

>> PLEASE RISE.  
SUPREME COURT OF FLORIDA IS  
AGAIN IN SESSION.  
PLEASE BE SEATED.  
>> OUR LAST CASE FOR THIS  
MORNING IS YOUNG V. STATE OF  
FLORIDA.  
YOU MAY PROCEED.  
>> YOUR HONOR, MAY IT PLEASE THE  
COURT, MY NAME IS JIM WULCHAK,  
ASSISTANT PUBLIC DEFENDER FROM  
DAYTONA BEACH, AND WE REPRESENT  
THE PETITIONER IN THIS  
DISCRETIONARY REVIEW CASE  
WHEREIN THE FIFTH DCA AFFIRMED  
HIS CONVICTION FOR BURGLARY OF A  
DWELLING AND CERTIFIED CONFLICT  
WITH MUNOZ V. STATE AND HELD  
THAT A HOUSE HAS BEEN COMPLETELY  
GUTTED FOR RENOVATION,  
MAINTAINED ITS CHARACTER AS A  
DWELLING FOR THE PURPOSE OF THE  
BURGLARY STATUTE.  
AS THE STATE NOTES, THE  
LEGISLATURE ELEVATED THE STATUS  
OF THE HOME AS AN OWNER'S  
CASTLE, REVISING THE COMMON LAW  
DEFINITION OF BURGLARY OF A  
DWELLING BY ENACTING 810.011  
WHICH UNLIKE THE COMMON LAW DOES  
NOT DEPEND ON ACTUAL OCCUPANCY  
AS THIS COURT HELD IN PERKINS V.  
STATE.  
UNDER THAT DEFINITION A BUILDING  
WHICH HAS A ROOF OVER IT AND IS  
DESIGNED TO BE OCCUPIED BY  
PEOPLE LODGING THEREIN AT NIGHT  
IS A DWELLING.  
THIS COURT NOTED IN PERKINS THAT  
UNDER THE STATUTORY DEFINITION  
THE DESIGN OF THE BUILDING, UM,  
IS PARAMOUNT.  
>> SO WHY DOESN'T THIS BUILDING,  
STRUCTURE IN THIS CASE FIT THE  
VERY DEFINITION THAT YOU'RE  
TALKING ABOUT?  
>> WELL, WE SUBMIT THAT AS THE  
COURT NOTED IN PERKINS, THE  
CHARACTER OF THE BUILDING MAY BE  
CHANGED.  
CERTAINLY, THE LEGISLATURE DID  
NOT INTEND TO GIVE GREATER  
PROTECTION OR GREATER PUNISHMENT  
TO PEOPLE WHO BREAK INTO A  
BUILDING THAT USED TO BE A HOUSE  
WHEN IT WAS BUILT IN THE LATE  
1800s BUT HAS NOW BEEN

CONVERTED INTO A DOCTOR'S OFFICE  
OR TO AN ATTORNEY'S OFFICE.  
>> WHY DON'T WE JUST TALK ABOUT  
THIS CASE.  
THIS IS NOT A SITUATION WHERE IT  
WAS A HOUSE THAT'S NOW BEING  
RENOVATED TO DO SOMETHING ELSE,  
THIS IS A HOUSE THAT WAS BEING  
RENOVATED, AND THE RENOVATIONS  
WERE SUBSTANTIALLY COMPLETE.  
SO WHY ISN'T THIS A DWELLING?  
>> WE SUBMIT THAT ONCE THE HOME  
IS GUTTED, IT NO LONGER HAS THAT  
DESIGN ANYMORE.  
IT'S A BLANK SLATE THAT CAN BE  
WRITTEN ON AND CHANGED.  
AND --  
>> AND WAS THIS HOUSE GUTTED, OR  
WAS THIS HOUSE SUBSTANTIALLY  
FINISHED?  
>> THIS HOUSE, IT WAS THE  
TESTIMONY BY THE CONTRACTOR THAT  
WAS WORKING THERE INDICATED THAT  
THE HOUSE HAD BEEN GUTTED FOR  
RENOVATIONS, AND BY THE  
DEFINITION OF "GUTTED," THAT'S  
TEARING OUT THE ENTIRE INTERIOR.  
WE SUBMIT THEN THAT BECAUSE IT  
HAD BEEN GUTTED, IT NO LONGER AT  
THAT TIME WAS DESIGNED --  
>> BUT DOESN'T THE TESTIMONY  
INDICATE THAT THEY HAD DONE A  
RENOVATION, BUT IT WAS ABOUT  
FINISHED?  
>> THAT --  
>> SO IT'S NOT, IT'S NOT, I  
MEAN, IT'S LIKE ANY DWELLING AT  
SOME POINT WOULD NOT -- WOULD  
HAVE NOT BEEN COMPLETED, BUT I  
DON'T -- THE FACTS HERE SEEM TO  
BE A LITTLE DIFFERENT.  
WHEN YOU TALK ABOUT IT HAVING  
BEEN GUTTED, YOU SOUND LIKE IT  
IS CURRENTLY IN A STATE OF BEING  
GUTTED.  
I DON'T THINK THAT REALLY FITS  
THE FACT HERE, DOES IT?  
>> NO.  
THE FACTS WERE THAT IT WAS IN  
THE PROCESS, IT WAS ALMOST  
COMPLETED WITH THIS DRYWALL  
HAVING --  
>> AND THEY WERE TAKING THE  
LEFTOVER DRYWALL, THEY WERE  
CUTTING IT UP AND TAKING IT OUT.  
>> CORRECT, YOUR HONOR.  
BUT WE WOULD SUBMIT YOU HAVE TO

HAVE A BRIGHT LINE.  
YOU CAN'T SAY, OKAY, IT'S BEEN  
GUTTED, IT NOW LOSES ITS  
CHARACTER AS A DWELLING.  
BACK WHEN THEY'RE ALMOST  
COMPLETED, THERE'S BEEN NO  
CERTIFICATE OF OCCUPANCY.  
WE SUBMIT THAT THAT WOULD BE THE  
POINT WHEN IT BECOMES A DWELLING  
AGAIN.  
>> BUT, I MEAN, YOU COULD HAVE  
JUST MINOR ZONING PROBLEMS OR A  
BUILDING CODE --  
>> THAT'S CORRECT.  
>> -- ISSUES.  
I MEAN, IT COULD BE ABSOLUTELY  
LIVABLE.  
>> THAT'S CORRECT.  
>> BUT YOU NEED A, YOU KNOW, YOU  
HAVE TO HAVE A WASHER HERE OR A  
PLUG HERE.  
I MEAN, IT'S --  
>> CORRECT, YOUR HONOR.  
BUT WE SUBMIT ONCE IT HAS BEEN  
GUTTED, THAT'S WHEN IT LOSES ITS  
STATUS AS A DWELLING, ITS  
CHARACTER AS A DWELLING, AND IT  
DOESN'T REGAIN THAT, WE SUBMIT,  
UNTIL IT IS --  
>> A CO IS --  
>> RIGHT.  
THANK YOU.  
>> AND WHAT DO YOU, AND WHAT  
CASE LAW DO YOU BASE THAT ON?  
>> WE BASE IT ON THE LANGUAGE IN  
PERKINS --  
>> THAT SAYS "DESIGNED OR  
SUITABLE FOR HABITATION" --  
>> RIGHT.  
>> -- IS WHAT IS THE CONTROLLING  
FACTOR.  
>> THAT WHERE ITS CHARACTER IS  
SUBSTANTIALLY CHANGED OR  
MODIFIED TO THE EXTENT IT  
BECOMES UNSUITABLE FOR DWELLING,  
WE SUBMIT THAT HAPPENED HERE  
WHEN IT WAS GUTTED, YOUR HONOR.  
>> WHY ISN'T IT, WHY CAN'T IT  
JUST BE A QUESTION OF FACT FOR  
THE JURY TO DECIDE WHETHER IT IS  
A DWELLING OR NOT?  
LIKE ANY OTHER ELEMENT OF THE  
CRIME?  
>> WE SUBMIT THAT THE EVIDENCE  
HERE THAT WAS, THAT WAS GIVEN  
WAS INSUFFICIENT TO MAKE IT A  
JURY QUESTION, YOUR HONOR.

WHERE IT HAD BEEN GUTTED, WE  
SUBMIT THAT UNDER MUNOZ AND THE  
LANGUAGE IN PERKINS WHICH RELIED  
ON, WHICH MUNOZ RELIED UPON --

>> BUT, YOU KNOW, AS A THRESHOLD  
MATTER, WAS THIS EVEN PRESERVED  
FOR APPEAL?

>> NO, YOUR HONOR, IT WAS NOT.  
WE ADMIT THAT THE TRIAL ATTORNEY  
WAS FOCUSED MORE ON THE  
DEFENDANT'S THEORY THERE, THAT  
THIS WAS A DRUG TRANSACTION THAT  
HE GOT WITH HIS TRUCK THROUGH  
PAYMENT FOR DRUGS.

>> AND SO --

>> SO, NO.

BUT WE SUBMIT THAT IT IS  
FUNDAMENTAL, AND THIS COURT IN  
FB V. STATE RECOGNIZED THERE  
STILL ARE EXCEPTIONS TO THE  
GENERAL RULE THAT A MOTION FOR  
JUDGMENT OF ACQUITTAL MUST BE  
SPECIFIC.

>> AND WHAT'S THE EXCEPTION THAT  
IS APPLICABLE HERE?

>> IT'S FUNDAMENTAL ERROR THAT  
THE, THAT THE EVIDENCE THAT WAS  
PRESENTED AFFIRMATIVELY SHOWS  
THAT THIS ELEMENT WAS MISSING,  
THAT THE CRIME CHARGE --

>> THE ELEMENT THAT WAS MISSING  
IS THAT THIS  
SUBSTANTIALLY-COMPLETED HOUSE  
WAS NOT A DWELLING, IS THAT WHAT  
YOU'RE SAYING?

>> YES.

BECAUSE IT HAD BEEN GUTTED AT  
ONE POINT AND WAS NOT, WAS NOT  
COMPLETED YET BY A CERTIFICATE  
OF OCCUPANCY.

FB RECOGNIZED THIS DECEPTION AND  
TALKED ABOUT, YOU KNOW, THE  
GENERAL RULE BEING, YOU KNOW, IN  
POLICY THAT THE STATE SHOULD BE  
ALLOWED TO REOPEN ITS CASE TO  
PROVE ANY TECHNICAL ISSUES THAT  
WEREN'T THERE.

BUT WHERE THE EVIDENCE  
AFFIRMATIVELY SHOWS THAT THE  
CRIME CHARGED WAS NOT COMMITTED,  
THEN IT IS FUNDAMENTAL ERROR  
THAT THE APPELLATE COURTS CAN  
REVIEW, AND THIS COURT CITED  
THOSE CASES APPROVINGLY IN FB V.  
STATE.

