

PRESS RELEASE

Second highest nitrate contamination of groundwater in the EU: Environmental Action Germany sues the Federal Republic of Germany for “clean water”

DUH files a precedent case for “clean water” against the Federal Republic of Germany – Maximum permitted limit for nitrate of 50 milligrams per litre clearly exceeded at 27.7 percent of the measuring stations – Fertiliser Act amended in 2017 is not sufficient to satisfactorily reduce the excessive nitrate contamination of groundwater and surface water – European Court of Justice confirms the shortcomings of German agricultural policy with its ruling of 21 June 2018

Berlin, 17.7.2018: Of all 28 EU states, Germany has the second highest contamination of groundwater with nitrate. Only Malta has more nitrate in groundwater than Germany. Environmental Action Germany (DUH) criticises the failure of more than 25 years of German policy and calls for the protection of groundwater and drinking water contaminated by industrial agriculture.

In order to compel politicians to act, DUH filed a lawsuit against the Federal Republic of Germany, represented by the Federal Ministry of Agriculture, with the Higher Administrative Court of Berlin-Brandenburg on 31 May 2018 (docket number OVG 11 A 1. 18).

The lawsuit has now been fully substantiated by a written statement dated 16 July 2018. The lawsuit is directed against the “National Action Programme for the Protection of Waters against Pollution caused by Nitrates from Agricultural Sources”, which was amended in 2017 and is currently in force. Germany is obliged to draw up such an Action Programme and has done so on the basis of Section 3a of the Fertiliser Act (Düngesetz - DüNGeG) through various legal regulations in fertiliser law. In the opinion of DUH, however, the existing fertiliser legislation even after its amendment remains unsuitable for reducing the excessive nitrate contamination of groundwater and water bodies to such an extent that the objectives of the Nitrates Directive 91/676/EEC are met.

According to the Federal Government's last Nitrate Report from 2016, the limit of 50 milligrams per litre will still be exceeded, in some cases significantly, at almost one third of the measuring stations. The changes made to the statutory regulations in 2017 are unlikely to lead to a radical change in this situation. The aim of the lawsuit is to bring about a legal state of affairs as quickly as possible. This will require a revision of the National Action Programme and thus of the German Fertiliser Act.

“We have decided to take legal action to secure ‘clean water’ in addition to ‘clean air’. DUH has been committed to clean air and clean water since its foundation. The example of air pollution control and the lawsuit strategy adopted by DUH convincingly demonstrate that the necessary steps to enforce the air quality limits can only be enforced by the courts. While Germany was a role model for other states in environmental protection before Angela Merkel’s chancellorship and regularly exceeded EU standards, hardly any other EU state is subject to as many infringement

proceedings resulting from its violations of EU regulations as Germany”, says Jürgen Resch, Executive Director of DUH.

The judgement of the European Court of Justice (ECJ) against Germany on 21 June 2018 due to the inadequate implementation of the Nitrates Directive documents the decades of negligence of German agricultural policy. *“German agricultural policy has relied on intensifying industrial animal husbandry instead of land-based, near-natural agriculture. The dramatic results of this include the massive increase in the input of nitrogen from fertilisation, slurry and factory farming into groundwater and surface waters. The consequences are the closure of wells for drinking water production, the ever increasing technical and financial expenditure for drinking water treatment and the overfertilisation of sensitive ecosystems such as lakes, rivers and coastal waters”*, says Sascha Müller-Kraenner, Executive Director of DUH.

If too much nitrate is absorbed into drinking water, nitrite, which is hazardous to health, can accumulate in the body. In infants and young children, this can lead to a reduction in the oxygen transport capacity and thus to the life-threatening disease called cyanosis.

The ECJ ruling confirms that Germany is not fulfilling its obligations to reduce nitrates. For procedural reasons, however, the Court of Justice could only take into account the legal situation valid until 2014. With the amendment of the Fertiliser Act in 2017, the Federal Ministry of Agriculture assures the EU that it has taken all measures that will now lead to a legally compliant situation. However, DUH criticises the fact that the amended legislation contains numerous exceptions, so that the European legal requirements of the Nitrate Directive 91/676/EEC on the protection of drinking water and groundwater are still not being observed.

