

Mayor and Council Questions and Staff Responses (May 19, 2025 agenda)

**Questions from Mayor Ashton regarding consent item C scheduled for May 19, 2025:
Authorization to Sign the EPA Administrative Order of Consent (AOC).**

Question 1. Are there any water safety impacts for our community?

Response: No, there are no drinking water safety impacts. Chapter 5 of the city code proscribes when backflow assemblies are required and there has been no backflow related water safety incident reported within the city. Implementation of a comprehensive Cross Connection Control Program (CCCP) is a preventative measure to ensure that backflow assemblies are installed and operating on all equipment within buildings to protect the potable water supply for City of Rockville water customers.

Question 2. Is it possible to get a briefing on this so that we can better understand some of the recent violations?

Response: This violation is explained here in detail. It stems from an EPA inspection that occurred on March 20 through 22, 2023 and is not a new issue, nor one that can be resolved quickly. Staff developed and began implementing the Cross Connection Control Program soon after the EPA inspection and well before issuance of the NOV or AOC. EPA conducted an announced inspection of the system to determine compliance with the Safe Drinking Water Act (SDWA) as well as the Maryland drinking water regulations. EPA did not issue the Notice of Violation until July 31, 2024, then the draft AOC on April 15, 2025, and the final AOC on May 1, 2025.

The Notice of Violation (NOV) issued on July 31, 2024 cited two issues:

- (a) not having a formal cross connection control plan (CCCP) approved by the Maryland Department of the Environment (MDE); and
- (b) not fully implementing a cross connection control plan.

Subsequent interactions with EPA and MDE include:

- On August 5, 2024, DPW staff resubmitted the City's CCCP to MDE after learning that the MDE staff member that received the City's CCCP in May 2024 is no longer working at MDE. MDE provided a new contact for the Regulatory and Compliance Engineer assigned to review the plan. On August 9, 2024, MDE confirmed receipt and approval of the CCCP.
- DPW staff met with EPA and MDE staff on August 12, 2024, to confer and discuss the City's plan for compliance. At the City requested meeting, EPA confirmed that since MDE approved the City's CCCP that the City was now in compliance with the first requirement of the NOV (item a). DPW staff also informed EPA and MDE that the City's FY 25 budget included a now filled 0.5 FTE senior environmental compliance inspector that will administer the CCCP. EPA acknowledged that the City is making progress in implementing the cross-connection control plan (item b); however, the NOV requires compliance with implementing the CCCP within 30 days of the July 22, 2024, NOV issuance. Because full

implementation of the program (completion of the inventory and inspection and enforcement of more than 1,000 commercial buildings) is not possible within 30 days, EPA indicated it would issue an Administrative Order on Consent (AOC) to ensure the City fully implements the CCCP in accordance with the approved plan.

- On October 8, 2024, EPA sent an email to staff indicating the draft AOC is going through internal review.
- EPA shared the draft AOC with staff on April 15, 2025 for the city to review. EPA requested the City's proposed changes be shared by April 29, 2025.
- Staff reviewed the AOC and determined that the CCCP plan needed to be updated to reflect the City's change to include more in-house administration of the program. The City submitted a CCCP plan revision to the Maryland Department of the Environment (MDE) on April 23, 2025, and MDE approved the revised plan on April 25, 2025.
- On April 29, 2025, the staff sent EPA the proposed revisions to the AOC and the updated CCCP plan that was approved by MDE.
- On April 30, 2025, EPA indicated there were no objections to the edits to the AOC and they would process the document for signature.
- On May 1, 2025, EPA shared the document for signature and staff scheduled the item for the May 19th Mayor and Council Agenda for authorization.