>> I GUESS MY PROBLEM WITH IT IS  
THAT IF IT IS SORT OF A SLIDING

SCALE ISSUE WHERE YOU'VE GOT,  
AGAIN, FROM A SHELL UP TO THE  
ACTUAL DWELLING --  
>> UH-HUH.  
>> -- THEN I'M NOT SURE I  
UNDERSTAND WHY IT'S NOT, AS  
JUSTICE LABARGA WAS SAYING, OR  
MORE OF AN EVIDENTIARY ISSUE AS  
OPPOSED TO A FUNDAMENTAL ERROR  
ISSUE THAT HAS TO BE RAISED.  
SO COULD YOU EXPLAIN THAT?  
I'M NOT SEEING THE DISTINCTION.  
I MEAN, HERE IF IT WAS THE  
BEGINNING PHASES, YOU'D SAY,  
WELL, NO WAY THAT YOU COULD EVER  
DETERMINE IT'S A DWELLING.  
BUT THIS WAS ALMOST THE END OF  
IT.  
WHAT IS THE -- WHAT'S YOUR, YOU  
KNOW, WHAT'S YOUR ARGUMENT ON --  
>> THE ARGUMENT IS NOTICE TO  
PEOPLE, TO DEFENDANTS THAT THEY  
ARE BREAKING INTO A DWELLING --  
>> SO WAIT, LET'S SEE.  
SO IN THIS SITUATION THIS  
DEFENDANT WANTED TO ROB SOMEBODY  
TO TAKE A CAR?  
>> THAT'S WHAT THE STATE  
ALLEGED, YES.  
>> OKAY.  
SO HE KNOWS, LET'S ASSUME HE'S  
THE, THAT HE'S CHARGED WITH  
KNOWLEDGE OF THE LAW.  
SO THE DIFFERENCE BETWEEN THE  
DWELLING AND AN UNOCCUPIED  
STRUCTURE IS WHAT IS THE  
DIFFERENCE IN THE PENALTY.  
>> CORRECT.  
>> WHAT IS THE DIFFERENCE?  
>> IT'S A -- I DO -- IT GOES UP  
A DEGREE.  
>> A DEGREE.  
>> I BELIEVE, YES.  
>> DOES HE, DOES HE ROB THE  
PERSON THAT'S THERE?  
>> THE TESTIMONY THAT HE WAS  
FOUND GUILTY OF WAS, YES, HE  
ROBBED THE PERSON.  
HE CAME IN AND SAID, "WHERE'S IT  
AT?"  
>> OKAY.  
SO THE ROBBERY IS NOT AFFECTED  
BY WHETHER IT'S A DWELLING.  
>> NO.  
>> OKAY.  
SO I WOULD IMAGINE IF WE LOOK AT  
PENALTIES, THAT ROBBING THIS

PERSON AT GUNPOINT --  
>> UH-HUH.  
>> -- IS GOING TO BE THE MAJOR  
CHARGE.  
>> YEP.  
>> RIGHT?  
SO THIS IS SORT OF ASSUMED,  
ISN'T IT -- I MEAN, I'M NOT  
SAYING IT'S NOT A BIG DEAL.  
>> RIGHT.  
>> JUST TRYING TO UNDERSTAND  
WHERE WE ARE IN THIS.  
>> UH-HUH.  
>> OKAY, SO HE COMES IN.  
DOES HE KNOW AT THE OUTSET,  
WELL, I'M GOING TO PICK A PLACE  
THAT, FIRST OF ALL, HE KNOWS  
IT'S OCCUPIED BECAUSE HE KNOWS  
THE GUY'S THERE, SO THE OCCUPIED  
IS REALLY THE BAD PART.  
BUT I'M GOING TO PICK A PLACE TO  
LOOK FROM THE OUTSIDE THAT IT  
WAS JUST AN ABANDONED STRUCTURE?  
SEE, I'M TRYING TO UNDERSTAND  
WHEN YOU SAY "NOTICE," LIKE I  
SAID, IF HE KNEW THIS WASN'T A  
DWELLING, HE KNEW IT WAS JUST A  
PLACE UNDER RENOVATION?  
WHAT WAS --  
>> HIS TESTIMONY WAS HE KNEW THE  
VICTIM AND KNEW THE VICTIM WAS  
WORKING THERE AND HAD EXCHANGED  
DRUGS FOR THE TRUCK IN THE PAST.  
>> SO THE GUY COULD HAVE BEEN,  
YOU KNOW, YOU CALL A REPAIR  
PERSON INTO YOUR HOUSE, AND  
THEY'RE WORKING IN YOUR HOUSE  
FIXING THE GARAGE DOOR --  
>> UH-HUH.  
>> -- AND WHAT'S -- I'M JUST NOT  
SEEING THE LEGISLATURE, WHICH  
WE'RE DEALING WITH, AS FAR AS  
WHAT THEY MEANT TO DO.  
>> UH-HUH.  
>> BY INCREASING PENALTIES FOR A  
DWELLING VERSUS AN UNOCCUPIED  
STRUCTURE.  
WHY THE NICETY OF THAT IT WAS  
JUST ABOUT COMPLETED IS NOT  
ESSENTIALLY THAT IT WAS A  
DWELLING.  
AT LEAST FOR A JURY QUESTION AS  
OPPOSED TO A MATTER OF LAW.  
>> WE SUBMIT THAT THE DEFINITION  
PROVIDED BY THE STATUTE TALKS  
ABOUT THE CHARACTER OF IT, AND  
ONCE --

>> WELL, DIDN'T IT LOOK FROM THE OUTSIDE LOOK LIKE A REGULAR HOUSE?

>> THERE WAS NO TESTIMONY AS TO THAT, YOUR HONOR.

>> BUT WE WOULD ASSUME SO IF ALL THAT WAS LEFT WAS A LITTLE BIT OF DRYWALL.

I MEAN, NO EVIDENCE THAT THERE WAS NO ROOF ON IT, THERE WAS NO EVIDENCE THAT IT DIDN'T LOOK FROM THE OUTSIDE LIKE A HOUSE. NO ONE EVER PUT ON THAT KIND OF EVIDENCE, DID THEY?

>> NO, YOUR HONOR.

>> WHY THE PRESERVATION ISSUE SEEMS IMPORTANT BECAUSE IF THE PROSECUTION WAS ALERTED THAT THIS WAS AN ISSUE, THEY COULD HAVE PUT ADDITIONAL TESTIMONY ON JUST TO FILL IN THAT BLANK.

I MEAN, THAT'S TO ME WHY THE PRESERVATION'S A BIG DEAL.

>> AGAIN, WE SUBMIT IT LOST ITS CHARACTER ONCE IT WAS GUTTED AND DOESN'T REGAIN THAT --

>> UNTIL WHEN?

>> THE CERTIFICATE OF OCCUPANCY THAT SAYS IT'S NOW A DWELLING --

>> IS THAT IN YOUR BRIEF?

ABOUT THE CERTIFICATE OF --

>> NO, YOUR HONOR.

>> THAT JUST POPS UP TODAY?

>> WE'RE TALKING ABOUT THE CHARACTER OF IT AND WHEN IT LOSES IT, AND THE QUESTION WAS WHEN IT REGAINS IT.

>> THERE ARE PEOPLE THAT THEY'LL SAY WHEN YOU TRY TO LEGISLATE FROM THE BENCH, IT JUST STRIKES ME THAT IF WE WERE TO ACTUALLY SAY, WELL, UNTIL A CERTIFICATE OF OCCUPANCY IS GRANTED THAT IT'S NOT A DWELLING, WE'D BE SUPPLYING SOMETHING IN A STATUTE THAT ACTUALLY HAS NO REAL PUBLIC POLICY PURPOSE OR ANY CONSISTENCY WITH THE LEGISLATIVE GOAL ON MAKING A RESIDENCY, A DWELLING HAVE GREATER PENALTIES THAN A UNOCCUPIED STRUCTURE.

>> WELL, AGAIN, AS POINTED OUT BY THE STATE, THE LEGISLATIVE POLICY WAS TO PROVIDE GREATER PROTECTIONS, GREATER PUNISHMENTS FOR ONE'S CASTLE, AND THIS WAS NOT ONE'S CASTLE.

IT WASN'T OWNED BY THE PERSON  
THAT WAS GOING TO BE LIVING  
THERE.

A CONTRACTOR BOUGHT IT AND  
GUTTED IT FOR RENOVATION  
PURPOSES.

>> FOR USE AS A DWELLING.

>> PARDON?

>> AND HE GUTTED IT AND WAS  
REDOING IT FOR USE AS A  
DWELLING.

>> YES, YOUR HONOR.

>> I THINK YOU HAVE A MORE  
INTERESTING ARGUMENT, ACTUALLY,  
ON YOUR CARJACKING CASE.  
DO YOU PLAN TO ARGUE THAT AT  
ALL?

>> YES, YOUR HONOR.

IN POINT TWO THAT WE RAISED IN  
THE DCA THAT THEY DID NOT  
ADDRESS, WE SUBMITTED THAT THE  
DEFENDANT WENT INTO THE HOUSE  
AT -- THE STATE'S TESTIMONY  
WAS -- AT GUNPOINT AND SAID,  
"WHERE'S IT AT?"

THE TAKING, HE TOOK THE  
GENTLEMAN'S CELL PHONE, HIS  
WALLET AND CAR KEYS OR TRUCK  
KEYS, AND WE SUBMIT THAT --  
>> WHAT MORE, WHAT MORE DO YOU  
SUBMIT THAT THE DEFENDANT HAD TO  
DO TO MAKE THIS A CARJACKING?  
HE FORCIBLY, WITH A GUN, TOOK  
THE KEYS FROM THE POSSESSION OF  
THE OWNER, WENT OUTSIDE, STARTED  
THE VEHICLE UP AND LEFT.

>> RIGHT.

>> WHAT MORE WOULD HE HAD TO  
HAVE DONE TO MAKE IT A  
CARJACKING?

>> UNDER THE FLORES CASE FROM  
THE THIRD DCA, THAT THE TAKING  
OF THE TRUCK WAS NOT BY FORCE.  
IT WAS SEPARATE FROM THE ROBBERY  
INSIDE THE HOUSE.

>> BUT IT'S CLEAR HE TOOK THE  
KEYS BY FORCE.

>> YES.

AND AS IN FLORES, THE KEYS WERE  
ALSO TAKEN BY FORCE, AND THE  
COURT RULED IT WAS NOT A  
CARJACKING.

>> THE FOURTH DCA IN CARTER V.  
STATE, I THINK THEY LOOKED AT IT  
FROM A PERSPECTIVE, A SIMILAR  
ISSUE, THAT WE SHOULD LOOK AT  
THE CONTINUOUS SERIES OF ACTS OR



EVENTS.  
ISN'T THAT WHAT WE SHOULD BE  
DOING?  
WHAT YOU'RE TELLING US IS THE  
THREAT TO TAKE THE CAR WAS NOT  
CONTEMPORANEOUS WITH THE ACTUAL  
TAKING OF THE CAR.  
>> YES.  
>> THEREFORE, IT'S NOT A  
CARJACKING.  
>> YES, THERE WAS NO VIOLENCE IN  
TAKING THE TRUCK OUTSIDE.  
>> BUT THE EVENTS THAT LED TO  
THE TAKING OF THE CAR OCCURRED  
EARLIER, AND LIKE THE COURT SAYS  
IN CARTER, WE'VE GOT TO LOOK AT  
THE BIG PICTURE.  
WHAT WAS THAT?  
WHY CAN'T WE DO THAT HERE?  
>> RIGHT.  
THE THIRD DCA ALSO SAID THAT IN  
FLORES, BUT SAID THIS WAS AN  
AFTER THOUGHT, YOU KNOW?  
THIS GENTLEMAN WENT IN THERE,  
"WHERE'S IT AT," OBVIOUSLY NOT  
TALKING ABOUT THE TRUCK THAT WAS  
RIGHT OUTSIDE IN THE DRIVEWAY  
THAT HE WALKED PAST WHEN HE CAME  
INTO THE BUILDING.  
SO WE SUBMIT UNDER FLORES, WHICH  
IS SIMILAR -- THAT WAS A ROBBERY  
OF A LADY IN A BEAUTY SHOP WHERE  
THEY TOOK HER KEYS FROM THE HER  
PURSE BY FORCE -- AND THE COURT  
RULED THAT THAT WAS NOT A  
FORCIBLE TAKING OF THE TRUCK FOR  
CARJACKING.  
>> SO HOW DO YOU DISTINGUISH  
THIS, HOWEVER, FROM BAPTISTE  
JOHN?  
>> JUST BECAUSE IT APPEARED TO  
BE AN AFTER THOUGHT WHERE HE  
SAID, "WHERE'S IT AT," HE WAS  
OBVIOUSLY LOOKING FOR SOMETHING  
OTHER THAN THAT, AND WE SUBMIT  
THAT THEN THE FORCE --  
>> BUT IN THAT CASE DIDN'T HE  
TAKE THE KEYS FROM THE MAN'S  
POCKET?  
THEY HAD BEAT HIM UP, AND THEY  
TOOK HIS KEYS, AND THEY WENT OUT  
TO THE CAR.  
>> AND IT APPEARS THAT WAS HIS  
INTENT WHEN HE ROBBED THE  
PERSON.  
HERE THERE'S NO SHOWING THAT WAS  
HIS INTENT WHEN HE ROBBED THE

PERSON.

>> WELL, DIDN'T HE DRIVE OFF IN THE TRUCK?

>> YES, HE DID.

>> HOW CAN THAT BE AN AFTER THOUGHT?

>> WE SUBMIT THAT THAT'S ALL THAT THE EVIDENCE SHOWS AND THAT THIS WAS A ROBBERY OF THE KEYS AND THE WALLET AND THE MONEY INSIDE THE HOUSE BUT JUST A GRAND THEFT --

>> WAS THERE MONEY IN -- I DON'T RECALL THAT THERE WAS ANY EVIDENCE THAT THERE WAS MONEY IN --

>> I'M SORRY.

>> -- THE HOUSE THAT WAS TAKEN.

>> I'M SORRY.

THE VICTIM THAT HE HAD IN HIS WALLET.

>> WAS THERE EVEN MONEY IN THE WALLET?

I THOUGHT THERE WAS CHECKS AND STUFF LIKE THAT.

