

IN THE MATTER OF AN	§	BEFORE THE
	§	
AGREED ORDER CONCERNING	§	TEXAS NATURAL RESOURCE
	§	
SOUTHWEST AIRLINES CO.	§	CONSERVATION COMMISSION

AGREED ORDER
DOCKET NO. 2000-0827-SIP

The Texas Natural Resource Conservation Commission (the “Commission” or “TNRCC”) hereby orders Southwest Airlines Co. (“Southwest” or the “Company”) to comply with the requirements herein regarding control of emissions of oxides of nitrogen (“NOx”) from the sources referenced below, pursuant to §§ 382.011, 382.012 and 382.023(a) of the Texas Clean Air Act (the Act), Texas Health & Safety Code, Chapter 382, for the purpose of revising the Texas State Implementation Plan for Ozone Control (“SIP”) pursuant to § 110 of the Federal Clean Air Act, 42 U.S.C. § 7401 et seq. The Executive Director of the Commission and the Company have agreed on these control requirements, subject to the approval of the Commission. The parties enter into this Agreed Order for the purpose of making the Memorandum of Agreement between the TNRCC and Southwest (Attachment A) a part of the SIP. The Memorandum of Agreement is incorporated by reference in this Agreed Order as if set forth at length verbatim in this Agreed Order.

I. STIPULATIONS

For the purpose of this Agreed Order only, the parties have agreed and stipulated as follows:

1. Section 110 of the Federal Clean Air Act, 42 U.S.C. § 7401 et seq., requires Texas to submit SIP revisions to the United States Environmental Protection Agency (“EPA”) for approval and to demonstrate that such SIP revisions provide protection of the National Ambient Air Quality Standards (“NAAQS”).

2. The Company owns and operates ground support equipment (“GSE”), as defined in the Memorandum of Agreement, at Houston-Hobby Airport (“HOU”) in Houston, Harris County, Texas.

3. The GSE constitutes sources as defined in § 382.003(12) of the Act.

4. Southwest acknowledges, but does not necessarily accept or agree to the accuracy thereof, that the TNRCC has projected total GSE NO_x emissions for the Houston-Galveston nonattainment area to be 5.65 TPD in 2007. Based upon such projection, the TNRCC estimates that, absent any GSE emission reduction measures contemplated by the Memorandum of Agreement (Attachment A) incorporated by reference hereto, Southwest’s HOU GSE Fleet’s contribution to this amount would be 0.753 TPD, based on the following assumptions: (i) 18% of the region’s GSE population is located at HOU; and (ii) Southwest’s GSE Fleet comprises 74% of the GSE population located at HOU.

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5. In accordance with and subject to the terms of this Agreed Order and the attached Memorandum of Agreement, Southwest agrees: (i) to reduce NOx emissions from sources under Southwest's control located at HOU, whether stationary or mobile, in an amount equal to 25% of the NOx emitted from its 1996 GSE Fleet (hereinafter "1996 GSE Fleet NOx emissions") by December 31, 2003; in an amount equal to 50% of its 1996 GSE Fleet NOx emissions by December 31, 2004; and in an amount equal to 75% of its 1996 GSE Fleet NOx emissions by December 31, 2005; (ii) to install RACCC on Southwest's GSE placed into service after 1996 at HOU that is in addition to (not replacements of) the 1996 GSE Fleet; (iii) to utilize BAT with respect to GSE placed into service after 2004 at HOU that is in addition to (not replacements of) the 1996 GSE Fleet; and (iv) to assist the TNRCC in demonstrating that the anticipated emission reductions from the measures specified in clauses (ii) and (iii) above will achieve a 75% reduction in NOx emissions from the GSE identified in such clauses.

6. The Commission and the Company acknowledge that the Company has entered into this Agreed Order voluntarily. In order to better safeguard the air resources of this state, the Company agrees to comply with the terms of this Agreed Order and the attached Memorandum of Agreement.

7. The Commission and the Company agree that the Commission has jurisdiction to enter this Agreed Order, and the Company is subject to the Commission's jurisdiction.

8. Nothing in this Agreed Order shall be interpreted as evidence that the Company is causing or contributing to a violation of the NAAQS or is in any respect non-compliant with any

federal, state or local law. Additionally, this Agreed Order shall not constitute a “compliance event” as defined in 30 TAC § 116.11 or any similar designation under federal, state, or local law.

9. Capitalized terms used but not defined in this Agreed Order shall have the meanings assigned thereto in the Memorandum of Agreement.

