

<b>IN THE MATTER OF AN</b>	<b>§</b>	<b>BEFORE THE</b>
	<b>§</b>	
<b>AGREED ORDER CONCERNING</b>	<b>§</b>	<b>TEXAS NATURAL RESOURCE</b>
	<b>§</b>	
<b>DELTA AIR LINES, INC.</b>	<b>§</b>	<b>CONSERVATION COMMISSION</b>

**AGREED ORDER  
DOCKET NO. 2001-0221-AIR**

The Texas Natural Resource Conservation Commission (the “Commission” or “TNRCC”) hereby enters this order to enforce the voluntary agreement of Delta Air Lines, Inc. (“Delta” 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 Delta (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. 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.

2. Delta asserts that the Commission is preempted from mandating the control of emissions from ground support equipment ("GSE"). The Commission asserts that it has authority to mandate the reduction of emissions attributable to GSE. This Agreed Order does not indicate agreement of the parties regarding the issue of preemption, is not predicated upon the existence of such authority in the Commission, and does not waive either party's right to assert its position in other proceedings. Delta has voluntarily agreed to achieve the reductions required herein. The Commission and Delta agree that the Commission has authority to enter this Agreed Order and that for the sole purpose of that voluntary undertaking the Company is subject to the Commission's jurisdiction for purposes of this Agreed Order.

3. Nothing in this Agreed Order shall be interpreted as evidence that the Company is causing or contributing to a violation of the National Ambient Air Quality Standards ("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.

4. 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 NAAQS.

5. The Company owns and operates ground support equipment GSE, as defined in the Memorandum of Agreement, at Dallas/Fort Worth International Airport (“DFW”) in Dallas and Tarrant Counties, Texas.

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

7. Delta acknowledges, but does not necessarily accept or agree to the accuracy thereof, that the TNRCC has projected total GSE NO<sub>x</sub> emissions for the Dallas/Fort Worth nonattainment area to be 6.8 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, Delta’s DFW GSE Fleet’s contribution to this amount would be 1.16 TPD, based on the following assumptions: (i) 85% of the region’s GSE population is located at DFW; and (ii) Delta’s GSE Fleet comprises approximately 20% of the GSE population located at DFW.

8. In accordance with and subject to the terms of this Agreed Order and the attached Memorandum of Agreement, Delta agrees: (i) to reduce NO<sub>x</sub> emissions from sources under Delta’s control located at DFW, whether stationary or mobile, in an amount equal to 25% of the NO<sub>x</sub> emitted from its 1996 GSE Fleet (hereinafter “1996 GSE Fleet NO<sub>x</sub> 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 Reasonably Available Controls Considering Cost ("RACCC") on Delta's GSE placed into service after 1996 at DFW that is in addition to (not replacements of) the 1996 GSE Fleet; (iii) to utilize Best Available Technology ("BAT") with respect to GSE placed into service after 2004 at DFW that is in addition to (not replacements of) the 1996 GSE Fleet; and (iv) to assist the TNRCC by providing appropriate documentation 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 levels that would exist absent the application of RACCC and BAT.

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

## **II. ORDER**

Delta 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 8 above and the attached Memorandum of Agreement, and maintain compliance with paragraph 8 above and the attached Memorandum of Agreement.

The provisions of this Agreed Order shall apply to and be binding upon Delta and its successors and assigns. This Agreed Order shall terminate upon the termination of the Memorandum of Agreement. In addition, the terms of this Agreed Order shall apply to any GSE leased to Delta for

**AGREED ORDER**  
**DELTA AIR LINES, INC.**  
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a lease term in excess of 12 months or representing 20 percent or more of its fleet, or, if Delta subcontracts out 20 percent or more of its current GSE operations, to any GSE so contracted for use at DFW. Delta shall 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 DFW 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.

**PASSED AND APPROVED** at the regular meeting of the Texas Natural Resource Conservation Commission on \_\_\_\_\_.

**TEXAS NATURAL RESOURCE CONSERVATION COMMISSION**

\_\_\_\_\_  
**For the Commission**

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.

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

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Date

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John C. Marshall  
Vice President - Corporate Safety and Compliance  
Delta Air Lines, Inc.

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Date

ATTACHMENT A

MEMORANDUM OF AGREEMENT  
BETWEEN DELTA AND TNRCC

## **MEMORANDUM OF AGREEMENT (“MEMORANDUM”)**

### **I. PARTIES**

This Memorandum is entered into between the Texas Natural Resource Conservation Commission (“TNRCC”) and Delta Air Lines, Inc. (“Delta”), collectively, the “Parties,” effective as of \_\_\_\_\_, 2001.

