EFTA Surveillance Authority  
Rue Belliard 35  
1040 Brussels

Your ref  
76709  

Our ref  
13/4417-  

Date  
12.06.2015  

Regarding complaint alleging failure by Norway to comply with Directive 2000/60 in relation to a mining project in Western Norway

Dear Madam/Sir,

The Ministry of Climate and Environment refers to the letter from the EFTA Surveillance Authority of 28 April 2015, further to the Authority’s letter of 23 January 2015 and to the Norwegian Government’s response of 27 February 2015. The Norwegian Government will in the following clarify the issues raised in the Authority’s letter of 28 April 2015.

Status for license under the Pollution Control Act and zoning plan
On 17 April 2015, the zoning plan concerning the mining project in Engebofjellet, County of Sogn og Fjordane, was approved by the Ministry of Local Government and Modernisation. On the same date, the Ministry of Climate and Environment decided to grant a permit pursuant to the Pollution Control Act for the proposed mining project. The permit was given on 5 June 2015.

The Water Framework Directive is transposed into national law through Regulation 15 December 2006 No 1446 on a Framework for Water Management (the Water Regulation). The relevant articles of the Water Regulation have been considered in the handling of the application for a permit under the Pollution Control Act. This permit and the zoning plan are considered in context with each other. The Ministry refers to the assessment in the permit pursuant to the Pollution Control Act.
Status for license under the Water Resources Act
At the present time, the Norwegian Water Resources and Energy Directorate has not received an application from Nordic Mining for a licence to extract process water. The decision according to the Water Resources Act does not affect the disposal in the fjord.

The Minerals Act
In light of the Authority's request for information about the operating license in particular, the Ministry will in the following provide additional information about licenses pursuant to the Minerals Act.

According to the Act 19 June 2009 no. 101 relating to the acquisition and extraction of mineral resources (the Minerals Act) all extraction of mineral deposits totaling more than 10,000 m³ of matter requires an operating license from the Directorate of Mining, see the Minerals Act article 43. Regardless of the size of deposits, any extraction of natural stone requires an operating license.

The background for the requirement for an operating license is the need for a unified management for the acquisition and extraction of mineral resources, to help prevent the spoiling of mineral resources due to a lack of proficiency and ensure that operations on mineral deposits do not present unnecessary hazard to the community. It will also help ensure that mineral resources are exploited in the best possible way and that all operators answer to the same regulations.

An operating license may only be granted to a party that holds an extraction permit, either from the landowner or from the State (for minerals owned by the State, see the Minerals Act article 7). In the assessment of whether an operating license should be granted, emphasis shall be given to whether the applicant is qualified to extract the deposit. The applicant must demonstrate the necessary industrial proficiency and that the project has sufficient economic solidity. An application for an operating license must contain a plan of operations (driftsplan). The plan of operations must comply with the Directorate of Mining’s guidelines for operational plans. A form for the application of an operating license and the guidelines concerning plans of operations are available at the Directorate of Mining homepage www.dirmin.no

The license may be made subject to conditions. Amongst other conditions, the applicant will be required to provide financial security for the implementation of safety measures and clean-up measures pursuant to articles 49 and 50 of the Minerals Act. The area of operations will be fixed in the license according to the extraction permit and other regulations. A license may be limited in time. The license may be made subject to review after a specified period of time and may in any event be reviewed every tenth year.

Consequently, water quality and the Water Regulation is not assessed under the Minerals Act, but is assessed in connection with other relevant legislation, in particular the Pollution Control Act, as mentioned above.
Status for extraction permit and operating license

Nordic Mining ASA had an extraction permit for state owned minerals according to the Minerals Act article 29. This was transferred to Nordic Rutile AS in a letter from the Directorate of Mining dated 22 February 2012. This extraction permit expires 23 October 2017. According to the extraction permit the extracting party may extract and utilize all deposits of minerals owned by the State in the extraction area, cf. Minerals Act article 32. Before extraction may begin, it is necessary to have an operating license from the Directorate of Mining.

According to article 45 of the Minerals Act an operating license expires if operations have not begun, at the latest, within five years of the operating license being granted. The same applies if operations are discontinued for more than one year.

At the present time, the Directorate of Mining has not received an application for an operating license from Nordic Mining (Nordic Rutile) concerning Engebøfjellet. Experience shows that it may take some time before a party with an extraction permit applies for an operating license. The applicant must prepare a plan of operations and ensure that the project has sufficient funding, which may take some time. Also, since an operating license will expire if operations have not begun within five years, the applicant will often ensure that all other obstacles to operations are resolved before applying for an operating license.

Hopefully this information sufficiently addresses the questions posed by the Authority. Please do not hesitate to contact the Ministry if any additional information is considered necessary.

Yours sincerely,

Lene Lyngby
Director General

Lindis Nerbo
Deputy Director General