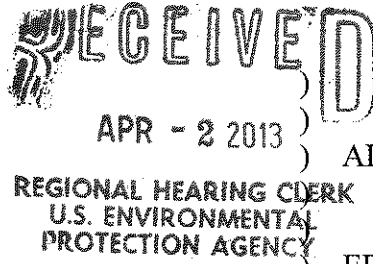


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



IN THE MATTER OF:

2355 South Tibbs Avenue
Indianapolis, Indiana 46241

EPA ID# IND 000 806 836
IND 094 469 913

RESPONDENT,
ROLLS-ROYCE CORPORATION

ADMINISTRATIVE ORDER ON CONSENT

EPA Docket No. **RCRA-05-2013-0004**

Proceedings under Section 3008(h) of the
Resources Conservation and Recovery Act
as amended, 42 U.S.C. § 6928(h).

I. JURISDICTION

1. The United States Environmental Protection Agency ("EPA") is issuing this Administrative Order on Consent ("Order") to the Rolls-Royce Corporation ("Rolls-Royce") under Section 3008(h) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6928(h). The authority vested in the Administrator to issue orders under Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), has been delegated to the Regional Administrators, and further delegated to the Director, Land and Chemicals Division, EPA Region 5.
2. Rolls-Royce owns and operates a gas turbine engine manufacturing facility at 2355 South Tibbs Avenue, Indianapolis, Indiana (the "facility"), which is composed of Plant 5 and Plant 8.
3. Respondent agrees not to contest EPA's jurisdiction to issue this Order, to enforce its terms, or to impose sanctions for violations of the Order.
4. Respondent waives any rights to request a hearing on this matter pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and 40 C.F.R. Part 24, and consents to the issuance of this Order without a hearing under Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), as a Consent Order issued pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h).

II. BACKGROUND

5. In 1942, the Defense Plant Corporation constructed Air Force Plant Number 26, which is now named Rolls-Royce Plant 5, for the production of aircraft engines. Plant 5 contains approximately 1.82 million square feet of floor space on approximately 210 acres. A wide range of gas turbine engine-related production processes have been performed at Plant 5 including metal fabrication, machining, heat treating, electroplating, engine testing and assembly. General Motors (GM) purchased the plant in 1966. GM constructed Plant 8 in 1953 for turbine engine research and development. The processes conducted at Plant 8 were similar to those performed at Plant 5. In 1993, GM sold both plants to AEC Acquisition Corporation. In 1995, Rolls-Royce North America purchased the plants. In April 2001, GM

entered into a Voluntary Corrective Action Agreement with U.S. EPA and the Indiana Department of Environmental Management (IDEM) to investigate and remediate the now Rolls-Royce owned facility. In 2010, GM entered bankruptcy proceedings and formed Motors Liquidation Company, and soon thereafter, was released from its obligation to continue the RCRA Corrective Action at this Facility. Since then, Rolls-Royce has managed the obligations created by the April 3, 2001 Voluntary Corrective Action Agreement, knowing that Rolls-Royce was not the owner/operator of the Facility when the contamination release occurred. Originally, each plant had its own EPA identification number. The EPA identification number for Plant 8 was IND 0944 69 913 and for Plant 5 was IND 000 806 836. Both plants were combined under EPA identification number IND 000 806 836.

III. DEFINITIONS

6. This Order incorporates the definitions in RCRA, 42 U.S.C. §§ 6901 - 6922k, and the regulations promulgated under RCRA unless otherwise specified.

IV. PARTIES BOUND

7. This Order applies to and binds EPA, Respondent and its agents, successors, assigns, trustees, receivers, and all persons, including but not limited to contractors and consultants, acting on behalf of Respondent. Respondent will be responsible for and liable for any violations of this Order, regardless of Respondent's use of employees, agents, contractors, or consultants to perform work required by this Order.

8. No change in ownership or corporate or partnership status relating to the facility will alter Respondent's obligations under this Order. Any conveyance of title, easement, or other interest in the facility, or a portion of the facility, will not affect Respondent's obligations under this Order. Should Respondent pursue a change of Ownership to a successor in interest who willingly agrees to accept completion of the obligations outlined in this Order, Respondent will notify EPA of this proposal for EPA's consideration. EPA reserves the right to conduct an evaluation to determine whether the potential successor in interest has financial capacity to assure the ability to accept these obligations. If EPA determines that the potential successor in interest positively demonstrates this ability, and the potential successor in interest has agreed to enter an order with EPA to complete Respondent's obligations EPA may consider allowing the transfer of the obligations in this Order to the successor in interest. Respondent will give written notice of this Order to any successor in interest prior to transferring ownership or operation of the facility or a portion thereof and will notify EPA in writing within five days of the transfer. This written notice will describe how Respondent has assured that, despite the transfer, all institutional controls required now or in the future for the facility will be implemented and maintained. This paragraph will not apply if EPA and Respondent agree that this Order has terminated as to the facility or any relevant portion of the facility.

V. DETERMINATIONS

9. After consideration of the Administrative Record, the Director, Land and Chemicals Division, EPA Region 5, has made the following conclusions of law and determinations:

- a. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
- b. Respondent is the owner or operator of a facility that has operated under interim status subject to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e).
- c. Certain wastes and constituents found at the facility are hazardous wastes and/or hazardous constituents pursuant to Sections 1004(5) and 3001 of RCRA, 42 U.S.C. §§ 6903(5) and 6921, and 40 C.F.R. Part 261.
- d. There is or has been a release of hazardous wastes or hazardous constituents into the environment from the facility.
- e. The actions required by this Order are necessary to protect human health and/or the environment.

