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Reminder of ESA's assessment of our complaints; Norway's violation of the Water framework directive

We refer to Case No:77424, document No: 830452, decision No: 009/17/COL (18.01.2017) and our letters/ complaints of 19.05.2015 and 22.12.2015, concerning violation of the Water Framework Directive (WFD).

The purpose of this letter:

1. We want to be informed about the status of ESA's assessment of whether Norway violated WFD when Rana Gruber AS got permission to significant increased dumping of mine waste in Ranfjorden. (Our complaint 19.05.2015)
2. We want to be informed about the status of ESA's assessment of whether Norway violated WFD when Nussir ASA got permission to dump mine waste in Repparfjorden. (Our complaint 22.12.2015)
3. We want to be informed about the status of ESA's assessment of whether it is a violation for WFD when mining companies have permits to continue their dumping of mine waste in several Norwegian fjords. This must be seen in connection with the River Basin Management Plans. (Our complaint 19.05.2015)
4. We ask ESA to perform a new assessment of the permit to dump mine waste in Bøkfjorden. The dumping in Bøkfjorden was ended in 2015 due to bankruptcy of the mining company 18.11.2015.
A new mining company, Sydvaranger Eiendom AS, has been allowed to dump mine waste in Bøkfjorden even though they have not applied for a permit. The old permit has been transferred to the new company with no change, and no assessment, EIAs etc.
In our opinion, this is a new permit, that should have required a new application from the new mining company.

A. Our complaint 19.05.2015 dealt with four complaints, summarised by ESA in document 830452:

- i) the issuing of a permit in relation to mining activities in the Førde fjord*
- ii) the issuing of a new permit in relation to mining waste in Ranfjord*

- iii) *the issuing of a permit in relation to mining waste in Bøkfjorden*
- iv) *the continued use of active dumping sites for mining waste across Norway and their treatment in the respective river basin management plans.*

Our summing up of ESA's document 830452:

1. Complaint i): We regret that ESA concluded that Norway did not violate WFD when issuing a permit to dump mine waste in Førdefjorden.
We are preparing a new complaint, in connection with basic changes of the mining plans.
2. Complaint ii): ESA writes: «*In relation to the permit to allow the disposal of mining waste in Ranfjord, the Authority is still investigating this head of claim.*»
We want to be informed about the status of this investigation.
3. Complaint iii): ESA declined to assess the dumping of mine waste in Bøkfjorden: "*In relation to the third ground of complaint above, the Authority notes that, according to the information provided by the complainant, the permit was issued on 23 April 2008. While national legislation may already have been in force at that time, the WFD entered into force in the EEA States on 1 May 2009.* »
In relation with this, we want to draw your attention to the fact that the dumping of mine waste in Bøkfjorden was closed November 2015, due to bankruptcy of the mining company. A new company was established some years later and got the old permit to dump mine waste transferred 19.03.2019, with no change and no assessment of WFD.
We regard this as a new permit to dump mine waste in Bøkfjorden. We ask ESA to investigate whether this permit has been given in violation of WFD. We refer to our information about the permit, given in our complaint 19.05.2015, and further details later in this letter
4. Complaint iv): ESA has not rejected to investigate this complaint.
We want to be informed about the status of ESA's investigation of whether Norway violates WFD when allowing mining companies to continue their dumping of mine waste in five Norwegian fjords.

B. Our complaint 22.12.2015 about Repparfjorden

In our complaint 22.12.2015, we asked ESA to assess whether the permit to dump 2 million tonnes of mine waste each year in Repparfjorden was issued in breach of WFD. The permit was issued to Nussir ASA by the Ministry of Local Government and Modernisation 20.03.2015.

We want to be informed about the status of ESA's assessment of our complaint.

C. Detailed review of new information concerning Ranfjorden, Bøkfjorden and other fjords with ongoing dumping of mine waste.

