

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

NOTICE OF FINAL RULEMAKING

The Board of Directors (“Board”) of the D.C. Water and Sewer Authority (the “Authority”), pursuant to the authority set forth in section 203(3) of D.C. Law 11-111, the “Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996”, D.C. Code § 43-1673 (“the Act”) at its regular meeting held February 1, 2001 took final action to adopt amendments to the Water and Sanitation Regulations (21 DCMR) by adding a new Chapter 54 entitled “CROSS CONNECTIONS” and to make conforming amendments to Chapter 4 “CONTESTED WATER AND SEWER BILLS” by amending Sections 400, 401, 402, 410, 416, 424, and 499. These rules establish procedures for the protection of the public health and safety, and the potable water supply of the District of Columbia from contaminants and pollutants.

The Authority’s proposed rulemaking was originally published on December 1, 2000. No comments were received on the proposed regulations. No substantive changes were made. Clarification changes were made to various sections as follows: §5401.1 “or mixture of substances” was added; §5403.1, “prevent the contamination of the Potable Water System” was deleted, “ prevent the introduction of pollutants or contaminants to the Potable Water System” was added; §5410.1 “Necessary” was changed to “Necessity”; §5410.1 was revised by dividing the section into three subsections (a), (b) and (c); “solid” was added to the definition of Cross-connection; and in § 400.2 the reference to §5402 was changed to §5403 to reflect the correct section.

These final rules will be effective upon publication of this notice in the D.C. Register.

A. Title 21 DCMR, Water and Sanitation is amended as follows:

1. By adding a new Chapter 54 entitled “CROSS CONNECTIONS”, to read as follows:

CHAPTER 54 CROSS CONNECTIONS

5400 GENERAL PROVISIONS

5400.1 The purpose of this chapter is to establish procedures for the protection of the public health and safety and the potable water supply of the District Columbia from contaminant and Pollutants through cross-connections. The provisions of this chapter are designed to eliminate or control actual or potential cross-connections, and to maintain a continuing program of cross connection control.

5400.2 These regulations are promulgated to provide authority separate from and independent of other regulations, the Building Code and Supplement authority exercised by the Department of Health and the Department of Consumer and Regulatory Affairs to regulate other activities that affect Cross-connections.

5400.3 The provisions of this chapter shall apply to all improved real property, appurtenances and fixtures thereto and all construction sites within the District of Columbia. Properties that have a private well or source of other private water source are not exempted from the requirements of this chapter.

5400.4 The General Manger shall have authority to develop, implement and enforce procedures and standards, which carry out the intent of this chapter.

5401 PROTECTION OF PUBLIC WATER SYSTEM

5400.5 An Owner shall maintain all interior plumbing to prevent contamination of the public water system from nonpotable liquids, solids, gasses or mixture of substances through cross-connections.

5400.6 An Owner shall not permit the installation of a bypass around any backflow preventer unless a backflow preventer is installed on the bypass.

5402 INSPECTION AND ENTRY

5402.1 The General Manager, with prior written notice to the Owner of the date of entry, may enter any building, establishment, or other premises to identify potential cross connections and to determine whether it is practicable and necessary to install a backflow preventer to protect the public health and safety from contaminants.

5402.2 The General Manager may, after reasonable notice, enter any building, establishment, or other premises to inspect, install, retrofit, replace, or repair any device required to be installed pursuant to this chapter.

5403 IDENTIFICATION OF CROSS-CONNECTONS PRACTICABILITY DETERMINATION

5403.1 The General Manager may utilize all reasonable means to identify properties with cross connections and may determine whether installation of backflow prevention device is practicable and necessary in order to prevent the introduction of pollutants or contaminants to the Potable Water System.

5403.2 In the event the General Manager determines that it is practicable and necessary to install backflow preventers, the General Manager shall give the Owner of the property identified written notification that the following will be required:

- (a) Installation of the number and type of backflow preventers determined to be necessary by the General Manager, at no cost to WASA, within sixty (60) days of the date of the notice;
- (b) Test and inspect the backflow preventers as directed by WASA, at no cost to WASA;
- (c) Report the test results to WASA as directed by WASA; and
- (d) Permit inspection or inspections as required by WASA.

5403.3 An Owner identified in a notice issued pursuant to § 5403.2 may petition the General Manager, in writing, for additional time to install the number and type of backflow preventers required by a notice issued pursuant to § 5403.2. This petition must be delivered to WASA no later than fifteen (15) days after the date of notice issued pursuant to § 5403.2. The General Manager may grant the request only upon a finding of good cause shown and shall advise the petitioning Owner of his or her decision in writing.