VI. PROJECT MANAGER

10. EPA and Respondent must each designate a Project Manager and notify each other in writing of the Project Manager selected within 14 days of the effective date of this Order. Each Project Manager will be responsible for overseeing the implementation of this Project. The parties must provide prompt written notice whenever they change Project Managers.

VII. WORK TO BE PERFORMED

11. Pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), Respondent agrees to and is hereby ordered to perform the actions specified in this section, in the manner and by the dates specified here. Respondent represents that it has the technical and financial ability to carry out corrective action at the facility. Respondent must perform the work undertaken pursuant to this Order in compliance with RCRA and other applicable federal and state laws and their implementing regulations, and consistent with all relevant EPA guidance documents as appropriate to the facility. This guidance includes, but is not limited to, the Documentation of Environmental Indicator Determination Guidance, relevant portions of the Model Scopes of Work for RCRA Corrective Action, and EPA's risk assessment guidance.

12. To the extent not already completed, Respondent must identify and define the nature and extent of releases of hazardous waste and hazardous constituents at or from the facility as follows:

- a. GM previously provided to EPA a Current Conditions Report in July, 2001.
- b. GM previously provided to EPA a RCRA Facility Investigation (RFI) Phase 1 Report in July, 2003.
- c. GM has previously implemented the following Interim Measures:

- i. In 1997, GM installed a soil vapor extraction system located near the former Oil Stores building and an air sparge/soil vapor extraction system located near the southern boundary of the Site which were operated until 2009.
- ii. In 2002, GM excavated and disposed of approximately 100 tons of mercury impacted soil from the former underground storage tank area at Plant 8.
- iii. In 2003, GM installed four additional air sparge/soil vapor extraction systems as Interim Measures at former PCE release areas around the facility. These systems were operated until 2007, with the exception of the Skim Basin and former Plant 11 Silver Plating Area which continue to operate.
- iv. In 2003, GM established a “no-well zone” at and around the facility to ensure that no private wells are installed or upgraded to supply water for human consumption which was approved by the Marion County Health Department.
- v. In 2008, GM expanded the “No Well Zone” to the east, extending to the White River.

- d. GM previously provided to EPA a Corrective Measures Proposal (CMP) in 2003.
- e. GM previously provided to EPA several RFI Phase 2 Reports from 2004 to 2011.
- f. GM previously provided to EPA a revised CMP in 2006.
- g. On September 14, 2012, Respondent submitted the RFI Phase 3 Investigation for the Plant 5 Test Cells (AOI 5-19).

13. Respondent must timely submit for EPA review and approval any proposed corrective measures necessary to control current human exposures to contamination or to stabilize the migration of contaminated groundwater (“interim corrective measures”) at least 90 calendar days prior to the planned initiation of construction work. The proposed interim corrective measures must contain a workplan and a project schedule. The EPA Project Manager will determine whether any public participation activities are appropriate prior to acting on the request for approval.

14. GM demonstrated on September 3, 2003, through submitting an Environmental Indicators Report and by performing any other necessary activities, that all current human exposures to contamination at or from the facility are under control, and that migration of contaminated groundwater at or from the facility is stabilized.

15. Respondent must propose to EPA by December 31, 2013 final corrective measures necessary to protect human health and the environment from all current and future unacceptable risks due to releases of hazardous waste or hazardous constituents at or from the facility (the “Final Corrective Measures Proposal”). The proposal must describe all corrective measures implemented at the facility since the effective date of this Order. It must also include a description of all other final corrective measures that Respondent evaluated, a detailed explanation of why Respondent preferred the proposed final corrective measures, and cost estimates for the final corrective measures evaluated. The proposal must also include

a detailed schedule to construct and implement the final corrective measures, and to submit a Final Remedy Construction Completion Report. The proposed schedule must provide for Respondent to complete as much of the initial construction work as practicable within one year after EPA selects the final corrective measures and that Respondent complete all final corrective measures within a reasonable period of time to protect human health and the environment.

16. As part of developing its Final Corrective Measures Proposal, Respondent must propose appropriate risk screening criteria, cleanup objectives, and points of compliance under current and reasonably expected future land use scenarios and provide the basis and justification for these decisions.

17. EPA may request supplemental information from Respondent if EPA determines that any submission required under this Order does not provide an adequate basis to select final corrective measures that will protect human health and the environment from the release of hazardous waste and hazardous constituents at or from the facility. Respondent must provide timely any supplemental information that EPA requests in writing within 90 days of EPA's request.

18. EPA will provide the public with an opportunity to review and comment on its proposed final corrective measures, including a detailed description and justification for the proposal (the "Statement of Basis"). Following the public comment period, EPA will select the final corrective measures, and will notify the public of the decision and rationale in a "Final Decision and Response to Comments" ("Final Decision").

19. Upon notice by EPA, Respondent must implement the final corrective measures selected in EPA's Final Decision according to the schedule in the Final Decision.

20. EPA may require further corrective action for any previous release of a hazardous waste or hazardous constituent at a later date, if new information or subsequent analysis indicates that a previous release at the facility may pose a threat to human health or the environment.