II. ORDER

It is therefore ordered by the TNRCC that Southwest shall, from and after the date of this Agreed Order and through the term of the Memorandum of Agreement, limit its emissions of NOx as specified in paragraph 5 above and the attached Memorandum of Agreement, and maintain compliance with paragraph 6 above and the attached Memorandum of Agreement.

The provisions of this Agreed Order shall apply to and be binding upon Southwest and its successors and assigns. In addition, the terms of this Agreed Order shall apply to any GSE leased to Southwest for a lease term in excess of 12 months or representing 20 percent or more of its fleet, or, if Southwest subcontracts out 20 percent or more of its current GSE operations, to any GSE so contracted for use at HOU. Southwest is hereby ordered to give notice of this Agreed Order to any such successor, assign, lessor, or contractor prior to transfer of control of all or any part of the GSE used at HOU to any such successor, assign, lessor, or contractor, and to provide TNRCC with written certification that such notice has been given.

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The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

PASSED AND APPROVED at the regular meeting of the Texas Natural Resource
Conservation Commission on _____.

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

For the Commission

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I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and do hereby agree to the terms and conditions specified therein.

Jim Phillips
Deputy Director, Office of Legal Services
Texas Natural Resource Conservation Commission

Date

Authorized representative of
Southwest Airlines Co.

Date

ATTACHMENT A

MEMORANDUM OF AGREEMENT
BETWEEN SOUTHWEST AND TNRCC

MEMORANDUM OF AGREEMENT (“MEMORANDUM”)

I. PARTIES

This Memorandum is entered into between the Texas Natural Resource Conservation Commission (“TNRCC”) and Southwest Airlines Co. (“Southwest”), collectively, the “Parties,” effective as of _____, 2000.

II. INTENT

The intent of this Memorandum is to memorialize Southwest’s voluntary agreement to reduce emissions of oxides of nitrogen (“NOx”) from sources under Southwest’s control located at Houston-Hobby Airport in Houston, Texas (“HOU”).

The Parties agree and intend that the provisions of this Memorandum themselves are not applicable requirements under 30 Tex. Admin. Code (“TAC”), Chapter 122; however, individual reduction strategies implemented as part of a plan submitted under Paragraph IV.G. of this Memorandum may be applicable requirements if emission reductions from stationary sources are included in the plan and are located at sites subject to federal operating permit requirements under 30 TAC, Chapter 122.

III. DEFINITIONS

A. Ground support equipment (“GSE”) means equipment that is used to service aircraft during passenger, baggage, and/or cargo loading and unloading, maintenance, and other ground-based operations, including, without limitation, the equipment listed on Exhibit A hereto; provided, however, GSE shall not include: (a) equipment used in connection with aircraft de-icing activities such as de-icing equipment, anti-icing equipment, and heater carts; and (b) any vehicle registered under the Texas Clean Fleet Program. Any

equipment leased on a short-term basis for a period of 12 months or less shall not be considered part of the GSE Fleet, except for that portion of such short-term leased equipment that exceeds 20% or more of the GSE Fleet.

- B. Reasonably Available Controls Considering Costs (“RACCC”)** means best air pollution retrofit controls for reducing NOx emissions that are available, in quantities sufficient to meet Southwest’s operational requirements, from more than one vendor and at a Reasonable Cost.
- C. Best Available Technology (“BAT”)** means the most stringent (in terms of reducing NOx emissions) air pollution controls or alternative-power technologies that are available, which includes availability and adequacy of alternative fueling and/or electrical power grid infrastructure at HOU, in quantities sufficient to meet Southwest’s operational requirements, from more than one vendor, and at a Reasonable Cost.
- D. 1996 GSE Fleet** means the GSE inventory operated by Southwest at HOU and in service on December 31, 1996, and replacements thereof.
- E. Reasonable Cost** means that the cost of the control or technology is reasonable when compared to (i) the cost of the equipment being retrofitted or replaced, or the cost of the equipment available without BAT; (ii) the amount of reductions in NOx to be achieved by such control or technology; and (iii) the average cost of similar controls or technology being used throughout the airline industry.

IV. SOUTHWEST'S COMMITMENT

A. Southwest's Obligations

Southwest voluntarily agrees: (i) to reduce NOx emissions from sources under Southwest's control located at HOU, whether stationary or mobile, in an amount equal to 25% of the NOx emitted from its 1996 GSE Fleet (hereinafter "1996 GSE Fleet NOx emissions") by December 31, 2003; in an amount equal to 50% of its 1996 GSE Fleet NOx emissions by December 31, 2004; and in an amount equal to 75% of its 1996 GSE Fleet NOx emissions by December 31, 2005; (ii) to install RACCC on Southwest's GSE placed into service after 1996 at HOU that is in addition to (not replacements of) the 1996 GSE Fleet; (iii) to utilize BAT with respect to GSE placed into service after 2004 at HOU that is in addition to (not replacements of) the 1996 GSE Fleet; and (iv) to assist the TNRCC in demonstrating that the anticipated emission reductions from the measures specified in clauses (ii) and (iii) above will achieve a 75% reduction in NOx emissions from the GSE identified in such clauses.

