

## **Backflow Valve Update # 1**

January 24, 2010

It has now been over six months since the Florida Dept. of Environmental Protection (DEP) held its last rule development workshop to revise 62-550 & 62-555 for backflow valves. At that time, DEP said they planned to have the “Notices of Proposed Rule” in place by October of 2009, the Secretarial Hearing by November of 2009 and the Adoption by December of 2009.

Of course, none of that has come to pass. So I suggested to the DEP that maybe they should issue user-friendly status reports to keep everyone updated and informed. Unfortunately, they seem to have rejected that idea.

Having attended the last four workshops <sup>1</sup>, here is an update as best I know. <sup>2</sup>

First of all, the attendees were in unanimous praise of the DEP’s revising the rules.

And several attendees congratulated the DEP for dropping the word “potential” from the revised rules’ definition of a cross-connection.

The specific written and verbal comments by water utility officials at the workshops centered on concerns over their budgets and their legal jeopardy.

### **Utility Budgets**

There was a general consensus among workshop participants that since the DEP's rules are an unfunded mandate, they are just too costly to implement, particularly in view of their current budget woes. One utility summed it up by stating: “We now have negative financial issues which are crippling our ability to pay for such a program.”

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<sup>1</sup> Sanford (2/18/2009), Temple Terrace (7/8/2009), West Palm Beach (7/9/2009) and Tallahassee (7/21/2009).

<sup>2</sup> The DEP was made aware of the contents of this *Update* and offered no corrections. However, they have asked me to make it perfectly clear to you that I am *just* a concerned citizen and am “not authorized to communicate on their behalf.” Of course, if they won’t keep you updated, I guess I’m the only voice in town. ;-). In the absence of periodic updates from the DEP, my goal is to publish these *Updates* monthly.

The rules related to taking a census of all customers received a number of negative comments. Many questioned the cost, need and accuracy of such a census. The question of trespassing was also raised.

The rules related to the change-out of Dual Check valves every five years, instead of at meter change-out time, received a number of negative comments. Many questioned the need to change them that often in view of the costs to hire a number of extra employees just to do that one task. They also questioned the need, based on the empirical testing done in Palm Beach County (whose representatives did show-and-tell at several of the workshops) that showed that Dual Checks function properly even after ten years.

Also receiving a great number of negative comments was the cost to do all of the paperwork that the revised rules require.<sup>3</sup> One utility described the program activities reports as “potentially overwhelming in scope” and proposed that the reporting be “limited to commercial establishments, which we believe pose the greatest risk.”

There was almost universal agreement among the workshop attendees that the timelines established by the DEPs regulations were costly and unrealistic.

### **Legal Jeopardy**

At the Tallahassee workshop, one utility official questioned the legality of DEP’s mandating an unfunded mandate on local governments that have been granted Home Rule under Article 8 of the Florida Statutes, because they are special districts and have legal responsibilities for water quality.

This same utility officer also asked if the DEP would be funding their regulations as part of the grant program under Florida Statute 403.885.<sup>4</sup>

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<sup>3</sup> Ironically, the DEP’s John Sowerby, who wrote the rules, actually has doubts about the honesty of utility employees to do the paperwork that he’s mandating. At the Sanford workshop in February of 2009, he said: “I know that we have a lot of water system personnel in the audience. Don’t be offended but it’s obvious that there is a dis-incentive for water systems to make public these incidents even when they’re aware of them because of liability and consumer confidence issues.” To hear the actual audio of his making that statement, go to [www.backflowvideos.org](http://www.backflowvideos.org) - click on “Dishonest Water Utility Employees”.

<sup>4</sup> Cynthia Christen with the DEP’s Office of General Counsel promised to get back to him, and to me, with the answers to both questions. Even though that was over six months ago, she has yet to provide any information, despite repeated requests.

One utility suggested that the DEP should do a comprehensive cost analysis of the whole CCC program's impact on both Florida businesses and Florida homeowners.

A utility stated their intention to move to AMRs (Automatic Meter Reading water meters) via "a phased program for the installation of AMR ready meters, which can be made fully operational later, when the economy rebounds." Since that particular utility has a reputation for legal foresight, they sought a clause in the revised rules that would protect them from having to purchase or reimburse homeowners for RPs that had previously been required to be installed.

One utility noted the conflict between the Building Code and the Cross-connection Control requirements. The Florida Statutes are a codified document. But all that customers see are conflicting regulations coming from their utility. The speaker felt that the Building Code requirements should be codified to respect the "broader context" of the DEP's regulations.

The legal point of selective enforcement was raised. Since utilities are typically responsible for delivering a potable product to the customer's property, a neighbor without an auxiliary water system, and therefore without an RP, could jeopardize the integrity of the utility's product during a negative pressure event causing a tainted product to be delivered back into the mains. The question was asked; shouldn't all homeowners be treated the same for legal and public relations purposes? <sup>5</sup>

### **RP terrorism and pranks**

At all four workshops, I spoke to my favorite point that RPs and Double Check valves are an expensive solution to a problem that simply doesn't exist, since there has never been a single death in Florida caused by a backflow incident. <sup>6</sup> I know of sixteen reasons why RPs <sup>7</sup> should be banned from residential areas. Of course, two reasons are their initial cost (\$400-\$700) and their annual testing (\$45 to \$800+).

Even more worrisome is that the RPs test ports provide direct access to the public water supply which makes them the perfect vehicle for backflow pranks and terrorism. <sup>8</sup>

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<sup>5</sup> Go to [www.backflowvideos.org](http://www.backflowvideos.org) - click on "Double Standard".

<sup>6</sup> Go to [www.backflowvideos.org](http://www.backflowvideos.org) - click on "Ethics".

<sup>7</sup> Double-check valves must also be banned from residential areas for the same sixteen reasons. All sixteen reasons will be discussed in "Backflow Valve Update # 2" coming in late February.

<sup>8</sup> Go to [www.backflowvideos.org](http://www.backflowvideos.org) - click on "Demonstration" and "Public Buildings at Risk".

Many county and state officials (including the DEP and the Dept. of Health) are very much aware of the dangers of RPs in residential areas and have stated that in internal emails and showed it by their actions. To see what these public officials said and did, please go to [www.backflowvideos.org](http://www.backflowvideos.org) – click on “Internal Emails”.

Since the DEP is well aware of the many dangers of RPs in residential areas, does their promulgation of regulations **that include RPs**, and then the enforcement of those same regulations by individual utilities amount to legal negligence and expose both DEP and those utilities to legal jeopardy?

In September of 2008, DEP’s Van Hoofnagle issued a notice that ‘given their present deliberations, they were advising all of their program offices to suspend any ongoing or new enforcement actions on the CCC program until January 1, 2009.’ That suspension expired over a year ago. However, in a recent phone conversation with DEP’s John Sowerby, I got the impression that the suspension is still in effect because the policy of the DEP’s program offices is to suspend enforcement when rules are under revision. Since I don’t speak for the DEP, you may want to officially confirm that by contacting John (850-245-8637) or Van (850-245-8631) directly incase your utility is considering putting your current CCC program on hold for budgetary or legal reasons in order to move to a different backflow valve protocol once the revised regulations are in place.

I plan to produce these *Updates* on a monthly basis. So if you have anything that you would like to share (with credit or anonymously) with your 150 peers who are also interested in backflow valves, please send it along.

Thank you,

A handwritten signature in black ink that reads "David Brown". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

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