>> CREDIT CARDS, I THINK THERE WAS MONEY --

>> THAT WAS NOT TAKEN OR WAS TAKEN?

>> IT WAS TAKEN.

THEY LATER RECOVERED ALL THAT INSIDE THE TRUCK A FEW DAYS LATER.

WE SUBMIT TO THIS COURT, WE ASK THIS COURT TO REVERSE AND STRIKE THIS CONVICTION AND IMPOSE LESSER INCLUDED OFFENSE.

THANK YOU.

>> MAY IT PLEASE THE COURT, MY NAME IS KRIS DAVENPORT, AND I REPRESENT THE STATE OF FLORIDA. TO ADDRESS THIS DWELLING ISSUE, AS THIS COURT'S HYPOTHETICALS SHOW, ONCE YOU GET INTO THIS MUNOZ THEORY OF IT HAS TO BE SUITABLE FOR SOMEBODY TO LIVE THERE, YOU'RE GETTING INTO ALL SORTS OF THINGS WHERE, YOU KNOW, AT WHAT POINT DOES THE GUTTING MAKE IT SO THAT YOU CAN'T LIVE THERE, AND THEN ALL OF A SUDDEN YOU NEED A CERTIFICATE OF OCCUPANCY.

THAT CLEARLY WAS NOT THE INTENT OF THIS COURT'S LANGUAGE IN PERKINS.

INSTEAD, AS THE DISSENTING

OPINION OF MUNOZ POINTED OUT,  
THE WHOLE FOCUS OF THE DWELLING  
DEFINITION IS THE DESIGN OF THE  
HOUSE.

>> LET ME ASK YOU THIS, LET'S  
ASSUME HYPOTHETICALLY THAT I, I  
LIVE IN A RESIDENTIAL  
NEIGHBORHOOD.

EVERYBODY LIVES IN HOUSES; FOUR  
BEDROOMS, TWO DOGS, KIDS, THE  
WHOLE NINE YARDS.

AND I DECIDE IN COMPLETE  
VIOLATION OF ZONING LAWS I'M  
GOING TO DISREGARD ALL THE  
ZONING LAWS.

I'M GOING TO GUT MY HOUSE, I'M  
GOING TO TURN INTO IT AN  
INSURANCE AGENCY.

THAT'S MY INTENT WHILE IT'S  
GUTTED.

WITH SUCH AN INTENT , WITH SUCH  
A DESIGN, WOULD THAT TAKE ME  
AWAY FROM, TAKE THE HOUSE AWAY  
FROM THE DEFINITION OF  
"DWELLING"?

>> YES.

ONCE YOU CHANGE THE DESIGN SO  
THAT IT'S NOT DESIGNED TO BE  
USED FOR LODGING BY PEOPLE AT  
NIGHT AS THE STATUTE DEFINES IT,  
THEN IT'S NOT A DWELLING  
ANYMORE.

THEN IT BECOMES A BUSINESS,  
WHICH IS A BURGLARY OF A  
STRUCTURE.

>> SO I GUESS IF A HOME IS  
GUTTED, THERE'S NOTHING THERE,  
NO WALLS OR ANYTHING THAT WOULD  
INDICATE THAT I'M GOING IN THAT  
DIRECTION AS FAR AS THE DESIGN  
IS CONCERNED.

WE WOULD HAVE TO BE, I WOULD  
THINK -- AND I GUESS IT'S A  
FRIENDLY QUESTION -- IT WOULD  
HAVE TO BE A FACTUAL  
DETERMINATION BY THE TRIER OF  
FACT --

>> RIGHT.

>> -- AS TO WHETHER THAT IS THE  
INTENT AND THE DESIGN OR  
WHATEVER?

>> THE TRIER OF FACT WOULD HAVE  
TO SEE IF IT MET THE STATUTORY  
DEFINITION OF IS THIS A BUILDING  
THAT'S DESIGNED FOR USE AS  
LODGING BY A PERSON AT NIGHT,  
AND IF THE OWNER OF THAT

BUILDING COMES IN AND SAYS,  
YEAH, I TOOK EVERYTHING OUT, AND  
I WAS JUST ABOUT TO BRING IN MY  
OFFICE FURNITURE, PUT UP  
PARTITIONS TO MAKE MY OFFICES,  
THEN UNDER THAT SITUATION I  
WOULD GRANT ACQUITTAL ON THE  
DWELLING ISSUE, AND IT WOULD BE  
BURGLARY OF A STRUCTURE.  
BECAUSE, AGAIN, YOU'RE FOCUSING  
ON THE DESIGN OF THE BUILDING.  
IS IT DESIGNED AS THE  
LEGISLATURE REQUIRES TO BE  
LODGING FOR PEOPLE AT NIGHT.  
THE PROBLEM IS WHEN MUNOZ COMES  
IN, THEY SAID IT'S NOT ABOUT THE  
DESIGN, IT'S ABOUT THE  
HABITABILITY AND WOULD SOMEBODY  
LIVE THERE, AND THAT'S WHEN YOU  
GET INTO THESE AMORPHOUS  
CONCEPTS OF CERTIFICATE OF  
OCCUPANCY AND WHAT ABOUT THE  
ELECTRICITY AND, YOU KNOW, YOU  
DON'T NEED ALL THE 21ST CENTURY  
AMENITIES FOR IT TO BE A  
DWELLING.  
IF YOU HAVE A FIRE IN YOUR  
VACATION HOME AND YOU'RE HAVING  
IT FIXED UP, I WOULDN'T WANT TO  
LIVE IN A PLACE LIKE THAT, BUT  
IT'S STILL A DWELLING.  
IT STILL MAINTAINS ITS  
CHARACTERISTICS AS A DWELLING,  
AND UNDER THE LEGISLATIVE  
DEFINITION IT REMAINS A  
DWELLING.  
IT DOESN'T CHANGE INTO SOMETHING  
ELSE AND GO BACK TO A DWELLING  
ONCE IT SEEMS LIKE IT'S GOOD  
ENOUGH THAT I WOULD STAY THERE.  
THAT'S NOT WHAT THE TEST IS.  
THE TEST IS ABOUT THE DESIGN.  
>> SO EVEN IF A HOUSE IS, IN  
FACT, GUTTED BUT IT STILL HAS  
ALL THE OUTSIDE TRIMMINGS OF  
BEING A HOUSE --  
>> IF IT'S GUTTED --  
>> -- IT'S STILL A HOUSE.  
>> IT'S STILL A HOUSE UNLESS THE  
ONLY EVIDENCE IS THAT THE DESIGN  
IS BEING CHANGED.  
THE ONLY SITUATION WHERE IT  
STOPS BEING A HOUSE IS WHERE ALL  
THE EVIDENCE SAYS WE'RE IN THE  
PROCESS OF TURNING IT INTO AN  
OFFICE.  
THAT'S WHEN IT STOPS MEETING THE

DEFINITION OF DWELLING AS THE  
LEGISLATURE HAS SET OUT, NOT AS  
THE COURT IN MUNOZ -- ONCE THESE  
LOWER COURTS STARTED FOLLOWING  
THAT MUNOZ DECISION, THAT'S WHEN  
YOU GET INTO, WELL, WAS THERE  
ELECTRICITY, AND WAS THE WATER  
ON, AND, YOU KNOW, THE NEXT  
LOGICAL STEP IS DO YOU HAVE A  
CERTIFICATE OF OCCUPANCY, AND  
THAT'S NOT WHAT "DWELLING" IS IN  
THE STATUTE.

SO IT'S GONE OFF ON --

>> REALLY AN INTERESTING  
ARGUMENT.

I MEAN, IT'S STRANGE BECAUSE  
THEN THE CRIMINAL LAW DEPENDS  
UPON THE SUBJECTIVE INTENT OF  
WHOEVER OWNS IT BECAUSE THERE  
ARE MANY LAW OFFICES, FOR  
EXAMPLE, THAT OPERATE OUT OF A  
HOUSE.

>> RIGHT.

>> AND THEY DON'T CHANGE  
ANYTHING.

HAS THE SAME BATHROOMS AND  
SHOWERS AND KITCHENS.

AND THEY USE BEDROOMS FOR  
OFFICES AND LIVING ROOMS FOR  
WAITING ROOMS.

SO IT REALLY THEN BECOMES THE  
SUBJECTIVE INTENT OF WHOEVER  
OWNS IT.

>> WELL, IT BECOMES THE DESIGN  
AS A DWELLING.

>> WELL, LET ME -- WELL, AGAIN,  
I'M SAYING YOU HAVE THE SAME  
DESIGN, IT'S JUST A QUESTION OF  
HOW YOU WANT TO IMPLEMENT IT.  
THERE'S NO DIFFERENCE AT ALL IN  
AN OFFICE THAT YOU TAKE OUT THAT  
FURNITURE THAT'S RESIDENTIAL IN  
NATURE AND JUST PUT A DESK IN  
THE BEDROOM.

THAT'S WHAT I'M SAYING IS --

>> RIGHT.

>> IT JUST SEEMS UNUSUAL.

I'M NOT AWARE OF ANY OTHER AREA  
OF THE LAW WHERE THE CRIMINAL  
STATUTE DEPENDS UPON REALLY THE  
SUBJECTIVE INTENT OF AN OWNER,  
AND IT CAN VARY FROM WITHOUT ANY  
WAY TO PROVE IT EXCEPT I SAY --

>> WELL.

>> YOU KNOW, I PRACTICED OUT OF  
AN OFFICE THAT WAS A HOME  
BEFORE, SO, I MEAN, IT'S THAT

KIND OF THING IS WHAT I'M  
SUGGESTING.  
I DON'T KNOW WHAT THE ANSWER  
IS --  
>> RIGHT.  
>> IT'S JUST VERY INTERESTING.  
>> IT'S KIND OF THE NATURE OF  
LOOKING AT THE DESIGN OF THE  
BUILDING.  
WAS IT DESIGNED --  
>> SOMEONE COULD LIVE IN IT AS A  
DWELLING.  
>> RIGHT.  
IF IT'S DESIGNED THAT WAY.  
>> LET ME ASK YOU THAT QUESTION  
ABOUT, FIRST OF ALL, WHAT ARE  
THE DIFFERENCES IN THE PENALTIES  
BETWEEN BURGLARY OF A DWELLING  
AND BURGLARY --  
>> BURGLARY OF A STRUCTURE?  
ONE'S A SECOND-DEGREE FELONY,  
AND ONE'S A THIRD-DEGREE FELONY.  
>> AND WHAT'S THE DIFFERENCE?  
>> SO THAT'S TEN YEARS'  
DIFFERENCE.  
>> AND HERE HE HAD A ROBBERY OF  
A -- AN ARMED ROBBERY.  
WHAT WAS THE SENTENCE?  
>> HE GOT 20 YEARS ON EACH  
COUNT, ALL TO RUN CONCURRENTLY.  
BECAUSE IN THIS CASE HE DID AN  
ASSAULT OR BATTERY INSIDE WITH  
THE BURGLARY, SO THAT UPPED  
IT --  
>> NOT THAT -- THIS DOESN'T  
REALLY AFFECT HIS SENTENCE, IF  
IT'S CONCURRENT?  
>> RIGHT.  
>> ON THIS, THOUGH, AND IT IS --  
IF THE PURPOSE OF THE  
LEGISLATURE WAS TO MAKE SURE  
THAT PEOPLE'S, FLORIDIANS THAT  
OCCUPIED HOMES HAVE GREATER  
PROTECTION THAN THOSE THAT  
DIDN'T OCCUPY HOMES, THE FACT  
THAT THIS WAS NOT YET -- IT  
WASN'T LIKE I WAS RENOVATING MY  
HOUSE, AND I WAS LIVING THERE OR  
HAD MOVED OUT.  
THIS WAS A PLACE THAT NOBODY WAS  
LIVING IN, IS THAT CORRECT?  
>> AT THE TIME IT HAD BEEN  
BOUGHT BY A CONTRACTOR, AND IT  
SOUNDED LIKE THEY WERE GOING TO  
FIX IT UP --  
>> WAS THERE FURNITURE IN THERE?  
>> THERE'S NO EVIDENCE ABOUT

THAT.

THEY WERE REDOING THE DRYWALL,  
THAT'S WHAT WE KNOW.

>> SO IF -- ARE WE -- IF THERE  
WAS A DEVELOPMENT AND THERE WERE  
TEN HOUSES THAT HAD BEEN BUILT  
BUT NOBODY WAS IN THEM, NOBODY  
HAD -- AND SOMEBODY GOES AHEAD  
AND BURGLARIZES THOSE PLACES,  
THOSE ARE ALL DWELLINGS EVEN  
THOUGH NOBODY HAS LIVED THERE OR  
INTENDS TO LIVE THIS IN ANY OF  
THE NEAR FUTURE?

