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Complaint: Norway has failed to comply with the Water Framework Directive

Complainants:

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Natur og Ungdom (Nature and Youth) Postboks 4783 Sofienberg 0506 OSLO Norway e-mail: info@nu.no phone: +47 23 32 74 00 fax: +47 23 32 74 10	NGO Norwegian environmentalist youth organisation 7000 members http://nu.no/english/
Vevring og Førdefjorden miljøgruppe Vevring 6817 Naustdal Norway e-mail: post@fjordaksjonen.org phone: +47 95 72 42 42	NGO, local environment group for Førdefjorden and Vevring http://www.fjordaksjonen.org/



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<p>Norske Lakseelver (Norwegian Salmon Rivers) Postboks 9354 Grønland 0135 Oslo Norway</p> <p>e-mail: post@lakseelver.no phone: 22 05 48 70 / 450 21 637 fax: 22 17 17 87</p>	<p>National NGO for river owners. 7000 individual river owners</p> <p>http://www.lakseelver.no/Engelsk/main.htm</p>
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Supporters of the Complaint:

Norges Fiskarlag (The Norwegian Fishermen's Association). See enclosure 4.

Overview of the complaint

The Water Framework Directive was implemented in Norwegian law in 01.01.2007, under the name «Forskrift om rammer for vannforvaltningen».

1. 19.04.2015: The Norwegian government issued a new permit for dumping 4 million tonnes of mining waste, mixed with chemicals in Førdefjorden each year. There is a planned increase to 6 million tonnes each year later in the mining period.
Our claim: This permit was given in violation of article 4.7 (new projects) and article 1 (purpose) of WFD.
2. 13.03.2015: The Norwegian government issued a new permit for a significant increase of mining waste, mixed with chemicals in Ranfjorden each year.
Our claim: The permit was given in violation of article 4.7 (new projects) and article 1 (purpose) of WFD.
3. 23.04.2008: The Norwegian government issued a new permit for dumping 4 million tonnes of mining waste, mixed with chemicals in Bøkfjorden each year.
The permit was given without an EIA that assessed the impact according to the articles of WFD.
Our claim: The permit was given in violation of article 4.7 (new projects), article 1 (purpose) and article 14 (public information and consultation) of WFD.
4. There are 6 active dumping sites for mining waste in Norwegian fjords, most of them with process chemicals mixed with the mining waste. The water management plans for 2015 – 2021 allow these dumping sites to continue, despite the fact that the quality status of these water bodies have been assessed to be less than «good». The dumping sites are not (and should not be) designated as Heavily Modified Water Bodies (HMWB), and the water management plans should take steps to lift the status to at least “good”.
Our claim: Continuing the dumping sites is a violation of article 4.1 and article 1 (purpose) of WFD.

We strongly urge ESA to instruct Norway to postpone the permit for the new dumping permit in Førdefjorden (permit given 19.04.2015), until ESA has reached a final decision concerning the complaint.

European development context

We want to draw your attention to the development in EU following the implementation of WFD. Submarine tailings disposal is now abandoned elsewhere in EU. The last STDs were in UK (until 2003), Greece (until about 2013) and France (until 2015). We refer to enclosure 1, page 25-26.

In contact with the London convention and Protocol, Norwegian authorities have stated that the low cost of submarine tailings disposal, compared with other solutions, is important for choosing this method. Our opinion is that this should be considered in view of EUs general market policy, as other EU countries have abandoned submarine tailings disposal to comply with EUs environmental policies.

Our previous actions concerning these cases

For each of the new permits we (most of the underwriting organisations) have stated our view several times against the proposed dumping during the hearings. We have objected to the given permits several times and have officially stated that there would be a complaint to ESA if the Norwegian authorities accepted applications for more tailings disposal in the fjords, or if they failed to accept a plan to put an end to the existing permits during the coming water management period.

We have also been active in the public hearing of the new water management plans, demanding an end to each of the 6 active dumping sites for mine waste.

Naturvernforbundet (by Mads Løkeland, mads.loekeland@gmail.com) sent 19.02.2015 an email to Maria Brättemark in the WFD Team, DG Environment, European Commission, asking for advice on the tailings disposal question, and was contacted by phone from Gabrielle Somers (Officer - Internal Market Affairs Directorate) in ESA in July 2012. She asked us whether we wanted to submit a formal complaint. Our conclusion was then that we should wait for the new applications, and the new water management plans to be considered by the Norwegian authorities.