B. 1996 GSE Fleet Emission Reductions

The TNRCC has estimated that the NOx emissions attributable to Southwest's 1996 GSE Fleet are 0.510 tons per day ("TPD"). However, upon submittal of the plan described in Paragraph G. below, the 1996 emissions may be less than this estimate. Southwest's obligation set forth in Paragraph IV.A.(i) above will be measured based upon Southwest's actual 1996 GSE Fleet NOx emissions as submitted in the plan and agreed to by the Parties. In no event, however, will Southwest's emissions from the 1996 GSE Fleet exceed 0.128 TPD after December 31, 2005. Calculation of the reductions will be based on reasonable empirical measurements to be taken by Southwest. Demonstration of the achievement of the reductions shall be to TNRCC's reasonable satisfaction.

C. Installation of RACCC

Installation of RACCC on Southwest's GSE placed into service after 1996 at HOU that is in addition to (not replacements of) the 1996 GSE Fleet shall be accomplished by December 31, 2004. In lieu of retrofitting with RACCC, Southwest may, at its option, replace certain post-1996 GSE with alternative-fuel and/or electric-powered equipment if adequate fueling and/or electrical power grid infrastructure then exists at HOU as long as the reductions equivalent with the installation of RACCC. As part of the plan described in Paragraph G. below, Southwest shall submit a plan for achieving such retrofits, modifications, or replacements.

D. Utilization of BAT

BAT shall be utilized for Southwest's GSE placed into service after 2004 at HOU that is in addition to (not replacements of) the 1996 GSE Fleet. As part of the plan described in Paragraph G. below, Southwest shall submit a plan for achieving such controls.

E. Assistance in SIP Demonstration

Southwest acknowledges, but does not necessarily accept or agree to the accuracy thereof, that TNRCC has projected GSE NO_x emissions for the Houston-Galveston nonattainment area to be 5.65 TPD in 2007. Based upon such projection, TNRCC estimates that, absent any GSE emission reduction measures contemplated by this Memorandum, Southwest's HOU GSE Fleet's contribution to this amount would be 0.753 TPD, based on the following assumptions: (i) 18% of the region's GSE population is located at HOU; and (ii) Southwest's GSE Fleet comprises 74% of the GSE population located at HOU.

The Parties acknowledge that TNRCC is required under the federal Clean Air Act to demonstrate to the U.S. Environmental Protection Agency ("EPA") the adequacy of the Texas

State Implementation Plan (“SIP”) for ozone pursuant to 42 U.S.C. § 7410. To achieve this, TNRCC wishes to demonstrate a reduction in NO_x emissions from sources under Southwest’s control at HOU equal to 75% of this 0.753 TPD figure, *i.e.*, 0.564 TPD. Southwest agrees to provide data to TNRCC in order to assist TNRCC in demonstrating to the EPA any such reductions. Southwest’s obligation in this regard, however, is to provide data only and not to guarantee achievement of any particular TPD amount of NO_x emission reductions, except as may be achieved from implementation of the commitments specifically set forth in Paragraph IV.A. of this Memorandum.

To the extent required, the Parties agree to enter into an Agreed Order setting forth the terms of this Memorandum so that the emission reductions may be creditable for demonstrating ozone attainment for the Houston-Galveston nonattainment area, and that TNRCC may take any appropriate and lawful steps necessary, consistent with this Memorandum, toward ensuring that the reductions are creditable.

F. Alternate Methods of Compliance

The Parties agree that Southwest’s NO_x emission-reduction obligations set forth in Paragraph IV.A. above can be accomplished in any manner that Southwest chooses including, but not limited to, the options enumerated herein. In lieu of compliance with each of the specific commitments set forth above, the Parties agree that Southwest may convert its GSE fleet at HOU to 100% lowest-emitting commercially-available equipment by May 1, 2005, including conversion to electric power where available. The term “lowest-emitting commercially-available equipment” shall not be interpreted to include equipment that limits the horsepower or activity level of a GSE unit. Southwest may also comply with all or any part of its commitments through emission control measures involving other emission sources controlled by Southwest elsewhere within the Houston-Galveston nonattainment area, such as reducing NO_x emissions from aircraft-mounted auxiliary power units (“APUs”), or the purchase of NO_x emission reduction

credits or offsets, as long as such actions are creditable pursuant to the TNRCC Emissions Banking Program as defined in 30 TAC § 101.29, or successor regulations, and Southwest can reasonably demonstrate that such measures have resulted in NOx emission reductions at least equal to those required from the commitment being substituted.