>> YES.

BECAUSE UNDER THE STATUTORY  
DEFINITION THE DESIGN OF THE  
STRUCTURE IS SUCH THAT IT'S  
INTENDED --

>> OKAY, AND WE DON'T -- IN THIS  
SITUATION IS, WAS THERE EVIDENCE  
THAT THE WHOLE -- EVERYTHING --  
AGAIN, I'M ASSUMING THERE WAS A  
ROOF ON THERE --

>> RIGHT.

>> -- AND THAT IT LOOKED LIKE A  
HOUSE.

>> RIGHT.

NOBODY TESTIFIED THAT THERE'S A  
ROOF ON THERE, BUT HE'S DOING  
DRYWALL.

I CAN'T IMAGINE DOING DRYWALL  
WITHOUT A ROOF.

[LAUGHTER]

>> WOULDN'T LIKE TO TRY, WOULD  
IT?

>> YOU HAVE, YOU DIDN'T MEET  
SOME OF THE CONTRACTORS DURING  
ANDREW.

[LAUGHTER]

>> THAT'S RIGHT.

>> AFTER ANDREW.

>> SO, YOU KNOW, AGAIN, THIS  
WASN'T RAISED IN THE TRIAL  
COURT, SO WE DON'T HAVE A HUGE  
AMOUNT OF EVIDENCE ON THIS.

>> THERE IS A CONFLICT, RIGHT,  
OF DECISIONS?

>> THERE'S A CONFLICT, THERE'S A  
CERTIFIED CONFLICT.

>> THERE'S A BRILLIANT DISSENT  
BY JUSTICE CANADY ON THIS ISSUE.

>> BRILLIANT DISSENT, YES.

THERE'S A BRILLIANT DISSENT THAT  
WOULD BRING THESE COURTS RIGHT  
BACK INTO LINE AND ELIMINATE ALL  
THESE AMORPHOUS CONCEPTS OF WHO  
WOULD STAY THERE AND HOW MUCH

ELECTRICITY WAS THERE AND ALL OF THESE THINGS THAT ARE NOT THERE UNDER THE STATUTE.

SO THE STATE WOULD ASK THAT YOU ADOPT THE BRILLIANT DISSENT IN MUNOZ AS THE LAW THAT'S STATED AND ELIMINATE ALL THESE ISSUES.

[LAUGHTER]

AS FAR AS THE CARJACKING GOES, YOU KNOW, IN THE COURSE OF THE TAKING, AS LONG AS IT'S THE CONTINUOUS SERIES OF EVENTS, THIS GUY CAME IN, TOOK THE GUY'S CAR KEYS AND SECONDS LATER LEFT IN HIS TRUCK.

HE LEFT THE WALLET ON THE BACKSEAT, HE LEFT THE GUY'S TOOLS.

THE TRUCK WAS THE WHOLE OBJECT OF THIS.

HE DIDN'T NEED TO WAIT FOR THE GUY TO COME OUTSIDE AND BE NEXT TO HIS TRUCK TO COMMIT A CARJACKING.

IT'S IN THE COURSE OF THE TAKING, AND THIS IS CLEARLY IN THE COURSE OF THE TAKING.

>> HOW ABOUT THE THIRD DISTRICT CASE THAT --

[INAUDIBLE]

>> THAT OPINION IS CLEARLY DISTINGUISHABLE, SO I WOULD SAY, NO.

WELL, IN THAT CASE THEY CAME IN AND TOOK THE LADY'S PURSE AND THEN LOCKED HER IN A BATHROOM. AND IT SEEMED TO BE -- ACCORDING TO THE COURT'S VERSION OF THE FACT THERE -- IT SEEMED TO BE MORE OF AN AFTER THOUGHT THAT HE WAS WALKING AWAY WITH THIS PURSE AND WENT, OH, THERE'S CAR KEYS AND WENT TO FIND THEM.

SO IN THAT SITUATION IT IS DISTINGUISHABLE HERE BECAUSE IT WOULDN'T BE IN THE COURSE OF THE TAKING, WOULD BE THE ARGUMENT.

UM, YOU KNOW, I THINK IT'S CERTAINLY BETTER FACTS FOR DEFENSE IN THAT CASE.

I WOULD THINK THAT WOULD BE MORE OF A JURY QUESTION.

SO IF THE COURT IS DECLINED TO DISPROVE FOR US, THAT WOULD BE TERRIFIC.

[LAUGHTER]

AND IN ALL DUE RESPECT, WE'D ASK



THE CONVICTION BE AFFIRMED.  
THANK YOU.  
>> THANK YOU.  
YOU HAVE SOME REBUTTAL TIME --  
>> I HAVE NOTHING FURTHER UNLESS  
THE COURT HAS MORE QUESTIONS.  
>> ALL RIGHT.  
THANK YOU FOR YOUR ARGUMENTS,  
THE COURT IS ADJOURNED.  
>> PLEASE RISE.  
COURT IS IN RECESS UNTIL 9 A.M.

::

>> ONE  
OF THE BEST THINGS WE DO IS  
TECHNICAL ASSISTANCE.  
THIS IS NOT AN ENFORCEMENT-TYPE  
PROGRAM.  
ENFORCEMENT IS COSTLY, IT'S  
INEFFECTIVE, AND YOU'RE  
ENFORCING IN SOME SYSTEMS THAT  
JUST CAN'T DO IT NO MATTER WHAT.  
AND YOU'VE ALL SEEN THOSE  
SYSTEMS THAT ARE TURNED OVER TO  
THE COUNTY BECAUSE THE OWNERS

COULDN'T MAINTAIN THE SYSTEM.  
SO OUR TECHNICAL ASSISTANCE IS  
CRITICAL TO US.  
WE HAVE TWO MAIN PROVIDERS,  
TRIO -- AND I ALWAYS GET THIS  
CONFUSED, I THINK IT STANDS FOR  
TRAINING, RESEARCH,  
ENVIRONMENTAL EMPLOYMENT  
OPPORTUNITIES.  
MAYBE THE WORD "EDUCATION" IS  
ONE OF THOSE Es, BUT IN ANY  
EVENT, THEY'RE A AFFILIATE WITH  
THE UNIVERSITY OF FLORIDA, AND  
THEY PROVIDE BASICALLY SECURITY  
AND EMERGENCY PREPAREDNESS  
TRAINING FOR YOU -- UTILITIES.  
THAT'S A GRANT WE GOT FROM THE  
FEDERAL GOVERNMENT.  
OF COURSE, AFTER 9/11 THERE'S  
BEEN AN EMPHASIS ON THAT.  
THEY ARE TECHNICAL PROVIDERS,  
THEY PROVIDE --  
[INAUDIBLE]  
THAT GO OUT AND HELP THE SYSTEM  
STAY IN COMPLIANCE.  
AND THEY'VE DONE A GREAT JOB,  
AND I'VE KNOWN THEM AND THEIR  
WORK SINCE '93 WHEN I CAME --  
'91 WHEN I CAME INTO THE  
PROGRAM.  
OUTREACH, WE DO WORK FOR THE  
RURAL WATER TO PROVIDE FOCUS ON  
CHANGE SEMINARS, AND I THINK I  
MET SOME OF YOU, UM, AT THOSE.  
AND THOSE ARE GIVEN THROUGHOUT  
THE STATE ABOUT SIX SESSIONS  
WHERE WE GO OVER THE NEW RULES  
AND REGULATIONS AND HINTS TO  
STAY UNDER COMPLIANCE, AND WE DO  
THAT AT SIX SITES.  
LAST YEAR WE HAD 1500 PEOPLE  
ATTEND.  
WE DO WEB FARES, WE HAVE A  
QUARTERLY NEWSLETTER, AND I GAVE  
20 COPIES OF THE NEWSLETTER  
TO -- I DON'T KNOW IF I GAVE IT  
TO JO ANN --  
>> YOU GAVE IT TO JO ANN.  
>> YES, FOR YOUR BENEFIT.  
YOU'LL NOTICE IN THE LAST ISSUE  
OUR GOVERNOR IS READING THIS  
ISSUE OF THE NEWSLETTER.  
WE GOT HIM TO POSE FOR THAT  
PICTURE.  
AND RULE OF BURDEN REDUCTION.  
THIS HAS BEEN A BIG EMPHASIS IN  
OUR PROGRAM.

NOT JUST DRINKING WATER, BUT I SHOULD SAY OUR DEPARTMENT FOR MANY, MANY YEARS.

AND WHAT WE'VE JUST DONE OR I SHOULD SAY WHAT THE HOUSE DID IN 503 LAST YEAR IS THEY EXTENDED WAIVER PROVISIONS TO INCLUDE NOT JUST BUSINESSES, BUT ALSO RELIGIOUS FACILITIES FOR PRODUCTION AND MONITORING.

THE FEDS DO ALLOW YOU TO MONITOR ONCE A YEAR.

THAT'S -- BUT YOU HAVE GOT TO BE A GOOD SYSTEM TO GET THAT KIND OF WAIVER FOR YOUR BACTERIA.

WE'RE ALSO LOOKING AT CHANGING SOME OF THE OTHER REGULATIONS TO REDUCE REPORTING REQUIREMENTS, TO MAKE CROSS-SECTION CONTROL LESS ONEROUS AND TO REDUCE OPERATOR STAFFING AND VISITATION REQUIREMENTS TO WHATEVER WE THINK IS APPROPRIATE.

SO WITH THAT, I THINK I'VE EXTENDED OVER MY TIME, BUT I'LL TAKE ANY QUESTIONS.

>> THAT'S OKAY.

UM, AND EVERYBODY, PLEASE, FEEL FREE TO ASK MR. HOOF NAG L QUESTIONS.

I WILL START WITH MR. SMALLRIDGE.

>> GOOD MORNING.

CAN YOU HEAR ME OKAY?

>> YES.

>> ARE OKAY.

I WAS UNDER THE IMPRESSION THAT CONGRESSMAN GILL RACK KISS' OFFICE WAS GOING TO PRODUCE LEGISLATION TO --

[INAUDIBLE]

THE RULES ON CONSUMER CONFIDENCE REPORTS.

DO YOU KNOW ANYTHING ABOUT THAT, WHERE THAT MIGHT BE?

>> YES.

THERE WAS LEGISLATION THAT WAS SUPPORTED BY THE ORGANIZATION THAT I BELONG TO, THE OTHER STATE DRINKING WATER ADMINISTRATORS, SUPPORTED ALSO BY NATIONAL RURAL WATER AND MANY OTHERS TO REDUCE THE, IT'S CALLED THE CONSUMER CONFIDENCE REPORT.

IT'S THE WATER QUALITY REPORT THAT YOU GET ANNUALLY FROM YOUR

SYSTEM THAT TELLS YOU ALL THE STANDARDS THEY'VE MET OR NOT MET AND SO FORTH.

IT'S REQUIRED UNDER THE 96 AMENDMENTS, AND, OF COURSE, FOR A LARGE SYSTEM LIKE MIAMI, TO SEND OUT HARD COPIES TO EVERY SINGLE RESIDENCY IS QUITE A COST.

SO THEY WERE LOOKING AT REDUCING THE -- OR I SHOULD SAY INCREASING DELIVERIES MECHANISMS YOU COULD USE TO INCLUDE E-MAILS OR ELECTRONIC SUBMITTALS.

I DON'T KNOW HOW THAT'LL PLAY OUT.

I THINK THERE'S SO MUCH SUPPORT FOR IT, AND I HONESTLY CAN'T REMEMBER AT WHAT LEVEL, WHAT'S THE MINIMUM SIZE TREATMENT PLANT THAT CAN DO THIS.

BUT IT'S NOW STILL IN DISCUSSIONS WITH EPA AND WORKSHOPS.

>> WELL, YOU'RE TALKING ABOUT, YOU KNOW, MIAMI.

I UNDERSTAND THOSE, BUT FOR SMALL SYSTEMS LIKE US, IT'S INVOICING IT'S PAPERWORK. AND I GET CUSTOMERS CALLING ME AND ASKING ME, WHAT IS THIS? NOBODY CAN READ THEM, NOBODY CAN UNDERSTAND THEM.

AND, TO ME, I WOULD AGREE THAT IF IT SHOULD BE AVAILABLE, IT CAN BE AVAILABLE FOR PEOPLE TO LOOK AT, BUT TO HAVE KIND OF MAIL THEM ALL OUT, I DON'T KNOW, I'D GUESS THE VAST MAJORITY WOULD PROBABLY GO INTO THE GARBAGE.