Confidentiality

We authorise the EFTA Surveillance Authority to disclose our identities in its contacts with the authorities of Norway.

Detailed complaint

We present a detailed discussion of why the dumping of mining waste in the sea (submarine tailings disposal) is a violation of WFD, in Enclosure 1, «Submarine Tailings Disposal violates the Water Framework Directive», Naturvernforbundet 2015.

A Norwegian guidance document on article 4.7

The Ministry of Climate and Environment has published a guidance document for the authorities on § 12 of the Norwegian water regulations (article 4.7 of WFD)¹. Our claim is that this document most certainly will result in decisions in breach of article 4.7 of WFD.

In particular, the guidance document fails when it comes to the assessments of benefits and losses in connection with new projects. The guidance document only requires assessment of loss of environmental qualities. According to WFD guidance documents and common implementation strategy and common policy documents, one should in addition have a broad assessment of losses to society, as described in enclosure 1, pages 13 – 14.

Førdefjorden

In addition to the arguments and conclusions in Enclosure 1, we want to draw your attention to some aspects of the permit for dumping mining waste in Førdefjorden (permit granted 19.04.2015). We

¹ Veiledning til bruk av vannforskriftens §12. Klima- og Miljødepartementet 23.02.2015 (Guidance for § 12 of the water regulations, Department of Climate and Environment).

claim that the permit is given without a proper assessment of benefits and losses to society and the environment, and give our arguments below:

To allow the ecological quality status for a water body to be lowered to less than «good», article 4.7 has some additional conditions to be assessed:

1. everything possible must be done to prevent reduced quality status
2. the benefits for society must be greater than the losses for society and environment
3. it is technically difficult/ impossible, or a disproportionately high cost to use other methods that are significantly better environmentally

Condition no. 2, losses and benefits:

As guidance for how to assess number 2, «the benefits for society must be greater than the losses for society and environment», there are developed guidance documents and a «policy document».

From these documents we have established this assessment table (page 14 in Enclosure 1), where we compare the assessment requirements of WFD with the Norwegian water regulations, which are much less specific:

	WFD	Norwegian Water regulations
Assessment of benefits	<ul style="list-style-type: none"> • “overriding public interest” or <ul style="list-style-type: none"> • benefits for the health • security for the population • magnitude of sustainable development 	<ul style="list-style-type: none"> • Benefits for society
Assessment of losses	Values mentioned in article 1 of WFD: <ul style="list-style-type: none"> • Loss of environmental qualities • Loss of society’s general gain by achieving good water standard Some examples of the losses stated in the Policy document ² : <ul style="list-style-type: none"> • health and biodiversity of the aquatic ecosystem • protection of human health, for example safe consumption of fish, shellfish and seafood • new jobs (e.g. in ecotourism, fisheries and nature conservation sector). • quality of life, through the value of surface waters (e.g. for visitors, tourists, water-sports users, conservationist) and its non-use value and all non-market benefits associated. 	<ul style="list-style-type: none"> • Loss of environmental quality

We claim that the Norwegian authorities have not properly assessed the disposal of mining waste, according to the assessment requirements of WFD, and give our comments on the assessments list from above.

The establishment of a rutile mine combined with dumping of mining waste in the Førdefjorden:

- cannot be classified as “overriding public interest”
- gives no «benefits for the health”
- gives no “security for the population”
- cannot be classified as “sustainable development”

² Policy summary and background document-environmental objectives, 2005.

“Benefits for the health”

It is possible to produce Titanium from rutile (TiO₂), but only 4 % of all TiO₂ is used for Ti production. Mostly all rutile is used as white pigment, and there is no shortage of TiO₂ for the production of metallic Ti. Although Titanium is an important material for health services, one can therefore not use this as an argument for «benefits for health».

“Sustainable development”

We refer to Enclosure 1, on our assessment of “sustainable development” and the use of the fjords for dumping tailings.

“Protection of human health, for example safe consumption of fish, shellfish and seafood”

The National Institute of Nutrition and Seafood Research (NIFES) is concerned that the planned dumping of mining waste in Førdefjorden could have impacts on the safe food from fish, shellfish and seafood in general. NIFES is especially concerned that Cadmium could leak out from the deposits and enter into the food chain, and of increased level of nano-sized TiO₂ particles in shellfish and crab. They are also concerned about the level of acrylamide arising from the flocculation chemicals, and that Acrylamide might be concentrated throughout the food chain, thereby representing a health risk.