21. Corrective Action for Newly Discovered Releases. Within 30 days after discovery of a previously unidentified release of a hazardous waste or hazardous constituent that was not discovered during the RFI, Respondent must provide written notification to EPA. The written notification shall include all of the following information to the extent that it is available: The location of the release on the facility topographic map; the nature and extent of the release; and the date the discovery of the release. Within 30 days after the notification by Respondent of a previously unidentified release of a hazardous waste or hazardous constituent, or if EPA receives information indicating there may be a release of a hazardous waste or hazardous constituent, at or from the facility that was not discovered during the RFI, EPA may request Respondent to submit a plan and schedule within 60 days of notification by EPA for performing an investigation of the nature and extent of such release and the impact of the release on human health or the environment and for submitting a report of its investigation and proposed corrective measures ("Newly Discovered Release Report"). The Newly Discovered Release Report shall document the basis for Respondent's conclusion as to whether or not the release presents a threat to human health or the environment and, if Respondent concludes that it does, the Report shall also include an evaluation of corrective measures considered to address the release and Respondent's recommended corrective measure(s), with supporting documentation. EPA shall review the Report and either approve the Report or require revisions to the Report, following the procedure set

forth in Paragraph 25 below. EPA may request supplemental information from Respondent if necessary to fully evaluate the nature and extent of the release and/or corrective measures alternatives. Respondent shall provide any supplemental information that EPA requests in writing within 60 days of EPA's request. During the remedy evaluation and selection process, Respondent shall implement interim measures as necessary to prevent exposure to contaminants above risk-based levels. The CMP shall be amended to include a plan and schedule for implementation of corrective measures as approved by EPA. Respondent shall implement the selected corrective measures in accordance with the approved implementation schedule.

22. Reporting and other requirements:

- a. Respondent must consider green remediation best management practices when developing remediation plans and activities. Respondent must show proof of such consideration in reports, documentation and plans Respondent submits to EPA as required by this Order. This includes, but is not limited to, consideration of green remediation best management practices, as applicable, for site investigation, excavation and surface restoration, integrating renewable energy into site cleanup, soil vapor extraction and air sparging, pump and treat technologies, and landfill cover and energy production activities.
- b. Respondent must establish a publicly accessible repository for information regarding site activities and conduct public outreach and involvement activities.
- c. Respondent must provide quarterly progress reports to EPA by the fifteenth day of the month after the end of each quarter. The report must list work performed to date, data collected, problems encountered, project schedule, and percent project completed.
- d. The parties will communicate frequently and in good faith to assure successful completion of the requirements of this Order, and will meet on at least a semi-annual basis to discuss the work proposed and performed under this Order. The frequency of this meeting may be modified by agreement of the parties.
- e. Respondent must provide a Final Remedy Construction Completion Report documenting all work that it has performed pursuant to the schedule in EPA's Final Decision. The Final Remedy Construction Completion Report must provide a description of the environmental results of the final remedy and any interim corrective measures including, but not limited to, (1) the volume, in cubic yards, for each of the following: soil, sediment, vapor, aquifer formation, surface water, and materials in containers addressed or to be addressed by the response actions; and (2) an estimate of the mass of contaminants mitigated as part of those materials addressed.
- f. If ongoing monitoring or operation and maintenance is required after construction of the final corrective measures, Respondent must include an operations and maintenance plan in the Final Remedy Construction Completion Report. Respondent must revise and resubmit the report in response to EPA's written comments, if any, by the dates EPA specifies. Upon EPA's written approval, Respondent must implement the approved operation and maintenance plan according to the schedule and terms of the plan.

- g. Any risk assessments Respondent conducts must estimate human health and ecological risk under reasonable maximum exposure for both current and reasonably expected future land use scenarios. In conducting the risk assessments, Respondent will follow the Risk Assessment Guidance for Superfund (RAGS), the Ecological Risk Assessment Guidance for Superfund (ERAGS) and other appropriate EPA guidance. Respondent will use appropriate, conservative screening values when screening to determine whether further investigation is required. Appropriate screening values include those derived from Federal Maximum Contaminant Levels, EPA Regional Screening Levels for Chemical Contaminants, EPA EcoSSLs, and/or other sources as agreed to by EPA.
- h. All sampling and analysis conducted under this Order must be performed in accordance with the Region 5 RCRA Quality Assurance Project Plan Policy (April 1998) as appropriate for the site, and be sufficient to identify and characterize the nature and extent of all releases as required by this Order. EPA may audit laboratories Respondent selects or require Respondent to purchase and have analyzed any performance evaluation samples selected by EPA which are compounds of concern. Respondent must notify EPA in writing at least 14 days before beginning each separate phase of field work performed under this Order. At the request of EPA, Respondent will provide or allow EPA or its authorized representative to take split or duplicate samples of all samples Respondent collects under this Order.

23. The EPA Project Manager may extend any deadline in this Section for 90 days or less with written notice to the Respondent. Extensions of greater than 90 days require written approval from the Chief of the Remediation and Reuse Branch, Land and Chemicals Division.

VIII. EPA APPROVAL OF DELIVERABLES

24. Respondent must submit deliverables required by Paragraphs 13, 15, 21, 22.f, and 22.g of this Order to EPA for approval or modification pursuant to Paragraph 24. All deliverables must be received at EPA by the dates specified pursuant to this Order. EPA will make good faith efforts to act pursuant to this Section on deliverables required by Paragraphs 13, and 15 and 21 within 60 days of receipt. If EPA extends the time frame to act beyond 60 days, EPA will not unreasonably withhold granting Respondent's request for an extension of any subsequent deadline that is affected.

25. After review of any deliverable that is required pursuant to this Order, EPA will: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondent modify the submission; or (e) any combination of the above. However, EPA will not modify a submission without first providing Respondent at least one notice of deficiency and an opportunity to cure within 10 days, except where EPA determines that to do so would cause serious disruption to the Work (as referred to in Section VII above) or where EPA has disapproved previous submission(s) due to material defects and EPA determines that the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

26. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 25(a), (b), or (c), Respondent must proceed to take any action required by the deliverable, as approved or modified by EPA subject only to Respondent's right to invoke the Dispute Resolution procedures set forth in Section XIII (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 25(c) and EPA determines the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XII (Stipulated Penalties).

