City of Benson
City Council Communication

Regular Meeting **March 24, 2014**

To: Mayor and Council Agenda Item # 5

From: Keith Spangler, Fire Chief

Subject:

Discussion and possible action regarding Resolution 5-2014 of the Mayor and Council of the City of Benson, Arizona, approving a Delegation Agreement with the Arizona Department of Environmental Quality for the issuance of burn permits within the City

Discussion:

This is a renewal of the Delegation Agreement between Arizona Department of Environmental Quality (AZ DEQ) and the City of Benson. This agreement is for the sole purpose of issuing Burn Permits within the City limits on behalf of AZ DEQ. This is for our control of when the Fire Department feels it is too dry for open burning and to make it a bit more convenient for the citizens to obtain a burn permit.

The past Delegation Agreement was signed in 2007.

Staff Recommendation:

Council pleasure

RESOLUTION 5-2014

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, APPROVING A DELEGATION AGREEMENT WITH THE ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY FOR THE ISSUANCE OF BURN PERMITS WITHIN THE CITY.

WHEREAS, Arizona Revised Statues sections 49-107 and 49-501(D) authorize the Director of the Arizona Department of Environmental Quality (ADEQ) to delegate to municipalities the authority to issue open burn permits; and

WHEREAS, the City of Benson and the Benson Fire Department fulfill the requirements imposed by Arizona law to assume the authority to issue open burn permits as delegated by the ADEQ; and

WHEREAS, the ADEQ has delivered to the City a Delegation Agreement, a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, which provides for the delegation of the authority to issue open burn permits to the Benson Fire Department; and

WHEREAS, the Mayor and Council of the City of Benson have determined that approval of said Delegation Agreement is in the best interests of the City and its residents.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Benson, that the City hereby approves and adopts the Delegation Agreement Between Arizona Department of Environmental Quality and Benson Fire Department, a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, and the Mayor is hereby directed to execute said Agreement on behalf of the City of Benson.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BENSON, ARIZONA, this 24th day of March, 2014.

_____
TONEY D. KING, SR., Mayor

ATTEST:

_____
VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

_____
MESCH CLARK & ROTHSCHILD, P.C.
By: GARY J. COHEN, City Attorney

ADEQ Agreement No.: 06-007

Delegation Agreement between

Arizona Department of Environmental Quality and

Benson Fire Department

Recitals

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(D) 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 Benson Fire Department ("local agency," hereinafter LA) meets the delegation qualification, as set forth in A.R.S. § 49-501(D), 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.

d) Pursuant to A.R.S. §§ 35-214, 35-215, and 41-2548, all books, accounts, reports, files, and other records relating to this agreement shall be subject, at all reasonable times, to inspection and audit by the State for five years after the termination of this agreement.

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 ten 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) This agreement is subject to cancellation by the State under A.R.S. §38-511.

c) 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 SUB-DELEGATION

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(D), 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:	Keith Spangler
Title:	Fire Chief
Address:	P.O. Box 2223, Benson, AZ 85602
Phone:	(520) 586-9832
E-mail:	kspangler@cityofbenson.com

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:	Balaji Vaidyanathan
Title:	Manager, Air Quality Permits Section
Address:	1110 W. Washington Street Phoenix, AZ 85007
Phone:	(602) 771-4527
E-mail:	bv1@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 will be thirty (30) days from the Director's written final decision to enter into this Agreement with the LA.

10) NON-DISCRIMINATION

The parties agree to comply with Chapter 9, Title 41, Arizona Revised Statutes (Civil Rights), Arizona Executive Order 2009-09 and any other federal or State laws relating to equal opportunity and non-discrimination, including the Americans with Disabilities Act.

