

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PA

UPPER GWYNEDD TOWNSHIP  
Plaintiff

v.

HORGAN RECYCLING, INC.  
Defendant

No. 2007-10233

IN EQUITY

**ORDER**

NOW, this 14<sup>th</sup> day of May, 2009, with the consent and upon submittal by the parties to the pending action, it is hereby ORDERED that the Stipulation attached hereto (and the Settlement Agreement attached thereto) are hereby approved and entered as an Order of the Court.

Copies hand delivered to:  
Gilbert P. High, Jr., Esq.  
Marc Jonas, Esq.  
Interoffice Mail to:  
Court Administration-Civil

Virginia A. Hayden 5/8/09  
Secretary

BY THE COURT:

Joseph A. Smyth  
JOSEPH A. SMYTH, J.

HIGH SWARTZ LLP  
BY: Gilbert P. High, Jr., Esquire  
Attorney ID No. 09419  
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Norristown, PA 19404  
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OFFICE OF THE  
PROthonotary  
MONTGOMERY COUNTY, PA

Attorneys for Upper Gwynedd Township

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

UPPER GWYNEDD TOWNSHIP : No. 2007-10233  
Plaintiff :  
 :  
v. : IN EQUITY  
 :  
HORGAN RECYCLING, INC. :  
Defendant :

**STIPULATION**

THIS STIPULATION is entered into as of this 8<sup>th</sup> day of May, 2009 between Upper Gwynedd Township ("Township") and Horgan Recycling, Inc. ("HRI") by and through their respective attorneys.

**Background**

A. This matter was commenced by the Township filing a complaint against HRI seeking to enjoin violation of various sections of the Township's Code pertaining to Noise, Nuisances and Zoning. The complaint involved HRI's use of property located behind the Allied Concrete plant on Cottage Avenue, West Point, Upper Gwynedd Township for a concrete and asphalt recycling operation (the "Property"). The complaint averred that HRI's operations created noise above the maximum levels permitted by the Code and that its current operations were inconsistent with and an unauthorized expansion of its Use and Occupancy permit for the Property.

B. At a conference held May 11, 2007 before Bertin, J., an agreed order was entered staying the action as to the alleged zoning violation because HRI's appeal of a Notice of Violation was pending before the Upper Gwynedd Zoning Hearing Board, and deferring action

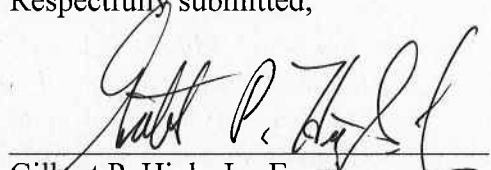
on the nuisance claims until such time as a final Decision and Order were entered by the Upper Gwynedd Zoning Hearing Board.

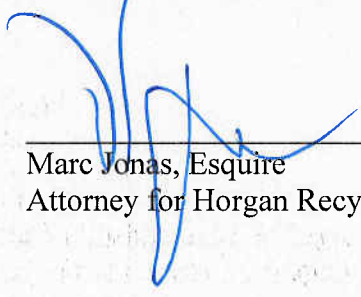
C. The Township and HRI have conferred and entered into a certain Settlement Agreement which, *inter alia.*, governs HRI's future operations on the Property, provides for the termination of related pending litigation and the withdrawal of the Notice of Violation, as revised, before the Zoning Hearing Board, and acknowledges HRI's right to operate under certain identified Pennsylvania Department of Environmental Protection and Township permits. This Settlement Agreement was approved at a public meeting of the Board of Commissioners of Upper Gwynedd Township held May 7, 2009. A copy of the Settlement Agreement is attached hereto as Exhibit "A". Pursuant to the Settlement Agreement the parties have agreed to enter into this Stipulation and submit it to the Court with the request that the Court enter an Order approving the Settlement Agreement.

**Stipulation**

**NOW**, this 8th day of May, 2009, the Township and HRI, by their undersigned attorneys, hereby agree and stipulate that upon approval of the Court of a final Order in the form attached, the Settlement Agreement shall become immediately effective and binding upon the parties in accordance with its terms.

Respectfully submitted,

  
\_\_\_\_\_  
Gilbert P. High, Jr., Esquire  
Attorney for Upper Gwynedd Township

  
\_\_\_\_\_  
Marc Jonas, Esquire  
Attorney for Horgan Recycling, Inc.

## SETTLEMENT AGREEMENT

This Settlement Agreement is made this 8<sup>th</sup> day of May, 2009, by and between the Upper Gwynedd Township (“Township”) and Horgan Recycling, Inc. (“HRI”) and Joseph Horgan, Individually.

