UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Certified Mail
Return Receipt Requested

Harley Davidson Motor Company Operations Inc.
Attn: Sharon R. Fisher, Environmental Engineer
1425 Eden Road
York, Pennsylvania 17402

RE: Harley Davidson Motor Company Operations Inc., York, PA

Dear Ms. Fisher:

On behalf of the United States Environmental Protection Agency ("EPA"), thank you for the teleconference on January 24, 2001, where EPA discussed investigating and remediating the Harley Davidson Motor Company Operations Inc. facility in York, PA ("Harley Davidson") in accordance with the federal Resource Conservation and Recovery Act ("RCRA") Corrective Action Program. During the teleconference, the Region discussed conducting corrective action at your site using a Facility Lead Agreement. This possibility had been previously discussed by EPA and Harley Davidson in meetings held on December 14, 2000, and April 18, 2001.

EPA requests that Harley Davidson document its decision to participate in the Region's Facility Lead Program by responding with a Letter of Commitment acknowledging its understanding and acceptance of the goals and expectations described in the enclosed Facility Lead Agreement. We believe the Region's Facility Lead Program will offer benefits to all parties and provides a means to achieve these critical corrective action goals in a streamlined and expeditious manner. We would appreciate receiving Harley Davidson's Letter of Commitment within thirty days of your receipt of this letter. EPA will treat receipt of your signed Letter of Commitment as initiation of corrective action and a commitment by Harley Davidson to perform the requirements set forth in the enclosed Facility Lead Agreement.

EPA looks forward to working with you to achieve the goals of the Corrective Action Program. If you have any questions regarding this letter, please contact me at 215-814-3140 or Darius Ostrauskas of my staff at 215-814-3360.

Sincerely,

Paul Gotthold, Chief
Pennsylvania Operations Branch

Attachment

cc: Eric Rooney, PADEP

Revised 9/5/2000

FACILITY LEAD CORRECTIVE ACTION AGREEMENT

I. CORRECTIVE ACTION GOALS

By agreeing to participate in the Facility Lead Corrective Action Program with EPA, the Facility commits to:

A. Determine the extent and sources of all releases of hazardous wastes or hazardous waste constituents at or from the Facility using quality data;

B. Evaluate and meet EPA's Environmental Indicators (see "Environmental Indicator Forms" on EPA Region III's website at www.epa.gov/reg3wcmd/correctiveaction.htm);

C. Perform interim measures at the Facility to prevent or mitigate unacceptable threats to human health and the environment by: 1) controlling human exposures, and 2) controlling migration of any groundwater contamination at or from the Facility from releases of hazardous wastes or hazardous constituents;

D. Conduct effective public involvement; and

E. Communicate regularly to EPA, the State, and the community on corrective action progress at the Facility.

EPA agrees to provide an appropriate level of oversight to assist the Facility to meet these goals.

II. WORK TO BE PERFORMED

The Facility agrees to demonstrate achievement of the goals listed in Section I by performing the work (as appropriate) described below. These goals may be achieved through a combination of sampling activities, previous work, and documentation of valid historical data.

A. Develop a Workplan

1. Within ninety (90) calendar days of the date of its Commitment Letter, the Facility agrees to submit a site specific Workplan to EPA. The Workplan is subject to approval by EPA and shall include a strategy and schedule to implement pertinent tasks identified in this Agreement, which include, but are not limited to, the following:

a. Site characterization (Section II.B)

b. Quality Assurance and Sampling Plan (Section II.B and D)
c. Evaluation of Environmental Indicator goals (Section II.C)
d. Ongoing or planned Interim Measures (Section II.D)
e. Community Relations Plan (Section II.E)
f. Reports to EPA (Section II.F and IV)
g. Selection of a land use scenario (Section II.B)

2. The Facility may also add other tasks to the Workplan.

B. Determine the extent and sources of releases of hazardous wastes or hazardous constituents at or from the Facility using quality data.