27. Resubmission of Deliverable. Upon receipt of a notice of disapproval, in whole or in part, pursuant to Paragraph 25(d), Respondent must, within 10 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. Any stipulated penalties applicable to the submission, as provided in Section XII (Stipulated Penalties), shall accrue during the 10-day opportunity to cure period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 25 and 26.

28. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 25(d), Respondent must proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for stipulated penalties for the deficient portion of the deliverable under Section XII (Stipulated Penalties).

29. In the event that a resubmitted deliverable, or portion thereof, is disapproved by EPA, EPA may again require Respondent to correct the deficiencies, in accordance with Paragraphs 25 and 27. EPA also retains the right to modify or develop the plan, report or other item. Respondent must implement any action as required in a deliverable which has been modified or developed by EPA, subject only to Respondent's right to invoke the procedures set forth in Section XIII (Dispute Resolution).

30. If upon resubmission, a deliverable is disapproved or modified by EPA due to a material defect, Respondent shall be deemed to have failed to submit such deliverable timely and adequately unless Respondent invokes the dispute resolution procedures set forth in Section XIII (Dispute Resolution) and EPA's action to disapprove or modify a deliverable is overturned pursuant to that Section. The provisions of Section XIII (Dispute Resolution) and Section XII (Stipulated Penalties) shall govern the implementation of the Section VII (Work To Be Performed) and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XII (Stipulated Penalties).

31. All deliverables required to be submitted to EPA under this Order, shall, upon approval or modification by EPA, be incorporated into and be enforceable under this Order. In the event EPA approves or modifies a portion of a deliverable required to be submitted to EPA under this Order, the approved or modified portion shall be enforceable under this Order.

IV. ACCESS

32. Upon reasonable notice, and at reasonable times, EPA, its contractors, employees, and any designated EPA representatives may enter and freely move about the facility to, among other things: interview facility personnel and contractors; review Respondent's progress in carrying out the terms of this Order; conduct tests, sampling, or monitoring as EPA deems necessary; use a camera, sound recording, or other documentary equipment; and verify the reports and data Respondent submits to EPA. Respondent will permit such persons to inspect and copy all non-privileged photographs and documents, including all sampling and monitoring data, that pertain to work undertaken under this Order and that are within the possession or under the control of Respondent or its contractors or consultants. Respondent may request split samples, or copies of all photographs, tapes, videos or other recorded evidence created by EPA and releasable under the Freedom of Information Act.

33. If Respondent must go beyond the facility's boundary to perform work required by this Order, Respondent must use its best efforts to obtain the necessary access agreements from the present owner(s) of such property within 30 days after Respondent knows of the need for access. Any such access agreement must provide for access by EPA and its representatives. Respondent must submit a copy of any access agreement to EPA's Project Manager. If it does not obtain agreements for access within 30 days, Respondent must notify EPA in writing within 14 additional days of both the efforts undertaken to obtain access and the failure to obtain access agreements. EPA may, at its discretion, assist Respondent in obtaining access.

34. Nothing in this Section limits or otherwise affects EPA's right of access and entry under applicable law, including RCRA and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675.

X. COST ESTIMATES AND ASSURANCES OF FINANCIAL RESPONSIBILITY FOR COMPLETING THE WORK

35. Estimated Cost of the Work To Be Performed (Section VII):

- a. Respondent must submit to EPA detailed written estimates, as described in Paragraph 35, in current dollars, of the cost of hiring a third party to perform the Work To Be Performed under Section VII of the Order (Cost Estimate) A third party is a party who (i) is neither a parent nor a subsidiary of Respondent and (ii) does not share a common parent or subsidiary with Respondent. Cost Estimates submitted under Paragraph 35 of this Order must be consistent with the requirements of 40 C.F.R. § 264.142 and § 264.144. References in these regulations to closure and post-closure shall mean the Work to Be Performed under Section VII of the Order.
- b. Within 30 days of the effective date of this Order, Respondent must submit to EPA for review and approval an initial Cost Estimate of the Work To Be Performed under Section VII of this Order. The initial Cost Estimate must account for the costs of the work necessary to meet the requirements of Paragraph 13, including, but not limited to, investigations, risk analyses, reports, and the construction and implementation of any

foreseeable interim corrective measures necessary to protect human health and the environment. In addition, the initial Cost Estimate must account for foreseeable costs necessary to meet the requirements of Paragraphs 15 through 22, including, but not limited to, proposals, reports, construction work, implementation, monitoring, and other long term care work.

- c. Within 30 days of submittal of the Final Corrective Measures Proposal under Paragraph 15, Respondent must submit to EPA for review and approval a revised Cost Estimate, adjusted for inflation, accounting for the costs of all remaining Work To Be Performed under Section VII of this Order, including, but not limited to, all remaining investigations and reports, construction work, implementation, monitoring, and other long term care work.
- d. Respondent must annually adjust the Cost Estimate for inflation and for changes in the scope of the Work to Be Performed under Section VII of the Order. Within 30 days after the close of Respondent's fiscal year, Respondent must submit the annually adjusted Cost Estimate to EPA for review and approval.
- e. EPA will review each Cost Estimate submitted by Respondent and will notify Respondent of EPA's approval, approval with modifications, or disapproval of the Cost Estimate.
- f. If at any time EPA determines that a Cost Estimate provided pursuant to this Paragraph is inadequate, EPA shall notify Respondent in writing, stating the basis for its determination. If at any time Respondent becomes aware of information indicating that any Cost Estimate provided pursuant to this Section is inadequate, Respondent must notify EPA in writing of such information within ten (10) days. Within 30 days of EPA's notification, or within 30 days of becoming aware of such information, as the case may be, Respondent must submit a revised Cost Estimate to EPA for review.

