

## **Backflow Valve Update # 3**

March 25, 2010

This *Update* is devoted to the annual cost of testing RPs <sup>1</sup>.

This series of *Backflow Valve Updates* <sup>2</sup> is in lieu of the Florida Department of Environmental Protection (DEP) providing periodic status reports on their revision of 62-550 & 62-555 (backflow valves and cross-connections) regulations.<sup>3</sup>

The following discussion is not intended to detract from the seriously brilliant effort by DEP to revise the regulations.

However, the continued inclusion of RP valves in DEP's current and revised regulations raises a number of legal questions.

Section 120.52(8)(f) of the Florida Statutes states that:

“A proposed or existing rule is an invalid exercise of delegated legislative authority if the rule imposes regulatory costs on the regulated person, county, or city which could be reduced **by the adoption of less costly alternatives that substantially accomplish the statutory objectives.**”

This same mandate is expressed again in 120.54(1)(d):

“In adopting rules, all agencies must, among the alternative approaches to any regulatory objective and to the extent allowed by law, choose the alternative that does not impose regulatory costs on the regulated person, county, or city which could be reduced **by the adoption of less costly alternatives that substantially accomplish the statutory objectives.**”

---

<sup>1</sup> To conserve space in this *Update*, the acronym “PR” is used to represent Reduced Pressure Zone backflow valves (known as RPs & RPZs).

<sup>2</sup> Previous *Updates* are available at [www.backflowvideos.org](http://www.backflowvideos.org)

<sup>3</sup> The DEP is aware of the contents of this *Update* and any corrections that they may have supplied have been incorporated. As a citizen, I do not speak for the DEP.

Given the less costly alternatives of an RP compared to an AMR/Dual-check combo <sup>4</sup>, the AMR/Dual-check is the winner hands-down.

Consider that AMRs are typically warranted for 20 years and empirical testing by Palm Beach County has shown that Dual-check valves still protect against backflow even after ten or more years. In other words: “Set it and forget it!”

And, AMRs report any backflow incidents either instantaneously or within 30 days, depending on the utility’s protocol.

Contrast that with an RP which is so delicate and so prone to failure that it must be tested annually. And its failure may not even be detected for up to 364 days.

However, it is the cost of the annual testing that is the subject of this *Update #3*.

Starting on page 4 of this document are three emails <sup>5</sup> from Les O’Brien when he was the Senior Training Specialist at TREEO (Center for Training, Research, and Education for Environmental Occupations) at the University of Florida.

His three letters are to three different individuals and contain the candid statements of a state official as he reflects on the high cost of the annual testing of RPs.

In Letter 1, Mr. O’Brien documents the bill presented to a homeowner by a tester who charged **\$840.85** for the annual field test and repair of an RP.

In Letter 2, Mr. O’Brien states that some testers are “**criminals**” trying to “**milk the system.**”

And perhaps most telling is Mr. O’Brien’s statement in Letter 3 that:

**“Too many testers are ripping off the customers and charging criminal prices.”**

---

<sup>4</sup> AMR’s (Automatic Meter Reading water meters) record the amount of forward **and backflow** every 15 minutes, or oftener, and transmit the data to a passing vehicle or central antenna.

<sup>5</sup> These emails were obtained via Florida’s Public Records Law.

Sections 120.52(8)(f) and 120.54(1)(d)<sup>6</sup> of the Florida Statutes mandate that the least costly alternative be set forth. Mr. O'Brien's statements in his capacity as a state official enumerate clear and legally persuasive proof that an RP has real cost problems in the area of the mandatory testing.

RPs have no legal place in the DEP's regulations given that the alternative of an AMR/Dual-check combo can detect and prevent backflow more reliably and at a much lower cost!

Again, thank you for your positive response to these *Backflow Valve Updates*.

In the three letters that follow, please note Les O'Brien's emphasized statements related to the cost of RP testing.

Thank you,

A handwritten signature in black ink that reads "David Brown". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

David Brown  
1805 Burlington Circle  
Sun City Center, FL 33573-5219  
Phone: 1-813-634-6048  
Websites: [www.suncitydave.info](http://www.suncitydave.info) & [www.backflowvideos.org](http://www.backflowvideos.org)  
Email: [dbrown28@tampabay.rr.com](mailto:dbrown28@tampabay.rr.com)

---

<sup>6</sup> By the way, Section 120.54 of the Florida Statutes contains a lot of ways to challenge the proposed regulations of state agencies - if you ever feel put upon. And in these tough economic times, who doesn't?

