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## **Complaint: Norway violates the Water Framework Directive**

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## 1.0. Background

Norway has participated fully in the joint European implementation strategy for the Water Directive "European Common Implementation Strategy" (CIS) for the Water Framework Directive (WFD) since 2001. The water management plan "River Basin Management Plan" (RBMP) was approved by the Ministry of Climate and Environment 1<sup>st</sup> July, 2016 and should be in line with the WFD.

WFD is now formally part of Norwegian legislation, in force on 14<sup>th</sup> December, 2018. The Green Warriors of Norway (NMF) claims that "vannforskriften" Norwegian Regulation on a Framework for Water Management of 2006 (The Water Regulation) do not fully incorporate the WFD to Norwegian law. While "The Water Regulation" does not prevent Norwegian coast and fjords from continuous environmental degradation, WFD emphasizes just that through the Article 1: "prevents [waters from] *further* deterioration" (italics added). Thus this part's claims that the Norwegian provisions do not satisfy the EEA Agreement Article 7 litra b): "Acts referred to or contained in the Annexes to this Agreement or in decisions of the EEA Joint Committee *shall be binding* upon the Contracting Parties and be, or be made, *part of their internal legal order* as follows ... (b) an act *corresponding* to an EEC directive shall leave to the authorities of the Contracting Parties the choice of *form* and *method* of implementation."

## 2.0. Introduction

NMF is aware that complaints have previously been submitted by various organizations concerning mining waste supplied to Førdefjorden, Ranfjorden and Repparfjorden. NMF supports the environmental arguments presented by these previous complaints. NMF has noticed that the complaints are closed. Reference to previous complaints is linked here: <http://www.vannportalen.no/english/complaint/the-complaints1/>

NMF has often been confronted with statements such as:

*All practical steps have been taken to reduce the negative consequences. The pursued objects could not, for technical reasons or disproportionate costs, be achieved in other ways that would have represented a significantly better environmental protection.*

NMF claims that profit and labor considerations should not undermine the fundamental environmental concerns anchored in the WFD. Continuous environmental defeats can also result in a decrease in the engagement of ordinary people.

NMF assert that Norway does obvious fails in its justification since the text of the WFD is not followed. Earlier complaints have not been successful. New facts have however entered the scene, which legitimates NMF to submit a complaint.

By 14<sup>th</sup> December, 2018, the WFD became statutory in Norway. The Water Regulation of **15<sup>th</sup> December, 2006** have failed to fully transform WFD. It is only the **Naturmangfoldloven** (Nature Diversity Act) Section 26a, which was adopted by the Norwegian Government on 20<sup>th</sup> November 2018, which specifically refers to the WFD. Technically, only the Nature Diversity Act provides the formal statutory authority for the implementation of the WFD.

Member States must inter alia implement "the necessary measures to prevent deterioration of the status of all bodies of surface water" (*Article 4, para. 1, (a)(i)*), an obligation which the court judges "does not simply set out, in programmatic terms, mere management-planning objectives, but has binding effects, once the ecological status of the body of water concerned has been determined, at each stage of the procedure prescribed by that directive" (*Case C 461/13 Bund für Umwelt und Naturschutz Deutschland*, para. 43; *Case C-346/14 Commission v Austria*, paras. 53-55).»

Source:

[http://ec.europa.eu/environment/legal/law/7/module\\_3\\_1.htm](http://ec.europa.eu/environment/legal/law/7/module_3_1.htm)

It is undisputed that that the WFD according to the EEA Agreement Article 7 litra b) is binding upon Norway. As unveiled in the continuation there are a mismatch between The Water Regulation and WFD.

### 3.0. Limitations

This appeal relates to the dumping of mining waste in Norwegian fjords.

### 4.0. Purpose

The purpose of this request:

- Make evident that Norway do not fully incorporate the WFD.
- Try to motivate the EU to make Norway to implement the legislative text in the WFD.
- Persuade Norway to withdraw mining waste in Norwegian fjords.
- Is to ensure that Norwegian fjords maintain their very complex ecosystem and are not turned into permanent and irreversible damage.

