant with the law. If necessary, independent legal / specialist advice should be sought.

# Appendix 1 – Further detail on viability

If you want to demonstrate that your proposal is a recovery operation, you may provide a financial case to demonstrate the works proposed would have a reasonable prospect of proceeding if non-waste materials were to be used. This is not the same as the demonstration of financial provision needed in the authorisation application process. There is no requirement for any funds to be set aside or for you to provide evidence of funds in this instance. The purpose would be to demonstrate a viable business case for the works to go ahead whether or not waste materials are used. The financial case would not need to demonstrate financial gain; but a prediction of substantial monetary loss, resulting from the use of non-waste materials, could be an indicator that the works would not proceed without waste materials and, therefore, an indicator of a waste disposal activity.

The viability assessment does not hinge solely on profit, and it does not seek to quantify the financial benefit of using waste. However, the presence and direction of payment between the applicant and the waste producer is one indicator for SEPA to consider when determining a proposed activity as recovery or disposal.

Any case put forward could take account of any financial benefit you would gain from the site. This could include the value of materials extracted from the site, or the value of the land once it has been restored. It could also take account of the cost of not carrying out the proposed works, which might include the withholding of bonds or the provision of equipment to maintain the site in a safe condition.

Where the proposal forms part of a larger scheme, it will be assessed as part of the whole scheme being commercially worthwhile. The presence of any funding secured for the implementation of the works will also be taken into account.

It is accepted that any such viability assessment cannot be completely future proof and SEPA would not expect it to be. The case should show that the purpose of the proposed activity is reasonable and does not rely on income from the disposal of wastes. If SEPA determines that the activity is a recovery activity we would not expect the financial case to be updated/revisited over the lifetime of the activity.

While SEPA envisages that any financial case submitted would not contain detailed confidential information, we accept that some of that information may be regarded as commercially confidential by you. You would be able to apply for your submission or any part of it to be excluded from the public register. Any such application would be determined by SEPA in accordance with the legislation.

It is anticipated that it would be difficult to demonstrate a financial case to support recovery in circumstances where an excavated quarry, with little or no further economically extractable material, has been sold. In these circumstances, SEPA is aware that the value attached to the quarry is often calculated by reference to the available void space and that the purpose of acquisition is generally to use the void for waste disposal.