# Short Note 5.2

## Broward Attorney Andrew Meyers Comments, March 1, 2002

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The following is a note received from Mr. Andrew Meyers, Broward County attorney on March 1, 2002. On my website, I said that Bill 1926 was just another way for the Department to dodge a legitimate challenge to the 1900 ft policy. The abbreviation DOAH stands for Division of Administrative Hearings.

> I *[Andrew Meyers]* could not agree with your sentiments more strongly. When we beat the Department before Judge Fleet in November 2000, they could have then come up with a rule. Instead, they appealed and obtained a reversal on a technicality. While we didn't agree with the appellate court, we followed the direction of the appellate court, which direction was based on the Department's argument. We challenged their absence of a rule in DOAH.
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> Within a month, we beat them before DOAH. The Department could again have come up with a rule. They didn't. They enacted an emergency rule, a rule which would provide little opportunity for challenge prior to tree destruction. Once again, we challenged them, both before DOAH and the 1st District Court of Appeal. Again we beat them. The 1st District stayed the emergency rule, and rather than defend the rule in court, the Department withdrew the emergency rule, tacitly admitting it could not justify its declaration of emergency.
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> Finally, the Department was forced to draft a proper rule, and would be forced to defend that rule before DOAH. Of course, prior to actually drafting the rule, and despite the "agricultural emergency of unparalleled proportions," the Department wasted our time for 3 months with hearings so it could disregard our input. The last hearing was in mid-November, and just before Thanksgiving, we filed our latest DOAH challenge, what we expected would be the final battle and our day in court regarding the rule.
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> Right away, we sought all the information the Department had which it claimed supported the rule. The Department raised dozens of invalid objections, and was overruled on virtually all of them. But the Department used common legal tactics to avoid giving us answers. As we sit here today, we still have not seen Gottwald's data base, and we have not seen the Department's CCEP data base which is allegedly in transit. Additionally, the Department opposed our effort to depose Chainsaw Charlie Bronson. When DOAH ruled that we had the right to depose Bronson, the Department appealed, and also appealed to force Judge Van Laningham from the case. Those appeals have been pending since mid-December, and the case has been stayed since then.
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> The Department's strategy came into focus soon into the legislative session. They never intended for their unsupportable rule to be subjected to court scrutiny. They were going to call on their friends in the legislature, tell them the same horror stories they have been spreading down here since 1995, and get the bill passed. Well, to their credit, they have been successful. Passage is a foregone conclusion, and even distinguished papers like the Miami Herald have jumped on the bandwagon.

> Where do we go from here? We are analyzing all of our options, and we will advise the Board of County Commissioners once our analysis is complete. We continue to prepare to go to trial. The lawyers that have worked so hard and long on this case are greatly disturbed that the Department and legislature may end up denying us our day in court. But we must also recognize that the legislature is empowered to speak for the people of Florida, and the legislature's decisions are entitled to great deference. Courts are loathe to "interfere" with political decisions, routinely stating that the remedy for such decisions rests in the ballot box, not in court houses. We have all fought a long and good fight. We must all stay positive and focused. The future is yet to be written.
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> Andrew Meyers, March 1, 2002. Broward County attorney

On March 18, 2002, Governor Bush signed the citrus canker bills into law. On May 24, 2002, Judge Fleet of Broward County Circuit Court ruled the law unconstitutional and issued a temporary injunction against healthy tree cutting. On February 12, 2004, the Florida Supreme Court ruled that healthy tree cutting was allowable as long as compensation was paid for their removal. The SC left in place the requirement of search warrants. Thus, it was neither a total win or loss for the Department. The ruling by the Supreme Court allowed healthy tree cutting to continue without any legal challenges to the scientific validity of the 1900-ft rule.

David Lord