ADEQ Agreement No.: 06-043

ADEQ
AIR QUALITY DIVISION
14 NOV 20 AM 11: 17

Delegation Agreement between

Arizona Department of Environmental Quality and

City of Holbrook

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 City of Holbrook ("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 City of Holbrook 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:	Ray Alley
Title:	City Manager
Address:	P.O. Box 970, Holbrook, AZ 86025
Phone:	(928) 524-6225
E-mail:	

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, Permits Section, Air Quality Division
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 # 06-043

Local Agency

Authorizing Officer Date

Arizona Department of Environmental Quality

Director, AQD 1/5/16 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:

LA Attorney

APPROVED AS TO FORM:

Assistant Attorney General