### 5.0. References

**EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE 2000/60/EC of 23 October 2000 Article 1.**

**NMF comment:** Bold text added.

The purpose of this Directive is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater which:

- (a) **prevents further deterioration** and **protects** and **enhances** the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly depending on the aquatic ecosystems;
- (b) promotes sustainable water use based on a long-term protection of available water resources;
- (c) aims at enhanced protection and improvement of the aquatic environment, inter alia, through specific measures for the progressive reduction of discharges, emissions and losses of priority substances and the cessation or phasing-out of discharges, emissions and losses of the priority hazardous substances;
- (d) ensures the progressive reduction of pollution of groundwater and prevents its further pollution, and
- (e) contributes to mitigating the effects of floods and droughts and thereby contributes to:
  - the provision of the sufficient supply of good quality surface water and groundwater as needed for sustainable, balanced and equitable water use,
  - a significant reduction in pollution of groundwater,
  - the protection of territorial and marine waters, and

- achieving the objectives of relevant international agreements, including those which aim to prevent and eliminate pollution of the marine environment, by Community action under Article 16 (3) to cease or phase out discharges, emissions and losses of priority hazardous substances, with the ultimate aim of achieving concentrations in the marine environment near background values for naturally occurring substances and close to zero for man-made synthetic substances.

Source:

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02000L0060-20141120&qid=1485938661229&from=EN#page=9>  
( [http://ec.europa.eu/environment/legal/law/7/module\\_3\\_1.htm](http://ec.europa.eu/environment/legal/law/7/module_3_1.htm) )

The relevant provision in relation to the Repparfjord mining waste on the seabed residue is the

**WFD provision article 4 no.6:**

*“Temporary deterioration in the status of bodies of water shall not be in breach of the requirements of this Directive if this is the result of circumstances of natural cause or force majeure which are exceptional or could not reasonably have been foreseen, in particular extreme floods and prolonged droughts, or the result of circumstances due to accidents which could not reasonably have been foreseen, when all of the following conditions have been met”.*

The Norway incorporation has taken place by the Nature Diversity Act section 26a, coming in force 14.12.2018:

**Naturmangfoldloven § 26a**

Kongen kan fastsette de forskrifter som er nødvendige for å gjennomføre Europaparlaments- og rådsdirektiv 2000/60/EF av 23. oktober 2000 om fastsettelse av rammer for fellesskapstiltak for vannpolitikk (vanndirektivet) i norsk rett.

Source:

<https://lovdata.no/lov/2009-06-19-100/§26a>

**This is an unofficial translation of the Norwegian version of the Act. Legal authenticity remains with the Norwegian version. In the event of any inconsistency, the Norwegian version shall prevail:**

**Nature Diversity Act Section 26a**

The King may determine the rules necessary for the implementation of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (WFD) in Norwegian legislation

Source:

<https://lovdata.no/lov/2009-06-19-100/§26a>

**NMF comment:** The Norwegian Environment Agency claims that the The Water Regulation (2006) is fully incorporate the EU WFD provisions. The appropriate provision is The Water Regulation Section 12.

### **Vannforskriften § 12 Ny aktivitet eller nye inngrep**

Ny aktivitet eller nye inngrep i en vannforekomst kan gjennomføres selv om dette medfører at miljømålene i § 4–§ 7 ikke nås eller at tilstanden forringes, dersom dette skyldes: ...

**b)** ny bærekraftig aktivitet som medfører forringelse i miljøtilstanden i en vannforekomst fra svært god tilstand til god tilstand».

Source:

<https://lovdata.no/dokument/SF/forskrift/2006-12-15-1446>

**This is an unofficial translation of the Norwegian version of the Act. Legal authenticity remains with the Norwegian version. In the event of any inconsistency, the Norwegian version shall prevail:**

### **The Water Regulation Section 12 New activity or new intervention.**

New activity or new intervention in a water body can be carried out even if this means that the environmental goals in § 4-§ 7 are not achieved or that the condition deteriorates if this is due to: ...

