

Department of Environmental Conservation



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

DIVISION OF AIR QUALITY
Air Permits Program

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May 15, 2020

Daniel Graham, Permit and Environmental Manager
Donlin Gold, LLC
4720 Business Park Blvd., Suite G-25
Anchorage, AK 99503

Subject: PSD Permit and Approval to Construct – Second Permit Extension Request dated April 21, 2020 for Donlin Gold, LLC's Donlin Gold Project, Air Quality Control Construction Permit AQ0934CPT01

Dear Mr. Graham:

The Alaska Department of Environmental Conservation (the Department) in a letter dated April 21, 2020, received a request from Donlin Gold, LLC (Donlin) for a second extension to the deadline for commencing construction of the Donlin Gold Project (DGP). In accordance with 40 CFR 52.21(r), AS 46.14, and 18 AAC 50, of the Prevention of Significant Deterioration (PSD) rules, the DGP was required to commence construction within 18 months after issuance of the permit. Since the PSD permit was issued on June 30, 2017, the date for commencing construction would have been December 30, 2018. With the approval of the first extension granted by the Department, the extended date for commencing construction would have been June 30, 2020.

Donlin is requesting an extension because it is in the process of acquiring the other necessary permitting approvals for constructing and operating the DGP. Donlin has received multiple permits required for the DGP since the issuance of the previous permit extension on October 12, 2018, however, there are other necessary permit approvals before construction can commence. It will be critical for Donlin to obtain these approvals to put themselves in a position to finalize engineering designs, secure project financing, procure necessary equipment, hire contractors, and mobilize the necessary equipment, materials, and manpower resources to commence construction. Therefore, Donlin is requesting the date for commencing construction be extended an additional 18 months to December 30, 2021.

EPA's Memorandum dated January 31, 2014, titled "Guidance on Extension of Prevention of Significant Deterioration (PSD) Permits under 40 C.F.R. 52.21(r)(2)" (Extension Memorandum) states the following:

First Permit Extension Request

In accordance with 40 CFR 52.21(r)(2), a Permittee's first PSD permit extension request should include a detailed justification of why the source cannot commence construction within the initial 18-month period. For example, relevant factors for this justification could include ongoing litigation over any PSD permit, natural disasters that directly affect the facility, significant or unusual economic impediments (including inability to secure financial resources necessary to commence construction), and/or delays in obtaining other required permits.

Furthermore, the EPA believes that in order to give meaning to the extension provision in 40 CFR 52.21(r)(2), review or redo of substantive permit analyses such as Best Available Control Technology (BACT), air quality impacts analysis (AQIA) or PSD increment consumption analyses should generally not be necessary for a first permit extension request.

Second Permit Extension Request

The EPA believes that in most cases a request for a second extension of the commencement of construction deadline should include a substantive re-analysis and update of PSD requirements. Only in rare circumstances would a detailed justification of why a source cannot commence construction by the current deadline (as is recommended above for the purpose of requesting the first extension) be sufficient to support a second extension. Generally, the benefits of conducting an updated substantive review of the PSD requirements after 36 months from the initial issuance of the PSD permit would outweigh the considerations discussed above that favor an initial extension without such analysis. While the EPA's experience is that pollution control technology for criteria pollutants has not been advancing at the same rate that it once was, the EPA believes that it is more likely that technology and air quality considerations will become outdated when construction does not begin until 36 months or longer after the EPA has taken final action to issue a PSD permit. Therefore, when a second extension of the deadline for commencing construction is requested, the EPA will evaluate on a case-by-case basis whether a second permit extension is justified. In some cases, the EPA may ask the permittee to apply for a new PSD permit rather than conduct its review through a permit extension proceeding.

In the absence of regulations or guidance specifically addressing PSD permit amendments, the regulatory definitions of Best Available Control Technology (BACT) and the information requirements for PSD permits suggest that permit issuers must evaluate proposed PSD permit amendments on a case-by-case basis to determine whether new information relating to the BACT analysis underlying the original permit warrants revisiting that analysis because such information is “necessary” to ensure that BACT will be applied.

While the New Source Review Manual does not specifically address PSD permit modifications, the manual's methodology for BACT analysis suggests principles which permit issuers may use on a case-by-case basis in evaluating whether revisiting a BACT analysis is required in the context of a proposed PSD permit amendment.

Based on the aforementioned EPA guidance, the Department must evaluate the second extension request on a case-by-case basis. In the April 21, 2020 letter, Donlin provided additional information related to the BACT limits established on December 30, 2018. Donlin researched the RACT/BACT/LAER Clearinghouse (RBLC) and found the existing BACT limits and control technologies at the DGP are consistent with those contained in more recent permit approval determinations and that the proposed facility is technologically consistent with recent BACT determinations. Upon review, the Department found that Donlin analyzed each emission unit for each regulated pollutant and concurs with its conclusion. The Department finds that the numerical emission limits listed in the PSD permit do not require additional top-down BACT review beyond that in the existing record.

Therefore, the Department is granting the request for a second extension to the deadline for commencing construction because no reanalysis of substantive conditions of the permits needs to be conducted. This extension requires that construction of the DGP commence no later than **December 30, 2021**. The Department is not requiring a public comment period since this is a decision to extend the deadline for commencing construction without any changes to the permit.

If you have any further questions please feel free to contact the undersigned or Mr. Dave Jones of my staff at (907) 465-5122, or dave.jones2@alaska.gov. Please note that Alaska's air quality statutes, regulations and permit application information can be obtained from the Department's web page at the following address: <http://dec.alaska.gov/air/air-permit/>.

A person who has a private, substantive, legally protected interest under state law that may be adversely affected by the permit action, the owner and operator, or, if a public comment process is required or solicited, a person who participated in the public comment process may request an adjudicatory hearing in accordance with 18 AAC 15.195 - 18 AAC 15.340 or an informal review by the Air Quality Division Director, either via the U.S. Postal Service to PO Box 111800, Juneau, Alaska 99811-1800, or by any other mail carrier (i.e. UPS, FedEx, DHL) to 410 Willoughby Avenue, Suite 303, Juneau, Alaska 99801, within 15 days of receipt of the permit decision by email, facsimile, or mail whichever is earlier.

Adjudicatory hearing requests must be delivered to the Commissioner of the Department of Environmental Conservation, either via the U.S. Postal Service to PO Box 111800, Juneau, Alaska 99811-1800, or by any other mail carrier (i.e. UPS, FedEx, DHL) to 410 Willoughby Avenue, Suite 303, Juneau, Alaska 99801, within 30 days of issuance of the permit decision. If a hearing is not requested within 30 days, the right to appeal is waived. More information on how to appeal a Department decision is available at <http://dec.alaska.gov/commish/review-guidance>.

Sincerely,



for: James R. Plosay, Manager
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