36. Assurances of Financial Responsibility for Completing the Work To Be Performed under Section VII of the Order:

- a. Within 60 days after EPA approves the initial Cost Estimate, Respondent must establish and maintain financial assurance for the benefit of the EPA in the amount of the approved initial Cost Estimate. In the event that EPA approval of Respondent's initial Cost Estimate is not received within 30 days after the close of Respondent's fiscal year ("fiscal year") during which the initial Cost Estimate was submitted, Respondent must establish and maintain the financial assurance in the amount of the initial Cost Estimate within 90 days after the close of such fiscal year. Respondent must adjust the financial instrument or financial test demonstration as necessary to reflect the most recent Cost Estimate approved by EPA within 90 days after the close of each fiscal year. In the event that EPA approval of a revised Cost Estimate is not received within 60 days after close of Respondent's fiscal year, Respondent must submit adjusted financial assurance instruments in the amount of the most recently submitted Cost Estimate. Respondent must use one or more of the financial assurance forms described in Paragraphs 36.a.i – vi,

below. Any and all financial assurance documents provided pursuant to this Order must be submitted to EPA for review in draft form at least 45 days before they are due to be filed and must be satisfactory in form and substance as determined by EPA. Respondent must maintain adequate financial assurance until EPA releases Respondent from this requirement under Paragraph 37.c, below.

- i. A trust fund established for the benefit of EPA, administered by a trustee who has the authority to act as a trustee under Federal or State law and whose trust operations are regulated and examined by a Federal or State agency, and that is acceptable in all respects to the EPA. The trust agreement must provide that the trustee must make payments from the fund as the Director, Land and Chemicals Division, EPA Region 5, shall direct in writing to (1) reimburse Respondent from the fund for expenditures made by Respondent for work performed under Section VII of the Order, or (2) to pay any other person whom the Director, Land and Chemicals Division, EPA Region 5, determines has performed or will perform the work under Section VII of the Order. The trust agreement must further provide that the trustee must not refund to the grantor any amounts from the fund unless and until EPA has advised the trustee that the work under the Order has been successfully completed.
- ii. A surety bond unconditionally guaranteeing performance of the Work to Be Performed Under Section VII of this Order, or guaranteeing payment at the direction of EPA into a standby trust fund that meets the requirements of the trust fund in Paragraph 36.a.i, above. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal Bonds as set forth in Circular 570 of the U.S. Department of Treasury.
- iii. An irrevocable letter of credit, payable at the direction of the Director, Land and Chemicals Division, EPA Region 5, into a standby trust fund that meets the requirements of the trust fund in Paragraph 36.a.i, above. The letter of credit must be issued by a financial institution (i) that has the authority to issue letters of credit, and (ii) whose letter-of-credit operations are regulated and examined by a Federal or State agency.
- iv. An insurance policy that (i) provides EPA with rights as a beneficiary which are acceptable to EPA; and (ii) is issued by an insurance carrier that (a) has the authority to issue insurance policies in the applicable jurisdiction, and (b) whose insurance operations are regulated and examined by a Federal or State agency. The insurance policy must be issued for a face amount at least equal to the Cost Estimate, except where costs not covered by the insurance policy are covered by another financial assurance instrument, as permitted in Paragraph 36.a. The policy must provide that the insurer shall make payments as the Director, Land and Chemicals Division, EPA Region 5, shall direct in writing (i) to reimburse Respondent for expenditures made by Respondent for work performed in accordance with this Order, or (ii) to pay any other person whom the Director, Land and Chemicals Division, EPA Region 5, determines has performed or will

perform the work in accordance with this Order, up to an amount equal to the face amount of the policy. The policy must also provide that it may not be canceled, terminated or non-renewed and the policy shall remain in full force and effect in the event that (i) the Respondent is named as a debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or (ii) EPA notifies the insurer of Respondent's failure to perform, under Paragraph 38 of this section.

- v. A corporate guarantee, executed in favor of the EPA by one or more of the following: (1) a direct or indirect parent company, or (2) a company that has a "substantial business relationship" with Respondent (as defined in 40 C.F.R. § 264.141(h)), to perform the Work to Be Performed under Section VII of this Order or to establish a trust fund as permitted by Paragraph 36.a.i., above; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of the EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the portion of the Cost Estimate that it proposes to guarantee.
 - vi. A demonstration by Respondent that it meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Cost Estimate, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied.
- b. Respondent must submit all original executed and/or otherwise finalized instruments to EPA's Regional Comptroller (MF-10J), 77 W. Jackson Blvd., Chicago, IL 60604-3590, within 30 days after date of execution or finalization as required to make the documents legally binding. A transmittal letter stating the name and RCRA ID number of the facility, Respondent's name and address, and the EPA docket number of this Order must accompany the instruments. Respondent must also provide copies to the EPA Project Manager within 30 days.
 - c. If at any time Respondent provides financial assurance for completion of the Work To Be Performed under Section VII of the Order by means of a corporate guarantee or financial test, Respondent must also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods, and will promptly provide any additional information requested by EPA from Respondent or corporate guarantor at any time.
 - d. For purposes of the corporate guarantee or the financial test described above, references in 40 C.F.R. § 264.143(f) to "the sum of current closure and post-closure costs and the current plugging and abandonment cost estimates" shall mean "the sum of all environmental remediation obligations" [including obligations under CERCLA, RCRA, Underground Injection Control (UIC), the Toxic Substances Control Act (TSCA) and any other state or tribal environmental obligation] guaranteed by such company or for which such company is otherwise financially obligated in addition to the Cost Estimate.

