

EFTA Surveillance Authority
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BELGIUM

Oslo, 11 February 2022

Reference is made to the letter of 6 October 2021 from the EFTA Surveillance Authority (the Authority) to the Norwegian Ministry of Climate and Environment (the Ministry) and the response letter of 8 December 2021 in case no. 80563.

We have some comments to the Ministry's response letter.

We are happy to read that the Norwegian Government acknowledges that clarification of the national legal framework can be beneficial and that the Ministry will conduct a thorough review of the Waste Regulation and make the necessary and appropriate amendments to the regulation. However, we find it alarming that the Ministry completely overlooks several important remarks from the Authority. We are particularly concerned about section 5 and 6 in the Ministry's letter regarding the specific cases of Nordic Mining (Førdefjorden) and Nussir (Repparfjorden) and would like to share these concerns with the Authority. Furthermore, we address the principle of employing the Best Available Technique (BAT).

[Norway has failed to approve a waste management plan in the permitting process](#)

We support the preliminary view of the Directorate that Norway has failed to adequately implement Articles 5(5) and 7(2)(c) of the Mineral Waste Directive (MWD). The Authority writes on page 16:

It follows from the complaint received by the Directorate that permits have been granted for the disposal of mining waste in Norwegian fjords without waste management plans being included in the permit application, as required by Article 7(2)(c) of the Mining Waste Directive. This is not disputed by the Norwegian Government, which confirmed in its letter of 16 October 2017 that no waste management plans were produced with the permit applications for the dumping of mining waste in Førde and Reppar fjord, since the information relevant for the waste

management plan was considered to be covered in other documents obtained in the application process.

This is still not disputed by the Norwegian Government in the Ministry's last letter (page 3-4):

In these cases [the two specific cases of Nordic Mining (Førdefjorden) and Nussir (Repparfjorden)], the applications for a permit to operate the waste facilities were received in 2009 and in 2011, prior to the implementation of the Mining Waste Directive. In these cases, the Norwegian Environmental Agency considered that Nordic Mining and Nussir provided the necessary information regarding waste management during the application process, which will be a part of the final waste management plan.

The Ministry states that the applications for the permits to operate the waste facilities were received in 2009 and in 2011, prior to the implementation of the mineral waste directive. This may be true, as the mineral waste directive (MWD) was incorporated into the EEA-agreement on 5 February 2009, entered into force in Norwegian law on 1 August 2011 and was transposed into the Norwegian waste regulation (NWR) section 17 on 15 June 2012. However, the permits were not approved before June 2015 (Nordic Mining/Førdefjorden) and January 2016 (Nussir/Repparfjorden).

In the transitional provisions of the MWD Article 24 and the NWR §17-18, there are no provisions stating that already applied for, but not yet processed permits are subject to applicable law at the time of application, and as such, exempt from the legal requirement of a waste management plan Article 5(2) as a basis for application and permit. It follows from this that applicable law and EEA-commitments at the time of decision (not application) should have been the basis for the case-processing. Existing applications without a waste management plan (compliant with §17-5), should have been supplemented and subjected to a new review from the competent authority.

In comparison, operators of existing waste facilities were, per the transitional provision in the NWR §17-18, required to give information on the compliance of §17-5 by a set date. The competent authority is then obliged to review and alter the permit to ensure compliance with §17-6. This process will ensure compliance with the MWD. It should also be noted that the time limit given to operators of existing facilities were relatively short, as such, the complainant holds that a similar duty placed upon applicants for new waste facilities would have been appropriate and proportionate.

It follows from this, that there is no legal basis for the Ministry's view that applications not yet processed at the time of applicability were exempt from the MWD. Consequently, the described two-step approach, applied in the two specific cases of Førdefjorden and Repparfjorden, of granting permits before reviewing and approving a final waste management plan as an integrated part of the project application, is not compliant with Article 5 in the MWD.

We would also like to point out that the Norwegian Government recently has approved revised pollution permits for both Nordic Mining (January 2021) and Nussir (November 2021), even though both companies did still *not* include a waste management plan in the application process for the revised permits.

The objectives of the waste management plan have not been achieved

In reference to Article 5(2) of the MWD, the Ministry asserts that (page 3):

Further, there is no general obligation to provide cross-references between relevant national acts or regulations, provided that the legal framework as a whole guarantees the full application of the directive as previously mentioned.

In our view, the legal framework cannot guarantee full application of the directive unless it requires the operator to deliver a full waste management plan compliant with Article 5(3) as a part of the application and the case-processing from the very beginning of the project. This follows from Article 5(2) in the MWD on the objectives of the waste management plan; the competent authority is obliged to ensure that the operator draws up a waste management plan especially considering "waste management in the **design phase** and in the choice of method used for mineral extraction and treatment" (Article 5(2)(a)-i, our highlighting). A general principle of the managing of waste from extractive industries is to employ a life-cycle approach.

We argue that the changes the Norwegian Government made in the NWR in December 2021 reflect this view and is in part an implicit admission that the case-processing in the two specific cases of Førdefjorden and Repparfjorden was not compliant with the MWD.

Had the operators been required to supplement the applications with a full waste management plan for review by the competent authority, they would have been required to find alternatives to a sea disposal, ensuring the minimization of waste generation and harmful effects as well as

encouraging waste recovery. In the case of Førdefjorden, it has been shown that it should be possible to carry out a profitable mining project to extract minerals from the very same mountain (Engebø) without the use of a sea disposal. In June 2021 the mining company Arctic Mineral Resources submitted their application for a license pursuant to the Mineral Act. It appears in their operating plan and budget¹ that they have designed their project to avoid sea disposal and make use of the mineral waste.

Best available technique (BAT)

Member states are per MWD required to ensure that operators take *all necessary measures to prevent or reduce any negative effects brought about by the management of waste from the extractive industries*, these measures should be based on the employment of Best available technique (BAT).

We claim that it has been shown that the disposal of mining waste into fjords is *not* the Best Available Technique today or at the time when the revised permits were given in 2021. As explained in the previous paragraph, the mining company Arctic Mineral Resources has found solutions for the mining waste that are better for the environment than a sea disposal.

Yours sincerely,



Truls Gulowsen
Elected head of Naturvernforbundet



Gina Gylver
Elected head of Natur og Ungdom

¹ We attach the mining company's operating plan, budget summary and an English summary of their project. These documents are confidential and should not be shared further without the company's permission.