

**VIRGINIA:**

**SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD**

CHRIS and JILL GUENTHER, )  
 )  
 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 August 5, 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 Chris and Jill Guenther (the “Guenthers”). Mr. Guenther appeared at the August 5, 2009 hearing without counsel, and the Department was present with counsel. Both parties presented testimony, documentary evidence and argument.

2. The Guenthers are and were at all times pertinent to this matter the owners of Lot 33, The Fields Subdivision, Bedford County, Virginia (the “Property”).

3. On February 5, 2007, a sewage system was installed at the Property. The Bedford County Health Department (“BCHD”) issued an operation permit for the sewage system on the Property on March 1, 2007.

4. On October 8, 2008, the BCHD notified the Guenthers that the sewage system had failed, and on November 3, 2008, the BCHD permitted the Guenthers to repair the sewer line.

5. Testimony from the witnesses indicated that at some point during or after the installation of the sewer line, the line became bent, resulting in a sewage backup into the Guenthers’ house.

6. The evidence indicated that the sewage system failed within three (3) years of its permit.

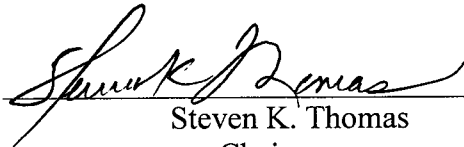
#### **CONCLUSIONS OF LAW**

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 the Guenthers’ sewage system and because both the first and revised permits were granted pursuant to the regulations, the Board denies the Guenthers 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 Chris and Jill Guenther.

**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: September 8, 2009

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