

City of Henderson, Department of Utility Services Cross-Connection Control Program Enforcement Response Plan

1. Purpose of CCC Program

The City of Henderson ("COH" or "City") has developed and enforces a Cross-Connection Control Program ("CCC Program" or "Program") to enable the City to comply with requirements in Nevada Administrative Code (NAC) 445A, to protect the City's public water system, and to prevent cross-connections, defined as a physical connection between the public water system and a possible source of pollution or contamination. A component of this Program is the Henderson Municipal Code (HMC) Chapter 14.08 ("Cross-Connection Control Regulations" or "Regulations"). Through its CCC Program, the City works to ensure that all water connections are identified and that the public water system is protected from any source of pollution or contamination that may be introduced into the City water system. The proper backflow prevention assembly, commensurate with the degree of hazard, is required to be installed at all customer water connections (domestic, irrigation, and fire systems). Hazard types include, but are not limited to:

- Irrigation
- Fire Suppression
- Medical/Dental Facilities
- Pharmaceutical Facilities
- Automotive
- Food or Beverage Processing
- Office/Retail

CCC staff in the City's Department of Utility Services ("DUS") administers the City's Program.

2. Delegation of CCC Program Administration, Implementation, and Enforcement

HMC 14.08 provides that the Director of DUS ("Director") administers, implements, and enforces the Regulations and that "[a]ny powers granted or duties granted to or imposed upon the director or the department may be delegated by the director to other persons acting in the beneficial interest of the city."

HMC 14.21 provides:

An enforcement official has the authority to determine whether a violation of title 14 of the Code exists and to take appropriate action to gain compliance with the provisions of title 14 of the Code. These powers include the power to impose administrative fines, to issue notices of violation, to have the city take corrective

action, to issue notices and orders, to order and conduct a show cause hearing, to inspect public and private property, to order abatement of a violation, and to use any remedy that is available in title 14 of the Code, in another provision of the Code, and in Nevada law. "Enforcement official" shall mean the director and any director designee.

The Director has formally delegated the authority to administer, implement, and enforce HMC Chapter 14.08 and designated who has authority to act as an "enforcement official" in the Delegation of Authority for Administration, Implementation, and Enforcement of HMC Chapter 14.08.

3. Purpose of ERP

This CCC Program Enforcement Response Plan ("ERP") describes how CCC staff will manage enforcement of the Cross-Connection Control Regulations and respond to instances of noncompliance and is intended to provide enforcement guidelines for CCC staff that result in consistent, timely, and appropriate responses to noncompliance. The City reserves the right to revise the ERP at any time.

4. Program Enforcement

A. Applicability

The Regulations apply to any person, governmental entity, or property owner with a property or premise that has a commercial meter or commercial connection to the public water system, to any property or premise that has a commercial meter or commercial connection to the public water system, and to any backflow prevention assembly company or tester that provides, or wishes to provide, backflow prevention assembly testing in the City. HMC 14.08 prohibits the introduction of any pollution or contamination into the public water system and applies to any person and governmental entity.

B. Violations Generally and Factors in Selecting the Appropriate Response

Violation of a Regulation may range from a minor violation to a significant violation. A violation occurs whenever a person subject to the Regulations performs an act that is prohibited, or fails to perform an act that is required, by a Regulation. Each instance of noncompliance is a violation and as such will be reviewed and separately addressed, as determined by CCC staff.

CCC staff should select the appropriate enforcement response after considering various factors (referred to as the "Factors"):

1. *Magnitude of the Violation*

Generally, an isolated instance of noncompliance can be met with a warning letter, notice of violation, or notice of violation and administrative fine. However, because even an isolated violation could threaten public health or the integrity of the CCC Program, the enforcement response to this type of violation might be escalated to:

- Mitigate the violation quickly;
- Prevent a reoccurrence of violation(s);
- Provide an appropriate level of response; and/or
- Provide for cost recovery as appropriate.

2. ***Duration of the Violation and Compliance History***

CCC staff should review the compliance history of the person responsible and the subject property, as well as the effectiveness of the enforcement response that was used for any previous violation. The City's response to these situations should be designed to prevent extended periods of noncompliance from recurring.

3. ***Apparent Good Faith of Responsible Personnel***

The responsible person's "good faith" in correcting its noncompliance is a factor in determining which enforcement action to take. "Good faith" is generally the responsible person's honest intention to remedy their noncompliance coupled with actions that give support to this intention. A responsible person can demonstrate good faith by responding promptly to requests from the City, consistently complying with the Regulations, aggressively investigating and correcting violations, and demonstrating a willingness to invest the necessary resources to achieve compliance. However, good faith does not eliminate the necessity of an enforcement action (which documents the event and respective response(s) and corrective action(s)).