IT JUST SEEMS LIKE A WASTE. SO IS THERE SOMETHING WE COULD DO ON A STATE LEVEL TO PUT THAT ON THE INTERNET OR E-MAIL IT OUT, SOMETHING LIKE THAT?

>> WELL, EACH SYSTEM WOULD BE RESPONSIBLE FOR PUTTING IT UP ON THEIR WEB SITE IF THEY HAVE A WEB SITE OR DOING THE ELECTRONIC MAILING.

WE DON'T GENERALLY GET INVOLVED IN THAT PARTICULAR ASPECT OF IT.

>> THE COURT RULES --

[INAUDIBLE]

>> CURRENT RULES OR FEDERAL RULES.

SO, YEAH, THROUGH FEDERAL LEGISLATION, LIKE I SAY, ALMOST ALL THE STATES INCLUDING OUR STATE HAVE SUPPORTED THIS CHANGE TO ALLOW FOR ELECTRONIC DISTRIBUTION.

UM, THE CCR IS ONE OF THOSE RULES THAT WAS DONE BY, BY COMMITTEE, AND EVERYBODY GOT INPUT INTO IT.

SO IT BECAME SORT OF A MONSTER. AND RATHER THAN JUST GIVE THE CITIZENS THE BASICS ABOUT THE QUALITY OF THEIR WATER, IT GOT BLOWN WAY OUT OF PROPORTION. AND, YOU KNOW, IT READS LIKE A LARGER DOCUMENT NOW.

I DO NOT KNOW IF THEY'RE LOOKING AT REDUCING SOME OF THE REPORTING REQUIREMENTS THOUGH.

>> SO JUST SO WE'RE ALL ON THE SAME PAGE, RIGHT NOW DO I UNDERSTAND YOU CORRECTLY, IT TAKES FEDERAL LEGISLATION TO CHANGE HOW THE CCRs ARE DISTRIBUTED?

>> THAT'S CORRECT.

>> OKAY, THANK YOU.

>> THANK YOU.

MR. KAY?

>> THANK YOU, MADAM CHAIR.

A COUPLE QUESTIONS ON YOUR SLIDE ABOUT WHAT YOU DO REGULATE CAPACITY DEVELOPMENT.

IS THAT NEW DEVELOPMENT?

IN OTHER WORDS, IF YOU HAVE AN EXISTING SYSTEM AND THEY'RE GOING TO EXPAND, YOU KNOW, THEIR CAPACITY, DO THEY HAVE TO COME TO YOU?

IS THAT WHAT YOU MEAN BY -- DO THEY HAVE TO COME TO YOU AND SEEK AN APPLICATION OR PERMIT TO EXPAND THEIR CURRENT OPERATION?

>> NO.

IF THEY'RE AN EXISTING SYSTEM, THEY'RE NOT COVERED UNDER OUR NEW SYSTEM STRATEGY THAT'S BEEN APPROVED.

THE FORM THAT THEY FILL OUT AND THE PERMIT, IT'S A ONE-TIME BASIS.

NOW, IF THEY'RE BUILDING, IF THEY'RE GOING FROM A SIMPLE LITTLE WELL AND THEY'RE BUILDING A MONSTER TREATMENT PLANT WITH ALL SORTS OF PROCESSES AND SO

FORTH, WE MIGHT REQUEST THAT  
THEY LOOK AT FILLING OUT THAT  
PARTICULAR BE FORM.

>> MR. WILLIAMS.

>> UM, WHOA.

ACTUALLY, TO HELP ANSWER  
MR. SMALL JUDGE RIDGE'S  
QUESTION, THE LEGISLATION ON THE  
CCR, UM, WAS PROPOSED BY  
CONGRESSMAN YOUNG AND BILIRAKIS  
IN THE HOUSE AND SENATOR NELSON  
AND RUBIO IN THE SENATE.

UM, IT HAS BEEN RECOGNIZED NOW  
BY EPA, AND LAST WEEK THEY  
INTRODUCED A PROPOSED RULE TO  
ALLOW THE CCR TO BE DELIVERED BY  
ELECTRONIC MEANS.

AND SO I THINK THERE'S RELIEF  
COMING THERE SO THEY WON'T HAVE  
TO BE MAILED OUT.

>> THANK YOU.

COMMISSIONER MARIANO.

TRY IT AGAIN.

ONE ON THE LEFT.

>> THANK YOU.

I HAD ABOUT FOUR QUICK  
QUESTIONS.

>> SURE.

>> FIRST ONE, YOU SHOWED LIKE  
YOU HAVE A PARTNERSHIP WITH  
EIGHT COUNTIES IN FLORIDA?  
AND I'M JUST WONDERING HOW THAT  
GET ESTABLISHED BETWEEN THE  
COUNTIES AND CAN OTHER COUNTIES  
GET INVOLVED, OR WHAT'S  
INVOLVED.

>> YES.

THE ORIGINAL LEGISLATION BACK IN  
'78 ESTABLISHED TEN COUNTIES AND  
A METHODOLOGY FOR REVOKING THE  
APPROVED STATUS OF THESE  
COUNTIES AS WELL AS BRINGING NEW  
COUNTIES ONBOARD.

AND THAT'S WHAT HAPPENED.

ORIGINALLY, THE LIST DID NOT  
INCLUDE VOLUSIA OR LEE.

ORIGINALLY, THE LIST DID INCLUDE  
DUVAL AND BREVARD AND PINELLAS  
AND MANATEE, AND THEY'VE ALL  
DROPPED OUT.

>> OKAY.

>> THE REASON THEY'VE DROPPED  
OUT IS GENERALLY BECAUSE THE  
HEALTH DEPARTMENT HAS A  
DIFFERENT METHOD OF FUNDING  
THEIR DRINKING WATER SYSTEM THAT  
IS MUCH MORE SUBJECT TO SWINGS

IN THE ECONOMY AND SO FORTH.  
WHERE OUR FUNDING IS GENERALLY  
FEDERAL GRANTS OR SET FEES ON  
THE UTILITIES.

>> OKAY.

UM, NEXT QUESTION WAS AS FAR AS  
THE -- YOU REGULATE THE  
OPERATING AND MANAGEMENT OF THE  
SYSTEM, MAINTENANCE OF THE  
SYSTEM -- HOW EXACTLY DO YOU DO  
THAT, AND HOW ACCURATE IS IT AS  
FAR AS HOW DO YOU KNOW A  
SYSTEM'S BEING MAINTAINED?

>> UM, DRINKING WATER'S A LITTLE  
DIFFERENT THAN, LIKE FOR  
EXAMPLE, WASTEWATER.

WASTEWATER YOU HAVE A PERMIT  
THAT'S AN OPERATING PERMIT THAT  
TELLS YOU EVERYTHING YOU HAVE TO  
DO UNDER OR THE OPERATION.

DRINKING WATER WE ONLY HAVE  
CONSTRUCTION PERMITS.

SO EVERYTHING IS IN THE RULES  
AND SAYS YOU SHALL DO THIS, YOU  
SHALL HAVE YOUR TANKS INSPECTED  
EVERY FIVE YEARS, YOU SHALL HAVE  
A FLUSHING PROGRAM, YOU SHALL  
HAVE A SAMPLING PLAN.

AND THEN WE GO OUT AND INSPECT  
ABOUT ONCE EVERY THREE YEARS FOR  
MOST SYSTEMS THE LITTLE  
TRANSIENT SYSTEMS ARE ONCE EVERY  
FIVE YEARS.

SO WE DO AN INSPECTION, A  
DETAILED INSPECTION OF THE  
SYSTEMS.

WE ALSO DO INSPECTIONS IF WE GET  
COMPLAINTS.

INVARIABLY, THAT WILL ALWAYS  
LEAD TO AN INSPECTION.

AND IF WE DO AN INSPECTION WITH  
PROBLEMS, WE HAVE FOLLOW-UP  
INSPECTIONS.

SO IT'S PRIMARILY DONE THROUGH  
OUR INSPECTIONS AND ALSO  
CITIZENS CALLING US UP AND  
TELLING US THERE'S SOMETHING  
GOING ON, THE WATER DOESN'T  
TASTE RIGHT AND SO FORTH.

THAT'S HOW WE, THAT'S OUR  
INVOLVEMENT IN THEIR OPERATION  
AND MAINTENANCE ACTIVITIES.

SURFACE WATER PLANTS ALSO SEND  
US OPERATIONAL RECORDS, FOR  
EXAMPLE, AND WE CHECK -- WE DO  
GET MONTHLY OPERATING REPORTS  
FROM ALL SYSTEMS EXCEPT THE

TRANSIENTS THAT SHOW THEIR  
CHLORINE RESIDUALS ON A DAILY  
BASIS AND ANY OTHER CHANGES TO  
THEIR WATER QUALITY.

>> MY THIRD QUESTION, IN TRYING  
TO LOOK AT WHEN THEY'RE -- LET'S  
SAY SOMEONE'S IN VIOLATION OF  
WATER QUALITY, TRIMETH LEANS,  
WHATEVER THE CASE MAY BE.  
AND LET'S SAY THEY GO TWO  
QUARTERS IN A ROW, YEAH, TWO  
MEASUREMENTS IN A ROW, TWO  
QUARTERS IN A ROW.  
THEY DON'T MAKE THE NUMBERS,  
THEN THEY MAKE IT, THEN THEY  
FALL OFF AGAIN.  
AT WHAT POINT IN TIME DO YOU  
SAY, LOOK, YOU'VE GOT TO CHANGE  
SOMETHING YOU'VE GOT.  
HOW LONG DO YOU LET THIS GO ON  
WITH BAD WATER QUALITY KEEPS  
GOING ON?

>> IT'S A VERY GOOD QUESTION  
BECAUSE THE -- EXCEPT FOR THE  
ACUTES, ALMOST ALL STANDARDS  
WHETHER IT'S RADIOLOGICAL OR  
CHEMICAL OR SECONDARIES ARE  
BASED ON A RUNNING ANNUAL  
AVERAGE.  
THAT IS, THEY TAKE A MEASUREMENT  
EVERY QUARTER, AND IF THE  
AVERAGE OF THAT QUARTER IS OVER  
THE STANDARD, THEN THAT'S A  
VIOLATION.  
SO YOU CAN GO BACK AND FORTH, IN  
AND OUT FROM THE STANDARDS.  
BUT ONCE THEY HAVE A RUNNING  
ANNUAL FOUR QUARTERS' AVERAGE  
OVER THE STANDARD, THEY ARE IN  
VIOLATION, AND WE DO SEND OUT  
EITHER WARNING LETTERS OR  
NOTICES OF VIOLATION.  
WE ASK THEM FOR CORRECTIVE  
ACTION, AND SOMETIMES IT'S AN  
OPERATIONAL PROBLEM LIKE THEY  
NEED TO DO ADDITIONAL FLUSHING,  
AND SOMETIMES THEY'VE GOT A BAD  
SOURCE WATER, AND THEY'RE GOING  
TO HAVE TO INSTALL TREATMENT TO  
DEAL WITH IT.

>> SO IF SOMETHING GOES ON FOR A  
QUARTER THAT'S BAD, NEXT  
QUARTER'S BAD, IT CAN GO ON FOR  
A YEAR, AND YOU STILL DON'T DO  
ANYTHING --

>> THAT'S CORRECT.  
THAT'S BECAUSE THE STANDARDS FOR



CHEMICALS ARE BASED ON  
EXPOSURE OVER AN ENTIRE  
LIFETIME, CAUSING A ONE IN A  
MILLION CHANCE OF GETTING THAT  
ILLNESS FROM CONSUMING WATER FOR  
70 YEARS AT 1.1 LITERS A DAY.  
I MEAN, IT'S THE EPA STANDARD OF  
ONE IN A MILLION.

>> OKAY.

>> FOR MOST CHEMICALS, NOT ALL  
CHEMICALS.

>> ONE OTHER QUESTION.

WHEN THEY HAVE, WHEN SOMEONE'S  
GOT A FACILITY AND IT DOESN'T  
MEET THE STANDARDS OF  
CONSTRUCTION THAT YOU'RE EVEN  
SUPPOSED TO HAVE, WHAT DO YOU DO  
IF THEY CAN'T SEEM TO GET THAT  
SYSTEM UP TO, INTO COMPLIANCE?