Question 3. Has the City's response to this matter been as timely as it should be? Based on the report it looks like the EPA sent an AOC to staff. From previous updates, we were informed that actions were being taken to address, so I was concerned when I read about the EPA issuing an AOC early last month. The report notes that "this was issued because the City has not yet fully implemented its cross-connection control program to protect our drinking water supply. The AOC requires us to implement our Cross Connection Control Prevention Plan (CCCPP) which was submitted and approved by the Maryland Department of the Environment (MDE) on August 8, 2024. The CCCPP was recently amended to account for administration in-house and was resubmitted and approved by MDE on April 25, 2025."

Response: The time lag from the original inspection/NOV and the draft AOC is almost entirely dependent on EPA. The original inspection of our water systems occurred in the spring of 2023. It was not until the following year that EPA met with DPW staff to discuss our CCCP. DPW staff received the draft AOC in April 2025 and the final AOC in May 2025. Immediately after the March 2023 inspection when staff was alerted to potential issues with its Cross Connection Control Program by inspectors, staff developed a program implementation plan. This includes:

- Developed budget proposals in 2024 and received FY 2025 budget appropriation for 0.5 FTE and contractor support for CCCP implementation.
- Development and MDE approval of the Cross Connection Control Plan (8/9/2024 and amended on 4/25/25)

- Hired a 0.5 FTE in July of 2024, the first month it was added to the budget, to inspect all commercial buildings in the City. After assessing the workload after six months of implementation, the FY 2026 budget increases this position to 1.0 FTE.
- The FY 2025 budget appropriated funding for contractor support to gather existing backflow device inventory and identify where devices are needed in existing buildings (FY2025 budget). In October 2024, the City advertised a RFP and selected a contractor in April 2025 to survey all commercial buildings for proper backflow installations and collect the inventory using geographic information systems (GIS) tools.
- Launched the cross connection website and online test report portal in December of 2024.

DPW staff has made this a high priority and responding as quickly as possible to develop an annual device testing tracking and enforcement process and complete an inventory of backflow assemblies installed in commercial facilities throughout the city including:

- Development of data collection system and tracking dashboard using the geographic information system tools.
- City staff have inspected over 142 commercial buildings and are performing enforcement to those facilities that do not comply with our code.
- Coupled with the contractor who will survey the City's entire stock of approximately 1,000 commercial buildings, our inventory is anticipated to be completed by the January 2028 deadline.

Question 4. Is the \$4,550K the total amount of fines that the City will have to pay for the violation once this is addressed?

Response: EPA has not issued a penalty fine associated with the findings from its March 2023 Safe Drinking Water Act (SDWA) related inspection. The \$4,550 payment described in the Department of Public Work's April monthly report is unrelated to this and resulted from a letter from the Maryland Department of Environment (MDE) Water Science Administration (WSA) offering a settlement for five (5) sanitary sewer overflows (SSO), which originated from the city's wastewater collection system between January 2021 and December 2024. The settlement replaces a formal enforcement action from the agency. Staff does not anticipate issuance of a notice of violation (NOV) associated with the SSOs occurring between January 2021 and December 2024 nor additional penalties.

Question 5. Are there lessons learned and systems being put in place to prevent future issues and notices of violation?

Response: City staff has now imbedded the cross connection control program in the city's operating budget, so continued funding for, and implementation of, the Cross Connection Control Program will prevent future regulatory issues. City staff is on target for meeting the deadlines of program development and implementation put forth in the AOC. The Mayor and Council have provided funding in the FY 2026 budget to support a full-time Cross Connection

Control Inspector to implement the program. Staff will reassess program needs in three years, and periodically thereafter, to ensure there are the resources needed to administer the device test report process, inspect and perform enforcement as the program continues to grow.

Question 6. If the consent agenda item is available, is there any possibility for the Mayor and Council to approve this Monday to be timelier on the response to the EPA?

Response: The City has worked in a timely manner with EPA to finalize the AOC and they have accepted the proposed schedule to request Mayor and Council authorization on May 19, 2025; which would allow us to execute the AOC later that week. Given staff thorough communication with EPA on this matter, moving the approval forward one week will not help in any meaningful manner.