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Complaint against the Norwegian Government – violation of the Mining Waste Directive

Complainants

Naturvernforbundet (Friends of the Earth Norway) Mariboës gate 8 N-0183 OSLO Norway e-mail: naturvern@naturvernforbundet.no phone: +47 23 10 96 10	NGO Norwegian environmentalist organisation 23.000 members http://naturvernforbundet.no/?lang=en_GB
Natur og Ungdom (Nature and Youth) Postboks 4783 Sofienberg 0506 OSLO Norway e-mail: info@nu.no phone: +47 23 32 74 00	NGO Norwegian environmentalist youth organisation 7000 members http://nu.no/english/
Vevring og Førdefjorden miljøgruppe v/ Ole Erik Thingnes Vevring 6817 Naustdal Norway e-mail: post@fjordaksjonen.org phone: 970 85 962	NGO, local environment group for Førdefjorden and Vevring http://www.fjordaksjonen.org/

<p>Friends of the Earth Europe Mundo-B Building Rue d'Edimbourg 26 1050 Bruxelles Belgium</p> <p>e-mail: magda.stockiewicz@foeeurope.org phone: +32 2 893 1000</p>	<p>NGO, Environmental network with 30 national organizations.</p> <p>www.foeeurope.org</p>
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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</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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<p>Greenpeace Norge Pb. 33 Torshov 0412 Oslo Norway</p> <p>e-mail: info.no@greenpeace.org phone: + 47 22 20 51 01</p>	<p>NGO, Norwegian branch of Greenpeace 19.700 members and supporters</p> <p>http://www.greenpeace.org/norway/no/</p>
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<p>Norges Jeger- og Fiskerforbund (Norwegian association of Hunters and Anglers) P.O.Box 94 NO-1378 NESBRU</p> <p>e-mail: njff@njff.no phone: +47 66 79 22 00</p>	<p>NGO Norwegian outdoors organization 120.000 members</p> <p>www.njff.no</p>
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<p>SABIMA (The Norwegian Biodiversity Network) Pb 6784 St.Olavs plass 0130 Oslo Norway</p> <p>e-mail: christian.steel@sabima.no phone: +47 22 36 36 41</p>	<p>Umbrella NGO Organizes nine Norwegian biological associations with 20 000 members</p> <p>http://sabima.no/about-sabima</p>
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Framtiden I våre hender (Future in our hands) Fredensborgveien 24G 0177 Oslo Norway e-mail: post@framtiden.no phone: +47 22 03 31 50	Environmental NGO 25 000 members http://www.framtiden.no/english/
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Den Norske Turistforening (The Norwegian Trekking Association) Youngstorget 1 0181 Oslo Norway e-mail: info@turistforeningen.no phone: +47 4000 1868	Norway's largest outdoor life organization 290,000 members http://english.turistforeningen.no/
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Norges Kystfiskarlag Postboks 97 8380 Ramberg Norway e-mail: post@norgeskystfiskarlag.no phone: +47 76 05 21 00	Union for Norwegian coastal fishermen 1000 members http://www.norgeskystfiskarlag.no/
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Summary of the complaint

The Mining Waste Directive, 2006/21/EC was adopted as Norwegian law 15 June 2012, as § 17 of avfallsforskriften, "håndtering av mineralavfall fra mineralindustrien".

1) Violation of article 7.2(a) of MWD

According to article 7.2(c) of the Mining Waste Directive, a waste management plan (article 5) should be in place as part of the application to establish a waste facility.

Waste management plans were not in place prior to granting

- a. Nordic Mining ASA a permit to dump 250 million tons of mining waste into Førdefjorden (19 April 2015 by the Norwegian Government).

- b. Nussir ASA a permit to dump 25 million tons of mining waste into Repparfjorden (19 December 2016 by the Ministry of Climate and Environment).
- c. Rana Gruber AS a permit for increasing the yearly dumping of mining waste in Ranfjorden from 1.7 to 3 million tons (13 May 2015 by the Ministry of Climate and Environment).

If proper waste management plans with waste minimizing and waste prevention measures had been in place in these cases, the waste amounts could have been significantly reduced (or removed), thereby establishing a different base for the assessment of waste facility alternatives.