**(b)** new sustainable activity leading to deterioration of the state of the environment in a water body from very good to good condition”.

Source:

<https://lovdata.no/dokument/SF/forskrift/2006-12-15-1446>

## **6.0. Discussion**

### **6.1. The Water Framework Directive 2000/60/EC**

The Water Framework Directive 2000/60/EC (WFD) is setting objectives in terms of water protection for surface water and groundwater. Surface water include rivers, lakes, transitional and coastal waters. In order to achieve those objectives, it is made a common framework for Member States to assess pressures and impacts of all anthropogenic activities on aquatic ecosystem, including aquaculture, and to put in place the appropriate measures to achieve the environmental objectives. For coastal water, the WFD is complementary to the Marine Strategic Framework Directive (MSFD), which also sets objectives and requirements in terms of ecosystem protection.

The WFD and the MSFD do not contain explicit obligations for aquaculture. However, the national state that foster the aquaculture industry has to comply with the requirements of the WFD and MSFD. In particular, if the analysis performed shows that new or existing aquaculture facilities may affect the status of aquatic ecosystem, then appropriate measures have to be put in place to suppress or reduce those impacts. These two Directives cover in particular all relevant pressures that can be associated with aquaculture, including pollution, habitat alteration or introduction of non-indigenous species.

When it comes to mining waste, the same preventive measures must be taken to preserve and protect the ecosystem in the fjords.

### **6.2. Norway and EU**

The EU must ensure safe and healthy water environments and aquaculture is committed to the same. WFD, year 2000 and the Marine Strategy Framework Directive (MSFD, in 2008) form the framework for the EU's environmental policy that Norway is obliged to fulfill. MSFD aims to achieve good environmental status (GES-MSFD) in marine waters by 2020. The focus area is: biodiversity, eutrophication, seabed integrity, biodiversity of bottom animals, hydrographic conditions, pollution and contaminants in fish and seafood.

Member States are required to prepare the River Basin Management Plan (RBMP) covering all river basins. The EFTA Surveillance Authority (ESA) is obligated to ensure that the EFTA States Iceland, Liechtenstein and Norway comply with their obligations under the EEA Agreement. ESA may now, in the exercise of its supervisory authority, initiate a breach procedure against the EFTA State concerned and may bring the matter before the EFTA Court with the requirement that disputed rules or practices be amended.

### 6.3. Violations of the WFD

WFD is now part of Norwegian formal law, which happened on 14<sup>th</sup> December 2018. Norway has a moral responsibility and has failed, which is explained by the fact that The Water Regulation fail to transform the WFD Norwegian law in a satisfactory manner. Norway is obligated, materially spoken, to, comply with the WFD. Norway's only freedom of action is to be able to determine the form and means of implementation (Article 7 b) of the EEA Agreement).

#### EEA Agreement Article 7

Acts referred to or contained in the Annexes to this Agreement or in decisions of the EEA Joint Committee shall be binding upon the Contracting Parties and be, or be made, part of their internal legal order as follows:

- (a) an act corresponding to an EEC regulation shall as such be made part of the internal legal order of the Contracting Parties;
- (b) an act corresponding to an EEC directive shall leave to the authorities of the Contracting Parties the choice of form and method of implementation.

Source:

<https://www.efta.int/media/documents/legal-texts/eea/the-eea-agreement/Main%20Text%20of%20the%20Agreement/EEAagreement.pdf>

#### EØS-avtalen artikkel 7 (nasjonal gjennomføring).

##### Artikkel 7

Rettsakter som er omhandlet i eller inntatt i vedlegg til denne avtale eller i EØS-komiteens vedtak, skal være bindende for avtalepartene og skal være eller gjøres til del av deres interne rettsorden som følger:

- a) en rettsakt som tilsvarer en EØF-forordning skal som sådan gjøres til del av avtalepartenes interne rettsorden;
- b) en rettsakt som tilsvarer et EØF-direktiv skal overlate til avtalepartenes myndigheter å bestemme formen og midlene for gjennomføringen.

