



3. Owners did not appear at the May 14, 2008 hearing in person, but they did submit a one page facsimile requesting the Board to specifically review certain documents contained in the record. The Department objected to the Owners' facsimile request for review and moved to summarily strike the appeal due to Owners' failure to appear.

4. Upon consultation with legal counsel, the Board chairman overruled the Department's objection and denied the Department's motion to strike. The Board ruled that it would proceed with the appeal and review all of the evidence in the case, including the documents specifically referred to by Owners.

5. In 1998, the local health department reviewed and approved the Property for an on-site sewage disposal system ("System"). The local health department also issued a permit for the System in 1998.

6. The System was not installed in 1998 and the permit expired in 1999.

7. A permit was reissued for the Property in 2005 after inspection and certification by an Authorized Onsite Soil Evaluator (AOSE) and a Environmental Health Supervisor, respectively.

8. An operation permit was issued for the Property in May 2006.

9. In July 2006, Owners contacted their local health department and reported the System was failing.

10. The testimony and evidence presented to the board indicated that while the System failed within three (3) years of its reissued permit, it did not fail due to any negligence on the part of the Department.

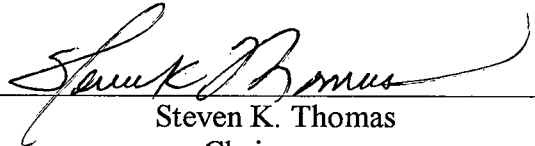
**CONCLUSIONS OF LAW**

11. 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.

12. Because there was no evidence of negligence on the part of the Department in permitting Owners' System, the Board denies Owners' 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 Wendi and Bernard Brown.

**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.**

  
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Steven K. Thomas  
Chairman

Dated: May 28, 2008