## Letter 1

**From:** O'brien,Leslie F,II  
**Sent:** Monday, June 15, 2009 9:59 AM  
**To:** Steve Peraza  
**Subject:** Administering a CCC program

**We still have a few tester/contractors who are charging the customers outrageous prices for annual field tests and repairs.**

**Here is an example sent to me by a customer for a ¾ inch RP.**

**\$ 120.00 test**  
**\$ 90.00 2 service calls**  
**\$ 77.00 parts**  
**\$ 512.50 labor**  
**\$ 41.25 tax**  
-----  
**\$ 840.85 total**

The average annual field test in Florida is around \$60.00. Smaller companies may charge less while large companies may charge more because of overhead. The rubber kit for a ¾" assembly is between \$25.00 and \$40.00.

Here are some signs to watch for:

1. Customer complaints about high prices charged for annual field test.
2. Tester repairs the same assembly every year.
3. Tester replaces the assemblies rather than repair them.

Remember when you place a tester or company on your Approved Tester List you are in effect entering into an unwritten contract with that tester or company. You are responsible for the quality of the work performed by the tester. You are telling your customers that the water utility fully trusts the tester and will stand behind their work.

How do you know the tester is qualified to test the assemblies? The certificate they receive may not be an indication of competency. The certificate may only signify that the student passed the minimum requirements for that training facility. Some training facilities do not actually require the students to know how to perform the hands-on field tests.

If the tester continues to perform poorly and you do not remove them from the Approved Tester List the perception by the customer might be that someone at the utility company is benefitting from this tester being on the list.

Some suggestions:

1. Evaluate the tester before you place them on the list.
2. Have the tester sign a Code of Conduct document. Examples:  
<http://www.nobackflow.com/Code-Conduct.htm>
3. Rotate your list so that every good tester gets a turn at the top of the list.

I hope this information will help you administering your Cross-Connection Control Program. If you have any questions, please contact me.

Thank you

Les

Les O'Brien  
Senior Training Specialist  
UF TREEO Center  
3900 SW 63 Blvd  
Gainesville, FL 32608  
(352) 392-9570 ext 232  
Fax: (352) 392-6910  
[www.treeo.ufl.edu](http://www.treeo.ufl.edu)

## Letter 2

**From:** O'brien,Leslie F,II  
**Sent:** Thursday, June 11, 2009 3:04 PM  
**To:** Macmillan,Mari L  
**Subject:** RE: Update and proposed changes

Mari,

True, but subtly I am hoping that better training will discourage **the criminals**.

The testers who have taken the repair class and/or the advanced class may very well welcome this proposal.

The testers who are just maintaining their certificate and don't really do any field testing could care less. They are not competing with other testers or contractors. This is about 60 % of our recent testers.

The rip-off artist will not spend more money on training. **They are trying to milk the system** at the lowest possible cost to themselves.

By raising the bar, the unethical will be slowly weeded out of the system. That is if the water purveyors actually will do their jobs.

If the DEP rule passes, every community water system will be required to provide extensive data about their CCC program. If the DEP rule fails to pass then we may be just spinning our wheels.

Hopefully we will know more next month.

Les

Les O'Brien  
Senior Training Specialist  
UF TREEO Center  
3900 SW 63 Blvd  
Gainesville, FL 32608  
(352) 392-9570 ext 232  
Fax: (352) 392-6910

**Letter 3**

From: O'brien,Leslie F,II  
Sent: Thursday, June 11, 2009 11:39 AM  
To: Gale, Harold T.  
Cc: Macmillan,Mari L; Hinton,Carol  
Subject: RE: Update and proposed changes

Harry,

You have made some good points. We will ponder these. Thank you.

One of my major concerns is the reputation of the UF and TREEO.

**Too many testers are ripping off the customers and charging criminal prices.**

We are trying to find a way to give a tool to the water purveyors so they can control the crimes.

I did not plan to ask the testers for their approval. I am asking the water purveyors if they want TREEO to initiate a better system. If the water purveyors are not interested then we will not spend the extra time and money on this project.

BTW - Only 1 or 2% of our testers could pass the ABPA or USC examinations. What does that say about the quality of our students? The western states seem to have better qualified testers that the east coast.

I understand that the poor quality testers will go someplace cheaper and easier. We really don't want those individuals representing UF-TREEO. I don't need a customer to declare that "a TREEO trained tester ripped me off."

Also the testers who make an effort to be better trained should be rewarded for their efforts. We are still a society where the people who work harder and are better trained should get ahead.

Testers in Charleston, SC who had also passed our repair class filed a lawsuit against Charleston because the utility did not recognize their achievements and advanced training. I guess it can go either way.

Please give me some ideas how we can instill honesty and proper ethics into our students. I will forward your e-mail to my boss and wait to discuss with her.

Thank you again.

Have a great summer.

Les

Les O'Brien  
Senior Training Specialist  
UF TREEO Center  
3900 SW 63 Blvd  
Gainesville, FL 32608  
(352) 392-9570 ext 232  
Fax: (352) 392-6910  
[www.treeo.ufl.edu](http://www.treeo.ufl.edu)