

IN THE MATTER OF AN	§	BEFORE THE
AGREED ORDER CONCERNING	§	TEXAS NATURAL RESOURCE
AMERICAN AIRLINES, INC. AND	§	CONSERVATION COMMISSION
AMERICAN EAGLE AIRLINES, INC.	§	

**AGREED ORDER
DOCKET NO. 2000-1149-SIP**

The Texas Natural Resource Conservation Commission (the Commission or TNRCC) hereby orders and American Airlines, Inc. (AA) and American Eagle Airlines, Inc. (AEA) hereby agree to comply with the requirements herein regarding control of emissions of nitrogen oxide (NO_x) 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 (SIP) pursuant to § 110 of the federal Clean Air Act, 42 U.S.C. § 7410. The Executive Director of the Commission and AA and AEA have agreed on these control requirements, subject to approval by the Commission. The Parties enter into this Agreed Order for the purpose of making the Memorandum of Agreement between TNRCC and AA and AEA (Attachment A) a part of the SIP. The Memorandum of Agreement is incorporated herein by this reference as if set forth at length verbatim in this Agreed Order.

I. STIPULATIONS

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

1. Section 110 of the federal Clean Air Act, 42 U.S.C. § 7410, requires Texas to submit SIP revisions to the United States Environmental Protection Agency (EPA) for approval and to demonstrate that such SIP revisions will provide for attainment of the National Ambient Air Quality Standards (NAAQS).

2. AA and AEA own and/or operate ground support equipment (GSE), as defined in the Memorandum of Agreement, at Dallas-Fort Worth International Airport in Dallas and Tarrant Counties, Texas. The GSE constitute sources as defined in § 382.003(12) of the Act.

3. The Parties agree that, for purposes of this Agreed Order, based upon current best available information, combined GSE NO_x emissions for the Dallas-Fort Worth ozone nonattainment area (D/FW ONA) are projected by TNRCC to be 6.8 tons per day (TPD) in 2007. The Parties agree that, for purposes of this Agreed Order, based upon current best available information, GSE owned and/or operated by AA and AEA at Dallas-Fort Worth International Airport contribute an estimated 4.35 TPD to the projected 2007 D/FW ONA GSE NO_x emissions (absent the reductions contemplated herein).

4. In accordance with and subject to the terms of this Agreed Order and the attached Memorandum of Agreement, AA and AEA agree to reduce NO_x emissions from their operations at Dallas-Fort Worth International Airport, by 3.05 TPD by December 31, 2004.

5. The Commission and AA and AEA agree that the emission reductions described in Paragraph 4 above shall satisfy all requirements to reduce AA and AEA's GSE emissions set forth in the Dallas-Fort Worth Attainment Demonstration SIP and associated rulemaking, adopted on April 19, 2000. This

language is not intended to relieve AA and AEA from obligations to comply with rules, other than the GSE rule, as may be applicable to GSE fleets.

6. The Commission and AA and AEA acknowledge that AA and AEA have entered into this Agreed Order voluntarily. In order to safeguard the air resources of the State of Texas, AA and AEA agree to comply with the terms of this Agreed Order and the attached Memorandum of Agreement.

7. The Commission and AA and AEA agree that the Commission has jurisdiction to enter this Agreed Order, and AA and AEA agree not to challenge whether they are subject to the Commission's jurisdiction.

8. Nothing in this Agreed Order shall be interpreted as evidence that AA and AEA are causing or contributing to a violation of the NAAQS, or are 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 the Agreed Order shall have the meanings assigned thereto in the Memorandum of Agreement.

II. ORDER

It is therefore ordered by the TNRCC that AA and AEA shall, from and after the date of this Agreed Order, through the term of the Memorandum of Agreement, limit their emissions of NO_x as specified herein.

The provisions of this Agreed Order shall apply to and be binding upon AA and AEA and their successors and assigns. In addition, the terms of this Agreed Order shall apply to any GSE leased to AA

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and AEA for a lease term in excess of 12 months or representing 20 percent or more of its fleet, or, if AA and AEA subcontract out substantial portions (20 percent or more) of their current GSE operations, any GSE so contracted for use at Dallas-Fort Worth International Airport. AA and AEA are 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 their GSE used at Dallas-Fort Worth International Airport to any such successor, assign, lessor or contractor, and to provide TNRCC with written certification that such notice has been given.

