

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

AGREED ORDER  
DOCKET NO. 2000-0826-SIP

The Texas Natural Resource Conservation Commission (the Commission or TNRCC) hereby orders Continental Airlines, Inc., (Continental or the Company) to comply with the requirements herein regarding control of emissions of nitrogen oxide (NO<sub>x</sub>) 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 TNRCC and Continental (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, 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 to the United States Environmental Protection Agency (EPA) for approval SIP revisions 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 (as defined in the Memorandum of Agreement; GSE) at Bush Intercontinental Airport (IAH) in Houston, Harris County, Texas.

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

4. The parties agree that, based upon the current best available information, combined GSE NO<sub>x</sub> emissions for the Houston/Galveston nonattainment area are projected to be 5.65 TPD in 2007. The parties agree that, based upon the current best available information, Continental's IAH GSE fleet's contribution to this amount is estimated to be 3.616 TPD (absent the reductions contemplated by this Memorandum), based on the following assumptions: (i) 80% of the Houston/Galveston region's entire GSE population is located at IAH; and (ii) Continental's GSE fleet makes up 80% of the GSE population located at IAH.

5. In accordance with and subject to the terms of this Agreed Order and the attached Memorandum of Agreement, Continental agrees: (i) to reduce NO<sub>x</sub> emissions from its 1996 GSE Fleet by 25% by December 31, 2003; 50% by December 31, 2004; and 75% by December 31, 2005;

(ii) to install RACCC on Continental's GSE placed into service after 1996 at IAH that is in addition to (not replacements of) the 1996 GSE Fleet; (iii) to utilize BAT with respect to all GSE placed into service after 2004 at IAH; and (iv) to assist the TNRCC in demonstrating that the anticipated emission reductions from (ii) and (iii) above will achieve a 75% reduction in NO<sub>x</sub> emissions from the GSE identified in such sections.

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 Continental shall, from and after the date of this Agreed Order and through the term of the Memorandum of Agreement, limit its emissions of NO<sub>x</sub> 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 Continental and its successors and assigns. In addition, the terms of this Agreed Order shall apply to any GSE leased to Continental or, if Continental subcontracts out substantial portions (20 percent or more) of its current GSE operations, any GSE so contracted for use at IAH. Continental 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 IAH 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.

---

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

---

Date

---

Authorized representative of  
Continental Airlines, Inc.

---

Date

ATTACHMENT A

MEMORANDUM OF AGREEMENT  
BETWEEN CONTINENTAL AND TNRCC

MEMORANDUM OF AGREEMENT (MEMORANDUM)

I. Parties

This Memorandum is entered into between the Texas Natural Resource Conservation Commission (TNRCC) and Continental Airlines, Inc. (Continental) collectively, the Parties, effective as of \_\_\_\_\_, 2000.

II. Intent

The intent of this Memorandum is to memorialize the matters set forth in Continental's letter of June 15, 2000 concerning Continental's voluntary agreement to reduce emissions of oxides of nitrogen (NOx) from ground support equipment at George Bush Intercontinental Airport in Houston, Texas (IAH).

The Parties agree and intend that the provisions of this Memorandum themselves are not applicable requirements under 30 Tex. Admin. Code Chapter 122, however, individual reduction strategies implemented as part of a plan submitted under Section IV, paragraph 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 which is leased on a short-term basis (less than 12 months) shall not be considered part of the GSE fleet, except for that portion of such short-term leased equipment which exceeds a substantial portion (20% or more) of the 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 Continental'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 alternate powered technologies that are available, in quantities sufficient to meet Continental's operational requirements, from more than one vendor, and at a Reasonable Cost.

(D) 1996 GSE Fleet means the GSE inventory operated by Continental at IAH and in service on January 1, 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. Continental 's Commitment

##### A. Continental 's Obligations

Continental voluntarily agrees: (i) to reduce NOx emissions from its 1996 GSE Fleet by 25% by December 31, 2003; 50% by December 31, 2004; and 75% by December 31, 2005; (ii) to install RACCC on Continentals GSE placed into service after 1996 at IAH that is in addition to (not replacements of) the 1996 GSE Fleet; (iii) to utilize BAT, with respect to all GSE placed into service after 2004 at IAH; and (iv) to assist the TNRCC in demonstrating that the anticipated emission reductions from (ii) and (iii) above will achieve a 75% reduction in NOx emissions from the GSE identified in such sections, all in the manner detailed below.

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

The Parties agree that the NOx emissions attributable to the 1996 GSE Fleet are estimated to have been 2.451 tons per day (ATPD). Continental's obligation set forth in section IV.A.(i) will be measured based upon this value. The measurements of the reductions will be based on reasonable empirical measurements to be taken by Continental using assumptions similar to those used to determine NOx emissions from the 1996 GSE Fleet. Demonstration of the achievement of the reductions shall be to TNRCC's reasonable satisfaction.

