

3. On September 23, 2005, an official from the Montgomery County Health Department ("MCHD") inspected the sewage system septic pump on the Property. The official noted that the electrical wiring to the septic pump had not yet been installed.

4. On January 11, 2006, the MCHD approved the construction of the septic pump based on assurances from the Eaves that the pump had adequate and properly-installed electrical wiring.

5. Soon thereafter the septic pump failed. The evidence indicated that the failure was due to faulty installation of the electrical wiring.

6. The testimony of MCHD witnesses indicated that the sewage system septic pump should have been inspected subsequent to the completed electrical wiring, but it was not inspected again after September 23, 2005 and before January 11, 2006.

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

8. The Eaves replaced the septic pump at a cost of \$1,750.48.

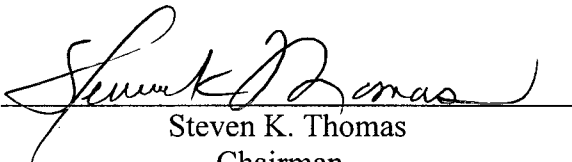
CONCLUSIONS OF LAW

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 Eaves' sewage system septic pump without a proper inspection, the Board grants the Eaves' request for indemnification and orders payment to Henry and Benzena Eaves in the amount of \$1,750.48.

WHEREFORE, for the foregoing reasons, the Board hereby *overturns* the decision of the State Health Commissioner to deny any indemnification award to Henry and Benzena Eaves and grants the Eaves' 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: April 20, 2009

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