1. Site Characterization - The Facility will develop a site specific workplan that determines the nature and extent of all releases of hazardous wastes and hazardous constituents at or from the Facility. The characterization will include investigative tasks such as sampling, analyses, data validation and data interpretation and will be conducted in a manner consistent with the provisions of Region III's guidance for a "RCRA Facility Investigation" and guidance for "Risk-Based Screening". (see EPA Region III's website at www.epa.gov/reg3wcmd/correctiveaction.htm for these two guidance documents). Other corrective action references are also available on this website. At a minimum, the Facility shall perform the following:

a. Soil - Identify maximum concentrations and determine the extent of any releases of hazardous wastes and hazardous constituents to soil. Sampling shall continue until concentrations in soil reach Region III's Risk-Based Concentration (RBC) Table using an appropriate land use scenario approved by EPA (see "Risk-Based Concentration Tables" on EPA Region III's website at www.epa.gov/reg3hwmd/risk/riskmenu.htm). In addition, evaluate the potential of hazardous wastes and hazardous constituents in soil to affect other media through cross media transfer (e.g., screening against Soil Screening Levels "SSLs" for groundwater).

b. Groundwater - Determine maximum concentrations of hazardous wastes and hazardous constituents in groundwater and, to the extent practicable, the source of the groundwater contamination. The horizontal and vertical extent of any releases to groundwater shall be delineated until concentrations of hazardous wastes and hazardous constituents in groundwater reach maximum contaminant levels ("MCLs"), or, where no MCLs have been promulgated, Region III's Risk-Based Concentration (RBC) Table using the tap water column, independent of whether the aquifer is currently utilized as a source of potable water.

c. Surface Water and Sediment - Where contaminated groundwater potentially discharges to a surface water body, determine the maximum concentrations of hazardous wastes and hazardous constituents in surface

water and sediment, and assess the extent of impact of hazardous wastes and hazardous constituents to the surface water body and sediments to levels considering the state-designated use of the surface water body and the potential exposure to human and/or ecological receptors.

d. Air - Where there is the potential for indoor or outdoor air to be contaminated by particulates or vapors through cross-media transfer, determine the maximum concentrations through appropriate methods (e.g., sampling, modeling).

2. Data Quality - The Facility agrees to perform site screening and site characterization through the use of high quality field data collection protocols and appropriate EPA laboratory methods specified in 2.a and 2.b below such that the analytical results accurately represent site characteristics (see "Quality Assurance/Quality Control" document on EPA Region III's website at www.epa.gov/reg3wcmd/correctiveaction.htm). The data collected must support decisions regarding the applicability and effectiveness of interim measures' and/or final remedial decisions. In addition the Facility shall:

a. Ensure that all laboratories used by the Facility for analyses perform such analyses according to the EPA methods included in "Test Methods for Evaluating Solid Waste" (SW-846, November 1986) or other methods deemed satisfactory to EPA;

b. Ensure that all laboratories used by the Facility for analyses participate in a quality assurance/quality control program equivalent to that which is followed by EPA; and

c. Ensure that data is reliable by having it data undergo 3rd party data validation.

3. Exposure Assessment - The Facility agrees to identify all potential exposure pathways.

4. Site Screening - The Facility agrees to use the Screening process specified in the Risk-Based Screening document located on EPA Region III's website.

5. Future Land Use - A "reasonably expected future land use" shall be identified for the facility. (See the discussion in the Advanced Notice of Proposed Rulemaking, May 1, 1996). The Facility shall include a schedule in the Workplan for submitting land use information and a plan for sharing land use assumptions with the public.

C. Evaluate and meet EPA's Environmental Indicators.

1. The Facility agrees to assess current exposures and evaluate potential contaminated groundwater migration pathways as priority activities of the site investigation.

2. The Facility agrees to implement Interim Measures as soon as possible to achieve the Environmental Indicator goals.

D. Perform Interim Measures at the Facility to prevent or mitigate threats to human health and/or the environment.

1. The Facility agrees to implement Interim Measures:

a. When it is necessary to protect human health and/or the environment.

b. To meet the Environmental Indicator goals of eliminating current human exposure to and controlling groundwater contamination from releases of hazardous wastes or hazardous constituents to the extent practicable.

