

**IN THE COURT OF COMMON PLEAS  
MONTGOMERY COUNTY, OHIO**

<b>STATE OF OHIO, <i>ex rel.</i></b>	:	<b>CASE NO. 2016 CV 00363</b>
<b>MICHAEL DEWINE</b>	:	
<b>OHIO ATTORNEY GENERAL,</b>	:	
<b>Plaintiff,</b>	:	<b>JUDGE WISEMAN</b>
	:	
<b>v.</b>	:	
	:	
<b>PINEVIEW PINES ESTATES, LLC,</b>	:	
<b><i>et al.</i></b>	:	<b>CONSENT ORDER</b>
	:	
<b>Defendants.</b>	:	

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The State of Ohio, by its Attorney General (“Plaintiff”/“the State”) and at the written request of the Director of the Ohio Environmental Protection Agency, filed a Complaint seeking injunctive relief and civil penalties against Defendants Pineview Pines Estates, LLC and Mr. Timothy Dearwester. The Complaint alleged violations of Ohio’s safe drinking water laws under R.C. Chapter 6109 and the rules adopted thereunder concerning the Defendants’ operation of a public water system at the Pineview Pines Estates mobile home park located at 5730 Farmersville-West Carrollton Road, West Carrollton, Montgomery County, Ohio 45449.

On June 22, 2016, this Court ordered the appointment of a receiver to ensure the completion of repairs and improvements to the public water system serving Pineview Pines Estates mobile home park. This Court granted the receiver the authority to sell Pineview Pines Estates mobile home park on May 19, 2017. The sale of the mobile home park was completed on June 19, 2017.

On May 8, 2017, Defendant Timothy Dearwester passed away. The Fiduciary of Timothy Dearwester's Estate, Andrew S. Larkin, was substituted for Defendant Timothy Dearwester on August 8, 2017.

The Parties have consented to the entry of this Order. Therefore, without trial, admission, or determination of any issue of fact or law and with the consent of the Parties hereto, it is ORDERED, ADJUDGED, AND DECREED:

### **I. DEFINITIONS**

1. As used in this Order, the following terms are defined:
  - a. "Defendant" and "Dearwester Estate" mean the Estate of Timothy Dearwester.
  - b. "Director" means the Director of the Ohio Environmental Protection Agency ("Ohio EPA") or his designee.
  - c. "Parties" means Plaintiff, the State of Ohio, and Defendant, the Dearwester Estate.
  - d. "Person" means an individual, public or private corporation, business trust, estate, trust, partnership, association, federal government or any agency thereof, municipal corporation or any agency thereof, political subdivision or any agency thereof, public agency, interstate body created by compact, any other entity, and other officers, agents, employees, attorneys, and/or those in active concert or participation with any of them.
  - e. "State" means Plaintiff, the State of Ohio, including the Director, Ohio Environmental Protection Agency, or the Ohio Attorney General on behalf of the State, or any State entity named in the Complaint.
  - f. "Order" refers to this Order.

g. "Written" means a paper copy or a saved or stored electronic copy.

## **II. JURISDICTION AND VENUE**

2. The Court has jurisdiction over the Parties and the subject matter of this action under R.C. Chapter 6109. The Complaint states a claim upon which relief can be granted. Venue is proper in this Court. Defendants shall not challenge the Court's jurisdiction to enter or enforce this Order.

## **III. PARTIES BOUND**

3. The Estate of Timothy Dearwester was opened in the Warren County Probate Court on June 14, 2017.

4. The Fiduciary of the Dearwester Estate, appointed on June 14, 2017, is Andrew S. Larkin, 5636 Bridgetown Rd., Cincinnati, OH 45248.

5. This Order shall apply to and be binding only upon the Parties.

6. This Order is in settlement and compromise of disputed claims, and nothing in this Order is to be construed as an admission of any facts or liability.

## **IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS**

7. The Plaintiff alleges that Defendants Pineview Pines Estates, LLC and the Dearwester Estate are responsible for violations of the safe drinking water laws of the State of Ohio under R.C. Chapter 6109. Defendants Pineview Pines Estates, LLC and the Dearwester Estate deny all such allegations. Compliance with this Order shall constitute full satisfaction of any civil liability of Defendants Pineview Pines Estates, LLC and the Dearwester Estate to Plaintiff for the claims alleged in Plaintiff's Complaint.

8. Except for the signatories to the Order, nothing in this Order shall constitute or be construed as satisfaction of civil liability, a covenant not to sue, and/or a release regarding the

claims alleged, against any person not a signatory to this Order for any liability such non-signatory may have arising out of matters alleged in the Complaint. The State of Ohio also specifically reserves its right to sue any entity that is not a signatory to this Order.

## V. CIVIL PENALTY

9. Not later than May 18, 2018, Defendant shall pay eight thousand seven hundred fifty-two dollars and eighty-two cents (\$8,752.82) to reimburse Ohio EPA for expenses incurred to complete emergency repairs at Pineview Estates mobile home park and a civil penalty of thirty-three thousand seven hundred forty-seven dollars and eighteen cents (\$33,747.18), for a total payment of forty-two thousand five hundred dollars (\$42,500.00), subject to the provisions in this Order. Such payment shall be made by delivering to Sandra Finan, Paralegal, or her successor, Office of the Attorney General, 30 E. Broad St., 25<sup>th</sup> Floor, Columbus, Ohio 43215, a certified check or checks for the appropriate amount, payable to the order of "Treasurer, State of Ohio."

10. If full payment of the total amount due under this Consent Order is not received by the State in accordance with the terms of this Consent Order, the remaining unpaid balance, plus applicable interest under R.C. 131.02(D), shall become immediately due and owing. The remaining unpaid balance of the delinquent payments shall accrue interest at the rate per annum required by R.C. 5703.47 calculated from the Effective Date of this Order.

11. If any amount is not paid in accordance with the terms of this Consent Order, the Attorney General may collect that amount under R.C. 131.02. Pursuant to R.C. 109.081, in addition to the outstanding balance due under this Consent Order, collection costs of ten percent shall be owing and fully recoverable from Defendant to be paid into the State Treasury to the credit of the Attorney General Claims Fund.

12. Defendant shall not be permitted to claim a force majeure as an excuse for any untimely payment or partial payment of an amount less than the full amount as specified in this Order.

**VI. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS**

13. Performance of the terms of this Order by Defendant is not conditioned on the receipt of any private, Federal or State grants, loans, and/or funds. In addition, Defendant's performance is not excused by failing to obtain or any shortfall of any private, Federal or State grants, loans and/or funds or by the processing of any applications for the same.

**VII. MODIFICATION**

14. No modification shall be made to this Order without the written agreement of the parties and the Court.

**VIII. MISCELLANEOUS**

15. Any acceptance by the State of Ohio of any payment, document, or other work due subsequent to the time that the obligation is due under this Order shall not relieve Defendant from the obligations created by this Order.

**IX. RETENTION OF JURISDICTION**

16. This Court shall retain jurisdiction for the purpose of administering and enforcing this Order.

**X. ENTRY OF ORDER AND FINAL JUDGMENT BY CLERK**

17. Under Rule 58 of the Ohio Rules of Civil Procedure, upon signing this Order by the Court, the Clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the Clerk is directed to serve upon all Parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Civ.R. 5(B) and note the

service in the appearance docket. The failure of the Clerk to serve notice does not affect the validity of this Order.

**XI. EFFECTIVE DATE**

18. This Order shall be effective upon the date of its entry by the Court.

**XII. COURT COSTS**

19. The State is not required to pay any court costs in this action.

**XIII. AUTHORITY TO ENTER INTO THE ORDER**

20. Each signatory represents and warrants he has been duly authorized to sign this document and is fully authorized to agree to its terms and conditions. By signing this Order, each signatory waives all rights of service of process for the underlying Complaint.

**XIV. SATISFACTION OF CLAIM IN PROBATE**

21. Upon entry of this Order and receipt of full payment under Paragraph 9, Plaintiff shall file a Satisfaction of Claim with the Warren County Probate Court, in substantially the same form as Exhibit A, certifying the satisfaction of its claim against Defendant and releasing Defendant from any further liability.

IT IS SO ORDERED.

Mary Wiseman  
JUDGE

May 24, 2018  
DATE

APPROVED AND AGREED TO BY:

The Estate of Timothy Dearwester

Andrew S. Larkin  
Andrew S. Larkin (0084331)  
5636 Bridgetown Rd.  
Cincinnati, OH 45248  
(513)574-0100  
*Fiduciary of Defendant*  
*The Estate of Timothy Dearwester*

Kyle D. Murray  
Kyle Murray (0084080)  
5636 Bridgetown Rd.  
Cincinnati, OH 45248  
(513)574-0100  
*Counsel for Fiduciary of Defendant*  
*The Estate of Timothy Dearwester*

Amanda M. Ferguson  
L. Scott Helkowski (0068622)  
Amanda M. Ferguson (0089576)  
Assistant Attorneys General  
Environmental Enforcement Section  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43215  
(614) 466-2766  
*Counsel for Plaintiff, the State of Ohio*

**COURT OF COMMON PLEAS  
PROBATE DIVISION  
WARREN COUNTY, OHIO**

ESTATE OF TIMOTHY R. DEARWESTER  
CASE NO. PE20171310

**SATISFACTION OF CLAIM AND RELEASE**

The Ohio Attorney General acknowledges receipt of \$42,500.00 and certifies that the claim filed in the Estate of Timothy R. Dearwester is hereby satisfied. The Estate and Administrator are released from any and all further indebtedness, liability, and causes of action, known and unknown, relating thereto.

Date: \_\_\_\_\_

By: \_\_\_\_\_

**L. Scott Helkowski (0068622)**  
**Amanda M. Ferguson (0089576)**  
Assistant Attorneys General  
Environmental Enforcement Section  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43215  
(614) 466-2766

**EXHIBIT A**



**COURT OF COMMON PLEAS  
PROBATE DIVISION  
WARREN COUNTY, OHIO**

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Date: 10/20/18

By: Amanda M. Ferguson

**L. Scott Helkowski (0068622)  
Amanda M. Ferguson (0089576)  
Assistant Attorneys General  
Environmental Enforcement Section  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43215  
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