### **II. INTENT**

The intent of this Memorandum is to memorialize Delta’s voluntary agreement to reduce emissions of oxides of nitrogen (“NOx”) from sources under Delta’s control located at Dallas/Fort Worth International Airport in Dallas and Tarrant Counties, Texas (“DFW”).

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 Delta’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 DFW, in quantities sufficient to meet Delta’s operational requirements, from more than one vendor, and at a Reasonable Cost.
- D. 1996 GSE Fleet** means the GSE inventory operated by Delta at DFW 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. DELTA'S COMMITMENT**

##### **A. Delta's Obligations**

Delta voluntarily agrees: (i) to reduce NOx emissions from sources under Delta's control located at DFW, 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 Delta's GSE placed into service after 1996 at DFW 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 DFW that is in addition to (not replacements of) the 1996 GSE Fleet; and (iv) to assist the TNRCC by providing appropriate documentation 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 levels that would exist absent the application of RACCC and BAT.

##### **B. 1996 GSE Fleet Emission Reductions**

The TNRCC has estimated that the NOx emissions attributable to Delta's 1996 GSE Fleet are .92 tons per day ("TPD"). However, upon submittal of the plan described in Paragraph G. below, the 1996 emissions may be less than this estimate. Delta's obligation set forth in Paragraph IV.A. (i) above will be measured based upon Delta's actual 1996 GSE Fleet NOx emissions as submitted in the plan and agreed to by the Parties. Subject to Delta's right to use Alternative Methods to achieve reductions required by IV.A. above, Delta's emissions from the 1996 GSE Fleet shall not exceed 0.23 TPD after December 31, 2005. Calculation of the reductions will be

based on reasonable empirical measurements to be taken by Delta. Demonstration of the achievement of the reductions shall be to TNRCC's reasonable satisfaction.

**C. Installation of RACCC**

Installation of RACCC on Delta's GSE placed into service after 1996 at DFW 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, Delta 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 DFW as long as the reductions are equivalent to those that would be achieved through the installation of RACCC. As part of the plan described in Paragraph G. below, Delta shall submit a plan for achieving such retrofits, modifications, or replacements.

**D. Utilization of BAT**

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

**E. Assistance in SIP Demonstration**

Delta acknowledges, but does not necessarily accept or agree to the accuracy thereof, that TNRCC has projected GSE NOx emissions for the Dallas/Fort Worth nonattainment area to be 6.8 TPD in 2007. Based upon such projection, TNRCC estimates that, absent any GSE emission reduction measures contemplated by this Memorandum, Delta's DFW GSE Fleet's contribution to this amount would be 1.16 TPD, based on the following assumptions: (i) 85% of the region's

GSE population is located at DFW; and (ii) Delta's GSE Fleet comprises approximately 20% of the GSE population located at DFW.

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<sub>x</sub> emissions from sources under Delta's control at DFW equal to 75% of this 1.16 TPD figure, *i.e.*, 0.87 TPD. Delta agrees to provide data to TNRCC in order to assist TNRCC in demonstrating to the EPA any reductions achieved by Delta. Delta's obligation in this regard, however, is to provide data only and not to guarantee achievement of any particular TPD amount of NO<sub>x</sub> 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 Dallas/Fort Worth 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 Delta's NO<sub>x</sub> emission-reduction obligations set forth in Paragraph IV.A. above can be accomplished in any manner that Delta 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 Delta may convert its GSE fleet at DFW to 100% lowest-emitting commercially-available equipment, determined as of the date of the contract for purchase or lease

of the equipment, prior to May 1, 2005, including conversion to electric power where both equipment and infrastructure are 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. Delta may also comply with all or any part of its commitments through emission control measures involving other emission sources controlled by Delta elsewhere within the Dallas/Fort Worth nonattainment area, such as reducing NOx emissions from aircraft-mounted auxiliary power units (“APUs”), or the purchase of NOx 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 Delta 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**

Delta 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. TNRCC’S COMMITMENT**

#### **A. Satisfaction of GSE Requirements**

The TNRCC agrees that Delta’s Commitment described in Subpart IV above satisfies all requirements to reduce Delta’s GSE emissions set forth in the Dallas-Fort Worth Attainment

Demonstration SIP and associated rulemaking, adopted on April 19, 2000 (“GSE Rule”). This language is not intended to relieve Delta from obligations to comply with rules, other than the GSE Rule, as may be applicable to GSE fleets.