If the responsible person is attempting in good faith to comply with requirements, enforcement actions will be conducted on a more cooperative level than if they are not making good faith compliance efforts. Prompt, vigorous, and possibly costly measures (such as installation or repair of a backflow prevention assembly) must be initiated and completed by the responsible person as promptly as possible.

4. ***Effect of the Violation on the Public Water System***

The primary objective of the CCC Program is to protect the public water system from pollution and contamination through a connection to the public water system. Consequently, any violation that results in water reversing back into the public water system from the customer's side of the point of connection or results in pollution or contamination entering into the public water system should be met with an escalated enforcement response to ensure compliance is achieved promptly. In some cases, criminal prosecution and/or injunctive measures will also be appropriate.

5. ***Failure to Comply with Deadlines or Milestones***

In determining which enforcement action to take, the City will factor in milestones missed, a failure to submit a report(s) on time or in compliance with reporting requirements, and a failure to meet any required deadlines and/or milestones. Postmark dates or, as applicable, are accepted as meeting required reporting dates unless otherwise specified in the Regulations or in the notice of violation.

C. Primary Components to Administrative Enforcement of the Regulations

Although CCC staff may use any enforcement tools in the Cross-Connection Control Regulations and/or in HMC Chapter 14.21, there are six (6) primary components to administrative enforcement of the Regulations, as set forth below. The letter notices and Notice of Violation (NOV) with administrative fine will be signed by CCC staff to whom the Director delegated authority to act as the "enforcement official." The "Anniversary Date" is the annual date assigned by DUS to each backflow prevention assembly device for required testing per HMC 14.08. The "Compliance Deadline" is the date by when the customer/person responsible must achieve compliance/correct the violation.

1. **Courtesy Notice Letter**

- a. *Applicable Regulations:* Backflow prevention assembly(ies) must be tested by a DUS-authorized tester annually by the Anniversary Date¹ and within five (5) business days of completing the test(s), that tester must submit the test report(s) to the CCC Program. "If a backflow prevention assembly(ies) fails testing, then within seven days of failing the testing the customer must cause (1) that assembly to either be repaired with original equipment manufacturer ("OEM") parts or be replaced with a department-approved assembly and (2) the repaired or replaced assembly retested by a department-authorized tester." [Reference: HMC 14.08]
- b. *Description:* CCC staff will send the customer a Courtesy Notice letter, reminding them that, by the customer's Anniversary Date, their backflow prevention assembly(ies) must be tested by a tester on the DUS list of authorized testers and, within five (5) business days of completing the particular test, the DUS-authorized tester must submit the test report(s) to CCC Program. That letter will also remind the customer that, if an assembly fails testing, then ALL of the following must occur within 21 days of the submitted failed test: the assembly must be replaced/repared, the assembly must be retested by a DUS-authorized tester, and that tester must submit to CCC staff a passing test report for the assembly.
- c. *Timing and Typical Compliance Deadlines²:* CCC staff will send this Courtesy Notice letter approximately 45 days before the customer's Anniversary Date. The customer must have a DUS-authorized tester test all backflow prevention assembly(ies) by the Anniversary Date. For any assembly that did not pass, then within 21 days of the failed test, all of the following must occur: the assembly

must be replaced/repaired, the assembly must be retested by a DUS-authorized tester, and that tester must submit to the CCC Program a passing test report for the assembly.

2. **Past Due Notice Letter**

- a. *Applicable Regulations:* Backflow prevention assembly(ies) must be tested by a DUS-authorized tester annually by the Anniversary Date and within five (5) business days of completing the test(s), that tester must submit the test report(s) to the CCC Program. "If a backflow prevention assembly(ies) fails testing, then within seven days of failing the testing the customer must cause (1) that assembly to either be repaired with original equipment manufacturer ("OEM") parts or be replaced with a department-approved assembly and (2) the repaired or replaced assembly retested by a department-authorized tester." [HMC 14.08]
- b. *Description:* CCC staff will send the customer a Past Due Notice letter, informing the customer that they are not in compliance because the City's records indicate that one or more annual tests for their assembly(ies), test reports, and/or delivery of the test report(s) to the CCC Program are past due and giving the customer 21 days of the date on that letter to have each backflow prevention assembly tested, any repairs/replacements performed, retesting performed, and a passing test report submitted by their DUS-authorized tester to the CCC Program.
- c. *Timing and Typical Compliance Deadline:* CCC staff will send this Past Due Notice letter approximately seven (7) days after the customer's Anniversary Date passes and the City did not receive the required test report. Within 21 days of the date on the notice letter, the customer must complete all of the following: have each assembly tested, have any repairs/replacements performed, have each assembly retested by a DUS-authorized tester, and have that tester submit a passing test report to the CCC Program.
- d. *Exception:* Depending on one or more of the Factors above, CCC staff may skip sending this Past Due Notice letter and escalate administrative enforcement to a Notice of Violation with an administrative fine or Notice of Termination of Service.