- e. Respondent may combine more than one mechanism to demonstrate financial assurance for the Work to Be Performed under Section VII of this Order.
- f. Respondent may satisfy its obligation to provide financial assurance for the Work To Be Performed under Section VII of the Order by providing a third party who assumes full responsibility for the Work To Be Performed under Section VII of the Order and otherwise satisfies the obligations of the financial assurance requirements of this Order; however, Respondent shall remain responsible for providing financial assurance in the event such third party fails to do so and any financial assurance from a third party must be in one of the forms provided in Paragraphs 36.a.i through 36.a.iv, above.
- g. If at any time EPA determines that a financial assurance mechanism provided pursuant to this Section is inadequate, EPA shall notify Respondent in writing. If at any time Respondent becomes aware of information indicating that any financial assurance mechanism(s) provided pursuant to this Section is inadequate, Respondent must notify EPA in writing of such information within ten (10) days. Within 90 days of receipt of notice of EPA's determination, or within 90 days of Respondent's becoming aware of such information, Respondent must establish and maintain adequate financial assurance for the benefit of the EPA which satisfies all requirements set forth in this Section. Any and all financial assurance documents provided pursuant to this Order must be submitted to EPA for review in draft form at least 45 days before they are due to be filed and must be satisfactory in form and substance as determined by EPA.
- h. Respondent's inability or failure to establish or maintain financial assurance for completion of the Work To Be Performed under Section VII of the Order shall in no way excuse performance of any other requirements of this Order.

37. Modification of Amount and/or Form of Performance Guarantee:

- a. Reduction of Amount of Financial Assurance. If Respondent believes that the Cost Estimate has diminished below the amount covered by the existing financial assurance provided under this Order, Respondent may, at the same time that Respondent submits its annual Cost Estimate, submit a written proposal to EPA for approval to reduce the amount of the financial assurance to equal the revised Cost Estimate.
- b. Change of Form of Financial Assurance. If Respondent desires to change the form or terms of financial assurance, Respondent may, at the same time that Respondent submits the annual Cost Estimate, or at any other time agreed to by EPA in writing, submit a written proposal to EPA for approval to change the form of financial assurance. The written proposal must specify all proposed instruments or other documents required in order to make the proposed financial assurance legally binding and must satisfy all requirements set forth in this Section. Within ten (10) days after receiving written approval of the proposed revised or alternative financial assurance, Respondent must execute and/or otherwise finalize all instruments or other documents required in order to make the selected financial assurance legally binding. Respondent must submit all executed and/or otherwise finalized instruments or other documents required in order to

make the selected financial assurance legally binding to the EPA Comptroller's Office, with a copy to EPA's Project Manager, with a transmittal letter, as provided in Paragraph 36, above.

- c. Release of Financial Assurance. Respondent may submit a written request to the Director, Land and Chemicals Division, EPA Region 5, that EPA release Respondent from the requirement to maintain financial assurance under this Section once EPA and Respondent have both executed an "Acknowledgment of Termination and Agreement to Record Preservation and Reservation of Right" pursuant to Section XXI (Termination and Satisfaction) of the Order. The Director, Land and Chemicals Division, EPA Region 5, shall notify both Respondent and the provider(s) of the financial assurance that Respondent is released from all financial assurance obligations under this Order.

38. Performance Failure:

- a. If EPA determines that Respondent (i) has ceased implementing any portion of the Work To Be Performed under Section VII of the Order, (ii) is significantly or repeatedly deficient or late in its performance of the Work To Be Performed under Section VII of the Order, or (iii) is implementing the Work To Be Performed under Section VII of the Order in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Performance Failure Notice") to both Respondent and the financial assurance provider of Respondent's failure to perform. The notice issued by EPA will specify the grounds upon which such a notice was issued and will provide Respondent with a period of 20 days within which to remedy the circumstances giving rise to the issuance of such notice.
- b. Failure by Respondent to remedy the relevant Performance Failure to EPA's satisfaction before the expiration of the twenty-day notice period specified in Paragraph 38.a shall trigger EPA's right to have immediate access to and benefit of the financial assurance provided pursuant to Paragraphs 36.a.i, 36.a.ii, 36.a.iii, 36.a.iv, or 36.a.v. If EPA is unable after reasonable efforts to secure payment of funds or performance of work from the financial assurance provider, then upon written notice from EPA, Respondent must within 20 days deposit into a trust fund approved by EPA, a cash amount equal to the most recent Cost Estimate approved by EPA.

XI. RECORD PRESERVATION

39. Respondent must retain, during the pendency of this Order and for at least six years after the Order terminates, all data and all final documents now in its possession or control or which come into its possession or control which relate to this Order. Respondent must notify EPA in writing 90 days before destroying any such records, and give EPA the opportunity to take possession of any non-privileged

documents. Respondent's notice will refer to the effective date, caption, and docket number of this Order and will be addressed to:

Director
Land and Chemicals Division
EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

Respondent will also promptly give EPA's Project Manager a copy of the notice.

40. Within 30 days of retaining or employing any agent, consultant, or contractor ("agents") to carry out the terms of this Order, Respondent will enter into an agreement with the agents to give Respondent a copy of all data and final non-privileged documents produced under this Order.

41. Respondent will not assert any privilege claim concerning any data gathered during any investigations or other actions required by this Order.