Source:

<https://www.europalov.no/eos-artikkel/eos-avtalen-artikkel-7-nasjonal-gjennomforing/id-6873>

**NMF comment:** This means that the WFD is binding upon Norway, the text of which should be part of Norwegian law, and which was done on 14<sup>th</sup> December, 2018.



Only the Nature Diversity Act section 26 (adopted by the Storting on 20<sup>th</sup> November, 2018, in force 14.12.2018), is the first and only act that specifically refers to the WFD. Before this date, no Act referred the WFD in the Norwegian law.

#### **Naturmangfoldloven Section 26a**

Kongen kan fastsette de forskrifter som er nødvendige for å gjennomføre Europaparlaments- og rådsdirektiv 2000/60/EF av 23. oktober 2000 om fastsettelse av rammer for fellesskapstiltak for vannpolitikk (vanndirektivet) i norsk rett.

Source:

<https://lovdata.no/lov/2009-06-19-100/§26a>

**This is an unofficial translation of the Norwegian version of the Act. Legal authenticity remains with the Norwegian version. In the event of any inconsistency, the Norwegian version shall prevail:**

#### **Nature Diversity Act Section 26a**

The King may determine the rules necessary for the implementation of Directive 2000/60/EC of the European Parliament and of the Council of 23<sup>th</sup> October 2000 establishing a framework for Community action in the field of water policy (Water Directive) in Norwegian legislation.

Source:

<https://lovdata.no/lov/2009-06-19-100/§26a>

## **7.0. Compilation of legislation**

The Water Regulations of Norway should – according to the EEA Agreement Article 7 b) comply with to the WFD, namely to promote the same purposes and motives that follow from the EEA Agreement. The fact that the contracting party can determine the form and method for the implementation means that the WFD is mandatory in Norway and it must be part of national law. Neither the purpose of the water regulations nor several of the specific provisions match the WFD. By compiling these we see where Norway fails. As an introduction, we refer to the EU's environmental foundation.

### **7.1. THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION**

CONSOLIDATED VERSIONS OF THE TREATY ON EUROPEAN UNION AND THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION

Source:

<https://eur-lex.europa.eu/collection/eu-law/treaties/treaties-force.html#new-2-51>

**NMF comment:** Bold text added.

## **Article 191**

(ex Article 174 TEC)

1 Union policy on the environment shall contribute to pursuit of the following objectives:

- **preserving, protecting and improving** the quality of the environment.
- protecting human health.

- prudent and rational utilisation of natural resources.
- promoting measures at international level to deal with regional or worldwide environmental problems and in particular combating climate change.

2. Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.

In this context, harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional measures, for non-economic environmental reasons, subject to a procedure of inspection by the Union.

3. In preparing its policy on the environment, the Union shall take account of:

- available scientific and technical data,
- environmental conditions in the various regions of the Union,
- the potential benefits and costs of action or lack of action,
- the economic and social development of the Union as a whole and the balanced development of its regions.

4. Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Union cooperation may be the subject of agreements between the Union and the third parties concerned.

The previous subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

## 7.2. DIRECTIVE 2000/60/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2000

**NMF comment:** Bold text added.

Acts whose publication is obligatory.

**DIRECTIVE 2000/60/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23<sup>th</sup> October 2000 establishing a framework for Community action in the field of water policy.**

Source:

[https://eur-lex.europa.eu/resource.html?uri=cellar:5c835afb-2ec6-4577-bdf8-756d3d694eeb.0004.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:5c835afb-2ec6-4577-bdf8-756d3d694eeb.0004.02/DOC_1&format=PDF)



(11) As set out in Article 174 of the Treaty, the Community policy on the environment is to contribute to pursuit of the objectives of **preserving, protecting and improving** the quality of the environment, in prudent and rational utilisation of natural resources, and to be based on the **precautionary principle and on the principles that preventive action** should be taken, environmental damage **should, as a priority, be rectified at source** and that the polluter should pay.

(22) This Directive is to contribute to the progressive **reduction** of emissions of hazardous substances to water.

