



3. The Duncans moved into their new home on the Property in April 2006. A sewage system was installed on the Property on January 12, 2006 and the sewage system was approved by the Prince George Health Department ("PGHD") on April 21, 2006.

4. The Duncans began to notice septic tank overflow and effluent in their home and in their yard in November 2006. Several representatives from the PGHD visited the Property over the course of the following two (2) years, and in May 2008, representatives from PGHD recommended that the Duncans install a French drain sewage system. The Duncans agreed and hired a contractor to install the French drain system. The PGHD issued a permit for the French drain on December 12, 2008, and the contractor completed the French drain system on December 23, 2008.

5. Problems soon developed with the French drain system, and on April 8, 2009, PGHD issued a permit for the construction of a new sewage drainage system on the Property.

6. The testimony indicated that the contractor of the first sewage disposal system failed to properly install the system and installed the system too deep and too close to the water table. However, the testimony also indicated that the sewage system should not have been permitted by PGHD due to the soils on the Property.

7. The evidence further indicated that the sewage system failed within three (3) years of its permit.

8. The Duncans replaced the failed sewage systems at a total cost of \$5,292.90.

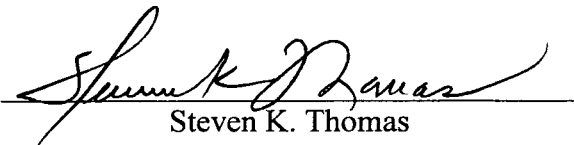
**CONCLUSIONS OF LAW**

9. The Board is authorized to determine whether a decision of the State Health Commissioner to refuse payment from the indemnification fund complies with the requirements contained in Va. Code § 32.1-164.1:01.

10. Because there was evidence of negligence on the part of the Department in permitting the Duncans' sewage system septic pump without a proper inspection, the Board grants the Duncans' request for indemnification and orders payment to Robert and Kristen Duncan in the amount of \$2,646.45.

**WHEREFORE**, for the foregoing reasons, the Board hereby *overturns* the decision of the State Health Commissioner to deny any indemnification award to Robert and Kristen Duncan and grants the Duncans' request for indemnification.

**If the Appellants wish to appeal this ORDER, they may do so pursuant to Va. Code § 2.2-4000 et seq. and the Rules of the Supreme Court of Virginia by: (1) filing a Notice of Appeal with the Secretary of the Board within thirty (30) days of service of this ORDER as required by Rule 2A:2; and (2) filing a Petition for Appeal in the Circuit Court within (30) days of filing the Notice of Appeal in accordance with Rule 2A:4 of the Rules of the Supreme Court of Virginia.**

  
Steven K. Thomas  
Chairman

Dated: March 9, 2010