Ranfjorden

Rana gruber AS was permitted a significant increase in the permitted amount of mine waste to be dumped in Ranfjorden. During the last years, 3 million tonnes of mine waste have been dumped in Ranfjorden each year.

The condition of Ranfjorden was examined in 2018, and this is the conclusion of the Directorate of Environment¹:

«The results from the surveillance in 2018 show moderate to bad condition of several components in Ranfjorden»

« As Ranfjorden is an active sea disposal area for Rana Gruber, and the disposal of suspended materials from Rana Gruber has increased significantly since 2013, the negative development is as expected.»

Our translation and underlining.

Rana Blad, 23.10.2019:

«According to WFD, it is a goal that all water bodies should reach good or very good condition by 2021. Ranfjorden has been given a prolonged deadline to 2027.»

Our translation.

When there was issued a dumping permit to Rana gruber AS, the Directorate of Environment (formerly KLIF) concluded that this would not give significantly negative consequences. Quotations from KLIF's assessment in connection with the permit²:

«Increased production and continued disposing in the fjord will lead to some increase the of the disposal area.

Klif's opinion is nevertheless convinced that this will not have significantly negative effects on the biodiversity in the area.»

«Based on this, we think that the effects on the biodiversity of the fjord is limited, and should be accepted.»

«Given that the conditions that Klif has stated in the permit are complied, we conclude that the extra load from the increased disposals from Rana Gruber on the ecosystem, is limited. We think that the ecosystem of the fjord will withstand the extra load without too large consequences.»

«Our opinion is therefore that the ecological condition of the water bodies will not be deteriorated due to particles in the water phase..»

¹ Tilbakemelding på vannovervåkingen gjennomført i 2018 i Ranfjorden og Mobekken. Brev til bedrifter i Mo, Miljødirektoratet 29.05.2019.

² Endret tillatelse til virksomhet etter forurensningsloven, ca 17.12.2012, Klima og Forurensningsdirektoratet.

NIVA's examination of Ranfjorden, 2018³

«Combined with observations of tailings in the sediments out to and including station RN9, it is concluded that it is primarily mining waste that adversely affects the soft bottom fauna.»

Our comments

The surveillance of Ranfjorden in 2018 proved significantly negative development, after only a few years of increased dumping of mine waste in Ranfjorden. Measure station RN9 is far out in the fjord, and this shows that the mine waste is spreading extensively. Based on the development, the water authorities have changed the goal of good condition from 2021 to 2027 as a new goal. We claim that the only possible method to achieve good condition by 2027 is to halt the dumping of mine waste in Ranfjorden during the first few years.

In their comment to the negative development in Ranfjorden, the Directorate of the Environment said in 2019 that *“the negative development is as expected.”*

When granting the permit in 2012, the Directorate of the Environment (KLIF) said that the negative consequences will be limited and acceptable.

In other words, it seems that the Directorate of the Environment in 2012 was aware that it was likely to risk a significantly negative development in the ecological condition, but this was not emphasized in the decision to issue a permit.

WFD states that it should be taken measures to improve the ecological and chemical conditions to good. We claim that it was a violation of WFD to permit increased dumping of mine waste in Ranfjorden. The negative development of Ranfjorden gives an extra load to this claim.

Bøkfjorden

Sydvaranger Gruve AS obtained 23.04.2008 a permit to dump 4 million tonnes of mine waste in Bøkfjorden, a national salmon fjord.

In June 2011 NIVA published a report about the ecological condition of Bøkfjorden. After only 2 years of dumping, it was revealed that the mine waste spread far out in the fjord, leading to bad ecological condition in large parts of the fjord.

«The report showed that the environmental status at all measuring stations in the fjord has deteriorated. This happened, despite the fact, that the disposing tube had fallen to the bottom, large parts of 2009.

The report shows that marine life is destroyed. Bottom animals and algae are suffocated.