DELEGATION AGREEMENT # 06-007

Local Agency	Arizona Department of Environmental Quality
_____	_____
Authorizing Officer Date	Director, AQD 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:
_____	_____
LA Attorney	Assistant Attorney General

NOTICE OF PROPOSED DELEGATION AGREEMENT

1. **Name of the agency proposing the delegation agreement:**

   Arizona Department of Environmental Quality

2. **The name of the political subdivision to which functions, powers and duties of the agency are proposed to be delegated:**

   Benson Fire Department, P.O. Box 2223, Benson, AZ 85602

3. **The name, address, and telephone number of agency personnel to whom persons may direct questions or comments:**

   Balaji Vaidyanathan
   Manager, Air Quality Permits Section
   Arizona Department of Environmental Quality, Air Quality Division
   1110 West Washington Street
   Phoenix, Arizona 85007
   Phone: (602) 771-4527
   E-mail: bv1@azdeq.gov

4. **A summary of the delegation agreement and the subjects and issues involved:**

   Pursuant to A.R.S. §§ 49-107 & 49-501(E), the Arizona Department of Environmental Quality proposes to delegate authority to Benson Fire Department, the Local Agency ("LA"), the program elements listed below, subject to certain conditions and limitations described in the delegation agreement. The proposed delegated program elements include:

   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.

5. **Copies of the proposed delegation agreement may be obtained from the agency as follows:**

   A copy of the proposed Agreement may be obtained by request to the ADEQ Central Office for public records pertaining to the delegation of the issuance of open burn permits.

   Or contact: Sherri L. Zendri, Administrative Counsel
   Arizona Department of Environmental Quality
   Office of Administrative Counsel
   1110 W. Washington Street
   Phoenix, AZ 85007
   Telephone: (602) 771-2242
   E-mail: slz@azdeq.gov

6. **The schedule of public hearings on the proposed delegation agreement:**

Where there is sufficient public interest, ADEQ will hold a public hearing to receive public comments, in accordance with A.R.S. § 41-1081. The time, place, and location of the hearings will be provided in the corresponding Notice of Public Hearing pursuant to A.A.C. R18-1-401 and R18-1-402.

ADEQ accepts written statements, arguments, data, and views on the proposed delegation agreement that are received within 30 days after the date of the publication of this notice in the *Register* by 5:00 p.m. or postmarked not later than that date.

After the conclusion of the public comment period and hearing, if any, the agency shall prepare a written summary responding to the comments received, whether oral or written. The agency shall consider the comments received from the public in determining whether to enter into the proposed delegation agreement. The agency shall give written notice to those persons who submitted comments of the agency's decision on whether to enter into the proposed delegation agreement.

ADEQ is committed to complying with the Americans with Disabilities Act. If any individual with a disability needs any type of accommodation, please contact ADEQ at least 72 hours before the hearing at (602) 771-2300 or TDD (602) 771-4829 or contact us via the web at azdeq.gov.

Janice K. Brewer
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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

Henry R. Darwin
Director

CERTIFIED MAIL
RETURN RECIPT REQUESTED

January 17, 2014

Keith Spangler, Fire Chief
Benson Fire Department
P.O. Box 2223, Benson, AZ 85602

Re: Delegation Agreement #06-007

Dear Mr. Spangler:

Enclosed, please find the Delegation Notice and the original Delegation Agreement # 06- 007 ("DA"), containing the terms delegated by the Director of the Arizona Department of Environmental Quality ("ADEQ") to the fire department.

This DA requires signatures of the Local Agency's (LA) authorized public officer(s), the LA Clerk or the LA Attorney on the original.

Upon execution and approval by all LA parties, please send the original back to ADEQ for signature by the ADEQ Director and filing with the Secretary of State. ADEQ will return a copy of the original upon filing. The delegation agreement will become effective 30 days after all required parties have signed and it has been filed with the Secretary of State.

If you have any questions or concerns, please contact me at (602) 771-4527.

Sincerely,

Balaji Vaidyanathan, Manager
Air Quality Permits Section

Enclosures: Delegation Agreement, Delegation Notice, and Return Envelope
Copy to: Sherri L. Zendri; ADEQ Office of Administrative Counsel