ROYAL NORWEGIAN MINISTRY OF
CLIMATE AND ENVIRONMENT

EFTA Surveillance Authority (ESA)

Your ref	Our ref	Date
	24/1828-	3 July 2026

Reply to request for information concerning implementation and application of Article 4(7) of the Water Framework Directive

1. Introduction

Reference is made to letter of 19 June 2026 from the EFTA Surveillance Authority ("the Authority") to the Ministry of Climate and Environment ("the Ministry") regarding request for information concerning implementation and application of Article 4(7) of the Water Framework Directive (2000/60/EC WFD). The Ministry hereby provides its responses to the questions posed by the Authority in the aforementioned letter.

2. Question 1 and 2 from the Authority regarding Førdefjorden

The Supreme Court has in its decision HR-2026-1360-A concluded that the permit decision of 2016 is invalid. The Supreme Court found that the grounds expressively relied upon in the written permit decision from 2016 were partly not relevant for the purposes of Article 4(7) of the WFD and partly not sufficiently weighty to alone justify a derogation in accordance with Article 4(7). At the same time, the Supreme Court expressly stated that it did not consider whether a permit could lawfully be granted on the basis of a different justification today, see para 149. Nor did the Court assess whether the permit could be justified on grounds relating to security of supply, as described in the Royal Decree from 2025.
In Norwegian administrative law, the consequences of a decision granting a permit being declared invalid by the national courts are not specifically regulated or addressed. Nor what actions the permit holder is required to conduct while the national authorities (in this case the

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Pollution Control Authorities) reassesses the matter.[1] The legal default starting point is that a party who has been granted a permit that is subsequently declared invalid may rely on that permit until the administration has reconsidered the case.[2] This presupposes that the reassessment is carried out within a reasonably period of time. The Ministry registers that there are different views on this issue among Norwegian legal scholars, but considers that in this case, there are solid reasons for relying upon the mentioned starting point.
The Ministry is currently reconsidering the case as a whole, as required following the Supreme Court's judgment. This entails assessing whether the permit that has been declared invalid should be amended or revoked in accordance with the Pollution Control Act section 18 paragraph 1 nr. 6, cf. the Public Administration Act section 35 paragraph 1 letter c or another legal basis, in light of the Court's ruling. The Ministry notes that this is in line with the Supreme Court's own summary of the case where the Supreme Court writes: "The authorities must now carry out a new assessment of the case" (our translation).[3] The assessment will be completed as swiftly as possible, while ensuring a sound administrative process in accordance with applicable procedural requirements.

Further, on 21 June 2026 Engebø Rutile and Garnet (ERG) applied for a temporary permit according to section 11 of the Pollution Control Act concerning mining disposal for three years. According to the permit application, ERG considers that disposal of mining waste in this period will not constitute a deterioration according to the WFD. The application has been submitted for public consultation by the Environment Agency on behalf of the Ministry. Please find more information regarding the public consultation, including the permit application, on the Environment Agency's website. A decision will most likely be reached shortly after the summer. In the present case, the Ministry's position is that ERG may rely on the permits until the Pollution Control Authorities has completed its review of the application for a temporary permit. An important reason for this is that no deterioration of the water body will occur while this application is being considered. This is further explained below. Please also find the letter from the Ministry to ERG of 30 June 2026 enclosed where the Ministry's view is explained.

The Ministry's preliminary assessment is that the application for a temporary permit may most likely be granted. This is based on an assessment from the Environment Agency conducted in the context of the legal proceedings between the enviromental NGOs (Naturvernforbundet and Natur og Ungdom) and ERG concerning a temporary injunction related to the disposal of mining waste, heard by Sogn og Fjordane District Court in October 2025 (25-133969TVI-TSOF/TFOR).[4] The state acted as an intervener for ERG. The Environment Agency conducted an assessment of the likelihood of deterioration as a result of continued disposal activities over a limited period of time. The Environment Agency concluded that continued disposal for a period of 24 months (from September 2025) would

[1] The Ministry refers to the preparatory works to the new Public Administration Act (Prop. 79 L (2024-2025)) section 22.4.4 where the Ministry of Justice and Public Security rejected the introduction of a general rule in which all administrative decisions declared invalid would automatically be deemed without legal effect.
[2] Prop. 79 L (2024-2025)) section 23.5.4.
[3] Tillatelser til gruvedrift i Engebøfjellet er ugyldige
[4] Sogn og Fjordane District Court found that the conditions for a temporary injunction were not met. The case was appealed to Gulating Court of Appeal, which reached the same conclusion in Case 26-002932ASK-GULA/AVD1.

not result in deterioration within the meaning of the WFD. While the Agency did not determine when deterioration might occur, it concluded that such deterioration would not occur within that period. A copy of the formalised written assessment from 29. October 2025 is enclosed. This has also been communicated in submissions from the state to the Sogn og Fjordane District Court in the case of temporary injunction. Please find enclosed submission from the state 9. October 2025.