We claim that it is a violation of the Mining Waste Directive, articles 7.2 that Norwegian authorities have granted permits to use Førdefjorden, Repparfjorden and Ranfjorden as mining waste facilities without waste management plans (article 5) included in the applications for waste facilities.

Our previous actions concerning these cases

We have sent complaints to the EFTA Surveillance Agency (ESA), claiming that the permits to dump mining waste in Førdefjorden, Repparfjorden and Ranfjorden were violations of the Water Framework Directive.

In our letter to the ESA 29 July 2016¹, we also mentioned that we regarded the permit to dump mining waste in Førdefjorden to be a violation of the Mining Waste Directive. This was contested by the director of the Internal Market Affairs Directorate in his letter of 26 October 2016², using the argument that article 5(1) of the MWD does not specify that a waste management plan must be drawn up before a permit is granted. We agree that this is not specified in article 5 (1), however we claim that it is specified in article 7.2(a). In the present complaint we present a more formal complaint concerning a violation of the Mining Waste Directive, due to the permit to dump mining waste in Førdefjorden, Repparfjorden and Ranfjorden without waste management plans included in the applications for running the fjords as waste facilities.

We have in several letters to Norwegian authorities asked for waste reduction measures for all three mines (alternative use, backfilling and alternative mining methods). A letter sent from Sabima to the Ministry of Climate and Environment questioned exactly why Norwegian authorities did not require a waste management plan prior to granting Nordic Mining ASA a permit to use Førdefjorden as a waste facility.³ The Ministry answered that it is sufficient that a waste management plan is sent to the Directorate of the Environment before Nordic Mining ASA starts using the waste facility (but after Nordic Mining ASA was granted a permit)⁴. We claim that this is not sufficient, according to article 7.2(a) of the MWD.

We have also been in contact with the Delegation of the European Union to Norway and asked for their interpretation of article 7.2.(a) of the MWD. The delegation answered by phone 10. March 2017. They did not want to express any opinion on the specific cases, but stated that their general

¹ Case 77424, answer to letter from ESA (Document No: 808071)

² Case 77424, letter from Internal Market Affairs Directorate, 26 October 2016 (Document No: 814747)

³ Letter from Sabima to the Ministry of Climate and Environment, 24 November 2016.

⁴ Letter from the Ministry of Climate and Environment, 16 January 2017

conclusion was that article 7.2(a) of the MWD states that a waste management plan must be in place as a part of the application to establish a waste facility.

Confidentiality

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

Detailed complaint

1. The Mining Waste Directive requires a waste management plan as part of the application for a waste facility

Article 7.2 of the Mining Waste Directive states:

“2. The application for a permit shall contain at least the following details:

(a) the identity of the operator;

(b) the proposed location of the waste facility, including any possible alternative locations;

(c) the waste management plan pursuant to Article 5;” (Our underlining)

The Norwegian Government and the Norwegian Environmental Agency have not required waste management plans with waste reduction measures as part of the applications for permits to dump mining waste in nearby fjords. We claim that this is a violation of article 7.2 of the Mining Waste Directive.

2. No waste management plans were in place before the mining companies were granted permits to dump mining waste in the nearby fjords

- a) Nordic Mining ASA was granted a permit to dump 250 million tons of mining waste, using Førdefjorden as a waste facility. This permit accepts the total amount of mining tailings stated in the application, after the extraction of about 2% TiO₂ from the ore (Eclogite). This means that the permit accepts that there is absolutely no measure to reduce the waste amount.
- b) Nussir ASA was granted a permit to dump 25 million tons of waste, using Repparfjorden as a waste facility. This permit accepts the total amount of mining tailings stated in the application, after the extraction of about 3% Cu concentrate from the ore. This means that the permit accepts that there are absolutely no measures to reduce the waste amount.
- c) Rana Gruber AS was granted a permit to increase the yearly dumping of tailings from 1.7 to 3 million tons of waste, using Ranfjorden as a waste facility. This permit includes all the tailings produced each year, with absolutely no measures to reduce the waste amount.

Nussir ASA and Nordic Mining ASA have both identified several possible alternative uses of the tailings, but they were not required to deliver waste management plans with waste minimising measures as part of their application to dump mining waste in Førdefjorden and Repparfjorden. Rana Gruber AS is also working to find alternative use of the tailings, but was not asked to deliver a waste management plan in connection with the application to increase the mining waste to be dumped in Ranfjorden.