3. **Notice of Improper Backflow Assembly (BFA)**

- a. *Applicable Regulations:* An unapproved or incorrectly installed device is considered an Improper Backflow Prevention Assembly (BFA). It is the owner's responsibility to correct the improper device and/or installation for compliance. [NAC 445A]

Examples of an Improper BFA are as follows:

- No protection (device not installed).

- Incorrect device type for identified application.
 - Incorrect installation.
- b. *Description:* CCC staff will send the customer a Notice of Improper BFA letter, informing the customer that they are not in compliance because the City's records indicate that an unapproved or incorrectly installed assembly is present, giving the customer 14 days of the date of the date on that letter to contact CCC staff to schedule a site survey to identify the necessary corrective action(s).
- c. *Timing and Typical Compliance Deadline:* CCC staff will send this Notice of Improper BFA letter within three (3) days of the infraction being reported/discovered. Within 14 days of the date on the notice letter, the customer must contact CCC staff and schedule a site survey to identify the necessary corrective action(s).
- d. *Exception:* Depending on one or more of the Factors above, CCC staff may skip sending this Notice of Improper BFA letter and escalate administrative enforcement to a Notice of Violation with an administrative fine or Notice of Termination of Service.
4. **Repair Notice Letter**
- a. *Applicable Regulations:* "If a backflow prevention assembly(ies) fails testing, then within seven (7) days of failing the testing the customer must cause (1) that assembly to either be repaired with original equipment manufacturer ("OEM") parts or be replaced with a department-approved assembly and (2) the repaired or replaced assembly retested by a department-authorized tester." [HMC 14.08]
- b. *Description:* CCC staff will send the customer a Repair Notice letter, informing the customer that they are not in compliance because the City's records indicate that one or more assembly(ies) failed testing and CCC staff has not received a passing test report within seven days of the assembly(ies) failing testing and giving the customer 14 days of the date on that letter to come into compliance. A Repair Notice letter might also be sent if a repair must be made to the assembly enclosure or if there is an issue with accessibility to the assembly or assembly enclosure.
- c. *Timing and Typical Compliance Deadline:* CCC staff will send this Repair Notice letter approximately ten (10) days after CCC staff received the failed test report or the assembly(ies) failed testing, whichever date is earlier, or CCC staff discovered there was a problem with the assembly enclosure or had a problem accessing the assembly enclosure (i.e. interference with City's right to access under HMC 14.08). Within 14 days of the date on the letter notice, the customer must complete all of the following, as applicable: (1) have the assembly repaired/replaced, have the assembly retested by a DUS-authorized tester, and have that tester submit a passing test report to the CCC Program; (2) repair the

assembly enclosure so that it is in working order and CCC staff can access it; or (3) fix the accessibility issue with the assembly enclosure so that CCC staff can access the enclosure and assembly.

- d. *Exception:* Depending on one or more of the Factors above, CCC staff may skip sending this Repair Notice letter and escalate administrative enforcement to a Notice of Violation with an administrative fine or Notice of Termination of Service.