(25) Common definitions of the status of water in terms of quality and, where relevant for the purpose of the environmental protection, quantity should be established. Environmental objectives should be set to ensure that **good** status of surface water and groundwater is achieved throughout the Community and that **deterioration** in the status of waters is prevented at Community level.

(26) Member States should aim to achieve the objective of at least good water status by defining and implementing the necessary measures within integrated programs of measures, taking in to account existing Community requirements. Where good water status already exists, it **should be maintained**. For groundwater, in addition to the requirements of good status, any significant and sustained upward trend in the concentration of any pollutant should be identified and reversed.

(27) The ultimate aim of this Directive is to achieve the elimination of priority hazardous substances and contribute to achieving concentrations in the marine environment near background values for naturally occurring substances.

While – as documented – the main rule and basis for justification is to “eliminate”, “maintain”, “deterioration ... prevented, “reduction of emission”, “preserving, protecting and improving the quality of the environment” etc. only the **Water-Directive Article 4 no. 6** entail national states to ignore Temporary deterioration” if resulting from “natural cause or force majeure..., which could not reasonably have been foreseen”:

**DIRECTIVE 2000/60/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2000**

**Article 4 Environmental objectives.**

Temporary deterioration in the status of bodies of water shall not be in breach of the requirements of this Directive if this is the result of circumstances of natural cause or force majeure which are exceptional or could not reasonably have been foreseen, in particular extreme floods and prolonged droughts, or the result of circumstances due to accidents which could not reasonably have been foreseen, when all of the following conditions have been met:

Source:

[https://eur-lex.europa.eu/resource.html?uri=cellar:5c835afb-2ec6-4577-bdf8-756d3d694eeb.0004.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:5c835afb-2ec6-4577-bdf8-756d3d694eeb.0004.02/DOC_1&format=PDF)

**NMF comment:** General consideration of EU environmental foundation:

1. EU Directive is based first and foremost on a one-way clause, namely "**reduction**", "**cessation**", "**phasing out**", "**avoiding deterioration**".
2. Principle of "**polluter pays**".

3. Principle of source control.
4. Principle that no surface water should have a state of summer is inferior to "good".

Government measures and/or permits can only result in improved water quality, and **not aggravate it with the one exception as entitled in WFD 4 no. 6**. Article 1 sets out the scope of action of the national state when it is to take decisions affecting water treatment and quality nationally. The WFD - when adopted nationally - sets the line in that all **degradation and aggravation** that have been found up to and including 2000 **should gradually cease**. This means that measures that are initiated hereafter and which directly or indirectly infuse the coastal water **shall only improve** the aquatic environment. Emissions in progress shall cease or be phased out. **Work, conditions or measures that aggravate the aquatic environment should not be able to continue, much less be initiated.**

The Water Regulation do not reflect WFD, on the contrary, because, the mismatch between conditions for allowing worsening conditions to develop in the directive Article 4 no. 6 and the regulation (section 12) that have no similar wording that prohibits the authorities from approving, initiating or implementing new instruments that **exacerbate** the quality of the coastal water.

### 7.3. Norway's water regulations compared with the EU water directive

#### Regulations on the framework for water management (The Water Regulations) of 15 December 2006

##### Section 1. Purpose

The purpose of these regulations is to **provide a framework** for setting environmental goals that will ensure the most comprehensive protection and sustainable use of the water bodies. The regulations are intended to ensure that approved water management plans with associated action programs are reviewed and updated every six years.

##### Vannforskriften § 1. Formål

Formålet med denne forskriften er å gi rammer for fastsettelse av miljømål som skal sikre en mest mulig helhetlig beskyttelse og bærekraftig bruk av vannforekomstene.

Forskriften skal sikre at godkjente vannforvaltningsplaner med tilhørende tiltaksprogrammer revurderes og oppdateres hvert sjette år.

Source:

<https://lovdata.no/forskrift/2006-12-15-1446/§1>

**This is an unofficial translation of the Norwegian version of the Act. Legal authenticity remains with the Norwegian version. In the event of any inconsistency, the Norwegian version shall prevail:**

##### The Water Regulation Section 1. Purpose

The purpose of these regulations is to provide a framework for setting environmental goals that will ensure the most comprehensive protection and sustainable use of water bodies.

