

# ***COUNCIL DECISION REQUEST***

SUBJECT: Delegation Agreement with AZ Dept. Environmental Quality (ADEQ)

MEETING DATE: September 6, 2007

PGP ITEM: New  Existing

ITEM NO.:

TENTATIVE SCHEDULE:

SUBMITTED BY: Martin deMasi, Fire Chief

AMOUNT BUDGETED: 0

SUBMITTAL TO AGENDA  
APPROVED BY TOWN MANAGER

EXPENDITURE REQUIRED: 0

CONT. FUNDING REQUIRED: 0

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EXHIBITS (If Applicable, To Be Attached): Agreement from ADEQ

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## **RECOMMENDED MOTION**

I move to that the Mayor be authorized to sign all necessary documents associated with Arizona Department of Environmental Quality Delegation Agreement #06-014.

**SUMMARY OF THE BASIS FOR RECOMMENDED MOTION:** Since 2001 the Payson Fire Department (PFD) has had a delegation agreement with the ADEQ that enables the PFD to issue ADEQ open-burning permits on their behalf. This was done to streamline the process for residents to obtain an open-burning permit. In these scenarios the PFD also has prescribed requirements, which includes issuance of a PFD permit. Previously, the potential permit holder had to fax or mail a copy of the permit application the ADEQ office in Phoenix and wait for it to be processed and returned. Then the PFD could issue their permit. This Delegation Agreement allows the PFD to issue the ADEQ permit by proxy without the waiting period.

**PROS:** Allows a quicker processing time for potential open-burning permit holders. Reduces red tape and bureaucratic wait times for the customer.

**CONS:** Additional paperwork for staff.

**PUBLIC INPUT (if any):** N/A

**BOARD/COMMITTEE/COMMISSION ACTIONS/RECOMMENDATIONS (if any) (give dates and attach minutes):** N/A

AUG 27 2007 I. 2\*



Janet Napolitano  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007  
(602) 771-2300 • www.azdeq.gov



Stephen A. Owens  
Director

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

**June 26, 2007**

Martin de Masi, Fire Chief  
Payson Fire Department  
400 W. Main Street  
Payson AZ 85541

Re: Delegation Agreement #06-014

Dear Mr. de Masi:

Enclosed, please find an original of Delegation Agreement # 06-014 ("DA"), containing the terms delegated by the Director of the Arizona Department of Environmental Quality ("ADEQ") as accepted by the 400 W. Main Street Payson AZ 85541.

This DA requires signatures of the Local Agency (LA) authorized public officer(s), the LA Clerk and the LA Attorney on the original. As evidence of approval as to form, an Assistant Attorney General's signature is on the original enclosed.

Upon execution and approval by all LA parties, please send the original back to ADEQ for the Director of ADEQ's signature and filing with the Secretary of State. ADEQ will return a copy of the original for filing with the LA Recorder.

The delegation agreement will become effective only after all required parties have signed and it has been filed with the Secretary of State.

If you have any questions or concerns, you may contact Trevor Baggiore, Air Permits Section Manager, at (602) 771-2321 or me at (602) 771-2308.

Sincerely,

Nancy C. Wrona, Director  
Air Quality Division

Encl.: Original of delegation agreement for signatures; return envelope to Henry Darwin's attention

cc: Henry Darwin; ADEQ Office of Administrative Counsel

Northern Regional Office  
1801 W. Route 66 • Suite 117 • Flagstaff, AZ 86001  
(928) 779-0313

Southern Regional Office  
400 West Congress Street • Suite 433 • Tucson, AZ 85701  
(520) 628-6733

**Delegation Agreement**

**Between**

**Arizona Department of Environmental Quality**

**And**

**Payson Fire Department**

Whereas, A.R.S. § 49-107 generally authorizes the Director of ADEQ (Director) to delegate to a local environmental agency, county health department, public health services district or municipality any functions, powers, or duties, hereinafter Functions and Duties, which the Director believes can be competently, efficiently, and properly performed by the local agency, and

Whereas A.R.S. § 49-501(E) specifically permits the Director to delegate authority for the issuance of open burn permits to a county, city, town, fire district, or its assigned private fire protection service provider, and

Whereas the Payson Fire Department (“local agency,” hereinafter LA) meets the delegation qualification, as set forth in A.R.S. § 49-501(E), and

Whereas, the LA is required by A.R.S. § 49-106 to enforce and observe rules adopted by ADEQ and laws of the State of Arizona pertaining to the preservation of public health and protection of the environment, and

Whereas the Director of ADEQ believes the LA will competently, efficiently, and properly perform the Functions and Duties covered by this Agreement, and the LA deems that it is in its best interests to accept such Functions and Duties,

Therefore, the Director of ADEQ delegates to the LA, and the LA agrees to accept the delegation of authority to abide by the terms of this document and A.A.C. R18-2-602 and perform those Functions and Duties on behalf of ADEQ and in accordance with the terms and conditions contained herein.

## **DELEGATED FUNCTIONS AND DUTIES**

The Functions and Duties delegated to the LA by this Agreement are identified by A.R.S. § 49-501 and A.A.C. R18-2-602 pertaining to issuing permits for open burning.

## **STANDARDS OF PERFORMANCE**

### **1) RECORDS AND INSPECTIONS:**

- a) The LA agrees to prepare records relating to each of the Open Burn permits issued under this agreement. The LA agrees to maintain each of these records for a period of five years after issuance of the respective permit and make them available for inspection by the Director as required by A.A.C. R18-2-602(G).
- b) The LA agrees to annually provide to ADEQ by May 15 copies of open burn permits and a record of daily burn activity, excluding household waste burn permits as required by A.A.C. R18-2-602(G).
- c) ADEQ representatives may accompany employees of the LA on inspections and review all records relating to the performance of the activities set forth in this Agreement. Where practicable, ADEQ will provide prior notice to the LA of its intent to accompany the Fire Department employees on inspections.