### Background

A. Joseph Horgan is the Vice President of Horgan Recycling, Inc.. Horgan Recycling, Inc. operates a concrete and asphalt crushing and recycling plant (the “Plant”) on a 2+/- acre parcel of leased ground located off of Cottage Avenue adjacent to the Allied Concrete Plant, West Point, Upper Gwynedd Township, Montgomery County, PA. (the “Property”).

B. HRI’s activities on the Property are authorized by two Use and Occupancy Permits issued by the Township. Permit No. 2004-17 issued on June 24, 2004 authorizes the operation of a “concrete and asphalt recycling” plant. Permit No. 2006-4 issued on January 9, 2006 authorizes the storage of rock salt in conjunction with snow plowing operations at Merck Pharmaceuticals, a neighboring industrial and office complex in the Township.

C. The Plant also operates under a solid waste general permit # WMG019D001 issued by the Pennsylvania Department of Environmental Protection (“DEP”) on January 17, 2006. HRI has also received an Air Quality Program Plan Approval #46-0256 issued by the DEP on April 11, 2007.

D. Certain disputes have arisen between the Township, HRI, and Joseph Horgan. relating to Plant operations and to the use of the Property resulting in the commencement of litigation in the Court of Common Pleas of Montgomery County, and of an appeal in an enforcement action pending before the Zoning Hearing Board of Upper Gwynedd Township, as follows:

- i. Upper Gwynedd Township vs. Horgan Recycling, Inc., No. 07-10233, a Complaint in Equity pending in the Court of Common Pleas of Montgomery County.
- ii. Horgan Recycling, Inc. and Joseph Horgan vs. Upper Gwynedd Township, No. 07-12409, a Local Agency Appeal pending in the Court of Common Pleas of Montgomery County.
- iii. Horgan Recycling, Inc. and Joseph Horgan vs. Upper Gwynedd Township, No. 07-12413, a Local Agency Appeal pending in the Court of Common Pleas of Montgomery County.
- iv. Horgan Recycling, Inc. and Joseph Horgan vs. Upper Gwynedd Township, No. 07-16674, a Local Agency Appeal pending in the Court of Common Pleas of Montgomery County.
- v. Horgan Recycling, Inc. and Joseph Horgan v. Upper Gwynedd Township and James A. Santi, Eugene P. Ziembra, Kenneth E. Kroberger, M. Clare Edelmayr and Thomas Duffy, No 07-28491, a writ of summons pending in the Court of Common Pleas of Montgomery County relating to alleged Sunshine Act and First Class Township Code Violations.
- vi. Horgan Recycling, Inc. Appeal from Notice of Violation pending before the Upper Gwynedd Township Zoning Hearing Board.

E. The parties have reached an agreement as set forth below to amicably resolve the Equity matter docketed as of 07-10233, as a result of which the remaining five matters are to be terminated/withdrawn.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and intending to be legally bound hereby, the parties hereto agree as follows:

1. Background - The Background section hereof is incorporated herein by reference.
2. Future Operations - The Plant operations and use of the Property shall henceforth be controlled and limited as follows:

- (a) HRI will maintain the earthen berm and the concrete block sound barrier wall around the working portion of the Property substantially in their present location and condition. A plan and/or photographs of the berm and sound barrier presently in place are attached to this agreement.
- (b) The Township will be permitted to visit the Property annually, on reasonable notice, for the purpose of generally inspecting the property. The Township, at its own expense, can take sound measurements at the HRI property line as often as it wishes using personnel who are either experts retained for this purpose or qualified Township staff. It is not the intention of this paragraph to limit the Township's right of inspection as otherwise provided by law.
- (c) The hours of operation of the crusher will be limited to 7:00 a.m. to 5:00 p.m., Monday through Friday. The Plant will be open to receive material and/or ship product 7:00 a.m. to 5:00 p.m., Monday through Friday, and on Saturday between 8:00 A.M. and 5:00 P.M. No crushing operations will take place on any Saturday. The Plant will be closed on Sundays. A HRI employee or agent will be present on the Property during all periods when it is in use, including Saturdays.
- (d) HRI will not permit truck bed vibration by trucks either on or leaving the HRI Property. This prohibition shall be posted at the HRI Property. HRI also will post at the HRI Property signs stating that UGT prohibits truck bed vibration on trucks entering the HRI Property, on Allied's site and on Cottage Avenue.
- (e) At all times when the crusher is in operation, the material being crushed will be sprayed at each transfer point with water nozzles (15 in total) so as to thoroughly dampen the material. HRI will take all reasonable actions to prevent fugitive particulate matter from becoming airborne. HRI will retain the current operating plan which requires that water pressure records be maintained for the water suppression system on the crusher on a daily basis whenever the crusher is operating. This level of material dampening will not be decreased. These records will be provided to the Township upon request, but not more frequently than quarterly.
- (f) HRI will be responsible for adequately tarping or wetting its loads before HRI's trucks exit the property, so as to reasonably prevent fugitive particulate matter from becoming airborne. HRI shall provide truck load wetting equipment at all times for any truck using its facility. Third party truck owners and operators that haul loads from the property are responsible to tarp their loads or use HRI's wetting equipment. This requirement shall be posted at the HRI Property. Incoming loads will be wetted as necessary to meet this standard except in freezing weather.

