

2. The Beavers are owners of record of a 10.1523 acre lot, TMP 20-7, also known as 10052 Settle School Road, Rixeyville in Culpeper County, Virginia (“Property”). An onsite sewage disposal system (“System”) was installed on the Property and subsequently failed within three years of installation.

3. On October 18, 2006, the Beavers appealed to the Board from the Department’s granting of an award of Five Thousand, Six Hundred Eighty-Two dollars (\$5,682.00) from the Fund.

4. The Department stipulates the System failed within three (3) years of installation.

5. The Department stipulates the Beavers filed a timely application for indemnification from the Fund within one (1) year of failure of the System.

6. The Department stipulates Department negligence caused the failure of the System within the contemplations of Virginia Code § 32.1-164.1:01.

APPLICABLE LAWS AND REGULATIONS

1. 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.

2. 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.

3. 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.

4. Pursuant to the authority of Va. Code § 32.1-164, the Regulations of the Board of Health govern the collection, conveyance, transport, treatment, and disposal of sewage within the Commonwealth.

5. Under Va. Code § 32.1-164.1:01, the Commissioner of the Department of Health regulates the use and disbursement of monies in the Fund.

6. Regarding matters within the Board of Health's jurisdiction, Va. Code § 32.1-20 vests the State Health Commissioner with all the authority of the Board when it is not in session, subject to such rules and regulations as may be prescribed by the Board.

7. 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. The System has failed.

2. Any warranty claims against the System manufacturer have been denied because of the failure of the System due to improper soil conditions as opposed to mechanical malfunction of defect.

3. The Beavers submitted to the Department written proposals and receipts for the System repair.

4. The Department has evaluated the Beavers' application of May 26, 2006 and determined they do qualify for payment from the Fund.

5. The Board has determined that definitive and sufficient evidence has been presented to the Board for the newly installed System.

CONCLUSIONS OF LAW

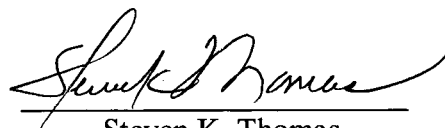
1. The Board is authorized to determine whether a decision of the State Health Commissioner to refuse an application for indemnification from the Fund complies with the requirements of Va. Code § 32.1-164.1:01.

2. A majority of the Board, convened to consider this appeal, finds that the monetary financial caps imposed by the policy under GMP #123 are not sufficient for the purposes of indemnification in this case.

3. The Board finds the Department's decision inconsistent with Va. Code § 32.1-164.1:01 because the amount awarded fails to adequately indemnify the Beavers for the cost of the System, since the claims made by them are now adequately substantiated by definitive evidence.

THEREFORE, for the foregoing reasons, the Board hereby *reverses* the Department's award of indemnification in the amount of \$5,682.00, and *orders* the Commissioner of the Virginia Department of Health to indemnify the Beavers in accordance with the amount awarded by the Board in this Order in the amount of Fifteen Thousand Three Hundred and Seventy dollars (\$15,370.00) and pay said amount forthwith.

If the Appellants wish to appeal this ORDER, they may do so pursuant to Virginia 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: 2/20/2007