

2. The Happels are and were at all times pertinent to this matter the owners of 11901 Carter's Garden Terrace, also known as Lot 37 in Carters Mill East Subdivision, located in Chesterfield County, Virginia (the "Property").

3. April 5, 2005, the Chesterfield County Health Department ("CCHD") issued a sewage disposal system ("System") operation permit for the Property and the System was installed on April 5, 2005.

4. The Happels purchased the Property on April 7, 2005, and Mr. Happel testified that he and Mrs. Happel noticed problems with the System almost immediately.

5. On May 14, 2007, the Happels filed a repair application for the System with CCHD. However, the evidence showed that the Happels thereafter withdrew this repair application.

6. On May 13, 2008, the CCHD received from the Happels, a second repair application, which was not withdrawn.

7. On May 11, 2009, the Happels filed an application with the Virginia Department of Health, Richmond for reimbursement of the costs to repair the System from the Indemnification Fund.

8. The evidence indicated that the System failed within three (3) years of its permit. However, the evidence further indicated that the repair application for the System was not filed within three (3) years of the System's construction. Moreover, the Happels did not file for reimbursement from the Indemnification Fund within a year of the System's failure.

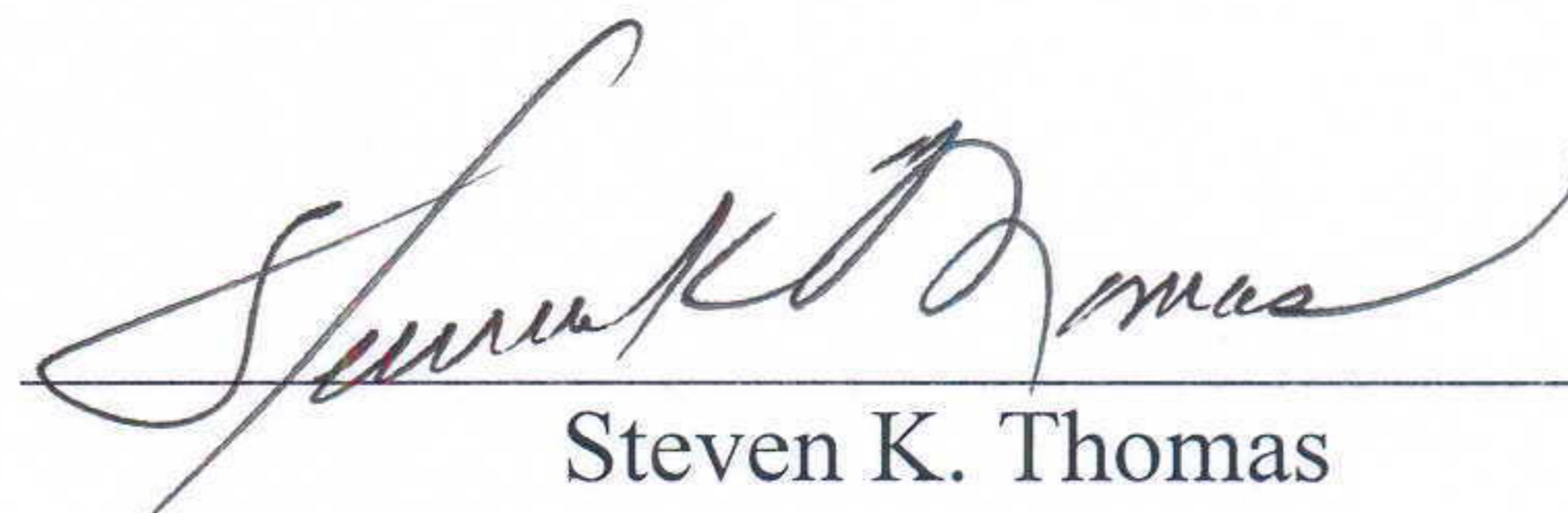
CONCLUSIONS OF LAW

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 Virginia Code § 32.1-164.1:01.

10. Because the Happels failed to file their repair application and request for monies from the Indemnification Fund within the time prescribed in Virginia Code § 32.1-164.1:01, the Board denies the Happels' request for indemnification.

WHEREFORE, for the foregoing reasons, the Board hereby *upholds* the decision of the State Health Commissioner to *deny* any indemnification award to Michael and Sonya Happel.

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: February 24, 2010