“Even the amended Act does not create a legally compliant situation. For example, the limit of 50 milligrams per litre will not be met at all German measuring stations for an unforeseeable period of time. Similarly, the significant eutrophication of our waters will not be eliminated. The new Fertiliser Act will not bring any improvements. Even many of the minimum requirements provided for in EU law have still not been implemented in the amended Fertiliser Act”, says lawyer Remo Klinger, who is representing DUH in the lawsuit. *“According to the established case law of the European Court of Justice on European air quality and water protection law, the objectives of the Nitrates Directive are not merely programmatic in character, but represent strict obligations to achieve results that do not give Member States any degree of discretion in their implementation. Germany is still failing to meet these targets more than 25 years after the Nitrates Directive came into force”*, Klinger adds. According to the Federal Government's last Nitrate Report from 2016, the concentration limit for nitrate is exceeded at 27.7 percent of the measuring sites in agricultural catchment areas. The population must once again bear additional costs: for subsidies to industrial agriculture, rising water costs for drinking water treatment and, if necessary, even for fines to the EU.

Background:

The levels of nitrate in groundwater and surface water in Germany are too high. The main reason for this is the use of nitrogenous fertilisers in agriculture. In addition to mineral fertilisers, slurry from fattening stables or biogas plants is spread on the fields. Inadequate buffer zones allow these to enter surface waters. The ecological consequences: cloudy water, excessive growth of algae and lack of oxygen, which then leads to fish dying. The nitrogen content of arable land exceeds the absorption capacity of plants and soils, so that nitrate also seeps into groundwater.

Annex I of Nitrates Directive 91/676/EC stipulates that groundwater is contaminated if it contains more than 50 milligrams of nitrate per litre. This value applies uniformly in EU law, thus also in the EU Groundwater Directive 2006/118/EC (GWD). The European quality standard of 50 milligrams of nitrate per litre was anchored in the German Groundwater Ordinance (GrwV) as a threshold value at the same level. However, Germany has not complied with these limits for 25 years. At measuring sites in whose catchment areas there are many agricultural uses, approximately 28 percent of the measuring sites exceed the concentration limit for nitrate (Nitrate Report 2016). In the assessment of groundwater status pursuant to the EU Water Framework Directive/GWD, 27.1 percent of the 1200 German groundwater bodies are also in a poor chemical state.

Drinking water filtration will reach its limits in the near future and require expensive technical solutions. The high nitrate contamination also has an impact on biological diversity. Almost half of the plant species on the "Red List" are endangered by increased nutrient inputs. The high nutrient inputs are changing the species composition in favour of nutrient-loving plants. As a result, vegetation is becoming more uniform and habitats and food supplies are being lost. For these reasons, the nitrate concentration must be drastically reduced. Particularly in the regions which have a high density of livestock, stricter specifications must be formulated rapidly. Measures include stronger time limits and an upper limit of 130 kg per hectare (previously 170 kg per hectare) for fertilisation, stricter rules to control how farmers distribute and apply fertilisers, shorter working in periods for farm manure, area-dependent livestock numbers and the establishment of at least five-metre-wide buffer strips beside water bodies.

Links:

The statement of claim can be found at: <http://l.duh.de/p180717>

Contact:

Sascha Müller-Kraenner, Executive Director
0160 90354509, mueller-kraenner@duh.de

Jürgen Resch, Executive Director
0171 3649170, resch@duh.de

Prof. Dr. Remo Klinger, Attorney at Law, Geulen & Klinger, Berlin
0171 2435458, klinger@geulen.com

DUH Press Office:

Andrea Kuper, Ann-Kathrin Marggraf
030 2400867-20, presse@duh.de

www.duh.de, www.twitter.com/umwelthilfe, www.facebook.com/umwelthilfe
