



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Environmental
Conservation

DIVISION OF AIR QUALITY
Air Permits Program

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December 1, 2021

Enrique Fernandez, Permitting and Environmental Manager
Donlin Gold LLC
2525 C St., Suite 400
Anchorage, AK 99503

Subject: PSD Permit and Approval to Construct – Third Permit Extension Request dated October 29, 2021 for Donlin Gold LLC's Donlin Gold Project, Air Quality Control Construction Permit AQ0934CPT01

Dear Mr. Fernandez:

On October 29, 2021, the Alaska Department of Environmental Conservation (the Department) received a new Prevention of Significant Deterioration (PSD) construction permit application (AQ0934CPT02) from Donlin Gold LLC (Donlin), for the Donlin Gold Project (Project). Additionally, Donlin included a letter requesting a third extension to the deadline for commencing construction of the Project under Construction Permit AQ0934CPT01. Donlin requests to extend the deadline for commencing construction for an additional eighteen months, or until the Department issues AQ0934CPT02.

In accordance with 40 CFR 52.21(r)(2), the Project was required to commence construction within 18 months after issuance of Construction Permit AQ0934CPT01. 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. With the approval of the second extension granted by the Department, the extended date for commencing construction would be December 30, 2021.

Donlin is requesting a third extension because the Project is slow-moving in a remote region of Alaska that has no existing infrastructure. The Project is a large undertaking that involves the permitting of the power plant, mine site and support facilities, water rights access, roads, a port, and a 315-mile natural gas pipeline. Donlin has made significant progress to secure the required federal and state permits, including:

- Completed a National Environmental Policy Act review that began with scoping in 2012, issuance of the draft Environmental Impact Statement (EIS) in 2015; completion of a six-month public comment period in May 2016; and publication of the final EIS on April 27, 2018.
- Received a water discharge permit from ADEC on May 24, 2018.
- Received a special permit for a strain-based design for the natural gas pipeline from the US Department of Transportation Pipeline and Hazardous Materials Safety Administration on June 5, 2018.
- Received the first Joint Record of Decision issued under EO 13807 (One Federal Decision policy) on August 13, 2018.

- Received a Clean Water Act Section 404 and Rivers and Harbors Act Section 10 permit from the US Army Corps of Engineers (USACE) on August 13, 2018. This includes the ADEC 401 certificate of reasonable assurance issued August 10, 2018. The 401 certificate has been appealed to superior court.
- Received a Right-of-Way (ROW) grant offer from the Bureau of Land Management on August 13, 2018.
- Received twelve (12) Title 16 permits for the mine site, access road and port from the Alaska Department of Fish and Game on August 30, 2018.
- Received a Waste Management Permit for the mine and associated facilities from ADEC on January 18, 2019.
- Received a Reclamation Plan Approval and Approval of Financial Assurance from the Alaska Department of Natural Resources (ADNR) on January 18, 2019.
- Received a right-of-way lease from the ADNR State Pipeline Coordinators Office on January 22, 2020. This permit has been appealed to superior court.
- Received a series of limited entry authorizations from ADNR for a fiber optic cable ROW, the port facility on the Kuskokwim River, private access road, and airstrip along with establishing seven material sites on state land near the transportation facilities on February 6, 2020.
- Received twelve (12) water rights for the mine and Jungjuk (Angyaruq) port facility on April 26, 2021. These permits are currently on appeal review by ADNR.

The US Environmental Protection Agency's (EPA's) Memorandum dated January 31, 2014, titled "Guidance on Extension of PSD Permits under 40 C.F.R. 52.21(r)(2)"¹ (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 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

¹ [EPA Guidance on Extension of PSD Permits under 40 CFR 52.21\(r\)\(2\)](#)

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.**

The Extension Memorandum provides no guidance for handling a third PSD extension request. Since the Department operates a fully-SIP approved PSD program in regulation, the EPA guidance is considered, but the Department may vary from its exact wording while adhering to the general principle of the guidance. Therefore, it is the Department's interpretation of the Extension Memorandum that at a minimum, a third PSD extension request should include the justifications contained in the first and second extension request guidelines stated above.

Based on the Extension Memorandum, the Department may evaluate the third extension request on a case-by-case basis. In the October 29, 2021 PSD Construction Permit AQ0934CPT02 application submittal, Donlin provided an updated BACT analysis to update the BACT selected in the original construction permit established on June 30, 2017. The new PSD application also includes an updated air quality impact analysis. A review of this analysis should demonstrate that the National Ambient Air Quality Standards (NAAQS) and maximum allowable increases to the increments subject to review will not be exceeded.

The Department is granting the request for a third extension to the deadline for commencing construction because a new permit application will provide all of the material elements updated with more timely information instead of conducting a re-analysis of the original BACT and ambient air quality modeling. This application is currently being processed. The required BACT and ambient analyses will provide a more robust basis for continuation of the project as planned. The purpose of the third extension approval is solely to allow the project to continue as planned while the Department processes the new permit application with all of the updated application elements. The required BACT and ambient analyses contained in the Construction Permit AQ0934CPT02 application will serve as a re-evaluation of the existing BACT and ambient demonstration. This extension requires that construction of the Project commence no later than **June 30, 2023**. The Department is not requiring a public comment period for this extension since this is a decision to extend the deadline for commencing construction without any changes to the existing permit while processing a new application. The Department will also sunset the existing construction permit upon completion and issuance of the new PSD Construction Permit AQ0934CPT02.

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 Division Director in accordance with 18 AAC 15.185.

Informal review requests must be made not later than 20 days after issuance of the permit decision. The request may be made by mail, email, or facsimile to the Division Director. If mailed via the U.S. Postal Service use PO Box 111800, Juneau, Alaska 99811-1800; or via another mail carrier (e.g. UPS, FedEx, DHL) use 410 Willoughby Avenue, Suite 303, Juneau, Alaska 99801. 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 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
Air Permits Program

cc: Brittany Crutchfield, ADEC/APP, ANC
Jason Olds, ADEC/ACP, JNU
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