## **B. Repeal of GSE Rule**

TNRCC agrees to publish a proposed repeal of the GSE Rule in the Texas Register contemporaneously with considering this agreement for proposal as a revision to the State Implementation Plan. TNRCC will publish the proposed repeal for comment as quickly as the logistics of the Texas Register Act allows and will communicate its proposal to repeal the rule to EPA contemporaneously. TNRCC will allow the statutory minimum number of days [thirty (30)] for comments. On or before submission for publication of the proposed repeal of the GSE Rule, TNRCC, et al. will join the Air Transport Association of America, Inc. in a joint motion to stay proceedings in *The Air Transport Association of America, Inc. v. Texas Natural Resource Conservation Commission, et al.*, cause no. GN-001483, in the district court of Travis County, Texas. Further, on or before submission for publication of the proposed repeal of the GSE Rule, Robert J. Huston, TNRCC Chairman, et al. will join the Air Transport Association of America, Inc. in a joint motion to stay proceedings in *Engine Manufacturers Association, et al. v. Robert J. Huston, TNRCC Chairman, et al.*, cause no. A-OO-CA-316SS in the United States District Court Western District of Texas Austin Division. In the event that the TNRCC repeals the GSE rule, *The Air Transport Association of America, Inc. v. Texas Natural Resource Conservation Commission, et al.*, cause no. GN-001483, in the district court of Travis County, Texas will be moot and counsel for the TNRCC, et al. will promptly move to dismiss the cause on that basis. Further, in the event that the TNRCC repeals the GSE Rule, ATA’s claim challenging the GSE Rule in *Engine Manufacturers Association, et al. v. Robert J. Huston, TNRCC Chairman, et al.*, cause no. A-OO-CA-316SS in the United States District Court Western District of Texas Austin Division will be moot and counsel for defendants Robert J. Huston, TNRCC Chairman, et al. will promptly move to dismiss the claims on that basis.

VI. **CONFIDENTIALITY**

The Parties agree that any information designated by Delta as "Confidential" and obtained by TNRCC concerning Delta'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 Delta'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 Delta'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 Delta 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 Delta's authorized representative to the Attorney General. For purposes of this Memorandum, Delta's authorized representative is John C. Marshall, who may be contacted at the following address:

John C. Marshall  
Vice President - Corporate Safety and Compliance  
Delta Air Lines, Inc.  
Department 725  
P.O. Box 20706  
Atlanta, Georgia 30320-6001  
Phone: (404) 715-3437  
Fax: (404) 715-2680

VII. **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, Delta 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 or if EPA rejects the Texas State Implementation Plan or otherwise fails to approve it such that the DFW area becomes subject to sanctions or a federal implementation plan, Delta shall have the right to terminate this Memorandum of Agreement.

In the event that a national agreement regarding emission reductions from GSE is reached between Delta (either individually or as a member of an industry organization) and EPA or the Federal Aviation Administration, Delta shall have the right to terminate this Memorandum of Agreement and propose an agreement in lieu thereof, which achieves the same quantity of emission reductions but is based upon the commitments in the national agreement.

If the TNRCC does not reach an agreement or agreements, prior to July 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, Delta shall have the right to terminate this Memorandum of Agreement. If such agreement or agreements described in the preceding sentence terminate, or an agreement or agreements between TNRCC and other carriers responsible for the operation of the majority of GSE at DFW or between TNRCC and DFW terminate for any reason, prior to December 31, 2007, Delta shall have the right to terminate this Memorandum of Agreement.

In the event that any GSE selected to achieve the reduction in emissions required by this memorandum cannot be employed because infrastructure necessary to its operation is not in place at DFW



notwithstanding reasonable notice to DFW of the need for such infrastructure, Delta shall be relieved of its obligation to achieve the reduction until the infrastructure is in place and demonstrated to be reliable.

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 Delta'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.

## **VIII. MISCELLANEOUS**

### **A. Entire Agreement**

This Memorandum represents the entire agreement between TNRCC and Delta, 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 Delta, by their authorized officers, have made and executed this Memorandum as of the day and year first above written.

**DELTA AIR LINES, INC.**

By: \_\_\_\_\_  
Name: John C. Marshall  
Title: Vice President - Corporate Safety and Compliance

**TEXAS NATURAL RESOURCE CONSERVATION COMMISSION**

By: \_\_\_\_\_  
Name: Jeffrey A. Saitas, P.E.  
Title: Executive Director

## **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

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