Even after a short period of time, the effect is large. This surprises me. The disposal tube is now back in place 25 meters above the fjord bottom, and we should expect a much larger

³ Tiltaksorientert overvåking av Ranfjorden i 2018. 20.02.2019, NIVA, RAPPORT L.NR. 7347-2019

spreading of the mine waste in the fjord, says ecotoxicologist Meier.⁴»

Our translation.

18.11.2015 the mining company Sydvaranger Gruve AS went bankrupt, and the dumping in Bøkfjorden stopped.

New activity in 2020?

A new mining company, Sydvaranger Eiendom AS, applied to the Directorate of Mining for a permit to reopen the mine. In our comments to this application, Naturvernforbundet claimed that there was no valid permit to dump mine waste in Bøkfjorden. Our claim was that the new mining company had to apply for a new permit to dump mine waste, in addition to applying for a permit to reopen the mine.

Our claim was not accepted, and 23.01.2019 the Directorate for Mining issued a permit to open the mine. Naturvernforbundet complained, based on our opinion that there was no valid dumping permit, and based on the significantly negative development in Bøkfjorden, 2009 – 2015.

19.03.2019, our complaint was discarded by the Ministry of Trade, Industry and Fisheries. They said that the dumping permit of 2008 was transferred to the new mining company.

The former Minister of Climate and Environment, Ola Elvestuen, stated this to the Parliament in 2019⁵:

«Sydvaranger Gruve AS got their permit for disposal in 2008. The permit comprises mining in Bjørnevatn, processing of the mine in Kirkenes, and disposal of tailings in Bøkfjorden. The permit is transferred to Sydvaranger Eiendom AS, that continues the activity according to the permit. This case is therefore not about establishing a new disposing site in the sea, but a continuing of a permit given in 2008.»

Our translation.

Representatives from the Directorate of Environment have officially stated that Sydvaranger Eiendom AS cannot use the permit as it is, thereby expressing another view:

«The new owner has a permit to run the mine, according to the law of pollution, but the Directorate of the Environment has warned that the conditions of the permit must be revised before opening the mine. In connection with the permit for disposal in sea, the status of the water body (Bøkfjorden) is good, and according to the water regulations (Norway's version of WFD), it is not permitted to start an activity that could deteriorate the status. More information about possible spreading is necessary if new disposal in sea could be permitted.⁶»

Our translation.

Summing up

- Representatives from the Directorate of the Environment expressed 05.02.2019 that it is not permitted to dump mining waste in Bøkfjorden, based on the dumping permit of 2008.

⁴ FISKERIBLADET FISKAREN fredag 3. juni 2011

⁵ Svar på spørsmål nr. 1296 til skriftlig besvarelse frå Stortingsrepresentant Lars Haltbrekken – Sydvaranger og sjødeponi. 02.04.2019, Brev Stortingets president, Klima- og Miljøminister Ola Elvestuen.

⁶ Pasvikseminaret 2018/2019- Oppsummering og behov for oppfølging, 19.02.2019, Fylkesmannen i Finnmark

- The Ministry of Trade, Industry and Fisheries writes in their decision 19.03.2019 that it is permitted to dump mine waste in Bøkfjorden, using the permit of 2008.
- The Minister of Climate and Environment at that time, Ola Elvestuen, stated 02.04.2019 that it is permitted to dump mine waste in Bøkfjorden, using the permit of 2008.

The Directorate of the Environment Miljødirektoratet warned Sydvaranger Eiendom AS 12.12.2019 about revising the dumping permit, and they ordered the company to provide more information.⁷

The company has not been ordered to deliver a full application for a new permit. In our view, this is conflicting with the conditions of WFD and the Mining waste directive. As the quotation from the former Minister of Climate and Environment Ola Elvestuen shows, the Norwegian Government states that the permit to dump mine waste in Bøkfjorden is valid.

Our comments.

It is not enough to implement some changes in the sea dumping permit. The mining company should be ordered to send a full application, according to both WFD and the Mining Waste Directive, including a full set of EIAs.

We ask ESA to consider this question.

Five other fjords with active dumping sites.