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

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PASSED AND APPROVED at the regular meeting of the Texas Natural Resource Conservation Commission on _____, 2000.

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

For the Commission

I am authorized to agree to the attached Agreed Order on behalf of the entity/entities 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

Name:
Title:
Authorized representative of
American Airlines, Inc.

Date

Name:
Title:
Authorized representative of
American Eagle Airlines, Inc.

Date

ATTACHMENT A

MEMORANDUM OF AGREEMENT

BETWEEN

AMERICAN AIRLINES, INC. AND

AMERICAN EAGLE AIRLINES, INC.

AND TNRCC

MEMORANDUM OF AGREEMENT

I Parties

This Memorandum of Agreement is entered into between the Texas Natural Resource Conservation Commission (TNRCC) and American Airlines, Inc. (AA) and American Eagle Airlines, Inc. (AEA), collectively, "the Parties," effective as of _____, 2000.

II Intent and Purpose

This Memorandum of Agreement memorializes the agreement between AA and AEA and the TNRCC to reduce emission of oxides of nitrogen (NO_x) from AA and AEA's GSE Fleets at Dallas-Fort Worth International Airport. The Parties enter into this Memorandum for the purpose of making AA's and AEA's NO_x reductions a part of the Texas State Implementation Plan.

III Definitions

As used in this Memorandum, the following terms have the meanings set forth below:

- (A) "D/FW ONA" shall mean the four (4) county Dallas-Fort Worth ozone nonattainment area.
- (B) "EPA" shall mean the United States Environmental Protection Agency.
- (C) "Ground Support Equipment" or "GSE" shall mean equipment that is used to service aircraft during passenger, baggage and/or cargo loading and unloading, and other ground-based operations as identified in the SIP. For purposes of this Memorandum of Agreement, licensed, on-road vehicles are not considered "Ground Support Equipment."
- (D) "GSE Rule" shall mean the revisions to Subchapter I (Non-Road Engines), Division

1 (Airport Ground Support Equipment), Chapter 114 (Control of Air Pollution from Motor Vehicles) and to the State Implementation Plan regarding the reduction of NO_x emissions from ground support equipment in the Dallas-Fort Worth ozone nonattainment area, 24 Tex. Reg. 11938.

(E) “SIP” shall mean the Texas State Implementation Plan.

(F) “TPD” shall mean tons per day.

IV Background

(A) The D/FW ONA has been designated by the EPA as a serious ozone nonattainment area.

(B) Pursuant to Section 110 of the federal Clean Air Act, 42 U.S.C. § 7410, each state that has a non-attainment area for any pollutant must submit a plan to the EPA demonstrating control strategies to attain the applicable National Ambient Air Quality Standard(s) (“NAAQS”).

(C) Section 110 of the federal Clean Air Act, 42 U.S.C. § 7410, also requires Texas to submit SIP revisions to the EPA for approval and to demonstrate that such SIP revisions will assist the D/FW ONA in attainment of the ozone NAAQS .

(D) The TNRCC has calculated the projected 2007 NO_x emissions from GSE operating in the D/FW ONA at 6.8 TPD.

V Obligations of the Parties

(A) AA and AEA agree as follows:

In accordance with the terms of this Memorandum, AA and AEA agree to implement strategies to obtain reductions in NO_x emissions at Dallas-Fort Worth International Airport by December 31, 2004. AA

and AEA agree that the total amount of D/FW ONA NO_x emission reductions that AA and AEA are responsible for achieving at Dallas-Fort Worth International Airport is 3.05 TPD¹. AA and AEA agree to submit their plan to achieve this reduction to the Director of the TNRCC by May 1, 2002.

The emission reduction plan submitted by AA and AEA must demonstrate in sufficient detail the strategies that will be in place to achieve the required NO_x emission reductions by December 31, 2004.

(B) The TNRCC agrees as follows:

The TNRCC agrees to support this Memorandum as a revision to the SIP and to recommend that the Governor submit it as such to the EPA.

The TNRCC further agrees that the reductions described in Subpart V.(A) above satisfy all requirements to reduce AA and AEA's GSE emissions set forth in the Dallas-Fort Worth Attainment Demonstration SIP and associated rulemaking, adopted on April 19, 2000. This language is not intended to relieve AA and AEA from obligations to comply with rules, other than the GSE rule, as may be applicable to GSE fleets.