“Health and biodiversity of the aquatic system”

We refer to the chapter “The impact of submarine tailings disposal in a fjord” in Enclosure 1, that discusses the serious impacts on marine life. In Førdefjorden, the tailings will have serious impacts on several species that are red listed nationally and internationally (eel, ling, spurdog and several others). Among these, Norway has a special obligation to protect spurdog habitats through the OSPAR convention.

“New jobs (e.g. in ecotourism, fisheries and nature conservation sector)”

Tourism, fisheries and aquaculture are important business sectors in Norway, especially in this part of the country. They are dependent on clean water, healthy marine ecology and a good international reputation. The major business organisations in these sectors have protested strongly against a permit for dumping mining waste in Førdefjorden. Among these we find:

- The Enterprise Federation of Norway (Virke) organizes 19 000 businesses with 220 000 employees. <http://www.virke.no/omvirke/aboutvirke/Sider/default.aspx>
- The Norwegian Fishermen’s Association (Norges Fiskarlag) <http://www.fiskarlaget.no/index.php/fiskarlaget-engelsk>
- Norwegian Seafood Federation (SjømatNorge) represents the interests of approximately 500 member companies. (<http://sjomatnorge.no/norwegian-seafood-federation/>)
- The Norwegian Hospitality Association (NHO reiseliv) has 2500 member businesses with a total of 55.000 employees. <http://www.nhoreiseliv.no/english>
- Norwegian Salmon Rivers (Norske lakseelver) represents 7000 individual river owners in a number of national committees and councils. (<http://www.lakseelver.no/Engelsk/main.htm>)

There is also a question of whether the government, according to both national and international law, has a legal right to allow a project that could deprive fishermen and local inhabitants of their traditional right to fish and use the fjord area. If the permit is not withdrawn, it could result in a series of court trials concerning fishing rights, negative influence on salmon in the local rivers etc.

Enclosure 2 consists of letters and petitions from businesses and organizations in fishing, aquaculture and tourism, against submarine tailings disposal in Førdefjorden.

“Quality of life, through the value of surface waters (e.g. for visitors, tourists, water-sports users, conservationist) and its non-use value and all non-market benefits associated.”

We refer to the broad protests from most Norwegian environment and leisure organisations, and a letter signed by 33 international environmental organisations: “Time to protect the Norwegian fjords and our common sea”. See enclosure 3.

Condition no. 3, other methods which are significantly better environmentally

The mining project is based on a huge open cast mine, where the waste rock is placed in a large land deposit, and the mine tailings are to be dumped into the fjord. Only about 4 % of the ore is to be utilized, and the rest treated as waste.

We find that alternative mining methods and alternative use of the tailings have not been assessed properly. We refer to a few examples of alternatives that have been assessed to a very limited extent or not at all. We also refer to ongoing work in the EU system to transform mining in a more environmentally friendly direction.

- Underground mine with backfilling. Several technologies allow backfilling simultaneously with active mining, as the internationally commonly used method “cut and fill”. A major part of the tailings would then be deposited underground. Underground mining also gives less waste rock material.
- Alternative use of the tailings. The mining company has a report showing many alternative uses of the tailings, but the actual alternative use is not a requirement in the mining permit.
- We refer to the ongoing work in EU concerning the “Strategic Implementation Plan for the European Innovation Partnership on Raw Materials” and several research programmes that are focusing on mining methods like “Invisible mine” and “zero waste mine”. This ongoing work focus on mining methods with smaller environmental footprint: *“shifting fully the conventional mining production processes from the surface to underground³”*. As we have mentioned above, the shifting from open cast to underground mining could lead to a significant reduction in the amount of tailings, thereby making it easier to find alternative use for the rest.

Once more, we strongly urge ESA to instruct Norway to postpone the permit for the new dumping permit in Førdefjorden (permit given 19.04.2015), until ESA has reached a final decision concerning the complaint.

³ Working document for the Strategic implementation plan for the European innovation partnership, draft of 27/03/2013

On behalf of the complainants



Lars Haltbrekken

Chair of Naturvernforbundet

Enclosures

- 1: "Submarine Tailings Disposal violates the Water Framework Directive», Naturvernforbundet 22.04.2015
- 2: Letters from business organisations protesting against submarine tailings disposal
- 3: "Time to protect the Norwegian fjords and our common sea", letter from 33 environmental organisations worldwide, 2015
- 4: Support letter from the Norwegian Fishermen's association