Consequently, the Ministry considers that it is sufficiently certain to conclude that, during the period required to process the application for a temporary permit, continued disposal of mining waste will not result in deterioration and therefore not constitute a breach of the non-deterioration principle in the WFD. For the same reason, such continued disposal would not be contrary to the Supreme Court's decision or to the Authority's observations regarding the justification for the derogation from Article 4(7) WFD in its letter of 23 April 2026.

The Ministry also emphasises that, throughout the judicial proceedings, no errors or deficiencies were identified in the environmental assessments in the permit decisions. See decision from the Oslo District Court 10. January 2025 (22-165021TVI-TOSL/04). This part of the judgement was not appealed. Please find the decision enclosed. This was also recognised by the Supreme Court, see para 66. Nevertheless, any submissions received during the public consultation containing new information or evidence not previously considered will be carefully examined and taken into account before a final decision is adopted.

In addition, an immediate suspension of disposal activities could have significant adverse consequences for ERG and its employees, which has relied on the permit and organised its operations accordingly over a prolonged period of time. In addition, a prolonged interruption of operations could, over time, adversely affect the supply of raw material necessary for the production of titanium metal, a critical and strategic mineral according to EUs Critical Raw Materials Act (CRMA). The CRMA has not yet been incorporated into the EEA Agreement, but the Norwegian Government have expressed its intention to work towards the incorporation of the CRMA into the EEA Agreement.[5]

Based on the assessments from the Environment Agency that no deterioration will occur during the period required to process the application, continued operations will not infringe the prohibition against deterioration under the WFD and would therefore not result in a breach of EEA law. Accordingly, the Ministry does not consider an immediate suspension of operations to be necessary, proportionate or warranted under national or EEA law.
In parallel with the processing of the application for a temporary permit, the Ministry will assess whether considerations relating to mineral supply can justify a potential future deterioration in this case. The Ministry notes that, in Case E-13/24 Førdefjord before the EFTA Court, the European Commission stated that:

[5] Regjeringen vil innlemme EUs regelverk for kritiske råvarer i EØS-avtalen - regjeringen.no

Rutile, which is the commodity that will be mined in accordance with the permits that are challenged before the national court, is the main source for production of titanium metal.

Titanium metal has been defined by the EU as both a critical and strategical raw material since 2020. The Ministry further understands that, at present, no rutile production is taking place within the EEA other than the production at Engebø.

3. Question 3 from the Authority regarding Repparfjorden

The Ministry is currently assessing the significance and implications of the Supreme Court's judgement. If these assessments show that the judgment is relevant to other cases, including the Repparfjord case, the Ministry will follow up accordingly. As the decision from the Supreme Court was only recently delivered, the Ministry has not yet completed these assessments. As stated in the letter of 9 June 2026, the Ministry will update the Authority on its assessment without undue delay once that assessment has been completed.
The Ministry is aware that, in 2025, the European Commission decided to designate the Nussir project near Repparfjord as a Strategic Project in a third country under the process established in the CRMA. The Ministry considers that there is nothing preventing Norway from taking this designation into account should there be a need for further assessments in the Nussir/Repparfjord case.

Furthermore, the Ministry considers that para 47 of E-13/24 Førdefjord must be interpreted in light of the CRMA, including the criteria to be classified as a strategic project, as well as the WTO framework. In particular, the Ministry considers that para 47 cannot be interpreted as requiring EEA States, under the WFD, to ensure through permit conditions that operators establish complete value chains for critical minerals, or to impose requirements regarding where product is ultimately sold. If the Authority holds a different view, we welcome input on the matter.

4. Question 4 from the Authority regarding Section 12 of the Norwegian Water Regulation

Norway intends to amend Section 12 of the Norwegian Water Regulation. As stated in the letter of 9 June, The Ministry has previously acknowledged that the wording of section 12 of the Water Regulation could be more precise in regard to reflecting the content of WFD article 4(7). Accordingly, the Ministry submitted proposed amendments of the Water Regulation for public consultation in 2023. The proposed amendment was put on hold to ensure that the amendments reflect the interpretation of the Norwegian Supreme Court.

As stated above, The Ministry is currently assessing the significance and implications of the Supreme Court's judgement, including the implications for the amendments of Section 12 of the Norwegian Water Regulations. As the decision from the Supreme Court was only recently delivered, the Ministry has not yet completed these assessments. As stated in the letter of 9 June 2026, the Ministry will update the Authority on its assessment without undue

delay once that assessment has been completed.

We continue to underline that ensuring effective implementation of EEA law in our regulatory framework remains a priority for Norway. The ministry welcomes input from the Authority on the wording of Section 12 of the Norwegian Water Regulation, in light of the proposed amendments in 2023 and the Supreme Court's decision.

Yours sincerely

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