- (g) Material waiting to be crushed will not exceed the height of the adjacent berms. Material that has been processed may exceed the height of the adjacent berms. Every reasonable effort will be made to limit the use of mechanical equipment above berm height. In all events the use of such equipment will not exceed that permitted by the noise limitations set forth in the Township Code.
- (h) HRI will wet down interior roadways and stockpiles to reasonably prevent fugitive particulate matter from becoming airborne on each day the Plant is operating. Unless deemed unnecessary by the Township, HRI will continue to wet down Cottage Avenue from the Allied entrance to West Point Pike.
- (i) On each day HRI is operating, HRI will coordinate with Allied Concrete daily multiple watering (washing) of the HRI Property interior roadway, the Allied concrete entrance way and Cottage Avenue out to West Point Pike whether or not crushing operations are under way, except in freezing weather. Trucks leaving the Property will be wheel washed before entering Cottage Avenue, provided Allied installs the equipment and agrees to do so.
- (j) All truck traffic will enter and leave the HRI Property through the Allied property adjacent to Cottage Avenue and will not use the rear driveway unless Allied revokes HRI's permission to use their driveway.
- (k) The number of trucks entering the Property to deposit materials or be loaded with product per year will be limited to 8,000 trucks. HRI will maintain a count of such trucks and provide reports setting forth that count upon request to the Township, but not more frequently than quarterly. Allied concrete trucks shall not be included in this count. HRI agrees that this number of trucks reasonably accommodates HRI's operations based on current expectations.
- (l) The operations at the Property will be limited to the crushing and recycling of concrete, asphalt, and uncontaminated block, brick & stone; associated separation and off-site disposal of soil, re-bar, and other intermixed materials and all other activities customarily associated with concrete and asphalt recycling operations. No product, including topsoil, may be brought to or stored on the Property for any purpose, except that rock salt may be brought to or stored on the Property solely for use by HRI in conjunction with Merck snow plowing operations pursuant to the use and occupancy permit issued January 9, 2006. HRI will make every effort to load salt spreading trucks prior to 9:00 P.M. when snow fall is anticipated.
- (m) As a security measure, "no trespassing" signs will be maintained and surveillance cameras will remain in use to discourage trespassing.

3. DEP Matters -

- (a) The Township and HRI will jointly notify the DEP that all zoning/land use issues have been resolved, and that the condition relating to resolution of the zoning/land use issues set forth in Plan Approval No. 47-0256 and any similar condition contained in the soon-to-be-issued Operating Permit have been satisfied and that this condition of plan approval has been satisfied.
- (b) The Township will not appeal the issuance by the DEP of an Operating Permit to HRI (or in any way support such an appeal by anyone else), provided the substance of the Operating Permit does not materially differ from the substance of the existing Plan Approval No. 47-0256.
- (c) The Township agrees that the existing solid waste permit does not place any limits on the sources of material recycled by HRI (i.e., is not limited to highway materials).
- (d) The Township will cease all efforts to challenge or invalidate HRI's existing solid waste permit.

4. Submission to Court - Subsequent to execution of this Agreement, the parties, by their attorneys, shall sign a Stipulation of Settlement to which this Settlement Agreement will be attached as Exhibit "A" thereto. The Township's counsel shall file it with the court requesting that the court issue an order in the form attached to the Stipulation. This Agreement is contingent upon the court's issuance of an order in such form. The parties hereto shall use their best efforts to obtain issuance of such order and shall cooperate with each other in order to do so. If, despite the parties' best efforts as set forth above, the parties are unable to obtain such an order within 60 days of the date hereof, this Agreement shall automatically and without the need for any further action or notice terminate, become void and ineffective, and the parties shall retain all rights they may now have against one another.

5. Withdrawal of Litigation/Appeals - It is the intent of this agreement that it shall have the full force and effect of settling and resolving all matters set forth and asserted in the pending legal disputes between the parties. The Township agrees that the Use and Occupancy Permit issued in 2004 remains in full force and effect and authorizes HRI's concrete and asphalt recycling operations pursuant to this agreement. Therefore, upon entry of a final, unappealable order incorporating this agreement the following shall occur:

- (a) The party(ies) plaintiff shall mark the pending litigation in Montgomery County Court of Common Pleas at 07-12409, 07-12413, 07-16674 and 07-28491 "Settled, Discontinued and Ended" or "Withdrawn", with prejudice; and