WFD requires actions/ plans to achieve good ecological and chemical conditions in water bodies. If there are no actions/ plans to achieve this goal, WFD is violated.

We ask ESA to give us information about the status of ESA's work with our complaint concerning continued dumping in several Norwegian fjords.

In this chapter, we give information about the ecological and chemical status of these fjords, and we show that there are almost no activities or plans in the River Basin Management plans to improve the condition of the water bodies at any of these dumping sites.

The information about the River Basin Management Plans is collected from www.vann-nett.no, an official site that gives detailed information about all water bodies in Norway.

Information about permits and disposals is collected from www.norskeutslipp.no.

1. Frænfjorden/ Elnesvågen

Omya Hustadmarmor has a permit to dump 700,000 tonnes of tailings in Elnesvågen each year. 187,000 tonnes were dumped in 2018. 300,000 tonnes were dumped in 2016.

The River Basin Management Plan 2016-2021:

- **Ecological status:** Bad
- **Chemical status:** Unknown

⁷ Pålegg om opplysninger i forbindelse med revisjon av virksomhetens tillatelse til forurensende virksomhet – Sydvaranger AS, Miljødirektoratet 12.12.2019

- **Influence:** Large from Omya Hustadmarmor and Tine
- **Environmental goals:** Postponed deadline to 2027
- **Action:** Increase the knowledge base

Our conclusion: No actions to improve the status from bad to good.

2. Ranfjorden

Rana Gruber AS has a permit to dump 3 million tonnes of mine waste in the national salmon fjord Ranfjorden each year. 3.03 million tonnes were dumped in 2017.

The River Basin Management Plan for Ranfjorden 2016-2021:

- **Ecological status:** Bad
- **Chemical status:** Bad
- **Influence:** Large from the mine
- **Environmental goals:** Postponed deadline to 2027
- **Action:** No action in connection with the dumping of tailings in the fjord

Our conclusion: No actions to improve the status from bad to good.

3. Tysfjorden

The Quartz Corp. AS has a permit to dump mine waste with several chemicals in Tysfjorden.

The dumping permit is not easy to understand, but it seems that the company has a permit to dump ca 38,000 tonnes of solid waste each year and 8,400 tonnes of Hydrogen Fluoride each year.

3,700 tonnes of solid waste and 1,500 tonnes of Fluorides were dumped in 2018.

The River Basin Management Plan for Tysfjorden 2016-2021:

- **Ecological status:** Moderate
- **Chemical status:** Bad
- **Influence:** Assumed little from the mine
- **Environmental goals:** Good (2021)
- **Action:** No actions are mentioned

Our conclusion: It is not probable that good status could be achieved by 2021.

4. Bergsfjorden (Troms)

Skaland Graphites has a permit to dump 40,000 tonnes of mine waste in Bergsfjorden each year. The actual disposals are not to be found in www.norskeutslipp.no.

The River Basin Management Plan for Tysfjorden 2016-2021:

- **Ecological status:** Moderate
- **Chemical status:** Bad
- **Influence from the mine:** The concentrations of Chromium, Copper and Nickel were above background level of marine sediments. Chromium and Copper from the tailings can be traced at least 7 km from the disposal point.
- **Environmental goals:** Good (2021)
- **Action:** Reduced disposals

Our comment: Promising, but It is not explained in detail what is meant by reduced disposals.

5. Stjernøysundet/ Lillebukt (Finnmark)

Sibelco Nordic has a permit to dump 300,000 tonnes of mine waste in Stjernøysundet each year. 240,000 tonnes were dumped in 2018.

The River Basin Management Plan 2016-2021:

- **Ecological status:** Moderate
- **Chemical status:** Unknown
- **Influence:** Significant. Smothering of the bottom, due to disposal of tailings from mining.
- **Environmental goals:** Postponed to 2027
- **Action:** Actions in contaminated bottom

Our conclusion: No actions to obtain good status by 2021.

Greetings

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