

**VIRGINIA:**

**SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD**

DAVID and PAMELA CUTRIGHT,                     )  
                                                                   )  
                           Appellants,                     )  
                                                                   )  
v.                                                                 )  
                                                                   )  
VIRGINIA DEPARTMENT OF HEALTH,             )  
                                                                   )  
                           Appellee.                     )

**ORDER**

This matter comes before the Sewage Handling and Disposal Appeal Review Board (“Board”) pursuant to Virginia Code § 32.1-164.1:01 and § 2.2-4000 et seq. Based upon the entirety of the record of this matter presented at the May 13, 2009 hearing, the Board finds as follows:

**FINDINGS OF FACT**

1. This case is an administrative appeal of the decision of the State Health Commissioner for the Virginia Department of Health (“Department”) to deny an indemnification award, pursuant to Virginia Code § 32.1-164.1:01, to David and Pamela Cutright. The administrative appeal of this case was heard before the Board on May 13, 2009 and both Mr. Cutright and the Department appeared. Mr. Cutright was represented by counsel, Stephen R. Cutright, Esquire. Both parties presented testimony, documentary evidence and argument.

2. The Cutrights are and were at all times pertinent to this matter the owners of Lot 4-10, Lakeview Subdivision, Section C, Block 53 located in Henrico County, Virginia (the "Property").

3. On January 28, 1999, the Henrico County Health Department ("HCHD") issued a sewage disposal system construction permit for the Property.

4. On February 23, 2000, an environmental health specialist from HCHD inspected the on-site sewage disposal system.

5. On March 15, 2000, the HCHD issued an operation permit for the on-site sewage disposal system to serve the Property.

6. On December 19, 2000, the HCHD noted "no concerns" regarding the development of the on-site sewage disposal system.

7. In 2007, the Cutrights notified HCHD that there were problems with the sewage system at the Property. Mr. Cutright testified that he did not notify HCHD of any problems with the sewage system on the Property prior to 2007. In March, 2008, the Cutrights filed an application with HCHD to repair the failed sewage system.

8. The Cutrights applied for indemnification with HCHD on June 8, 2008.

9. The evidence indicated that the Cutrights' sewage system likely failed within three (3) years of its permit. However, the evidence further indicated that the Cutrights failed to notify HCHD within a year of the sewage system's failure as required by Va. Code § 32.1-164.1:01(C).

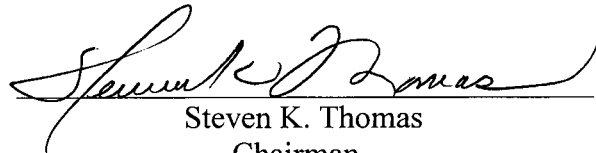
### **CONCLUSIONS OF LAW**

10. 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.

11. Because HCHD and the Department were not notified of the Cutrights' failing sewage system within a year of its failure, pursuant to Va. Code § 32.1-164.1:01(C), the Board denies their 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 David and Pamela Cutright.

**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: June 2, 2009

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