



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107-4431

ORIGINAL

May 15, 1998

John Morgan  
P.O. Box 2173  
Fairmont, West Virginia 26555

Re: **Big John Salvage Site, Hoult Road, Fairmont, West Virginia**

Dear Mr. Morgan:

I have been forwarded the letters that your attorney, Mr. William Hain, sent to Dennis Matlock, of the Environmental Protection Agency (EPA), and Michael Miano, of the West Virginia Department of Environmental Protection (the letters are dated May 15, 1998 and May 14, 1998, respectively). Based on these letters, it is my understanding that you do not have the capability to comply with the order issued by EPA pursuant to Section 311© of the Clean Water Act. Accordingly, I have accessed the Oil Spill Liability Trust Fund and I will conduct the removal of oil from the two waste pits located on the property using these funds. Please note, that you may be potentially liable as a responsible party for costs incurred in this response action pursuant to Section 311(f) of the Clean Water Act, 33 U.S.C. § 1321(f).

In order to conduct the removal action, I need you to sign the enclosed "Consent for Access to Property." As you will recall, the access form that you previously signed was for the performance of the removal assessment and was done pursuant to the authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"). The enclosed form is for the performance by EPA and its representatives of the removal action on your property as it pertains to the two pits containing oily liquids; this removal action is being conducted pursuant to the authority of the Clean Water Act. Please read the form carefully and, if you agree to provide the requested access, sign and date the form and fax it to (304) 291-2598 and return the original copy in the enclosed envelope within two (2) days of its receipt. The "Acknowledgment" line will then be signed by EPA and a fully executed copy of the form will be returned to you.

If you decide not to sign the Consent for Access to Property form, please notify EPA of the reasons for your decision. If EPA does not receive your response to this request for access within two (2) days of your receipt of this letter, EPA will assume that permission to enter your property has been denied. Under such circumstances, EPA is authorized to take such actions as may be necessary and appropriate under the Clean Water Act and any other applicable laws, including issuance of an order.

Your response to this request for access should be directed to:

Jeffrey Dodd (3HS31)  
U.S. Environmental Protection Agency, Region III  
Removal Branch  
303 Methodist Building  
11th & Chapline Streets  
Wheeling, WV 26003

If you have any questions regarding this matter, you may leave me a message at (304) 234-0254 or you may try to reach me at the Beaumont Glass Site at (304) 296-6230.

Sincerely,

A handwritten signature in black ink that reads "Jeffrey Dodd". The signature is written in a cursive style with a large, looping "J" and "D".

Jeffrey Dodd,  
On-Scene Coordinator

Enclosure

cc: William Hain, Esquire  
Daniel Isales (3RC22)  
Mike Welsh (3HS32)  
Stan Moskal, WVDEP  
John Hando, WVDEP  
Perry Gaughan, SATA (Site File)

## CONSENT FOR ACCESS TO PROPERTY

The undersigned property owner ("Owner") consents to the U.S. Environmental Protection Agency ("EPA") and its officers, employees, agents, consultants, and contractors ("EPA and/or its Representatives") entering and having continued access upon his property, the Big John Salvage Site, located on Hoult Road, Fairmont, West Virginia according to the following terms and conditions:

1. The Owner, by his signature below, grants to EPA and/or its Representatives, the right to enter upon the Property, as well as the right to take all reasonable actions deemed necessary by EPA for the implementation of the removal actions pursuant to Section 311 of the Clean Water Act, 33 U.S.C. § 1321. EPA and/or its Representatives will enter the Property for the following purposes:

- A. Complete removal of oily fluid from the two waste pits which are located on the property and secure the oily fluid in sealed storage container(s) on the facility.
- B. Provide adequate secondary containment for the containers described in Paragraph 1.A. above.
- C. Sample fluids for disposal characterization, including methods to identify Total Concentrate Leachate Procedure ("TCLP"), metals, organics, BTU, and chlorine content.
- D. Institute measures which will prevent any run-off and/or seepage containing oil from the waste pit area from discharging and/or threatening to discharge onto the adjoining shoreline or into the Monongahela River. These measures may include, but not be limited to, cutoff trenches, underflow dams, diversion piping, absorbent pads and/or booms.
- E. Dispose, as appropriate, of the oily fluid, contaminated soils, or other contaminated substances such as residual sludges or debris from the waste pits.
- F. Photodocumentation of the activities on the property.

2. All tools, equipment, and other property taken upon the property by EPA and/or its Representatives, shall remain the property of EPA and/or its Representatives and will be removed by EPA and/or its Representatives by the expiration of this 'Consent for Access to Property'. Owner agrees to permit EPA and/or its Representatives to store in, on, or under the Property all materials, including contaminated and non-contaminated materials, equipment, and supplies as deemed necessary by EPA.

3. EPA and/or its Representatives shall have the right to take reasonable precautions to protect the lands described below during the period of this 'Consent for Access to Property' in order to ensure the safety of equipment, tools, and work in progress. If at any time after signing

this 'Consent for Access to Property' the Owner becomes aware that the Property is entered, disturbed or adversely affected by persons other than EPA and/or its Representatives, Owner shall immediately contact EPA's representative at the number set forth below.

4. The Owner agrees not to remove, destroy, or otherwise interfere with any equipment, property placed upon the premises by EPA and/or its Representatives or interfere with removal activities performed or undertaken by EPA and/or its Representatives pursuant to this 'Consent for Access to Property.'

6. In the event of any anticipated change in ownership or control of the Property, including any portion of it, and in the event of any transfer of any interest in such Property including, but not limited to, any easement, license, lease, or other right to use said Property, the Owner shall notify EPA in writing at least thirty (30) days in advance of the transfer and provide EPA with the name, address, and telephone number of the anticipated new owner, new person in control, or proposed transferee in interest of such property; the proposed effective date of such change or transfer; and the nature of the proposed change or transfer. The Owner shall provide EPA with copies of any agreement(s) executed in connection with the change or transfer within five (5) days of the effective date of such documents.

7. This 'Consent for Access to Property' shall remain in effect until completion of all reasonable actions deemed necessary by EPA to determine the need for a response or upon completion of the appropriate removal action at the Property.

8. The Owner acknowledges that these actions by EPA are undertaken pursuant to its response and enforcement responsibilities under Section 311 of the Clean Water Act.

9. This written permission is given voluntarily with knowledge of my right to refuse and without threats or promises of any kind.

Agreed this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

Name of Owner (please print or type): \_\_\_\_\_

Signature of Owner: \_\_\_\_\_

Acknowledgment:

U.S. Environmental Protection Agency

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Jeffrey Dodd, On-Scene Coordinator  
U.S. EPA, Region III  
303 Methodist Building  
11th & Chapline Streets  
Wheeling, WV 26003