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TO: Carmily Stone, Bureau Chief
Randall Lane, Backflow Prevention Assembly
Tester Registration Program

FROM: Heather Adams, Assistant Attorney General *HA*

RE: Backflow Prevention Assembly Testers and Plumbers

DATE: April 18, 2013

You have asked a number of questions regarding the related practices of backflow prevention assembly testing and plumbing, specifically: (1) whether a backflow prevention assembly tester who is registered under Iowa Code chapter 135K is also required to be licensed as a plumber under chapter 105 in order to test and repair backflow prevention assemblies; (2) whether a backflow prevention assembly tester who is registered under Iowa Code chapter 135K is also required to be licensed as a plumber under chapter 105 in order to install or replace backflow prevention assemblies; and (3) whether a plumber licensed under chapter 105 may test and repair backflow assembly devices without also being registered as a backflow assembly tester under chapter 135K.

It is my opinion based on the following authorities that (1) a registered backflow prevention assembly tester is not required to be licensed as a plumber in order to test and repair backflow prevention assemblies; (2) a registered backflow prevention assembly tester is required to be licensed as a plumber to install or replace backflow prevention assemblies; and (3) a licensed plumber is required to be registered as a backflow assembly tester to test and repair backflow assembly devices.

For over twenty years Iowa law has provided that a person "shall not test or repair backflow prevention assemblies without first having registered with and having been approved by the department." Iowa Code § 135K.3. A backflow prevention assembly is defined as "a device or means to prevent backflow into the potable water system for which a method of testing the device in-line has been published by the Foundation of Cross-Connection Control and Hydraulic Research at the University of Southern

California.” Iowa Code § 135K.1(2); 641 IAC 26.2.¹ Persons seeking registration as a backflow prevention assembly tester are required to successfully complete an approved course covering the repair and testing of backflow prevention assemblies, and to comply with standards of conduct specific to backflow prevention assembly testing. Iowa Code § 135K.1; 641 IAC 26.5 & 26.6.

¹ The following assemblies are **included** under this definition:

| Backflow Prevention Assembly | Product Standards |
|---|------------------------------|
| Double Check Valve Assembly | ASSE 1015-2009, AWWA C510-07 |
| Double Check Detector Assembly | ASSE 1048-2009 |
| Pressure Vacuum Breaker | ASSE 1020-2004 |
| Reduced Pressure Principle Backflow Preventer | ASSE 1013-2009, AWWA 511-07 |
| Reduced Pressure Detector Assembly | ASSE 1047-2009 |
| Spill Resistant Pressure Vacuum Breaker | ASSE 1056-2001 |

The following devices are **excluded** from this definition:

| Std # | Standard Title |
|--------------|---|
| 1001-2008 | Atmospheric Type Vacuum Breakers |
| 1002-2008 | Anti-Siphon Fill Valves for Water Closet Tanks |
| 1004-2008 | Backflow Prevention Requirements for Commercial Dishwashing Machines |
| 1011-2004 | Hose Connection Vacuum Breakers |
| 1012-2009 | Backflow Preventers with Intermediate Atmospheric Vent |
| 1014-2005 | Backflow Prevention Devices for Hand-Held Shower |
| 1019-2011 | Wall Hydrant with Backflow Protection and Freeze Resistance |
| 1021-2001 | Drains Air Gaps for Domestic Dishwasher Applications |
| 1022-2003 | Backflow Preventer for Beverage Dispensing Equipment |
| 1024-2004 | Dual Check Backflow Preventers |
| 1032-2011 | Dual Check Valve Type Backflow Preventers for Carbonated Beverage Dispensers, Post Mix Type |
| 1035-2008 | Laboratory Faucet Backflow Preventers |
| 1037-1990 | Pressurized Flushing Devices (Flushometers) for Plumbing Fixtures |
| 1052-2004 | Hose Connection Backflow Preventers |
| 1053-2004 | Dual Check Backflow Preventer Wall Hydrants - Freeze Resistant Type |
| 1055-2009 | Chemical Dispensing Systems |
| 1057-2012 | Freeze Resistant Sanitary Yard Hydrants with Backflow Protection |
| PS 23-2006a | Dishwasher Drain Airgap |
| PS 65-2002 | Airgap Units for Water Conditioning Equipment Installation |

In 2007, the Iowa General Assembly passed the Iowa Plumber, Mechanical Professional, and Contractor Licensing Act at Iowa Code Chapter 105. The Act provides in part that a person shall not “install or repair plumbing” without obtaining a license from the Plumbing and Mechanical Systems Board. Iowa Code § 105.10(1). “Plumbing” is defined to include “all potable water building supply and distribution pipes, all plumbing fixtures and traps, all drainage and vent pipes, and all building drains and building sewers, storm sewers, and storm drains, including their respective joints and connections, devices, receptors, and appurtenances within the property lines of the premises, and including the connection to the sanitary sewer, storm sewer, and domestic water mains.” Iowa Code § 105.2(15). The Act does not expressly refer to backflow prevention assemblies or Iowa Code chapter 135K.

The scope of practices as detailed in the respective statutory schemes support a finding that backflow prevention assembly testers may test and repair backflow assemblies but may not expand their scope of authorized activities to include installation or replacement of these devices. Iowa Code § 135K.3. Installing and replacing these devices involves “breaking the line” so as to be defined as the practice of “plumbing” in chapter 105 for which a license is required. Iowa Code §§ 105.2(15), 105.10(1).

Likewise, the two statutory schemes support a finding that a licensed plumber may not test or repair a backflow prevention assembly without being registered to do so. Chapter 105 authorizes licensed plumbers to “install and repair plumbing” but does not authorize the testing or repair of backflow prevention assemblies. Iowa Code § 105.10.

Additionally, when there is ambiguity between two code chapters and uncertainty in their application, we follow established rules of statutory construction to interpret and apply the chapters. The determination that backflow prevention assembly testers are not required to be licensed plumbers in order to test and repair backflow assembly devices, but that they are required to be licensed plumbers to install or replace backflow assembly devices, is supported by the following tenets of statutory construction:

- 1) Courts look to the consequences of a particular construction when interpreting statutory provisions. Iowa Code § 4.6(5). If backflow prevention assembly testers were required to be licensed as plumbers in order to test and repair backflow assemblies, such construction would render the backflow prevention chapter at 135K superfluous. A court will not construe a statute in a manner which would render it superfluous. *See Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 520 (Iowa 2012).
- 2) The backflow chapter at 135K contains the more specific provisions governing backflow prevention assembly testing and repair. When in conflict, the more specific statute governs. Iowa Code § 4.7.
- 3) A court would consider the objectives sought to be obtained by the chapters. Iowa Code § 4.6(1). In passing Iowa Code chapter 135K, the legislature sought to ensure that persons who test and repair backflow prevention

assembly devices be competent to safely do so. Registration of these individuals under chapter 135K achieves those objectives; requiring them to also become licensed as plumbers to test and repair the devices would not enhance their competency to perform backflow prevention testing and repair but would serve only to subject them to duplicative and burdensome licensing regulation.

Finally, this determination is consistent with the registration and licensure requirements of surrounding states: for example, the states of Minnesota, Missouri, and Wisconsin authorize backflow prevention testers to test and repair backflow prevention assemblies without a plumber's license but require testers to be licensed plumbers to install or replace backflow devices.

Please note that this memorandum does not constitute a formal opinion of the Attorney General.