

Backflow Valve Update # 9

September 24, 2010

This is Update # 9. The full series of Updates is available at www.backflowvideos.org

This Update ¹ is not intended to detract from the effort by Florida's Department of Environmental Protection (DEP) to revise their out-of-date regulations. However, even the possible consideration of the old-fashioned and dangerous Reduced Pressure Zone (RP) ² backflow valves for residential irrigation in the DEP's revised regulations of Chapter 62-555 of the Florida Administrative Code ³ is very troubling.

This Update is concerned with the possible effect that Home Rule status has on the DEP's reporting requirements.

At the Tallahassee workshop on July 21, 2009, over a year ago, a gentleman from one of the utilities in northern Florida asked, in a very intelligent manner, if the regulations actually applied to those utilities with Home Rule status. He questioned the legality of DEP's forcing 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 their own legal responsibility for water quality. His question stumped the DEP officials who were there. Cynthia Christen, the legal counsel for the DEP at that meeting, promised that she would get back to him (and me) with an answer. I reminded her of her promise on 7/22/2009, 8/3/2009, 3/22/2010 and 7/21/2010 – and still there is no answer.

I'm not going to try to fathom all the aspects of Home Rule. I think it simply means that a local government can write its own laws as long as they don't violate federal laws.

We often infer an answer by silence. In the Sherlock Holmes mystery, "Silver Blaze", the crime is solved by the behavior of the dog.

"Is there any point to which you would wish to draw my attention?"

"To the curious incident of the dog in the night-time."

"The dog did nothing in the night-time."

"That was the curious incident," remarked Sherlock Holmes.

What concerns me is that when a civil servant is still silent after fourteen months and four reminders, one has to wonder if there's more to this simple question than meets the eye. According to an email from Les O'Brien (University of Florida's TREEO Center) to Bob DiCecco (Hillsborough County), "The Feds do not have rules requiring how a Cross-Connection Control program must be administered."

I've sort of wondered if Home Rule districts can bypass DEP regulations that aren't specifically mandated by the federal government. And that by answering this particular question related to the lowly RP valve, it might prove to be a precedent for a number of other DEP regulations. I have absolutely no legal basis to support this conjecture, but it surely would explain why the DEP's counsel wouldn't provide an answer, despite four reminders and the passage of fourteen months.

Oh, and by the way, Section 120.54(2)(c) of the Florida Statutes does require that: "When a workshop or public hearing is held, the agency must ensure that the persons responsible for preparing the proposed rule are available to explain the agency's proposal and to respond to questions or comments regarding the rule being developed." Well, so much for "responding to questions".

Of course, one has to appreciate the dark humor of her failure to respond. The DEP has written all kinds of time constraints into their revised regulations for harried utility workers to take a census of properties, routinely replace valves and fill out all manner of forms. And yet, DEP can't even respond to a simple workshop question, even after more than a year!

Again, I appreciate your positive responses to these Backflow Valve Updates.

Thank you,

A handwritten signature in black ink that reads "David Brown". The signature is written in a cursive, flowing style.

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¹ The DEP is aware of the contents of this *Update* and any corrections that they supplied have been incorporated. As "just a citizen", I do not speak for the DEP.

² To conserve space in this *Update*, the acronym "RP" is used to represent Reduced Pressure Zone backflow valves (known as RPs & RPZs) and Double-check valves, both of which are expensive and provide direct access ports to the public water supply. Double-check valves should not be confused with the simple and reliable Dual-check valves.

³ <http://www.suncitydave.info/DEP-Draft-3.pdf>