##### C. Installation of RACCC

Installation of RACCC on Continentals GSE placed into service after 1996 at IAH

that is in addition to (not replacements of) the 1996 GSE Fleet shall be accomplished by December 31, 2004. As part of the plan described in paragraph G below, Continental shall submit a plan for achieving such retrofits or modifications.

D. Utilization of BAT

BAT shall be utilized for Continental's GSE placed into service after 2004 at IAH. As part of the plan described in paragraph G below, Continental shall submit a plan for achieving such controls.

E. Assistance in SIP Demonstration

The Parties agree that, based upon the current best available information, GSE NOx emissions for the Houston/Galveston nonattainment area are projected to be 5.65 TPD in 2007. The parties agree that, based upon the current best available information, Continental's IAH GSE fleet's contribution to this amount is estimated to be 3.616 TPD (absent the reductions contemplated by this Memorandum), based on the following assumptions: (i) 80% of the region's entire GSE population is located at IAH; and (ii) Continental's GSE fleet makes up 80% of the GSE population located at IAH.

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. sec. 7410. To achieve this, the TNRCC wishes to demonstrate a 75% reduction in Continental's 2007 estimated IAH GSE fleet NOx emissions of 3.616 TPD. Continental estimates that the commitments made by Continental in this Memorandum will result in such a 75% reduction (a reduction of 2.712 TPD) in NOx emissions at IAH. Continental agrees to provide data to TNRCC in order to assist TNRCC in

demonstrating to the EPA any such reductions. Continental's obligation is to provide data only, and not to achieve any particular reduction in NOx emissions except as specifically set forth in 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 Reduction

The parties agree that the actual and estimated reductions of NOx emissions by Continental set forth above can be accomplished in any manner that Continental 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 Continental may convert its GSE fleet at IAH 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. Continental may also comply with all or any part of its commitments through the use of NOx emission control measures which have been achieved elsewhere within the nonattainment area, 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 Continental can reasonably demonstrate that

such measures have resulted in NOx emission reductions at least equal to those required or expected from the commitment being substituted.

G. Plan Submissions

Continental shall submit to the TNRCC Executive Director by May 1, 2002, a plan for the implementation of NOx emission reduction measures to achieve NOx emission reductions as described above. The plan may include emission reductions measures which are applied to the GSE fleet itself and/or reductions satisfied by other actions as provided in paragraph 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 as "Confidential" and obtained by TNRCC concerning Continental'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 Continental'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 Continental's authorized representative and subsequently receiving written approval from that representative. In the event a request is received by TNRCC for information designated as "Confidential", TNRCC agrees to promptly notify Continental 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 Continental's authorized representative to the Attorney

General. For purposes of this Memorandum, Continental's authorized representative is Leah Raney or her successors, who may be contacted at the following address: 1600 Smith Street, HQSEN, Houston, TX 77002.

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 proposes a regulation which in any way attempts to control, directly or indirectly, air emissions from Continental's GSE or aircraft operations at IAH that is inconsistent with or in addition to the measures set forth in this Memorandum. Nothing in this Memorandum shall prohibit TNRCC from proposing or adopting such regulation.

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 which cover Continental's GSE at IAH in the rules relating to vehicle idling restrictions when engine idling is necessary for auxiliary purposes or air conditioning for passenger comfort or safety, air ground support equipment, commercial air conditioners, use of diesel emulsion, accelerated purchase of Tier 2/3 diesel and NOx reduction systems. The parties further agree that any action taken by Continental in complying with such rules from which Continental's GSE is exempt may also be used by Continental as an alternate method of complying with this Memorandum as provided in paragraph IV.F. Additionally, Continental's compliance

with the Large Spark Ignition Rule at IAH may be used by Continental as an alternate method of complying with this Memorandum as provided in paragraph IV.F.

VII. Miscellaneous

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

This Memorandum may not be amended or modified except pursuant to a 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.

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

CONTINENTAL AIRLINES, INC.

By: \_\_\_\_\_  
Name:  
Title:

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

By: \_\_\_\_\_  
Name:  
Title:

## EXHIBIT A

### Examples of Ground Support Equipment

Air Conditioner Cart

Air Start

Aircraft Tractor (Push Back)

Baggage Tractor

Belt Loader

Bobtail

Bus

Car

Cargo Loader

Cargo Tractor

Catering Truck

Cleaner Engine Cart

Fork Lift

Cherry Picker

Fuel Hydrant Truck

Ground Power Unit

High Lift

Lavatory Cart

Lavatory Truck

Maintenance Lift

Man Lift

Passenger Stairs

Pickup Truck

Provisioning Truck

Ramp Sweeper

Stake Truck

Van

Water Truck

Wrecker Truck