>> WELL, IF IT CAME WITH A  
PERMIT FOR CONSTRUCTION AND IT  
WASN'T UP TO STANDARDS, WE WOULD  
DENY THE PERMIT, AND THEY COULD  
NOT CONSTRUCT --

>> IT'S ALREADY BEEN IN PLACE,  
AND IT'S IN PLACE AND NOW  
THROUGH SUBSEQUENT INTERVIEWS,  
NOW YOU FIND IT'S NOT UP TO WHAT  
THE STANDARDS ARE THAT YOU HAVE  
IN PLACE AND IT LOOKS LIKE THEY  
CAN'T MAKE STANDARDS, WHAT DO  
YOU DO?

>> WELL, IF IT'S SIMPLY A  
CONSTRUCTION STANDARD THAT  
THEY'RE NOT MEETING, WE WOULDN'T  
PROBABLY DO ANYTHING.  
BUT IF IT'S RESULTING IN A WATER  
QUALITY VIOLATION, YES, THEY  
WOULD BE REQUIRED TO CORRECT IT.

>> ALL RIGHT.

I'VE GOT TO BE MORE SPECIFIC  
THEN.

>> OKAY.

>> IF THERE'S A MULL PIPE THAT'S  
NOT PUT IN PLACE, THEREBY NOT  
HAVING AN EXTRA VALVE THAT'S  
SUPPOSED TO BE THERE, WHAT DO  
YOU DO ABOUT THEM NOT BEING ABLE  
TO MEET THE STANDARDS THAT ARE  
SET UP BY DEP?

A PIPE THAT'S SUPPOSED TO BE IN  
THERE FOR MERCY OUTFLOW.  
WHAT DO YOU DO?

>> IT WOULD DEPEND.

ON A SITUATION LIKE THAT, YOU'RE  
TALKING ABOUT A WASTEWATER  
ISSUE, AND MAYBE RICHARD'S

BETTER --  
>> ACTUALLY, LET ME SWITCH THAT  
BACK.  
THANK YOU.  
>> THANK YOU.  
I THINK MR. THOMPSON WAS NEXT.  
>> [INAUDIBLE]  
>> THANK YOU.  
>> DO YOU LOOK DOWN THE ROAD IN  
THE FUTURE FOR ANY CHANGE TO THE  
LEAD AND COPPER --  
[INAUDIBLE]  
?  
RIGHT NOW YOUR SMALL SYSTEMS  
THAT HAVE BEEN IN PLACE SINCE  
THE IP SENSE OF LEAD AND --  
INCEPTION OF LEAD AND COPPER --  
[INAUDIBLE]  
HAVE GONE THROUGH THIS COMPLETE  
PERIOD OF TIME WITH NO  
VIOLATIONS AND NO HITS, AND  
THERE ARE SOMEWHERE THAT THESE  
SMALL SYSTEMS CAN GET SOME  
RELIEF?  
>> THE LEAD AND COPPER RULE IS A  
TRULY FEDERAL RULE.  
THEY DON'T HAVE A PROVISION THAT  
SAYS IF YOU'RE SAMPLING EVERY  
THREE YEARS, IF YOU'VE DONE WELL  
FOR THE LAST NINE YEARS, THEN  
WE'LL REDUCE IT TO ONCE EVERY  
NINE YEARS OR ELIMINATE YOU  
COMPLETELY.  
WE DON'T HAVE A WAIVER LIKE WE  
DO FOR CERTAIN CHEMICALS,  
SYNTHETIC CHEMICALS.  
THEY ARE PROPOSING LONG-TERM  
REVISIONS TO THE LEAD AND COPPER  
RULE FOR MANY YEARS DOWN THE  
ROAD, PROBABLY AFTER 2015.  
I'M NOT FAMILIAR WITH HOW THEY  
ARE ADDRESSING A POSSIBLE WAIVER  
OR REDUCTION IN MONITORING.  
>> ONE OTHER QUESTION.  
ALONG WITH THAT, WHY WAS THE  
CHANGE MADE TO PUT LEAD AND  
COPPER TESTING ON THE SAME  
PERIOD AS YOUR MAJOR OR  
CHEMICAL?  
>> I DID THAT.  
YEAH, YOU CAN BLAME ME --  
[LAUGHTER]  
>> THIS MAKES FOR LESS TESTS IN  
AN ADDITIONAL YEAR.  
>> WELL, WHAT MR. THORPE'S  
REFERRING TO IS THE FACT THAT  
YOU HAVE IF YOU ARE A LARGE

COMMUNITY A CERTAIN YEAR IN A  
THREE-YEAR PERIOD IN WHICH TO DO  
YOUR CHEMICAL SAMPLING FOR YOUR  
VOCs, SOCs, METALS,  
RADIOLOGICALS.

AND THEY ALL COME TO US, WE CAN  
NOTIFY YOU OF THAT PARTICULAR  
DATE, SO THE RULE'S WRITTEN THAT  
LARGE SYSTEMS DO THE SAMPLING IN  
YEAR ONE, SMALL COMMUNITY  
SYSTEMS IN YEAR TWO, AND THEN  
THE NONTRANSIENT, NONCOMMUNITIES  
HAVE TO DO ALL THEIR SAMPLING IN  
YEAR THREE.

EPA IN THEIR INFINITE WISDOM  
TOTALLY IGNORED THE STANDARD  
MONITORING FRAMEWORK WHICH WE  
LOVED FROM THE '86 AMENDMENTS  
AND STARTED WRITING RULES THAT  
HAD DIFFERENT START DATES FOR  
EVERYBODY.

SO TO KEEP, TO SIMPLIFY IT SO  
THAT SYSTEMS WOULD STAY IN  
COMPLIANCE BASED UPON THE SIZE  
OF YOUR SYSTEM, WE PUT YOU INTO  
ONE OF THOSE THREE YEARS.

AND, OF COURSE, THAT FIRST TIME  
YOU DO THAT, AS YOU'RE  
SUGGESTING, IT'S NOT A  
THREE-YEAR PERIOD, IT MAY BE  
ONLY A TWO-YEAR PERIOD SINCE  
YOUR LAST MONITORING IN ORDER TO  
PLACE YOU ON THE STANDARD  
MONITORING FRAMEWORK.

>> THANK YOU.

MR. FLYNN.

>> YOU TOUCHED BRIEFLY ON THE  
BACK FLOW PREVENTION  
REGULATIONS.

CAN YOU BE MORE SPECIFIC ON  
WHERE WE ARE WITH THAT PROCESS?  
BECAUSE THEY HAVE BEEN PROPOSED  
TO CHANGE SOME REGS, AND --

>> I'M SORRY, SIR, I MISSED --

>> CROSS CONNECTION CONTROL.

>> OH, CROSS CONNECTION CONTROL.

>> BACKFLOW PREVENTION.

>> OKAY.

CROSS-CONNECTION CONTROL, WE'RE  
REALLY TALKING ABOUT DEVICES,  
BACKFLOW PREVENTION DEVICES.

YOU'VE SEEN THEM NEAR  
TALLAHASSEE SO THAT IF YOU HAVE  
A COMMERCIAL ESTABLISHMENT OR  
INDUSTRIAL ESTABLISHMENT, ONE OF  
THESE DEVICES IS PLACED ON THEIR  
SERVICE LINE TO PREVENT WHATEVER

THEY'RE DOING IN THEIR BUILDING  
IF THERE'S A LOSS OF PRESSURE IN  
THE WATER SYSTEM SIPHONING BACK  
INTO THE PUBLIC WATER SYSTEM AND  
THEN BEING DELIVERED TO THEIR  
NEIGHBORS.

AND, OBVIOUSLY, WITH A MORTUARY  
OR METAL PLATING AND SO FORTH,  
YOU NEED THESE DEVICES.  
THE FEDS HAVE NOT PROVIDED  
ANYTHING BUT A TOUCH OF GUIDANCE  
TO THE STATES ON WHAT KIND OF  
CROSS-CONNECTION CONTROL PROGRAM  
YOU SHOULD HAVE.

MOST STATES, AS OUR STATE DOES,  
SIMPLY ADOPTS A STANDARD OF  
PRACTICE BY THE INDUSTRY.  
SO WE'VE ADOPTED THE AMERICAN  
WATERWORKS ASSOCIATION'S  
STANDARD PRACTICE  
RECOMMENDATIONS FOR CROSS  
CONTROL, AND THE ISSUE CAME UP,  
AND WE HAVE TAKEN A WHILE ON  
THIS ONE.

SEVERAL YEARS AGO WHEN WE GOT AN  
APPLICATION FROM A UTILITY THAT  
WAS TAKING THEIR REUSE WATER --  
WHICH ONLY REQUIRES A LITTLE  
DUAL CHECK, AND THEY SEND IT TO  
RESIDENTIAL PROPERTY FOR  
IRRIGATION.

BUT THEY WERE TAKING THIS REUSED  
WATER THAT THEY HAD TREATED SO  
WELL AND PUTTING IT IN AN OPEN  
STORAGE STORM WATER POND.

SO NOW THEY NO LONGER COULD GET  
AWAY WITH LITTLE DUAL DEVICES,  
THEY HAD TO GO TO RPZs WHICH  
ARE BIG DEVICES, VERY EXPENSIVE.  
ANYWAY, WE WERE HAVING, WE WERE  
HAVING ISSUES WITH THIS, SO WE  
AGREED TO OPEN THE RULE.

WE HELD SEVERAL MEETINGS,  
ADVISORY COMMITTEE MEETINGS.  
WE DRAFTED THE RULE ABOUT THREE  
DIFFERENT TIMES, AND WE ARE VERY  
CLOSE NOW TO DOING A NOTICE OF  
RULE DEVELOPMENT FOR THAT.

WE'VE SUBMITTED THAT TO THE  
SECRETARY'S OFFICE, AND WE'LL  
GET OUT A PROPOSED RULE WE HOPE  
BEFORE THE END OF, WELL, ABOUT  
THE MIDDLE OF NEXT YEAR.

AND IT WILL ALLOW RESIDENTIAL  
PROPERTIES THAT HAVE THEIR OWN  
UNAPPROVED AUXILIARY WATER  
SYSTEM -- LIKE THEY'VE GOT O A

PUMP TO THE POND OR THEIR OWN PRIVATE RULE -- JUST TO GET BY WITH DUAL CHECKS.

THE DEVICE IS ABOUT \$50 AND A LOT LESS EXPENSIVE THAN THE REDUCED PRESSURE ZONE RPZ DEVICES.

YEAH, IT'S A LITTLE EMBARRASSING THAT WE'VE SPENT SO MUCH TIME ON THIS RULE.

IT'S VERY, VERY CONTROVERSIAL. BOTH SIDES.

BUT THE DEPARTMENT IS MOVING FORWARD TO MAKING IT CLEAR THAT RESIDENTIAL PROPERTIES IN THE FUTURE WILL ONLY BE REQUIRED TO HAVE DUAL CHECKS IF THEY HAVE AN AUXILIARY WATER SUPPLY.

AS IS THE CASE WITH REUSE WATER PRESENTLY.

>> ANY OTHER QUESTIONS?

MR. FRAME IS, I BELIEVE, HAD A QUESTION AS WELL.

>> LET'S TALK BRIEFLY ABOUT THE SECONDARY --

>> MR. FRAME, PLEASE, PUSH YOUR BUTTON.

>> I DID.

>> THANKS.

>> I'D LIKE TO ASK A QUESTION ABOUT THE SECONDARY TESTING, SPECIFICALLY WHEN YOU -- IN YOUR PRESENTATION YOU GOT A STUDIES ORDER COLOR PH.

HOW DO YOU ESTABLISH THOSE STANDARDS, AND THEN HOW DO YOU ENFORCE THEM?

>> THAT'S A VERY GOOD QUESTION. SECONDARIES ARE AESTHETICS. THEY ARE NOT HEALTH-BASED. THEREFORE, THE NGNCs DON'T HAVE TO MONITOR FOR THEM. THEY'VE ONLY COMMUNITY STANDARDS.

THEY'RE ONLY COMMUNITY STANDARDS.

THE EPA REGULATIONS SAY THEY'RE NOT ENFORCEABLE.

STATE REGULATIONS REQUIRE THAT WE, THAT THEY ARE ENFORCEABLE REGULATIONS.

IN OTHER WORDS, WE CAN TAKE ENFORCEMENT.

WE DO NOT TAKE ENFORCEMENT UNLESS THERE ARE COMPLAINTS OR THEY'RE EXTREMELY HIGH.

BECAUSE THEY ARE AESTHETICS.

OFTEN WITH THESE PROBLEMS, THEY OCCUR BECAUSE OF PLUMBING WHICH ALSO CAUSES US ISSUES.

