

**VIRGINIA:**

**SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD**

FALGUNI and RAJESH PATEL, )  
 )  
 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 September 19, 2012 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 Falguni and Rajesh Patel (“the Patels”). The Patels appeared at the September 19, 2012 hearing without counsel, and the Department was present without counsel. Both parties presented testimony, documentary evidence and argument.
2. The Patels are and were at all times pertinent to this matter the owners of 17564 Kinloch Ridge Court, Leesburg, Virginia 20175, located in Loudoun County, Virginia (the “Property”).

3. The Patels purchased the Property in 2004. The house on the Property was constructed in 2004, and a sewage system was installed on October 8, 2004.

4. The Loudoun County Health Department ("LCHD") issued an operational permit on the sewage disposal system on October 11, 2004.

5. Repairs to the sewage system were conducted and permitted in 2005.

6. The evidence indicated that the repaired sewage system operated without problems or incidents of inoperation or failure until 2011. The Patels applied for indemnification on February 9, 2012.

7. The evidence did not indicate that the sewage system's failure was due to negligence committed on the part of the Health Department.

8. The evidence indicated that the while the sewage system failed within three (3) years of its operation permit, the Patels did not apply for indemnification within one (1) year of the system's failure.

#### **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 1.) no evidence that the Patels' requested indemnification within one (1) year of the sewage system's failure; and 2.) no evidence of negligence on the part of the Department in permitting Mr. and Mrs. Patel's sewage system, the Board denies Mr. and Mrs. Patel's 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 Falguni and Rajesh Patel.

**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.**

  
Chairman

Dated: October 10, 2012