5403.4 An Owner identified in a notice issued pursuant to § 5403.2 may also submit an alternative proposal to eliminate existing or potential cross connections. The Owner's proposal shall be in writing certified by a professional engineer, registered with the District of Columbia, and must be delivered to WASA no later than fifteen (15) days after the date of the notice issued pursuant to § 5403.2.

5403.5 The General Manager shall review the Owner's proposal made pursuant to § 5403.4, and after consideration of generally accepted engineering practices, in his or her sole discretion, either approve or deny, in whole or in part, the Owner's proposal in writing.

5403.6 If the Owner's proposal made pursuant to § 5403.4 is approved in whole or in part, the General Manager shall notify the Owner to:

- (a) Install the number and type to backflow preventers approved, at no cost to WASA, within thirty (30) days of the date of the approval or such other period of time determined reasonable by the General Manager, within his or her sole discretion;
- (b) Take any other action determined necessary by the General Manager as a result of the approval of the Owner's proposal;
- (c) Test and inspect the alternative backflow preventers as directed by WASA, at no cost to WASA;
- (d) Report the test results to WASA as directed by WASA; and
- (e) Permit inspection or inspections as required by WASA.

5403.7 If the Owner's proposal made pursuant to § 5403.4 is denied, in whole or in part the Owner shall install the devices required in the § 5403.2 notice within thirty (30) days from the date of the General Manager's denial.

5403.8 An Owner, whose proposal made pursuant to § 5403.4 is denied in whole or in part, may also petition the General Manager for additional time to install the required devices. This petition

5403.9 must be delivered to WASA no later than fifteen (15) days, after the date of the General Manager's notice of denial. The General Manager may grant or deny the Owner's request within the General Manager's sole discretion and shall advise the petitioning Owner of his or her decision in writing.

5404 DUTY OF OWNERS TO IDENTIFY CROSS CONNETIONS

5404.1 An Owner shall, upon written request made by the General Manager, inspect all fixtures and appurtenant interior Plumbing and inform the General Manager, in writing, of all cross-connections on all properties that are the subject of General Manager's request.

5405 IMMINENT THREAT

- 5405.1 The General Manager shall terminate water service to any property that poses an imminent threat to the public health.
- 5405.2 The General Manager may also take any other action and require any person to take any action deemed
- 5405.3 necessary to protect the health of persons who are or may be users of the Potable Water Supply.
- 5405.4 Notwithstanding any other provision of this chapter, the General Manager, may upon receipt of information that a Contaminant is present in or is likely to enter the Potable Water Supply, and which may present an imminent and substantial endangerment to the health of persons, take such actions as the General Manager deems necessary in order to protect the health of such persons.

5406 MAINTENANCE AND TESTING OF BACKFLOW PREVENTERS

- 5406.1 An Owner shall inspect and test all backflow preventers annually or as otherwise directed by WASA at no charge to WASA. All test results shall be submitted to the General Manager within ten (10) days of test.
- 5406.2 An Owner shall repair or replace any backflow preventer that had failed within ten (10) days of the date the failure is made known to the Owner. In the event a device is replaced or repairs are made, an Owner shall test the device to insure correct operation.
- 5406.3 An Owner shall not permit the bypass of any backflow preventer unless a backflow preventer is installed on the bypass.

5407 CERTIFICATION REQUIREMENTS

- 5407.1 No person shall engage in the testing of backflow preventers unless the person possesses a valid certification issued by the General Manager.
- 5407.2 Applications for certification to test backflow preventers shall be made to the General Manager on a form prescribed by the General Manager. Certification shall be for a three (3) year term.
- 5407.3 Each person applying for certification shall submit to the General Manager under oath, such information as the General Manger may require to assist in the determination whether the applicant has sufficient experience, training or education in testing backflow preventers.
- 5407.4 Application and certification fees shall be set by the General Manager, and shall be submitted with the application to the General Manager.

5407.5 If the General Manager finds that an applicant has the required qualifications, the General Manger shall issue the certification.