5. **Notice of Violation (NOV) and Assessment of Administrative Fine(s)**

- a. *Applicable Regulations:* When a person does an act prohibited by a provision in the Regulations or fails to perform an act required by a provision in the Regulations, that person is subject to all compliance procedures in the Regulations and HMC Chapter 14.21, including the City taking administrative enforcement through an NOV and assessment of an administrative fine. [Reference: HMC 14.08, HMC 14.21, and HMC Table 14.21.050(a)]
- b. *Description:* Using one of two templates, CCC staff will generate and send to the customer or person responsible an NOV that includes an administrative fine(s) that is assessed in accordance with the fine table in HMC 14.21.050(A) (excerpted below) and accounts for the severity level of the violation(s). If the violation is continuous as to time, fines will accrue daily until compliance is met. If the customer/person responsible is a “user” (defined in HMC 14.01) and not the owner of the property, and the violation relates to utility service at the property, the NOV must also go to the property owner. [Reference: HMC 14.21]
- c. *Timing and Typical Compliance Deadline:* If the City does not receive a passing test within 21 days after sending a Past Due Notice letter, the enforcement official will send the NOV with administrative fine(s). Depending on one or more of the factors above, CCC staff may go directly to issuing an NOV and administrative fine(s) for any violation, including failure to timely perform annual testing. The Compliance Deadline is typically 21 days. The enforcement official has the discretion to waive the administrative fine(s) if the customer or person responsible achieves the milestone(s) by the deadline(s) set forth in the NOV and achieves full compliance by the deadline(s) in the NOV.

6. **Termination of Service**

- a. *Applicable Regulations:* When a person does an act prohibited by a provision in the Regulations or fails to perform an act required by a provision in the Regulations, that person is subject to all compliance procedures in the Regulations and HMC Chapter 14.21, including the City taking administrative enforcement by terminating service with or without notice. [Reference: HMC 14.08 and HMC 14.21]

- b. *Description:* If compliance is not achieved through previous notifications to the customer/person responsible (and owner of the property) or if previous notifications were not sent but the violation(s) represent(s) an endangerment to public health, the environment, or the public water system, the City may terminate water service to the customer, property, and premise.
- c. *Timing (Compliance Deadline, 5 Days):* The City will send a Notice of Termination of Service to the customer/person responsible (and owner of the property) by mail and call the customer/person responsible and owner of the property, advising the customer/person responsible (and owner of the property) that water service will terminate in five (5) days, *unless* the violation is corrected to CCC staff's satisfaction by the Compliance Deadline.
- d. *Timing (Compliance Deadline, 0 Days):* If there is a confirmed cross connection with a backflow event, then CCC staff may immediately terminate service to that customer, property, and premise. Within a reasonable time thereafter must send a written Notice of Termination of Service to the customer/person responsible (and owner of the property) by mail and call the customer/person responsible and owner of the property, advising them of the termination of service.
- e. *Resumption of Service and Other Measures:* "The City is not obligated to resume or re-establish service until after all violations are corrected to the director's satisfaction, all delinquent fees, rates and charges are paid to the city, and all administrative fine amounts due and owed to the city are paid." The City may take other compliance measures and exercise any other remedies available to the City under the Regulations and HMC Chapter 14.21. [Reference: HMC 14.08 and HMC 14.21]

D. Compliance Deadlines

In connection with administrative enforcement of the Regulations, CCC staff will typically use the following Compliance Deadlines:

Administrative Enforcement Type	Compliance Deadline
Courtesy Notice Letter	Anniversary Date (perform test) 21 days of failed test (replace/repair, retest, and passing report submitted)
Past Due Notice Letter	21 days of date on letter
Notice of Violation and Admin Fine(s)	21 days of date on letter
Termination of Service	0 days or 5 days of date on letter
Repair Notice Letter	14 days of date on letter

Based on the particular circumstances, to achieve compliance, and consistent with CCC Program requirements, CCC staff may use a different Compliance Deadline(s), establish milestones, and set Compliance Deadlines for each milestone.

E. Assessing Administrative Fines

When issuing an NOV, CCC staff may also assess an administrative fine(s) and If compliance is not met through prior enforcement actions of non-compliance notifications, the City has the authority to pursue additional enforcement action by issuing daily administrative fines in accordance with the below table (HMC 14.21.050a). If the person issued a notice of violation is the owner of commercial property and the violation concerns that commercial property, then the administrative fine shall be doubled.

Table 14.21.050a

	First Violation	Second Violation	Third and Subsequent Violation(s)
Severity Level 1	\$100.00	\$200.00	\$300.00
Severity Level 2	\$200.00	\$300.00	\$400.00
Severity Level 3	\$300.00	\$400.00	\$500.00
Severity Level 4	\$500.00	\$500.00	\$500.00

With respect to violations that are continuous with respect to time, each day that the violation continues is a separate violation. With respect to violations that are not continuous with respect to time, each prohibited act and/or each failure to perform a required act is a separate violation. [Reference HMC 14.21]

Severity Levels Described

When assessing an administrative fine for a violation of a Regulation, the City assigns a severity level, ranging from Level 1 for those that are more of a minor concern to Level 4 for the most significant and taking into account the Factors above.