XII. STIPULATED PENALTIES

42. Respondent must pay the following stipulated penalties to the United States for violations of this Order:

- a. For failure to submit quarterly progress reports by the dates scheduled in Paragraph 22, above: \$1,500 per day for the first 14 days and \$3,000 per day thereafter.
- b. For failure to submit the Final Corrective Measures Proposal in Paragraph 15 by December 31, 2013: \$1,500 per day for the first 14 days and \$3,000 per day thereafter.
- c. For failure to implement according to the approved schedule, the selected final corrective measures as described in Paragraphs 18 and 19: \$4,500 per day for the first 14 days and \$9,000 per day thereafter.
- d. For failure to submit the Final Remedy Construction Completion Report as scheduled in Paragraph 22.f: \$1,500 per day for the first 14 days and \$3,000 per day thereafter.
- e. For failure to submit written notification to EPA of previously unidentified releases within 30 days of discovery as required by Paragraph 21: \$1,500 per day for the first 14 days and \$3,000 per day thereafter.
- f. For failure to submit the work plan and schedule for Newly Discovered Releases, or supplemental information as required by Paragraph 21 within 60 days of EPA's request: \$1,500 per day for the first 14 days and \$3,000 per day thereafter.
- g. For failure to submit a Cost Estimate as required in Paragraphs 35.b, c, d, and f under Section X of the Order: \$1,500 per day for the first 14 days and \$3,000 per day thereafter.

- h. For failure to establish or maintain the Assurances of Financial Responsibility for Completing the Work To Be Performed under Section VII of the Order as required under Section X of the Order: \$1,500 per day for the first 14 days and \$3,000 per day thereafter.

43. Whether or not Respondent has received notice of a violation, stipulated penalties will begin to accrue on the day a violation occurs, and will continue to accrue until Respondent complies. Separate stipulated penalties for separate violations of this Order will accrue simultaneously.

44. Respondent must pay any stipulated penalties owed to the United States under this Section within 30 days of receiving EPA's written demand to pay the penalties, unless Respondent invokes the dispute resolution procedures under Section XIII: Dispute Resolution. A written demand for stipulated penalties will describe the violation and will indicate the amount of penalties due.

45. Interest will begin to accrue on any unpaid stipulated penalty balance beginning 31 days after Respondent receives EPA's demand letter. Interest will accrue at the current value of funds rate established by the Secretary of the Treasury. Under 31 U.S.C. § 3717, Respondent must pay an additional penalty of six percent per year on any unpaid stipulated penalty balance more than 90 days overdue.

46. Respondent must pay all penalties by certified or cashier's check payable to the United States of America, or by wire transfer, and will send the check to:

U.S. Department of the Treasury
Attention: EPA Region 5, Office of the Comptroller
P.O. Box 70753
Chicago, Illinois 60673.

A transmittal letter stating the name of the facility, Respondent's name and address, and the EPA docket number of this action must accompany the payment. Respondent will simultaneously send a copy of the check and transmittal letters to the EPA Project Manager.

47. Respondent may dispute EPA's assessment of stipulated penalties by invoking the dispute resolution procedures under Section XIII: Dispute Resolution. The stipulated penalties in dispute will continue to accrue, but need not be paid, during the dispute resolution period. Respondent must pay stipulated penalties and interest, if any, according to the dispute resolution decision or agreement. Respondent must submit such payment to EPA within 30 days after receiving the resolution according to the payment instructions of this Section.

48. Neither invoking dispute resolution nor paying penalties will affect Respondent's obligation to comply with the terms of this Order not directly in dispute.

49. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA for Respondent's violation of any terms of this Order. However, EPA will not seek both a stipulated penalty under this Section and a statutory penalty for the same violation.

XIII. DISPUTE RESOLUTION

50. The parties will use their best efforts to informally and in good faith resolve all disputes or differences of opinion.

51. If either party disagrees, in whole or in part, with any decision made or action taken under this Order, that party will notify the other party's Project Manager of the dispute. The Project Managers will attempt to resolve the dispute informally.

52. If the Project Managers cannot resolve the dispute informally, either party may pursue the matter formally by placing its objections in writing. A written objection must state the specific points in dispute, the basis for that party's position, and any matters which it considers necessary for determination.

53. EPA and Respondent will in good faith attempt to resolve the dispute through formal negotiations within 21 days, or a longer period if agreed in writing by the parties. During formal negotiations, either party may request a conference with appropriate senior management to discuss the dispute.

54. If the parties are unable to reach an agreement through formal negotiations, within 14 business days after any formal negotiations end, Respondent and EPA's Project Manager may submit additional written information to the Director of the Land and Chemicals Division, EPA Region 5. EPA will maintain a record of the dispute, which will contain all statements of position and any other documentation submitted pursuant to this Section. EPA will allow timely submission of relevant supplemental statements of position by the parties to the dispute. Based on the record, EPA will respond to Respondent's arguments and evidence and provide a detailed written decision on the dispute signed by the Director of the Land and Chemicals Division, EPA Region 5 ("EPA Dispute Decision").

55. If, at the conclusion of the Dispute Resolution process, Respondent notifies EPA that it refuses to implement EPA's selected final corrective measures, EPA will endeavor to pursue the action(s) it deems necessary, if any, within a reasonable period of time.

XIV. FORCE MAJEURE AND EXCUSABLE DELAY

56. Force majeure, for purposes of this Order, is any event arising from causes not foreseen and beyond Respondent's control that delays or prevents the timely performance of any obligation under this Order despite Respondent's best efforts.

57. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, Respondent must notify EPA within two business days after learning that the event may cause a delay. If Respondent wishes to claim a force majeure event, within 15 business days thereafter Respondent must provide to EPA in writing all relevant information relating to the claim, including a proposed revised schedule.