The Regulations shall ensure that approved water management plans with associated action programs are reassessed and updated every six years

Source:

<https://lovdata.no/forskrift/2006-12-15-1446/§1>

**EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE 2000/60/EC of 23 October 2000.**

**NMF comment:** Bold text added.

**Article 1**

The purpose of this Directive is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater which:

- (a) **prevents further deterioration** and **protects** and **enhances** the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly depending on the aquatic ecosystems.

Source:

<http://www.vannportalen.no/globalassets/nasjonalt/dokumenter/regelverk/vanndirektivet.pdf>

The comparison between The Water Regulation and WFD (2000) entails the following observation:

While the WFD main purpose is to promote better quality to inferior waters and which accept deteriorated waters in two instances only – i.e. natural cause or force majeure – the water regulation of Norway entitles public agencies to make waters turn from excellent or good to bad and worse. This is contradictory to law by the following reasons:

The degradation from “**very good condition**” to “**good condition**” which results from new installations or industrial establishments is valid according to the The Water Regulation of 2006, section 12 «Ny aktivitet eller nye inngrep»/New activity or new intervention.

**NMF comment:** Bold text added.

**Vannforskriften § 12 Ny aktivitet eller nye inngrep**

Ny aktivitet eller nye inngrep i en vannforekomst kan gjennomføres selv om dette medfører at miljømålene i § 4–§ 7 ikke nås eller at tilstanden forringes, dersom dette skyldes: ...

- b)** ny bærekraftig aktivitet som medfører forringelse i miljøtilstanden i en vannforekomst fra svært god tilstand til god tilstand».

Source:

<https://lovdata.no/dokument/SF/forskrift/2006-12-15-1446>

**This is an unofficial translation of the Norwegian version of the Act. Legal authenticity remains with the Norwegian version. In the event of any inconsistency, the Norwegian version shall prevail:**

**The Water Regulation Section 12 New activity or new intervention.**

New activity or new intervention in a water body can be carried out even if this means that the environmental goals in section 4 - section 7 are not achieved or that the condition deteriorates if this is due to: ...

- (b)** new sustainable activity leading to deterioration of the state of the environment in a water body from **very good to good condition**”.

Source:

<https://lovdata.no/dokument/SF/forskrift/2006-12-15-1446>

**NMF comment:** (bold italics added): The Water Regulation is however invalid in case of further deterioration; i.e. from good to *bad* conditions. No one know when or if this is going

to happen. In such a situation the precautionary principle of Nature Diversity Act Section 9 is not only applicable but **compulsory**, as seen in the legislation text, “**shall**” (skal).

#### **Naturmangfoldloven § 9 Føre-var-prinsippet**

Når det treffes en beslutning uten at det foreligger tilstrekkelig kunnskap om hvilke virkninger den kan ha for naturmiljøet, skal det tas sikte på å unngå mulig vesentlig skade på naturmangfoldet. Foreligger en risiko for alvorlig eller irreversibel skade på naturmangfoldet, skal ikke mangel på kunnskap brukes som begrunnelse for å utsette eller unnlate å treffe forvaltningstiltak.

Source:

<https://lovdata.no/dokument/NL/lov/2009-06-19-100>

**This is an unofficial translation of the Norwegian version of the Act. Legal authenticity remains with the Norwegian version. In the event of any inconsistency, the Norwegian version shall prevail:**

#### **Nature Diversity Act Section 9 Precautionary principle.**

When a decision is made without sufficient knowledge of the effects it may have on the natural environment, the aim shall be to avoid possible significantly damage to the natural diversity. If there is a risk of serious or irreversible damage to natural diversity, a lack of knowledge should not be used as a reason for postponing or failing to take management measures.

Source:

<https://lovdata.no/dokument/NL/lov/2009-06-19-100>

The NMF position is that this “risk” (risiko) is not only a far-off probability, but under a strong likelihood to materialize. The failing implementation of the precautionary principle is breaching the Nature Diversity Act Section 9.