Nussir ASA, Nordic Mining ASA and Rana Gruber AS were all told to establish waste management plans after they were granted permits to dump all the tailings into the fjords. None of them delivered waste management plans as part of their applications to establish waste facilities.

A significantly reduced waste amount through alternative uses, backfilling and better mining methods would have given other options for choosing between alternative waste facilities, possibly to remove the need for external waste facilities. This is a key reason why the Mining Waste Directive article 7.2(c) states that a waste management plan shall be in place as part of the application to establish a waste facility.

3. The Mining Waste Directive emphasizes waste reduction measures

Article 5.2 of the Mining Waste Directive states:

“2. The objectives of the waste management plan shall be:

(a) to prevent or reduce waste production and its harmfulness, in particular by considering:

(i) waste management in the design phase and in the choice of the method used for mineral extraction and treatment;

(ii) the changes that the extractive waste may undergo in relation to an increase in surface area and exposure to conditions above ground;

(iii) placing extractive waste back into the excavation void after extraction of the mineral, as far as is technically and economically feasible and environmentally sound in accordance with existing environmental standards at Community level and with the requirements of this Directive where relevant;

...”

“(b) to encourage the recovery of extractive waste by means of recycling, reusing or reclaiming such waste, where this is environmentally sound in accordance with existing environmental standards at Community level and with the requirements of this Directive where relevant;” (Our underlining)

Proper waste management plans could have reduced the waste amounts significantly, and this could have been of great importance when assessing alternative waste facilities. In all three cases the large amount of waste were used as arguments for why it was better to dump the mining waste in the fjords, with severe negative impacts on marine life, rather than constructing landfills or taking other measures.

4. The main purpose of the waste management plan

No 13 in the introduction chapter to the Mining Waste Directive states:

“Member States should ensure that operators in the extractive industry draw up appropriate waste management plans for the prevention or minimisation, treatment, recovery and disposal of extractive waste. Such plans should be structured in such a way as to ensure appropriate planning of waste management options with a view to minimising waste generation and its harmfulness, and encouraging waste recovery.” (Our underlining)

In other words, the main purpose of the waste management plan is to ensure that the different waste facility options are planned according to the reduced waste amount, following a wide range of appropriate waste reduction measures. In the Engebø, Nussir and Rana cases, the waste facility options are assessed without possible waste reduction measures presupposed in the waste management plan.

5. The EU waste hierarchy pyramid and the Mining Waste Directive



In our opinion, the Mining Waste Directive, article 5.2 (the waste management plan) is a detailed description of waste minimising measures, almost identical with the official EU waste hierarchy pyramid, which is consistent with the scope of the Waste Framework Directive 2008/98/EC. This could be used as a graphical description of the Norwegian failure to comply with the Mining Waste Directive and with the general waste policy of the European Union.

In the cases of Førdefjorden, Repparfjorden and Ranfjorden, only the least favored option was in place when granting permits to use the fjords as waste facilities for all the waste, with no waste minimising measures in place.

6. MWD article 5.3(d)/ 11.2(d) requires a waste management plan that includes arrangements “for the rehabilitation of the land”, “how human health may be adversely affected” and “the preventive measures to minimize environmental impact during operation and after closure”.

5.3 (d):

“a description of how the environment and human health may be adversely affected by the deposit of such waste and the preventive measures to be taken in order to minimise environmental impact during operation and after closure, including the aspects referred to in Article 11(2) (a), (b), (d) and (e);”

11.2(d):

“suitable arrangements are made for the rehabilitation of the land and the closure of the waste facility;”

- The waste management plan should describe *“how the environment and human health may be adversely affected”*. The EIAs and the permits do not assess the question of human health, which is not described in the waste management plans, as no such plans are established.