58. If EPA determines that a delay or anticipated delay is attributable to a force majeure event, EPA will extend in writing the time to perform the obligation affected by the force majeure event for such time as EPA determines is necessary to complete the obligation or obligations.

XV. MODIFICATION

59. This Order may be modified only by mutual agreement of EPA and Respondent, except as provided in Section VI - Work To Be Performed. Any agreed modifications will be in writing, will be signed by both parties, will be effective on the date of signature by EPA, and will be incorporated into this Order.

XVI. RESERVATION OF RIGHTS

60. Nothing in this Order restricts EPA's authority to seek Respondent's compliance with the Order and applicable laws and regulations. For violations of this Order, EPA reserves its rights to bring an action to enforce the Order, to assess penalties under Section 3008(h)(2) of RCRA, 42 U.S.C. § 6928(h)(2), and to issue an administrative order to perform corrective actions or other response measures. In any later proceeding, Respondent shall not assert or maintain any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon a contention that the claims raised by the United States in the later proceeding were or should have been raised here. This Order is not a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, or authorities of EPA.

61. EPA reserves all of its rights to perform any portion of the work consented to here or any additional site characterization, feasibility study, and remedial work as it deems necessary to protect human health or the environment.

62. If EPA determines that Respondent's actions related to this Order have caused or may cause a release of hazardous waste or hazardous constituent(s), or a threat to human health or the environment, or that Respondent cannot perform any of the work ordered, EPA may order Respondent to stop implementing this Order for the time EPA determines may be needed to abate the release or threat and to take any action that EPA determines is necessary to abate the release or threat.

63. Respondent does not admit any of EPA's factual or legal determinations. Except for the specific waivers in this Order, Respondent reserves all of its rights, remedies and defenses, including all rights and defenses it may have: (a) to challenge EPA's performance of work; (b) to challenge EPA's stop work orders; and (c) regarding liability or responsibility for conditions at the facility, except for its right to contest EPA's jurisdiction to issue or enforce this Order. Respondent has entered into this Order in good faith without trial or adjudication of any issue of fact or law. Respondent reserves its right to seek judicial review of EPA actions taken under this Order, including a proceeding brought by the United States to enforce the Order or to collect penalties for violations of the Order.

XVII. NOTICES AND SUBMISSIONS

64. Except as otherwise specifically provided in this Order, whenever, under the terms of this Order, written notice is required to be given or a report or other document is required to be sent by one party to

another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided.

U.S. EPA:

Gregory Rudloff
EPA Project Manager
Waste Pesticides and Toxics Division
U.S. EPA, Region 5
77 W. Jackson Blvd. LU-9J
Chicago, IL 60604-3590

RESPONDENT:

Pravin G. Patel
Senior Environmental Engineer
Mail Code R-22A
2355 South Tibbs Avenue
Rolls-Royce Corporation
Indianapolis, Indiana 46241

XVIII. OTHER CLAIMS

65. Respondent waives any claims or demands for compensation or payment under Section 106(b), 111, and 112 of CERCLA against the United States or the Hazardous Substance Superfund established by 26 U.S.C. § 9507 for, or arising out of, any activity performed or expense incurred under this Order. Additionally, this Order is not a decision on preauthorization of funds under Section 111(a)(2) of CERCLA.

XIX. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

66. Respondent indemnifies, saves and holds harmless the United States, its agencies, departments, agents, and employees, from all claims or causes of action arising from or on account of acts or omissions of Respondent or its officers, employees, agents, independent contractors, receivers, trustees, and assigns in carrying out activities required by this Order. This indemnification will not affect or limit the rights or obligations of Respondent or the United States under their various contracts. This indemnification will not create any obligation on the part of Respondent to indemnify the United States from claims arising from the acts or omissions of the United States.

XX. SEVERABILITY

67. If any judicial or administrative authority holds any provision of this Order to be invalid, the remaining provisions will remain in force and will not be affected.

XXI. TERMINATION AND SATISFACTION

68. Respondent may request that EPA issue a determination that Respondent has met the requirements of the Order for all or a portion of the facility. Respondent may also request that EPA issue a "corrective action complete" or "corrective action complete with controls" determination for all or a portion of the facility as described at 67 Fed. Reg. 9176, dated February 27, 2002.

69. The provisions of the Order will be satisfied upon Respondent's and EPA's execution of an "Acknowledgment of Termination and Agreement on Record Preservation and Reservation of Rights", consistent with EPA's Model Scope of Work.

70. Respondent's execution of the Acknowledgment will affirm its continuing obligation to preserve all records as required by Section XI, to maintain any necessary institutional controls or other long terms measures, and to recognize EPA's reservation of rights as required in Section XVI.

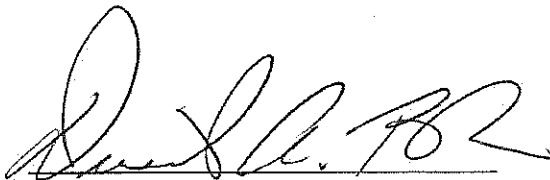
XXI. EFFECTIVE DATE

71. This Order is effective on the date that EPA signs the Order.

IT IS SO AGREED:

DATE: 3 JANUARY 2013

BY:

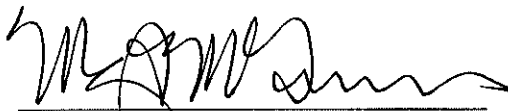


David A. Becker
Vice President, Rolls-Royce North America
Rolls-Royce Corporation

IT IS SO ORDERED:

DATE: 1/29/2013

BY:



Margaret M. Guerriero, Director
Land and Chemicals Division
U.S. Environmental Protection Agency
Region 5



APR - 2 2013

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY