1. **Introduction**

This document provides guidance on whether or not the infill or restoration of a quarry using waste is likely to be a recovery or a disposal operation, and therefore what waste regulation applies to the activity. This guidance has been written specifically for quarries but the principles expressed will also apply to other situations, for example, former reservoirs.

1. **Context**

The use of waste to infill or restore a quarry can be either a recovery operation or a disposal operation and it is important to establish which as this affects how SEPA will regulate the activity.SEPA’s statutory purpose is to protect and improve the environment in ways that, as far aspossible, also help create health and well-being benefits and sustainable economic growth. Where possible, SEPA will encourage the use of waste materials in place of virgin resources in the interests of the sustainable management of resources and one planet prosperity.

“Recovery” is defined in the Waste Framework Directive 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. Annex II sets out a non-exhaustive list of recovery operations.” The most relevant one to an infilling activity is R10 - land treatment resulting in benefit to agriculture or ecological improvement.

Disposal is defined as “any operation which is not recovery, even where the operation has as a secondary consequence the reclamation of substances or energy” and there is a separate non-exhaustive list of disposal operations which includes D1 – Deposit into or onto land.

For many quarries, especially those where extractive consents have lapsed, it is likely that “restoration” would only take place where waste materials are used for the infill because the costs associated with using non-waste material for the same purpose would be prohibitive. In those cases, the activity could not be considered a recovery activity as per the definition above as the waste would not be replacing other materials; it would be considered a disposal activity and would be regulated by SEPA accordingly.

In order 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 planned to be used suitable for that use? The responsibility for determining whether the proposed operation satisfies that test lies with the appropriate regulatory agency. In order 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 to determine whether the operation would proceed even if waste was not used.

Exemptions from the Waste Management Licensing regime generally do not apply to the infill of quarries. However, there may be limited circumstances where an exemption may be relevant. For example, paragraph 9 can apply to the infill of quarries to a maximum depth of up to 2 metres and paragraph 19, where it does not apply to land reclamation, could apply to the stabilisation of vertical rock walls.

The Scottish Landfill Tax may or may not be applicable to infilling operations. This is not a determining factor with regard to whether an activity is considered recovery or disposal. However it may have significant impact on the operator / applicant and therefore they should be advised to discuss their proposals with Revenue Scotland to understand the tax implications.

1. **Determining** **whether the proposal constitutes recovery**

SEPA will evaluate whether or not a proposal constitutes recovery and the following aspects will be considered during this determination. This process is shown in the flow chart in Appendix 1.

i – Extent of Works

The works proposed should be enough to satisfy the stated aim and no more. Excessive heights, unnecessary landforms and steep slopes may all be indications that the volume of material being brought onto site is being maximised. It follows that the purpose of the activity is probably to get rid of waste and therefore the activity is likely to be a disposal operation. It is likely that, in order to prove recovery, benefit to agriculture or ecological improvement will need to be shown and it is also unlikely to be necessary to completely fill a quarry.

ii – Suitability for Use

The waste must be suitable for the proposed use. It must have the engineering properties required (if necessary) and a specification should exist to ensure this is monitored or tested at an appropriate frequency. It should not require additional environmental safeguards (eg lining systems) compared to those required by non-waste material. The suitability of the material is intrinsically linked to the extent of the works and to the sensitivity of the site. As a general rule, SEPA will encourage the appropriate use of waste materials in place of natural resources in the interests of the sustainable management of resources where possible.

iii – Requirements of Other Regimes

There can often be interactions with other legislation with regard to quarry restoration. These have been split into two categories.

a) Restoration may be addressed within an existing planning permission or require the submission of further information as part of a planning condition. However the presence of a restoration condition will not be sufficient in most circumstances to prove recovery. SEPA recognises that the 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, SEPA will consider the extent to which the relevant bodies were directly involved in the design of the restoration proposals when the planning determination was taking place and whether there is evidence that the local planning authority would be likely to agree anything significantly different if it was submitted to them. Early engagement between SEPA, planning authority and operator is to be encouraged.

b) There may be a requirement 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 utilised. 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.

iv – Financial Considerations

Understanding the financial viability can demonstrate that the works could be worthwhile if non waste materials were to be used. Evidence should be provided which costs the works necessary utilising non-waste materials and shows the benefits of the works for example by increase in land value, expected income or by avoidance of other costs which may involve installation and operation of equipment. Further detail is provided in appendix 2.

1. **Examples**

• Where an operator indicates that a project will only go ahead if it utilises waste then it is unlikely to be a recovery operation.

• If a project proposes utilising non-suitable wastes which would require additional environmental protection measures then it is unlikely to be a recovery operation.

• If a project proposes utilising excessive quantities of material when compared to the stated aim then it is unlikely to be a recovery operation.

If the proposed activity is not a recovery operation, it is a disposal operation. This does not mean that the activity cannot proceed. However, it must be regulated as a waste disposal operation and would require to be permitted as such.

**Appendix 1 – Flow Chart**

Infill of Quarry

No Waste Licensing needed

Utilising Waste?

 No

 Yes

Extent of Works: Are the works utilising more material than absolutely necessary?

 No Yes

Suitability for Use: Are the works utilising only wastes that are suitable for use?

The works are likely to be classed as disposal

The works are likely to be classed as recovery

 No

 Yes

Requirements of Other Regimes: Are the works being carried out due to a definite obligation; and Financial Considerations: Are the works going to take place whether wastes are used or not?

 Yes No

Further consideration of the site specifics will be needed before the operations can be classed as recovery or disposal

 Mix of answers

Appendix 2 – Financial Considerations – further detail

SEPA will look for applicants who are attempting to prove their proposals are recovery operations to provide a financial case to show that the works proposed would have a reasonable possibility of going ahead if non-waste materials were to be used.

This case would be different from financial provision. It would look for no money to be set aside. It would not look for evidence of funds. Its purpose is to show that there is an understandable business case for the works to go ahead whether or not waste materials are used. This would not need to amount to financial gain but a substantial financial loss may be seen as evidence that the works would not proceed without waste materials and would amount to an indicator of a waste disposal activity.

The financial assessment does not hinge solely on profit and it does not seek to quantify the monetary benefit of utilising wastes. However, the presence and direction of payment between the operator and the waste producer is one indicator for SEPA to consider in terms of recovery or disposal.

Any financial case put forward would be able to take account of any monetary benefit that the applicant would gain from the site. This could include the value of materials extracted from the site or the value of the land once restored. It could also take account of the cost of not carrying out the works which might include the withholding of bonds or the provision of equipment to maintain the site in a safe condition. Where the proposals form 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 works will also be taken into account.

It is accepted that any financial case cannot be completely future proof and SEPA would not look for it to be so. The case should show that the purpose of the proposal is reasonable and does not rely on income from the disposal of wastes. SEPA would not look for it to be updated over time.

SEPA accepts that certain financial information may be seen as commercially confidential by the applicant. In most cases, SEPA would not envisage the financial case submitted to be so detailed as to contain information that was confidential. However in all cases it would be open to the applicant to claim commercial confidentiality with regard to their case or part of their case and SEPA would consider whether to keep that information securely, away from public registers.

It is expected that a financial case would be hard to be put forward to support recovery in circumstances where an excavated quarry, with little or no further economically extractable material, has been sold. In these circumstances, the value attached to the quarry is often measured in the available void space and the purpose is generally to dispose of waste to fill the void.