In the case of Repparfjord, some of the impacts on human health due to the dumping of tailings are assessed in connection with a research activity independent of the application for a dumping permit. The report estimates the yearly health cost for some of the health consequences to be about 46.4 million NOK.⁵ The report says *“Increased emissions (of heavy metals) contribute to increased concentrations in the environment, and this could give negative consequences for human health in the long run.”*

- The waste management plan should describe how *“suitable arrangements are made for the rehabilitation of the land”*

We have never heard of successful rehabilitation of marine environments with millions of tons of mining waste spread over a large area. Nothing in the EIAs from the mining companies tell us how this could be done. Newly released photos (2016) from Jøssingfjorden, where the dumping of mining waste was stopped in 1984, show that the fjord bottom is still very far from being rehabilitated after 32 years⁶.

Suitable rehabilitation arrangements of the fjord bottom are required by MWD to be included in the waste management plan, but no rehabilitation plans were presented by the companies.

- The waste management plan shall describe *“preventive measures to be taken in order to minimise environmental impact during operation and after closure”*.

When waste is dumped into marine environments it is extremely difficult and could be very expensive to reduce the environmental impacts afterwards, if the monitoring shows that the environmental impacts are bigger than anticipated. This should have been described in the waste management plans.

7. “choice of the method used for mineral extraction and treatment”

The Mining Waste Directive, article 5.2(i) states that to reduce waste production, the waste management plan should assess the *“choice of the method used for mineral extraction and treatment”*.

⁵ Økosystemtjenester i Barentshavet-Lofoten: Vedlegg. Vista analyse, Universitetet i Tromsø, NORUT. 2013/08. Table 8, page 70.

⁶ Case 77424, answer to letter from ESA (document no 808071), 29 July 2016

Nordic Mining ASA (Førdefjorden)

The Engebø mine is planned as an open pit mine during the first years of the mining period. This creates especially large volumes of waste rock, and makes it difficult or impossible to practice backfilling as a waste reduction method during the open pit mining period. The situation of the ore body makes it ideal to practice underground mine during the whole life time of the mine, thereby reducing the waste generation and allowing mining methods that include backfilling (overhead and underhead cut and fill). We have discussed these options in detail in our letter of comments to ESA⁷. The options of underground mining and backfilling have not been assessed in the EIA.

Nussir ASA (Repparfjorden)

The ore body of Ulveryggen, one of the planned Nussir ASA mines, is similarly oriented and located as the ore body in Engebø, and Nussir ASA has planned the mine as an underground mine during the whole mining period. This is better than in Engebø, and reduces the waste rock production. However, backfilling (cut and fill) as a mining method is not properly assessed, and could have reduced the waste amount by at least 50%.

Rana Gruber AS (Ranfjorden)

This is an iron mine, where the tailings amount to about 60 – 70% of the ore taken out from the mine. Using backfilling (cut and fill) as a mining method, most of the tailings could be backfilled. Combined with alternative use, this mine could have been run as a “zero waste mine”. In addition to using the “cut and fill” mining method, there are several old void pit holes that could have been used for backfilling.

8. Conclusion

Waste management plans were not established as part of the applications for using Førdefjorden, Repparfjorden and Ranfjorden as waste facilities. The Norwegian authorities granted permits for the fjords as waste facilities without any waste management plans in place, as required by the Mining Waste Directive.

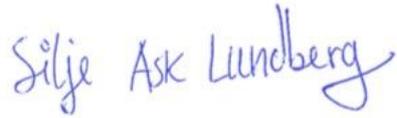
Accepting applications for waste facilities without waste management plans as part of the applications is a procedural error and a violation of the Mining Waste Directive.

The waste management plans should contain appropriate measures for waste reduction measures “*prevention or minimisation, treatment, recovery*” to “*ensure appropriate planning of waste management options*”. This assessment of waste reduction measures is not in place, and all three mining companies have been granted permits to dump all the tailings, without a single kg waste reduction in place.

The waste management plans should also have told how to rehabilitate the fjord bottom, the impacts on human health and how to minimise negative environmental impact after the closure of the waste facilities.

⁷ Case 77424, answer to letter from ESA (document no 808071), 29 July 2016

On behalf of all the complainants



Silje Lundberg

Chair of Naturvernforbundet

Enclosures:

- Letter from Sabima to the Ministry of Climate and Environment, asking why a permit was granted to Nordic Mining ASA without a waste management plan in place, 24 November 2016
- Letter from the Ministry of Climate and Environment to Sabima, as answer to the letter from Sabima, 16 January 2017.