

IN THE COURT OF COMMON PLEAS  
LAWRENCE COUNTY, OHIO

STATE OF OHIO, ex rel.  
MARC DANN  
ATTORNEY GENERAL OF OHIO

Plaintiff,

v.

BIOMASS ENERGY, LLC

and

MARK HARRIS

Defendants.

CASE NO. 040C493  
JUL 25 2007  
FINAL APPEALABLE ORDER  
JUDGE RICHARD W. WALTON

**JUDGMENT ENTRY**

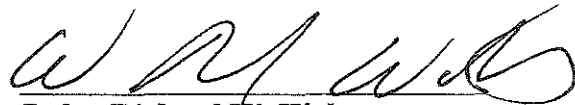
On July 19, 2007 a Hearing was scheduled and conducted to determine the extent to which the December 27, 2006 Consent Order was complied with and whether the performance penalty bond and stipulated penalty provisions of the Consent Order were triggered due to Defendants Biomass Energy, LCC and Mark Harris's noncompliance. Testimony was heard from witnesses provided by the State of Ohio. The testimony presented established that the Defendants had not paid any stipulated penalties, pursuant to the Consent Order, to the State of Ohio, as of June 30, 2007. Further, the testimony established that the Defendants had not removed coal/coke waste by May 30, 2007 as required by the Consent Order.

After hearing the testimony, this Court has reached a decision with regard to certain matters of the Consent Order. First, this Court finds the Defendants in violation of provision 8 of the December 27, 2006 Consent Order which required Defendants to remove their coal/coke waste by May 30, 2007. Second, this Court finds the Defendants in violation of provision 13 of the December 27, 2006 Consent Order, which required the Defendants to pay 109,000.00 in stipulated penalties by June 30, 2007 if the Defendants failed to remove their waste by May 30, 2007. Third, this Court finds that provision 5 of the Consent Order requires the Defendants to

relinquish full value of their bond if they failed to complete removal of their coal/coke waste by May 30, 2007.

**WHEREFORE**, the Court orders the following: 1) Judgment in the favor of the State of Ohio against Defendants for stipulated penalties in the amount of \$109,000.00 (one-hundred-nine-thousand dollars) with interest calculated pursuant to Ohio Revised Code §1343.03, from June 30, 2007, until payment is made to the State of Ohio, thus making 8.0% the correct interest rate for the period of June 30, 2007 through October 14, 2007, and 2) Judgment in favor of the State to draw on the Performance Penalty Bond of five hundred and twenty-two thousand dollars (\$522,000).

It is so ordered.



**Judge Richard W. Walton**  
Sitting by Assignment

Submitted by: Approval via e-mail attached as Ex A  
Robert Eubanks (0073386)  
Public Protection Division  
Envir. Enforcement Section  
30 East Broad Street  
Columbus, Ohio 43215-3400  
Counsel for the Plaintiff

and

the December 27, 2006 Consent Order, which required the Defendants to pay 109,000.00 in stipulated penalties by June 30, 2007 if the Defendants failed to remove their waste by May 30, 2007. Third, this Court finds that provision 5 of the Consent Order requires the Defendants to relinquish full value of their bond if they failed to complete removal of their coal/coke waste by May 30, 2007.

WHEREFORE, the Court orders the following: 1) Judgment in the favor of the State of Ohio against Defendants for stipulated penalties in the amount of \$109,000.00 (one-hundred-nine-thousand dollars) with interest calculated pursuant to Ohio Revised Code §1343.03, from June 30, 2007, until payment is made to the State of Ohio, thus making 8.0% the correct interest rate for the period of June 30, 2007 through October 14, 2007, and 2) Judgment in favor of the State to draw on the Performance Penalty Bond of five hundred and twenty-two thousand dollars (\$522,000).


It is so ordered.

~~Judge Richard W. Walton~~  
~~Sitting by Assignment~~

Submitted by:

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*Mark Harris*

#### INSTRUCTIONS TO THE CLERK

The Clerk shall mail a copy of this to all counsel of record and to each party not in default who is not represented by counsel and note the service in the Appearance Docket as follows:

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