Severity Level 1 typically relates to violations regarding:

- Pressure Vacuum Breaker (PVB) or other miscellaneous device types, such as a Single Check (Swing Check).
- Failing to perform annual testing by the Anniversary Date or other deadline required by DUS under HMC 14.08.
- Failing to have a backflow prevention assembly(ies) test performed at the time of installation or after any maintenance, repair, or relocation of the assembly(ies).

- Failing to have a DUS-authorized tester submit the test report(s) to the CCC Program within five business days of the tester completing the test on the backflow prevention assembly(ies).

Severity Level 2 typically relates to violations regarding:

- Double Check Valve (DC), Double Check Detector Assembly (DCDA), Double Check Detector Assembly - Type II (DCDA-II) device types.
- Failing to have a backflow prevention assembly(ies) tested by a tester on the DUS list of authorized testers.
- After a backflow prevention assembly(ies) failed testing, failing to have the backflow prevention assembly(ies) repaired with original equipment manufacturer parts or replaced with a DUS-approved assembly within seven days of the assembly failing the testing.
- Failing to maintain full and complete records relating to the installation, testing, repair, maintenance, and replacement of all backflow prevention assembly(ies) ("Records") for a period of five (5) years.

Severity Level 3 typically relates to violations regarding:

- Reduced Pressure Principle Assembly (RPPA), Reduced Pressure Detector Assembly (RPDA), and Reduced Pressure Detector Assembly - Type II (RPDA-II) device types.
- Failing to design, install, and/or place into operation a backflow prevention assembly(ies) in compliance with notice provided by DUS.
- Failing to provide Records to DUS or make them available for City inspection upon the City's request.
- Failing to maintain full and complete records relating to the installation, testing, repair, maintenance, and replacement of all backflow prevention assembly(ies) ("Records") for a period of five (5) years.

Severity Level 4 typically relates to violations regarding:

- Air Gap device types.
- Connecting to the public water system without advance DUS authorization, without complying with all requirements in HMC Title 14 applicable to that connection and the CCC Program, and/or without protecting the public water system from a cross-connection in accordance with all federal, state and local requirements.
- Allowing water that passed from the public water system through the point of connection to reverse back into the public water system.
- Introducing pollution or contamination into the public water system.
- Failing to maintain full and complete records relating to the installation, testing, repair, maintenance, and replacement of all backflow prevention assembly(ies) ("Records") for a period of five (5) years.

F. Miscellaneous Guidelines in Connection with Assembly Repair or Replacement

Approved Device Types

Only devices listed on the most current Foundation for Cross-Connection Control and Hydraulic Research at the [University of Southern California \(USC\) list of approved backflow assemblies](#), are acceptable for use within the City of Henderson. If it is impracticable or impossible to perform a site survey inspection of the customer's water system in order to determine the approved backflow prevention assembly appropriate for the degree of hazard, then all pre-existing devices such as Single Check, DC, DCDA, and PVB's shall be replaced with a RPPA or RPDA at the device's end-of-life, or due to tenant improvements (TI). All backflow assembly valves 3" and larger are required to be an Outside Stem & Yoke (OS&Y) configuration. All enclosures are required to have ASSE 1060 Class II certification.

Approved Installation Methods

Proper installation methods can be found in the Uniform Design and Construction Standards (UDACS) for potable water systems within the Big Bend Water District, Boulder City, City of Henderson, Las Vegas Valley Water District, and City of North Las Vegas jurisdictions.

G. Request for Reconsideration/Appeals

A person that violates a provision of HMC Chapter 14.08 or a customer directly aggrieved by an enforcement action taken by the City under HMC 14.21 may file a request for reconsideration under and in accordance with HMC 14.21. That request for reconsideration must be in writing and, to be timely, must be received by the Director on or before the 11th day after the City takes the action or makes the decision that the aggrieved person would like reconsidered.

If a decision made by the Director in accordance with HMC 14.21 is unsatisfactory to the aggrieved person requesting reconsideration, that aggrieved person may, within 11 days after receiving the Director's decision, appeal that decision to the City Manager. That appeal must comply with the requirements in HMC 14.21.

HMC 1.03.010 addresses computation of time.

H. Request for Administrative Hearing

The person cited in the NOV and/or the property owner (if the person cited is a user and not the owner of the property and the violation relates to utility services at the property) may dispute that NOV by requesting an administrative hearing before the DUS hearing officer in accordance with HMC 14.21 and by the NOV Correction Deadline.