### **2) OPERATING GUIDANCE:**

ADEQ will provide the LA with a copy of the requirements in A.A.C R18-2-602, application forms, and a copy of permit forms. Additional guidance may be provided on an as-required basis. This additional guidance may include other material that may assist the LA in making decisions necessary to carry out the activities covered by this Agreement. The LA is encouraged to contact ADEQ at any time to request clarification or to request that guidance be provided to cover a particular topic.

### **3) ENFORCEMENT:**

- a) In carrying out its duties under this Agreement, the LA shall comply with the provisions of A.R.S. § 49-501, and observe and enforce the rules of ADEQ and the laws of the State of Arizona pertaining to the preservation of public health and protection of environment.
- b) The LA shall initiate timely and appropriate enforcement actions against individuals and facilities to resolve violations of statutes and rules applicable to this Agreement. ADEQ retains complete authority to take enforcement action against any individual, facility or violator covered by this Agreement or, at its sole discretion, to refrain from exercising such authority if enforcement action taken by the LA is timely, appropriate and effective.
- c) The LA shall respond to imminent health hazards which fall under the LA's area of jurisdiction. ADEQ also retains authority to respond to, abate, or eliminate an imminent and substantial danger to public health or the environment.

- d) The LA shall not adopt any rules, procedures or policies that are in conflict with State law or are less restrictive than the rules of ADEQ.

## **TERMS AND CONDITIONS OF AGREEMENT**

### **1) TERM OF AGREEMENT:**

The initial term of this Agreement shall be five years from the effective date and may be extended by mutual written agreement of the parties, as permitted by applicable law.

### **2) TERMINATION:**

- a) This Agreement may be terminated in whole or in part by either party, upon providing 30 days advance written notice by certified mail to the other party.
- b) The LA shall, prior to the termination of all or part of the Agreement, forward to the Director all files, public documents and pending applications received by the LA for those Functions and Duties being terminated, a summary status report for the same, and shall provide written notification to all persons with pending applications and to all regulated facilities affected by such termination.

### **3) FEES AND LEGAL AUTHORITY FOR IMPOSITION:**

The LA may not assess any fee, tax or other assessment in the exercise of its delegated Functions and Duties of this Agreement, pursuant to A.R.S. § 41-1083, unless the LA is otherwise authorized by law.

### **4) PERSONNEL QUALIFICATIONS:**

In order to assure ADEQ's delegation is competently, efficiently and properly performed by qualified personnel the LA agrees to authorize only fire service providers performing fire protection services within that county, city, town or fire district to issue open burning permits, pursuant to A.R.S. § 49-501 and A.A.C. R18-2-602.

### **5) AMENDMENT:**

This Agreement may be amended at any time upon mutual written agreement of the parties. No amendment of any of the terms of this Agreement shall be effective unless it is in writing and signed by the Director and the LA or their respective representatives, or designees.

### **6) CONFLICT RESOLUTION PROCEDURES:**

The parties may resolve a conflict arising from this Agreement through arbitration. If a party seeks to invoke this provision the parties shall select a mutually acceptable third party as arbitrator. Each party shall bear its own arbitration fees, attorney fees and costs.

**7) DELEGATION TO OTHER LOCAL AGENCIES AND SUBDELEGATION**

- a) ADEQ's delegation to another jurisdiction within LA's boundaries shall in no way infringe upon, reduce or usurp a LA's right, authority and responsibility to implement non-delegated locally authorized activities and programs.
- b) ADEQ shall provide LA a copy of any delegation agreement with another jurisdiction located within the LA's boundaries.
- c) LA may not subdelegate the Functions and Duties of this Agreement to another local government agency or political subdivision without first obtaining the prior written approval of the Director. Pursuant to A.R.S. § 49-501(E), with the prior written approval of the Director, LA may assign the issuance of Open Burn permits to a private fire protection service provider that performs fire protection services within the LA's jurisdiction.

**8) AGENCY CONTACT PERSONS:**

The following Fire Department employee has been designated as responsible for administering the Functions and Duties pursuant to this Agreement. The Fire Department shall provide written notice to any successor.

Name: Martin de Masi  
Title: Fire Chief  
Address: 400 W. Main Street Payson AZ 85541  
Phone: (928) 474-5242  
E-mail: N/A

The following ADEQ employee has been designated as responsible for administering the Functions and Duties pursuant to this Agreement. ADEQ shall provide written notice of any successor.

Name: Trevor Baggio  
Title: Manager, Permits Section, Air Quality Division  
Address: 1110 W. Washington Street  
Phoenix, AZ 85007  
Phone: (602) 771-2321  
E-mail: [tb4@azdeq.gov](mailto:tb4@azdeq.gov)

The naming of a successor to either of the above individuals shall not require the re-execution of or an amendment to this agreement.

**9) EFFECTIVE DATE OF AGREEMENT:**

The effective date of this Agreement is the thirty (30) days from the Director's written final decision to enter into this Agreement with the LA.

**DELEGATION AGREEMENT # 06-014**

**Local Agency**

**Arizona Department of Environmental Quality**

\_\_\_\_\_  
**Authorizing Officer                      Date**

\_\_\_\_\_  
**Director                                      Date**

**ATTEST:**

\_\_\_\_\_  
**Clerk                                      Date**

Pursuant to A.R.S. • 11-952(D), the foregoing Agreement has been reviewed by the undersigned attorneys for the LA and ADEQ, who have determined that this Agreement is in proper form and is within the powers and authority granted under Arizona law to ADEQ and the LA.

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

By \_\_\_\_\_  
LA Attorney

By *James P. Miller*  
Assistant Attorney General