IN OTHER WORDS, IT'S NOT THE UTILITY'S FAULT OR RESPONSIBILITY FOR SOMETHING THAT'S OCCURRING ON THE OTHER SIDE OF THE METER, ALTHOUGH THEIR WATER MAY BE FAIRLY AGGRESSIVE.

SO SECONDARIES, UM, ARE KIND OF A, A VERY MUCH A PROFESSIONAL JUDGMENT ISSUE.

IF YOU GO DOWN TO SOUTH FLORIDA, THIS IS WHAT I FOUND WHEN I WENT DOWN TO FT. LAUDERDALE, I THINK I WAS AT A PSC MEETING.

I WENT INTO THE HOTEL, TURNED ON THE WATER, AND IT CAME OUT BROWN.

AND THEN WE WENT DOWN, AND THE WATER WAS CLEAR AT THE TABLES WHERE WE WERE HAVING THIS MEETING.

UM, HOW COULD THIS BE? THEY SAID, WELL, EVERYBODY'S USED TO THE BROWN WATER DOWN HERE.

WHEREAS IF YOU GO INTO SOME OTHER COMMUNITIES WHO WEREN'T USED TO THAT, LIKE HERE IN TALLAHASSEE, IF THERE'S A COLOR ISSUE, WE WILL JUMP ON IT IMMEDIATELY.

GENERALLY, COLOR IS A RESULT OF ORGANICS IN THE WATER.

YOU SEE HIGHER ORGANICS IN THE WATER IN SOUTH FLORIDA THAN YOU DO UP HERE.

>> SO SUM UP FOR MY PURPOSES, MY QUESTION HERE BASICALLY WHAT I'M HEARING YOU SAY IS WE NEED TO COMPLAIN TO YOUR ORGANIZATION ON THE COLOR AND TO DOOR? -- THE ODOR?

>> RIGHT, IF WE'RE NOT RECEIVING COMPLAINTS ON AESTHETICS, WE WOULD NOTIFY THEM THAT THEY'RE IN VIOLATION, THEY ARE IN VIOLATION.

BUT AS FAR AS ENFORCEMENT GOES, WE WON'T INITIATE ENFORCEMENT UNLESS IT DEVELOPS INTO A REAL PROBLEM.

>> OKAY.

>> OTHERWISE -- THE THING ABOUT SECONDARIES IS THEY'RE OFTEN

VERY EXPENSIVE TO CONTROL.  
IT'S NOT SOMETHING THAT'S EASY  
TO DEAL WITH.  
>> UM, THANK YOU.  
MR. FRIES, I BELIEVE, IS NEXT.  
>> YES.  
YOU TALKED ABOUT THE CAPACITY OF  
DEVELOPMENT ELEMENT.  
CAN YOU GO INTO THAT IN A LITTLE  
MORE DETAIL?  
BECAUSE I THINK THAT MAY BE  
SOMETHING THAT THIS COMMITTEE  
WOULD BE VERY INTERESTED IN  
UNDERSTANDING WHAT YOUR  
CAPABILITIES ARE AND WHAT, UM,  
WHAT YOU ACTUALLY DO IN THAT  
AREA.  
>> THE CAPACITY DEVELOPMENT  
PROGRAM HAS TWO PARTS, THE  
EXISTING STRATEGY PART IS FOR  
SYSTEMS THAT ARE EXISTING NOW,  
AND THEY BEGIN TO FAIL TO  
COMPLY WITH THE RULES AND  
REGULATIONS.  
AND THAT PARTICULAR ASPECT WHAT  
WE DO IS WE RELY ON OUR SERVICE  
PROVIDERS LIKE TREEO AND MORE  
SPECIFICALLY FLORIDA RURAL WATER  
TO SEND A CIRCUIT RIDER OUT TO  
THEIR SYSTEM TO SEE IF THEY CAN  
HELP.  
EITHER WITH HELPING WITH THE  
RATES OR MANAGEMENT OF THE  
SYSTEM OR SOME OF THE TECHNICAL  
ASPECTS OF THE SYSTEM TO TRY TO  
GET THEIR CAPACITY.  
BY CAPACITY WE ALSO MEAN THE  
TECHNICAL CAPACITY TO MEET THE  
STANDARDS.  
SO IT'S PRETTY MUCH OF A  
TECHNICAL ASSISTANCE PROGRAM.  
FOR NEW SYSTEMS WE TRY TO CATCH  
THOSE AT THE PERMITTING OF THE  
CONSTRUCTION, AND WE HAVE AN  
ADDITIONAL FORM IN OUR RULES IN  
WHICH THEY HAVE TO COMPLETE AND  
SATISFY THAT THEY HAVE LOOKED AT  
THE FINANCING AND HAVING THE  
MANAGERIAL SKILLS TO RUN A WATER  
SYSTEM.  
>> WE FINISHED?  
>> FOLLOW UP.  
ALL THEY HAVE TO DO IS THEY'VE  
CONSIDERED THAT?  
YOU DON'T TAKE THAT FURTHER STEP  
TO MAKE SURE THAT THEY --  
>> WELL, THEY HAVE TO SHOW A

BALANCE, A BALANCE SHEET.  
IN OTHER WORDS, THAT THEY,  
THEY'RE COMPARING THEIR  
EXPENDITURES WITH THEIR REVENUES  
AND THAT THEY'RE SHOWING THAT  
THEY'RE GENERATING ENOUGH  
REVENUE AT LEAST IN THEIR  
PROPOSAL TO, YES, TO RUN THE  
TREATMENT PLANT.

>> AND FROM A TECHNICAL  
PERSPECTIVE, JUST THAT THEY'RE  
CAPABLE OF RUNNING THE SYSTEM?  
>> YEAH.

THAT THEY HAVE IDENTIFIED A  
MANAGER AND AN OPERATOR, AN  
OPERATOR COMPANY, THAT THEY HAVE  
THE RIGHT LEVEL OF OPERATORS.  
IN THE SYSTEM.

AND THAT THEY HAVE A SYSTEM FOR  
MAINTAINING FLUSHING PLANTS AND  
SO FORTH.

>> UM, ARE YOU FINISHED,  
MR. FRIES?

OKAY, THANK YOU.

MR.--

[INAUDIBLE]

>> GOOD MORNING, VAN.

>> GOOD MORNING.

>> IN YOUR RULE BURDEN  
REDUCTION, UM, ARE YOU GOING TO  
BE LOOKING ALSO AT THE WATER  
DISTRIBUTION LICENSING AT ALL?

>> LET'S SEE.

ON THE LICENSING, NO.

THAT'S, THAT'S SOMETHING THAT  
BOB MIGHT LOOK AT.

>> THE REASON I'M SAYING IT IS,  
YOU KNOW, IS CREATING SOME  
UTILITIES KIND OF A REAL BURDEN  
IN TRYING TO GET ALL THESE  
PEOPLE THAT PUT THE PIPE IN, YOU  
KNOW, YOU'RE GETTING LICENSED,  
YOU HAVE A WATER RATE, YOU HAVE  
TO GET A LICENSE ORDER  
DISTRIBUTION.

SO THAT WILL BE AN EXTRA BURDEN  
TO THE SMALL UTILITIES, AND,  
YOU KNOW, I THINK THAT SOME OF  
THE PEOPLE THAT ACTUALLY OPERATE  
THE SYSTEM HAVE BEEN OPERATING  
THE SYSTEM FOR 30, 40 YEARS, AND  
THEY'RE NOT ABLE TO GET A  
LICENSE FOR WATER DISTRIBUTION.  
AND I WONDER IF THERE'S GOING TO  
BE ANY REVISIONS TO LIKE, YOU  
KNOW, EVEN HIGH SCHOOL DIPLOMA.  
IN MY CASE I HAVE PEOPLE THAT



ARE MY TOP PEOPLE, ARE  
SUPERVISORS, AND THEY DON'T HAVE  
HIGH SCHOOL DIPLOMAS, AND THEY CANNOT  
GET A LICENSE.  
BUT STILL THEY'RE TOPS, AND  
THAT'S WHAT I'M SAYING.  
ARE YOU GOING TO BE LOOKING AT  
SOMETHING LIKE THAT IN WATER  
DISTRIBUTION AT ALL?  
>> YEAH, THE ISSUE YOU BRING UP  
HAS BEEN ONE STATEWIDE, AND A  
BIG ISSUE.  
AND I THINK I'M GOING TO HAVE TO  
DEFER TO BOB ABOUT THAT BECAUSE  
THAT'S A STATUTORY ISSUE ABOUT  
LICENSING IN THE OPERATOR  
CERTIFICATION PROGRAM THAT HE  
MANAGES.  
>> BOB, CAN YOU --  
>> THAT'S EXACTLY RIGHT.  
THAT COMES OUT OF THE FLORIDA  
STATUTES THAT REQUIRES  
APPLICANTS FOR LICENSURE TO HAVE  
A HIGH SCHOOL DIPLOMA OR  
EQUIVALENT.  
LIKE A G.E.D.  
WE DO GET MANY APPLICATIONS THAT  
HAVE GONE OUT AND PAID FOUR OR  
FIVE HUNDRED DOLLARS FOR WHAT  
THEY THINK IS A G.E.D. THAT THEY  
GOT IN 15 MINUTES ON THE  
INTERNET AND PUBLISHES IT OUT.  
WE VERIFY EACH AND EVERY  
APPLICATION, EVERY G.E.D. THAT  
COMES THROUGH TO COMPLY WITH THE  
STATUTE.  
NOW, IF THERE'S SOME RELIEF  
GIVEN BY THE LEGISLATURE, WE  
WOULD CERTAINLY LESSEN THE  
REQUIREMENTS.  
>> THANK YOU.  
COMMISSIONER MARIANO, I THINK  
YOU HAVE A FOLLOW-UP QUESTION?  
>> UM, ANOTHER QUESTION.  
YOU ASKED ABOUT WATER QUALITY  
SECONDARY AESTHETICS, YOU KNOW, WE'VE GOT  
SOME SITUATIONS WHERE WE'VE GOT  
SMELLY WATER, AND SOMETIMES --  
I'VE GOTTEN A LETTER, AND I'M  
NOT SURE IF IT'S DEP, SO CORRECT  
ME IF I'M WRONG, BUT THEY WERE  
GIVEN A WARNING LETTER THAT DO  
NOT WASH CLOTHES WITH THE SYSTEM  
THAT'S GOING ON RIGHT NOW.  
BUT IT DIDN'T ADDRESS WHETHER  
THEY COULD ACTUALLY DRINK THE  
WATER.

AND I'M JUST WONDERING --

>> YEAH.

THAT SOUNDS LIKE SOMETHING MAYBE  
THE UTILITY MODIFIED A NOTICE.

WE HAVE A, BASICALLY, WE HAVE  
OUR BOILED WATER NOTICES, OUR DO  
NOT DRINK, BUT YOU CAN SHOWER,  
FOR EXAMPLE.

OR WATER THE LAWN WITH THEM.

UM, IT SOUNDS LIKE WHEN THEY SAY  
DON'T WASH WITH IT OR

LAUNDRY, IT'S AN IRON PROBLEM  
BECAUSE IRON WILL STAIN ONE'S  
CLOTHES.

IT'S ALL RIGHT TO DRINK IT.

YOU WOULD NOTICE IT.

BUT IN YOUR LAUNDRY, IT JUST  
RUINS -- PUTS STAINS ON THE SINK  
AND THE CERAMICS AND IN YOUR TUB  
AND SO FORTH.

>> THANK YOU.

>> THANK YOU.

I HAVE JUST ONE GENERAL QUESTION  
REGARDING MONITORING AND HOW BIG  
DEP'S STAFF IS TO COVER  
MONITORING FOR THE VARIOUS  
WATER/WASTEWATER UTILITIES.

>> OKAY.

WELL, YOU REMEMBER THERE'S A DOH  
COMPONENT, AND DOH REGULATES,  
LIKE I SAY, ABOUT A THIRD OF THE  
SYSTEMS.

SO THEIR STAFF NUMBERS INCLUDING  
HEADQUARTERS, I THINK, WAS  
AROUND 80 OR 90, AND THAT'S  
BECAUSE THEY DO OTHER THINGS WE  
DON'T DO, LIKE THEY DO  
LABORATORY CERTIFICATION, THEY  
DO DISEASE INVESTIGATION.