VI Confidentiality

The Parties agree that any information designated as "Confidential" and obtained by the TNRCC concerning AA's and AEA's operations will be maintained by the TNRCC as confidential and will not be released to persons or entities not parties to this Memorandum except upon AA's and AEA's valid written approval specific to the information in question or as required by law. Valid written approval may only be

¹This figure is based on 5.8 TPD of total GSE NO_x emissions at Dallas-Fort Worth International Airport, as projected by the TNRCC, and AA and AEA's estimated 75 percent share of GSE at Dallas-Fort Worth International Airport.

obtained by first providing a copy of the Confidential information to AA and AEA's authorized representative and subsequently receiving written approval from that representative. In the event a request is received by the TNRCC for information designated as "Confidential," the TNRCC agrees to promptly notify AA and AEA and submit the request and the document to the Attorney General for consideration as required by the Texas Public Information Act and the TNRCC agrees to provide the name and address of AA and AEA's authorized representative to the Attorney General. For purposes of this Memorandum, AA and AEA's authorized representative is James T. Johnson, or his successors, who may be contacted at the following address: 4333 Amon Carter Blvd., MD 5675, Fort Worth, TX 76155.

VII Alternate Means of Compliance

The Parties agree that the required NO_x emission reductions can be accomplished in any manner AA and AEA choose, subject to approval of their plan, as set forth in Part V, above. Commission approval of the emission reduction plan shall not be unreasonably withheld. AA and AEA may also comply with all or any part of their commitments through the use of NO_x emission control measures which have been achieved within the nonattainment area, 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 AA and AEA can reasonably demonstrate that such measures have resulted in NO_x emission reductions at least equal to those required or expected for the commitment being substituted.

The emission reduction plan and alternative strategies will be approved, provided the emissions reductions or the effect on the environment from such strategies will achieve a reduction of 3.05 TPD in NO_x

emissions, and the strategies are not duplicative of strategies relied upon in the most recent SIP approved by the TNRCC as of the date which that strategy is included in the emission reduction plan submitted by AA and AEA.

VIII Term and Termination

This Memorandum shall expire on December 31, 2007, unless terminated at an earlier date as allowed herein.

If the TNRCC does not repeal the GSE Rule prior to July 1, 2001, AA and AEA shall have the right to terminate this Memorandum of Agreement.

If the EPA does not agree to incorporate this Memorandum of Agreement into the Texas State Implementation Plan, AA and AEA shall have the right to terminate this Memorandum of Agreement.

If the TNRCC does not reach an agreement or agreements, prior to January 1, 2001, with carrier(s) owning or operating the majority of GSE at Dallas Love Field ("Love Field") in Dallas County, Texas, which is estimated to reduce the carrier's or carriers' contribution to the projected 2007 D/FW ONA GSE NOx emissions by an amount substantially equivalent to the reductions contemplated herein, AA and AEA shall have the right to terminate this Memorandum of Agreement. If such agreement or agreements described in the preceding sentence terminate, for any reason, prior to December 31, 2007, such that the majority of GSE at Love Field are no longer covered by such agreement or agreements, AA and AEA shall have the right to terminate this Memorandum of Agreement.

Either party may terminate this agreement upon 30 days written notice in the event the TNRCC proposes a regulation which in any way attempts to control, directly or indirectly, air emissions from AA's

and AEA's GSE or aircraft operations at Dallas-Fort Worth International Airport that is inconsistent with or in addition to the measures set forth in this Memorandum. Nothing in the Memorandum shall prohibit the TNRCC from proposing or adopting such regulation.

The Parties agree that nothing in the current proposed revisions to the SIP will trigger such right to terminate. The Parties further agree that rules regulating fuel content in the nonattainment area will not trigger the right to terminate. Additionally the Parties agree that engine or equipment manufacturing standards proposed by the TNRCC do not trigger the right to terminate but that compliance with such standards can be counted toward compliance with this Memorandum.

IX Miscellaneous

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

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

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.

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

Jeff Saitas
Executive Director
Texas Natural Resource Conservation Commission

Date

Name:
Title:
Authorized representative of
American Airlines, Inc.

Date

Name:
Title:
Authorized representative of
American Eagle Airlines, Inc.

Date