Regardless of the conclusion to this question, a further challenge to the anticipated validity of the Repparfjord license to deposit mining persist. As already indicated the transformation of WFD is inadequate. The WFD does simply not allow Norway to craft The Water Regulation Section 12 on new activity or intervention. The WFD is binding upon Norway, EEA Agreement Article 7 b) as shown p. 5.

The EU/EEA national states are exempt from the obligation of taking action if degradation is coming from a “natural cause or force majeure”. These are events out of reach for the responsibility of national states in casu Norway. (See WFD Article 4 no. 6, citation on p. 4):

This entitlement is limited: It is only in the case of “Temporary deterioration” and in case that the upcoming disaster “could not reasonably have been foreseen” in addition to a wide range of conditions listed in WFD Article 4 no 6. We do not need to dig deep into the text to conclude that The Water Regulation is far beyond this WFD exemption. Thus, the concessions allowing NUSSIR to “deposit” mining waste into the Repparfjord is not entitled.

#### **7.4. Deviation**

The Water Regulation do not correspond to the WFD, on the contrary, because, in the same way as the WFD, The Water Regulation has no wording that prohibits the authorities from approving or implementing measures that exacerbate the quality of the coastal water. The Water Regulation, does not match the WFD, The Water Regulation Section 1, lay down environmental targets without stipulating that all deterioration is prohibited. For example, as the mission statement text disclose, may peak so as to accept the worst sewer can find

acceptance and thus be approved as legal. The secret then is to find a recipient that is 100% pure. When, after a few years, when the recipient is heavily deteriorated, the trick is to make environmental authorities licensing polluter to continue in an unspoiled and 100% pure fjord, which then subverts the fjord into poor or very bad condition. The reason is then simply that the water regulations oblige Norway to subscribe to the most comprehensive protection possible even though it contributes to reduce quality ranking from good to bad. It is enough that the coastal water has good enough ecological and good chemical status. As Norway practices it, it then proves that pollutants cannot afford to take care of garbage, sewage, waste etc., so it is also not possible to claim that «polluter pay».

Such a practice can be referred to: “The state of surface water **must be protected from deterioration, improved and restored** with a view to water bodies having at least **good** ecological and **good** chemical status” ....

#### **Vannforskriften § 4 Miljømål for overflatevann**

Tilstanden i overflatevann skal beskyttes mot forringelse, forbedres og gjenopprettes med sikte på at vannforekomstene skal ha minst god økologisk og god kjemisk tilstand, i samsvar med klassifiseringen i vedlegg V og miljøkvalitetsstandardene i vedlegg VIII.

Source:

<https://lovdata.no/forskrift/2006-12-15-1446/§4>

**This is an unofficial translation of the Norwegian version of the Act. Legal authenticity remains with the Norwegian version. In the event of any inconsistency, the Norwegian version shall prevail:**

#### **The Water Regulation Section 4 Environmental targets for surface water**

The condition of surface water must be protected from deterioration, improved and restored with objective to ensuring that the water bodies have at least good ecological and good chemical status, in accordance with the classification in Annex V and the environmental quality standards in Annex VIII

Source:

<https://lovdata.no/forskrift/2006-12-15-1446/§4>

#### **The Water Regulation 1.2 Normative definitions for classification of ecological status:**

**Summary:** *Water showing signs of extensive changes* in the values of biological quality elements for the type of surface water body in question, and where relevant biological communities differ

materially from what is normally associated with the type of surface water body under undisturbed conditions, is classified as **poor**.

*Water showing signs of serious changes* in the values of biological quality elements for the particular type of surface water body, and

where large parts of relevant biological communities normally associated with the type of surface water body under undisturbed conditions are absent, are classified as **very poor**.

## Vannforskriften

Vedlegg V. Klassifisering og overvåking

1.2 Normative definisjoner for klassifisering av økologisk tilstand

Sitat:

Vann som viser tegn på omfattende endringer av verdiene for biologiske kvalitetselementer for den aktuelle typen overflatevannforekomst, og der relevante biologiske samfunn avviker vesentlig fra det som normalt forbindes med typen overflatevannforekomst under uberørte forhold, klassifiseres som dårlig.