OUR STAFF, INCLUDING

HEADQUARTERS, IS AROUND 92

INDIVIDUALS, AND WE HAVE SIX

DISTRICT OFFICES, AND WE HAVE

FOUND THAT -- AND THIS IS A

SURVEY I JUST COMPLETED

NATIONWIDE BY GOING THROUGH MY

ORGANIZATION, AND I FOUND THAT

NATIONALLY IT TAKES ABOUT ONE

PROFESSIONAL STAFF TO REGULATE

60 SYSTEMS.

THAT VARIES A BIT UPON WHETHER

OR NOT THE SURFACE WATER SYSTEMS

ARE THE TYPE OF SYSTEMS AND SO

FORTH, BUT THAT'S PRETTY MUCH

BEEN OUR STANDARD OF TRYING TO

DETERMINE STAFFING LEVELS AT

LOOKING AT ABOUT A 60-65 SYSTEMS

PER INDIVIDUAL, PROFESSIONAL  
INDIVIDUAL.  
THAT WOULDN'T INCLUDE, FOR  
EXAMPLE, DATA ENTRY OR CLERICAL.  
>> THANK YOU.  
ALSO REGARDING YOUR TESTING FOR  
CONTAMINANTS, YOU SAID THAT IT  
VARIES BASED ON THE COUNTY, FOR  
EXAMPLE, LIKE MIAMI-DADE YOU  
WERE USING THE EXAMPLE VERSUS A  
RURAL.  
>> YEAH.  
NOT BASED ON COUNTY, IT'S BASED  
ON SIZE OF THE SYSTEM, YES.  
>> OKAY, THANKS.  
ANY OTHER QUESTIONS?  
OH, MR. TYRRELL.  
>> I JUST WANTED TO MAKE A  
COMMENT ON THE, LIKE MIAMI-DADE,  
ON THE WATER DISTRIBUTION, THERE  
WERE ABOUT 450 SAMPLES.  
BUT IN TOTAL WE DO ABOUT 225,000  
SAMPLES A YEAR.  
THIS IS COMPLIANCE IN THE WATER  
TREATMENT PLANTS AND FOR IN THE  
WATER DISTRIBUTION.  
>> APPRECIATE THAT.  
>> YEAH.  
THAT'S PROBABLY PER LIMIT.  
IF YOU LOOK AT THE TABLES FOR  
HOW MANY SAMPLES YOU HAVE TO DO  
BASED ON POPULATION, MIAMI'S ON  
THE TOP SCALE THERE, 450 OR 480  
OR WHATEVER IT IS.  
>> THANK YOU SO MUCH FOR COMING  
OUT AND GIVING THE PRESENTATION.  
WE REALLY APPRECIATE IT, AND,  
UM, THANK YOU AGAIN.  
>> WELL, THANK YOU VERY MUCH.  
>> THANK YOU.  
AT THIS TIME WE WILL HEAR FROM  
MR. ATSON FROM THE DEPARTMENT OF  
ENVIRONMENTAL PROTECTION  
DOMESTIC WASTEWATER PROGRAM.  
GET YOU SET UP THERE.  
>> GOOD MORNING.  
>> MORNING.  
>> MY NAME'S RICHARD ADDISON, I  
WORK IN THE DOMESTIC WASTEWATER  
SECTION.  
MY PRESENTATION IS ON DEP'S ROLE  
AND THE DOMESTIC WASTEWATER  
FACILITIES IN FLORIDA.  
>> IS YOUR MICROPHONE ON?  
>> HELLO?  
>> I THINK IT'S ON.  
>> IS IT ON?

>> I WORK MAINLY ON THE  
PERMITTING SIDE, SO THERE'LL BE  
MORE OF THAT ASPECT ON MY  
PRESENTATION.  
WASTEWATER FACILITIES INCLUDES  
SEWERS, PLUMBING STATIONS AND --  
[INAUDIBLE]  
THAT TRANSMIT WATER TO THE  
TREATMENT FACILITY.  
THE WASTEWATER FACILITY AND  
BIOMANAGEMENT FILLS.  
WHEN DOMESTIC WASTEWATER'S  
TREATED, BOTH FLUID AND BODY  
SOLIDS MUST BE DISPOSED OF  
PROPERLY.  
THE NEXT FEW SLIDES SHOW INTERIM  
FACTS AND STATISTICS ABOUT  
WASTEWATER IN FLORIDA.  
DEP REGULATES ABOUT 2100  
DOMESTIC WASTEWATER FACILITIES.  
THERE ARE 1900 TREATMENT  
FACILITIES AND ABOUT 200  
BIOSOLIDS MANAGEMENT FACILITIES.  
CAPACITY OF THE TREATMENT  
FACILITIES IS OVER  
TWO-AND-A-HALF BILLION GALLONS  
PER DAY, AND DISCHARGE IS OVER  
ONE-AND-A-HALF BILLION GALLONS  
PER DAY.  
ABOUT TWO-THIRDS OF FLORIDA'S  
POPULATION IS SERVED BY CENTRAL  
SYSTEMS REGULATED BY DEP, AND  
ABOUT A THIRD IS SERVED BY  
SEPTIC SYSTEMS THAT ARE  
REGULATED BY DEPARTMENT OF  
HEALTH.  
THIS PIE CHART SHOWS THE METS  
USE -- METHODS USE OR FOR  
DISCHARGE OF THE 1.5 BILLION  
GALLONS A DAY OF FLUID.  
THIS INCLUDES DISPOSAL THROUGH  
SERVICE WATER OUTFALLS, DEEP ACT  
I BIER IF -- AQUIFER INJECTION  
WELLS AND PONDS AND SPRAY  
FIELDS.  
THIS SHOWS THE APPROXIMATE  
NUMBER OF WASTEWATER TREATMENT  
PLANTS BY SIZE.  
ABOUT 300 PLANTS HAVE AROUND 95%  
OF FLORIDA'S WASTEWATER  
TREATMENT PLANT CAPACITY.  
ABOUT 1300 OF THE 1900 TREATMENT  
PLANTS REGULATED BY DEP ARE  
SMALL FACILITIES WITH TREATMENT  
CAPACITIES UNDER 100,000 GALLONS  
PER DAY.  
THIS PIE CHART SHOWS WASTEWATER

TREATMENT PLANT OWNERSHIP.  
AS YOU CAN SEE, A LITTLE LESS  
THAN A THIRD ARE PUBLICLY OWNED,  
AND A LITTLE MORE THAN  
TWO-THIRDS ARE PRIVATELY OWNED.  
THESE PIE CHARTS SHOW TREATMENT  
CAPACITY BY OWNERSHIP TYPE.  
THE PLANTS LESS THAN 100,000  
GALLONS PER DAY ARE SHOWN IN  
BLUE.  
AROUND A THIRD OF THE  
PUBLICLY-OWNED FACILITIES ARE  
LESS THAN 100,000 COMMONS PER  
DAY.  
A LARGE MAJORITY OF THE  
PRIVATELY-OWNED FACILITIES HAVE  
CAPACITIES LESS THAN 100,000  
GALLONS PER DAY.  
THESE PIE CHARTS SHOW SERVICE  
WATER DISCHARGES BY OWNERSHIP  
TYPE.  
A LARGE MAJORITY OF THE  
PRIVATELY-OWNED FACILITIES DO  
NOT DARK SURFACE WATERS, THEY  
USE METHODS SUCH AS SPRAY FIELDS  
FOR DISCHARGE.  
THE CRITERIA TO BE ALLOWED TO  
OBTAIN A NEW DISCHARGE FOR  
SURFACE WATERS IS COMPLEX.  
DEP'S IMPLEMENTATION OF DOMESTIC  
WASTEWATER PROGRAM CONSISTS OF  
PERMITTING, UM, INSPECTIONS AND  
ENFORCEMENT, TECHNICAL  
ASSISTANCE OUTREACH AND  
RULEMAKING CONSISTENCY.  
DEP'S DAY-TO-DAY WASTEWATER  
PERMITTING AND ENFORCEMENT IS  
CONDUCTED BY THE SIX OFFICES AND  
FIVE DELEGATED LOCAL PROGRAMS.  
DEP'S GOAL IS TO INSPECT EACH  
WASTEWATER FACILITY ONCE A YEAR,  
AND IF THERE ARE PROBLEMS, THERE  
COULD BE FOLLOW-UP INSPECTIONS.  
BOTH THE DISTRICTS IN  
TALLAHASSEE PROVIDE TECHNICAL  
ASSISTANCE OUTREACH ACTIVITIES  
WHICH I'LL DISCUSS IN A LATER  
SLIDE PRIMARILY DONE IN  
TALLAHASSEE.  
PERMITS OF DISCHARGES TO SURFACE  
WATERS AND UNDERGROUND INJECTION  
WELLS ISN'T DELEGATED TO THE  
LOCAL PROGRAMS.  
UM, MOST DOMESTIC WASTEWATER  
TREATMENT FACILITIES ARE  
REQUIRED TO OBTAIN AN INDIVIDUAL  
PERMIT WHICH INCLUDES PERMIT

REQUIREMENTS AND CONDITIONS  
TAILOR TODAY THE SPECIFIC WASTE  
WATER SYSTEMS REGULATED IN THE  
PERMIT.

INDIVIDUAL PERMITS ALLOW THEM TO  
CONSTRUCT AND OPERATE THE  
WASTEWATER TREATMENT FACILITY.  
THE DEPARTMENT ALSO ISSUES  
GENERIC PERMITS FOR REGULATING  
CATEGORIES OF WASTEWATER  
FACILITIES' ACTIVITIES THAT  
INVOLVE THE SAME OR SIMILAR  
TYPES OF OPERATIONS OF WASTE.  
CURRENTLY, DOMESTIC WASTEWATER  
TREATMENT FACILITIES THAT MAY  
QUALIFY FOR A GENETIC PERMIT  
INCLUDE SMALL FACILITIES THAT  
DISCHARGE THE SLOW WEIGHT AND  
SMALL FACILITIES THAT DISCHARGE  
THE RAPID RATE INFILTRATION AND  
ABSORPTION FIELD SYSTEMS.  
USE OF A GENERIC PERMIT IS  
SUBJECT TO DEPARTMENT REVIEW AND  
APPROVAL AS WITH INDIVIDUAL  
PERMITS ARE REQUIRED.

DEP ALSO REGULATES THE  
CONSTRUCTION OF NEW COLLECTION  
SYSTEMS.  
COLLECTION TRANSMISSION SYSTEMS  
CAN EITHER BE CONSTRUCTED UNDER  
A GENERAL PERMIT OR BY  
INDIVIDUAL PERMIT EXCEPT FOR  
ALTERNATIVE COLLECTION  
TRANSMISSION SYSTEMS, THE  
GENERAL PERMIT CAN BE USED  
PROVIDED THE PROJECT HAS MET  
CERTAIN CRITERIA SUCH AS BEING  
DESIGNED IN ACCORDANCE WITH  
STANDARDS AND CRITERIA AND THE  
SYSTEM HAS CAPACITY THE RECEIVE  
THE WASTEWATER BY THE PROPOSED  
SYSTEM.

ALTERNATIVE COLLECTION  
TRANSMISSION SYSTEMS ARE THOSE  
SYSTEMS NOT COMPOSED OF STRICTLY  
CONVENTIONAL GRAVITY SEWERS,  
PUMP STATIONS AND FORCE MAINS.  
THIS INCLUDES LIKE PRESSURE  
SEWERS, USE OF SMALL PIPELINES  
AND SMALL DIAMETER SEWERS.  
THOSE WOULD REQUIRE AN  
INDIVIDUAL PERMIT.  
COLLECTION SYSTEMS NOT MEETING  
THE CRITERIA HAVE TO GET AN  
INDIVIDUAL PERMIT.  
A DEP-ISSUED PERMIT FOR A  
WASTEWATER FACILITY GENERALLY

CONTAINS TREATMENT, DISPOSAL,  
MONITORING AND REPORTING AND  
DOMESTIC BIOSOLID MANAGEMENT.  
THERE ARE STANDARD CONDITIONS  
THAT ARE IN ALL PERMITS AS WELL  
AS SPECIFIC CONDITIONS DEPENDING  
ON THE FACILITY'S TREATMENT AND  
DISPOSAL.

SELF-MONITORING REPORTS CALLED  
DISCHARGE MONITORING REPORTS ARE  
REQUIRED AND ARE SUBMITTED TO  
THE DEPARTMENT BY THE PERMITEE.  
THE PERMIT CODE'S BOTH  
CONSTRUCTION, CERTAIN  
CONSTRUCTION ACTIVITIES AND  
OPERATION.

ONLY A PERMIT IS VALID FOR FIVE  
YEARS, BUT IN CERTAIN SITUATIONS  
PERMITS MAY BE ISSUED FOR UP TO  
TEN YEARS.