Interim Measures implemented shall be consistent with the long term cleanup objectives at the Facility.

2. The Facility will conduct appropriate monitoring and/or confirmatory sampling of Interim Measures to assess their effectiveness. The quantity, quality, and frequency of the monitoring will be dependent upon the Interim Measures selected.

E. Conduct effective public involvement.

1. The Facility agrees to:

a. Develop a Community Relations Plan which will describe how it will conduct public involvement activities to inform the local community, the State and any other interested parties of activities throughout the corrective action process. EPA guidance for conducting effective public involvement in the RCRA program can be found in the RCRA Public Participation Manual, 1996 Edition. (See EPA's website at www.epa.gov/epaoswer/hazwaste/permit/pubpart/manual.htm)

b. Provide EPA with a fact sheet summarizing the status of the work to date for inclusion on EPA Region III's web page within sixty (60) calendar days of the Letter of Commitment. At a minimum, this fact sheet shall be updated semi-annually.

F. Communicate regularly to EPA, the State, and the community on corrective action progress at the Facility.

1. The Facility agrees to submit:

a. A Letter of Commitment which shall include a proposed time-frame for a meeting with EPA to discuss the known current conditions and to outline the work necessary to meet EPA's Environmental Indicator objectives. The letter will also identify a Facility Project Coordinator, who will be responsible for the implementation of the corrective action activities and serve as the Facility's point of contact.

b. An Environmental Indicators report to EPA and the State when the Facility has collected sufficient data, and taken action as necessary, to control current human exposures to contamination and the migration of any groundwater contamination.

c. A Site Investigation report to EPA and the State when the Facility has identified the nature and extent of all releases of hazardous wastes and/or hazardous constituents at or from the Facility.

d. Annual Progress Reports to EPA and the State summarizing the work performed (including new interim measures), public involvement activities, proposed schedule changes, and a summary of anticipated activities to be conducted over the next year. The first Annual Progress Report shall be submitted to EPA and the State one year from the date of the Letter of Commitment.

e. In addition to the written reports identified above, the Facility may choose to present information to EPA in the form of oral presentations and request EPA comment on technical issues or proposed actions.

III. FINAL REMEDIES - COMPLETING CORRECTIVE ACTION

Eliminating human exposure to hazardous wastes and hazardous constituents and controlling migration of contaminated groundwater are short-term corrective action objectives. Interim Measure activities implemented to achieve these short-term objectives are based on reasonably expected human exposures under current land and groundwater use conditions. The RCRA Corrective Action Program's overall mission is to protect human health and the environment. To achieve this goal, final remedies must be based on potential future land and groundwater uses and ecological receptors.

A. At the completion of site characterization activities, EPA will evaluate the need to issue a Corrective Action Permit or Order to the Facility.

B. Under certain circumstances' implementation of Interim Measures may achieve the final remedial goals. In that case, EPA will public notice a tentative determination and solicit comment prior to making a final Agency determination regarding final corrective action remedies at the Facility.

IV. CERTIFICATION

Reports specified in Section II. F.1.b, Section II.F.1.c and Section II.F.1.d, when submitted to EPA and the State, shall be certified by a "responsible corporate officer[1]." The Facility agrees to provide the certification in the following form:

I certify that the information contained in this Report is true, accurate, and complete.

As to [the/those identified portion(s)] of this [type of submission] for which I cannot

personally verify [its/their] accuracy, I certify that this Report and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, or the immediate supervisor of such person(s), the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.

Name: Title: Signature :

V. SAMPLING AND DATA/DOCUMENT AVAILABILITY AND PRESERVATION

A. The Facility shall submit to EPA the results of all sampling and/or tests or other data generated by, or on behalf of, Facility.

B. At the request of EPA, the Facility shall provide or allow EPA or its authorized representatives to take split or duplicate samples of all samples collected by Facility pursuant to this Agreement. The Facility agrees not to limit access to the property or otherwise affect EPA's authority to collect samples pursuant to applicable law, including, but not limited to, RCRA and CERCLA.