5407.6 Certifications issued pursuant to this chapter shall not be transferable.

5408 GROUNDS AND PROCEDURE FOR DENIAL, SUPSENSION OR REVOCATION OF CERTIFICATION

5408.1A backflow preventer tester certification shall be subject to denial, suspension, or revocation for the following causes:

- (a) Material misstatement in application for certification;
- (b) Willful failure or refusal to comply with any provision of statute or regulation relating to plumbing or water and sanitation;
- (c) Fraud;
- (d) Willful misrepresentation or concealment through any subterfuge or device of any matter or the nature of any matter required by the chapter to be stated or furnished.
- (e) Willful employment of any fraudulent or misleading device, method or practice in connection with the testing of backflow preventers; or
- (f) Incompetence

5408.2Whenever the General Manager finds that an applicant for a certificate under this chapter is deficient in one or more of the certificate qualifications or whenever the General Manager has reasonable grounds to believe that there has been a violation of any statute or regulation applicable to plumbing or water and sanitation for which the tester is subject to suspension or revocation, the General Manager shall give written notice to the applicant or certificate holder in accordance with the provisions of this section.

5408.3The notice required by § 5408.2 shall state with specificity the grounds for the suspension, revocation or denial.

5408.4Any person who has received a notice of denial, suspension or revocation may file a written notice of appeal pursuant to chapter 400 of this Title. The notice of appeal shall be filed no later than fifteen (15) days after the date of the notice of denial.

5409 ENFORCEMENT

5409.1 In the event that an Owner falls to: allow inspections; comply with any requirement to install required devices; report test results; install, repair, maintain or test a backflow preventer; fails to maintain a private water system so as to prevent a cross connection; fails to maintain a private water system in accordance with these regulations; or fails to comply with a notice, direction or order of the General Manager issued pursuant to these regulations, WASA may do the following:

- (a) Immediately terminate the water supply property;
- (b) Refuse to establish a water and sewer account for the property;
- (c) Refuse to supply water and sewer service to the property; or
- (d) Request that the building permit for the property be rescinded and not reinstated until the necessary backflow preventers are installed and inspected.

5410 RIGHT TO CHALLENGE PRACTICABILITY AND NECESSITY TO PROTECT PUBLIC HEALTH AND SAFETY, IMMINENT THREAT, AND PREVENTION DEVICE DETERMINATIONS

5409.2 The Owner of an identified property may contest any of the following determinations made by the General Manager:

- (a) Whether the installation of a backflow prevention device is practicable and necessary to protect the Potable Water System from contamination pursuant to § 5403.1 of this chapter;
- (b) Whether there is an imminent threat to the public health pursuant to § 5405.1 of this chapter; or
- (c) The type of preventive device determinations made made by the General Manager pursuant to § 5403.2 of this chapter by following the procedures set forth in chapter 400 of this subtitle.

5411 DEFINITIONS

When used in this chapter, the following words and phrases shall have the meanings ascribed:

Backflow – a reversal of the flow of water caused by a loss in water pressure. This reversal may allow other liquids, gases or mixtures of substances to enter into the potable water supply.

Backflow Preventer – a device approved by the General Manager or his or her designee for a water supply pipe to prevent the backflow of water into the water supply system from the connections on its outlet end.

Contaminant – any substance in the Potable Water Supply that creates a hazard to human health when its level exceeds the standards established under the Safe Drinking Water Act, 42 U.S.C. § 300 (f) et. Seq..

Cross-connection – an actual or potential link between any part of a potable water system and any other environment of liquid, gas, solid or mixture of substances in a manner that, under any circumstances, would allow such substances to enter the potable water system.

General Manager – the chief administrative officer of the District of Columbia Water and Sewer Authority of his or her designee.

Interior Plumbing – part of plumbing system that includes the water supply to the building and distribution pipes within the building or premises; plumbing fixtures and traps; soil, waste and vent pipes; and sanitary and storm sewers and building drains; including their respective connections, devices and appurtenances within a building or premises.

Owner – any individual, corporation, association or partnership listed as the legal titleholder of record or his or her agent, including where appropriate, agents and agencies of the government of the United States of America.

Pollutant – any substance in the water supply that renders it to be unsuitable or unacceptable for drinking.

Potable Water Supply – water distributed by WASA that meets the requirements of the Safe Drinking Act (42 U.S.C. §300(f) et. Seq.) and is otherwise suitable and acceptable for drinking.

Private Water System – the water service pipe, water distribution pipes, any necessary connecting pipes, fittings, control valves, hydrants, and all appurtenances in or adjacent to the building(s) or premises.

WASA – the District of Columbia Water and Sewer Authority or its lawful agent, representative, successor in interest, assign or designee.