G. Plan Submissions

Southwest shall submit to the TNRCC Executive Director by May 1, 2002, a plan for the implementation of emission control measures to achieve NOx emission reductions as described above. The plan may include emission reduction measures applied to the GSE Fleet itself and/or reductions satisfied by other actions as provided in Paragraph IV.F. above. The plan shall be revised as necessary and is subject to the approval of the Executive Director, which approval shall not be unreasonably withheld or delayed.

V. CONFIDENTIALITY

The Parties agree that any information designated by Southwest as “Confidential” and obtained by TNRCC concerning Southwest’s operations will be maintained by the TNRCC as Confidential and will not be released to persons or entities not party to this agreement except upon Southwest’s valid written approval specific to the information in question or as required by law. Valid written approval may only be obtained by first providing a copy of the Confidential information to Southwest’s authorized representative and subsequently receiving written approval from that representative. In the event a request is received by TNRCC for information so designated as Confidential, TNRCC agrees to promptly notify Southwest and submit the request and the documents to the Attorney General for consideration as required by the Texas Public Information Act, and TNRCC agrees to provide the name and address of Southwest’s authorized representative to the Attorney General. For purposes of this Memorandum, Southwest’s authorized representative is Richard Ketler, Chief Counsel, or his successors, who

may be contacted at the following address: Southwest Airlines Co., 2702 Love Field Drive, P.O. Box 36611, HDQ-4GC, Dallas, Texas 75235-1611.

VI. **TERM AND TERMINATION**

This Memorandum shall continue in effect through December 31, 2007 unless terminated as allowed herein. Either party may terminate this Memorandum upon 30 days written notice in the event that TNRCC, the EPA, or the Federal Aviation Administration ("FAA") promulgates a regulation or regulations that in any way attempt to control, directly or indirectly, air emissions from Southwest's GSE or aircraft operations at HOU that are incompatible with or require equivalent or greater reductions of NOx than the emission control measures or Southwest's obligations set forth in this Memorandum. Nothing in this Memorandum shall prohibit TNRCC from proposing or adopting such regulations.

The Parties agree that nothing in the proposed air quality rules associated with the proposed Houston-Galveston Area's Attainment Demonstration State Implementation Plan presented to the TNRCC Commission on August 9, 2000 (the "Plan") will trigger such right to terminate provided the final Plan includes exemptions covering Southwest's GSE at HOU in the rules relating to vehicle idling restrictions when engine idling is necessary for auxiliary power purposes or air conditioning for passenger comfort or safety, airport ground support equipment, commercial air conditioners, use of diesel emulsion, ~~or~~ accelerated purchase of Tier 2/3 diesel and NOx reduction systems. The Parties further agree that any action taken by Southwest in complying with such rules from which Southwest's GSE is exempt may also be used by Southwest as an alternate method of complying with this Memorandum as provided in Paragraph IV.F. above.

VII. **MISCELLANEOUS**

A. Entire Agreement

This Memorandum represents the entire agreement between TNRCC and Southwest, and it supercedes all other agreements, understandings, or commitments, written or oral, relative to the subject matter of this Memorandum.

B. Amendment

This Memorandum may not be amended or modified except pursuant to a written agreement executed by each of the Parties.

C. Applicable Law

This Memorandum shall be governed by and interpreted in accordance with the laws of the State of Texas, without giving effect to the conflicts laws thereof.

IN WITNESS WHEREOF, TNRCC and Southwest, by their authorized officers, have made and executed this Memorandum as of the day and year first above written.

SOUTHWEST AIRLINES CO.

By: _____
Name:
Title:

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

By: _____
Name:

Title:

EXHIBIT A

EXAMPLES OF GROUND SUPPORT EQUIPMENT

Air Conditioner Cart

Air Start Unit

Aircraft Tractor or Pushback

Baggage Tug or Tractor

Baggage or Cargo Beltloader

Bobtail Truck or Tug

Boom Truck

Bus

Car

Catering Truck

Cherry Picker

Forklift

Fuel Truck

Ground Power Unit

Hydrant Fuel Truck

Lavatory Cart

Lavatory Truck

Maintenance Lift

Man Lift

Passenger Stairs

Pick-up Truck

Provisioning Truck

Ramp Sweeper

Van

Water Truck

Wrecker Truck