C. The Facility may assert a business confidentiality claim covering all or part of any information submitted to EPA pursuant to this Agreement in the manner described in 40 C.F.R. § 2.203(b). The Facility shall not assert any confidentiality claim with regard to any physical, sampling, monitoring, or analytical data.

D. Commencing on the date the Letter of Commitment is submitted to EPA, the Facility agrees that it shall preserve and make available to EPA for inspection and copying, all data, records and documents in its possession or in the possession of its divisions, officers, directors, employees, agents, contractors, successors, and assigns which relate in any way to this Agreement or to hazardous waste management and/or disposal at the Facility.

VI. RESERVATION OF RIGHTS

A. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to the Facility's activities. This Agreement shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory, or common law authority of the United States.

B. EPA reserves the right to disapprove work performed by the Facility pursuant to this Agreement and to request or direct that Facility perform additional tasks.

C. EPA reserves the right to require or to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and remedial work as it deems necessary to protect human health and/or the environment. EPA may exercise its authority under CERCLA to undertake response actions at any time. EPA reserves its right to seek reimbursement from the Facility for costs incurred by the United States. Notwithstanding compliance with the terms of this Agreement, the Facility is not released from liability, if any, for the costs of any response actions taken or authorized by EPA.

D. If EPA determines that activities undertaken pursuant to this Agreement have caused or may cause a release of hazardous waste or hazardous constituent(s), or a threat to human health and/or the environment, or that the Facility is not capable of undertaking the work agreed upon, EPA may order the Facility to stop further implementation of activities undertaken pursuant to this Agreement for such period of time as EPA determines may be needed to abate any such release or threat and/or to undertake any action which EPA determines is necessary to abate such release or threat.

E. EPA and the Facility acknowledge and agree that EPA's approval of any Statements of Work (SOWs) or any workplan submitted pursuant to this Agreement does not constitute a warranty or representation that the SOWs or workplans will achieve the required cleanup or performance standards. Compliance by the Facility with the terms of this Agreement shall not relieve it of its obligations to comply with RCRA or any other applicable local, state, or federal laws and regulations.

F. Notwithstanding any other provision herein, no action or decision by EPA pursuant to this Agreement, including without limitation, decisions of the Regional Administrator, the Director of the Waste and Chemicals Management Division, or any authorized representative of EPA, shall constitute final agency action giving rise to any right of judicial review prior to EPA's initiation of an enforcement action, including an action for penalties or an action to compel the Facility's compliance with RCRA.

G. Notwithstanding any other terms or conditions in this Agreement, EPA may decide to issue a Corrective Action Permit or Order to the Facility at any time.

H. Indemnification: The Facility agrees to indemnify and save and hold harmless the United States government, its agencies, departments, agents, and employees, from any and all claims or causes of action arising from or on account of acts or omissions of the Facility or its officers, employees, agents, independent contractors, receivers, trustees, and assigns in carrying out activities required by this Agreement. This indemnification shall not be construed in any way as affecting or limiting the rights or obligations of the Facility or the United States under their various contracts. The Facility shall not be responsible for indemnifying the EPA for claims or causes of action solely from or on account of acts or omissions of EPA.

VII. OTHER APPLICABLE LAWS

All actions shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations. The Facility shall obtain or require its authorized representatives to obtain all permits and approvals necessary under such laws and regulations.

VIII. NOTICE OF NON-LIABILITY OF EPA

EPA shall not be deemed a party to any contract involving the Facility and relating to activities at the Facility and shall not be liable for any claim or cause of action arising from or on account of any act, or the omission of the Facility, its officers, employees, contractors, receivers, trustees, agents or assigns, in carrying out the activities required by this Agreement.

IX. EFFECTIVE DATE

The effective date of this Agreement is the date of the Letter of Commitment submitted by the Facility to EPA.

[1] A "responsible corporate officer" means: (a) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (b) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. A person is a "duly authorized representative" only if: (1) the authorization is made in writing by a person described above; and (2) the authorization specifies either an individual or position having responsibility for overall operation of the regulated facility or activity (a duly authorized representative may thus be either a named individual or any individual occupying a named position).