Vann som viser tegn på alvorlige endringer av verdiene for biologiske kvalitetselementer for den aktuelle typen overflatevannforekomst, og der store deler av relevante biologiske samfunn som normalt forbindes med typen overflatevannforekomst under uberørte forhold, er fraværende, klassifiseres som svært dårlig.

Source:

[https://lovdata.no/dokument/SF/forskrift/2006-12-15-1446/KAPITTEL\\_12-1-2#KAPITTEL\\_12-1-2](https://lovdata.no/dokument/SF/forskrift/2006-12-15-1446/KAPITTEL_12-1-2#KAPITTEL_12-1-2)

**This is an unofficial translation of the Norwegian version of the Act. Legal authenticity remains with the Norwegian version. In the event of any inconsistency, the Norwegian version shall prevail:**

## The Water Regulation

### Appendix V. Classification and monitoring

#### 1.2 Normative definitions for classification of ecological state

##### Quotation:

Water showing signs of extensive changes in the values of biological quality elements for the type of surface water body in question, and where relevant biological communities differ significantly from what is normally associated with the type of surface water body under untouched conditions, is classified as poor.

Water that shows signs of serious changes in the values of biological quality elements for the particular type of surface water body, and where large parts of relevant biological communities normally associated with the type of surface water body under undisturbed conditions are absent, are classified as very poor.

Source:

[https://lovdata.no/dokument/SF/forskrift/2006-12-15-1446/KAPITTEL\\_12-1-2#KAPITTEL\\_12-1-2](https://lovdata.no/dokument/SF/forskrift/2006-12-15-1446/KAPITTEL_12-1-2#KAPITTEL_12-1-2)

**NMF comment:** Repparfjord a biotope that previously supported a diverse life and untouched life before 1971, after 9 years of mining, the fjord depository area extinguished all kind of life. Here the condition is nothing but very poor. Today 2019; 40 years later, one of the mining company's marine biological experts triumphed when discovered some very few hints for life in an area that was experimentally built "landfill" in the fjord.



## 8.0. Conclusion

Based on legislation and practice, it is established that Norway does not comply with Article 7 of the EEA Agreement. Directives shall be transformed and incorporated into Norwegian law with a substantial content that is identical to the relevant directive. The only discretion left open for Norway is to decide on the form and means of implementation (Article 7 (b) of the EEA).

No rule or practice entitles the polluter to pushing the cost of the pollution over to the community. **The principle that "polluter pays" does not exist.** The Water Regulation ignore the fact that the WFD contains a basic principle of "source control". Furthermore, **no result of the "precautionary principle"** is seen.

As set out in Article 174 of the Treaty, the Community policy on the environment is to contribute to pursuit of the objectives of **preserving, protecting and improving** the quality of the environment, inprudent and rational utilisation of natural resources, and to be based on the **precautionary principle and on the principles that preventive action** should be taken, environmental damage **should, as a priority, be rectified at source** and that the polluter should pay.

By 14<sup>th</sup> December, 2018, the WFD became statutory in Norway. ***The Water Regulation of 15<sup>th</sup> December, 2006 have failed to fully transform WFD.*** It is only the Naturmangfoldloven (Nature Diversity Act) Section 26a, which was adopted by the Norwegian Government on 20<sup>th</sup> November, 2018, which specifically refers to the WFD. Technically, only the Nature Diversity Act provides the formal statutory authority for the implementation of the WFD. Comparing the total environmental impacts of mining waste and the aquaculture industry, it is extensive and devastating, Mining waste that is dumped in Norwegian fjords helps to degrade ecology and does not protect against deterioration.

**NMF claims that it is contradictory to the WFD to depose and dump mining waste in the Repparfjord and other Norwegian fjords.**

Best regards,

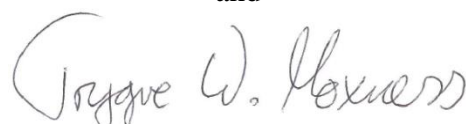


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