

**VIRGINIA:**

**SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD**

DAVID and JO MAYE, )  
 )  
 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, including documents, presentation, oral testimony, argument, other evidence, and authorities offered by the parties at the June 25, 2008 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 Jo Maye.

2. David and Jo Maye were previously and at all times pertinent to this matter the owners (“Owners”) of Lot 28, Hunters Pond subdivision, Tax Map 27H-28, Stafford, Virginia (“Property”).

3. In July 2000, the Stafford County Health Department (“SCHD”) completed a soil evaluation, and in April 2002 the SCHD issued a permit for an on-site sewage disposal system (“System”).

4. In November 2003, the local health department approved the installation of a substituted system.

5. In June 2005, Owners notified the local health department that the substituted system had failed.

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

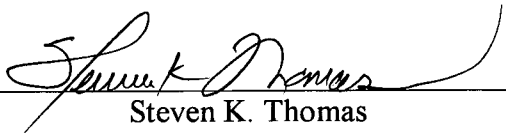
#### **CONCLUSIONS OF LAW**

7. 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.

8. Because there was no evidence of negligence on the part of the Department in permitting Owners’ System or a substituted 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 David and Jo Maye.

**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: July 17, 2008