

**VIRGINIA:**

**SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD**

LEONARD ALLESE, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 VIRGINIA DEPARTMENT OF HEALTH, )  
 )  
 Appellee. )

IN THE APPEAL OF THE DECISION BY THE VIRGINIA DEPARTMENT OF HEALTH RE: Indemnification for Sewage System Failure of Lot 4, Section D, Pinewood Estates in Powhatan County.

**ORDER**

Based upon the entirety of the record of this matter, including documents, presentation, oral testimony, argument, other evidence, and authorities offered by the parties pursuant to the January 16, 2008 hearing before the Sewage Handling and Disposal Appeal Review Board (the "Board") herein, the Board finds the following:

**BACKGROUND**

1. This case is an appeal of the decision of the Virginia Department of Health ("Department") of a request by Mr. Leonard Allese for the indemnification from the Onsite Sewage Indemnification Fund ("Fund").

2. Leonard J. Allese and Loretta J. Allese are the owners of record of property located at 4387 Three Bridge Road, of Lot 4, Section D, Pinewood Estates in Powhatan County ("Property").

3. An onsite sewage disposal system ("System") was installed on the Property and subsequently failed within three years of installation.

4. Peter Brooks, P.E., was hired to investigate the impact of a pool excavation on the sewage system. A report by Brooks dated May 19, 1995, concluded that the lowest drain field trench was damaged by the excavation.

5. The repair system has not been installed nor have any records been submitted by Allese concerning the cost of the repair.

#### **APPLICABLE LAWS AND REGULATIONS**

6. Va. Code § 32.1-164.1:01 established the Fund to receive monies generated by a portion of the fees collected by the Department pursuant to the permitting of onsite sewage disposal systems.

7. The purpose of the Fund is to assist any Virginia real property owner holding a valid septic tank permit when such owner's system fails within three years of construction and the failure results from the negligence of the Department.

8. Pursuant to Va. Code § 32.1-164.1:01, the owner of the septic tank system permitted by the Department may request the Commissioner to review the circumstances of the onsite system failure and grant indemnification from the fund if the septic system is permitted by the Department and it has failed within three years of construction.

9. Va. Code § 32.1-164.1:01(C) requires owners to file their claim within one year of from the date the system or components thereof have failed.

10. The Regulations of the Board of Health govern the collection, conveyance, transport, treatment, and disposal of sewage within the Commonwealth.

11. The Board of Health also regulates the use and disbursement of monies in the Fund pursuant to Va. Code § 32.1-164.1:01.

12. Regarding matters within the Board of Health's jurisdiction, Va. Code § 32.1-164 authorizes the State Health Commissioner to act in the absence of Board regulations.

13. Pursuant to Va. Code § 32.1-164.1:01, the Sewage Handling and Disposal Appeal Review Board hears appeals from the denial of an application to the State Health Commissioner for indemnification from the fund.

### **FINDINGS OF FACT**

1. Leonard J. Allese and Loretta J. Allese are the owners of record of property located at 4387 Three Bridge Road, of Lot 4, Section D, Pinewood Estates in Powhatan County ("Property").

2. An onsite sewage disposal system ("System") was installed on the Property in 1994 and subsequently failed within three years of installation.

3. Peter Brooks, P.E., issued a report dated May 19, 1995, concluding the lowest drain field trench of the sewage system was damaged during exaction for a swimming pool.

4. There is no written plan or estimate for installation or repairs of a new onsite sewage disposal system for the Property.

5. Repairs have not been made to the system.

6. Mr. Allese failed to provide documentation upon which an indemnification award may be based.

7. Mr. Allese filed the subject claim approximately twelve years from when the system first failed.

#### **CONCLUSIONS OF LAW**

1. The Board is authorized to determine whether a decision of the State Health Commissioner to refuse an application for indemnification from the Fund complies with the requirements of Va. Code § 32.1-164.1:01.

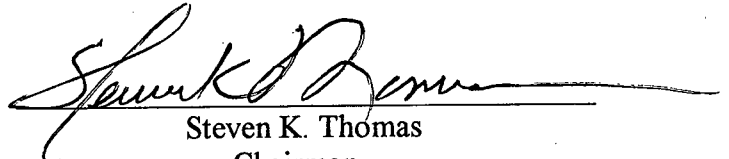
2. Absent a repair application or other written estimates, there is nothing upon which the Board may base a decision for change of indemnification award.

3. Va. Code § 32.1-164.1:01(C) requires owners to file their claim within one year of from the date the system or components thereof have failed.

**WHEREFORE**, for the foregoing reasons, the Board hereby *upholds* the decision of the Department of Health to *deny* any indemnification award to Mr. and Mrs. Allese.

**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**

receipt 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: January 28\_\_\_\_, 2008