

## **Statement of Principles**

### **Houston/Galveston Ozone Nonattainment Area Railroad Program**

#### **I. Parties**

1. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company (“Participating Railroads”), which are Class I freight railroads operating within the boundaries of the Houston/Galveston Ozone Nonattainment Area (the “HGA Area”), the United States Environmental Protection Agency (“EPA”), the Texas Natural Resource Conservation Commission (“TNRCC”), and the Houston/Galveston Area Counsel (“HGAC”) (collectively, the Signatories” or “the parties”) recognize the importance of preserving the environment while maintaining a strong and viable railroad industry. The Participating Railroads have volunteered to become a leader in environmental protection by joining the HGAC, TNRCC and the EPA in a unique, innovative, and cooperative effort to achieve cleaner air in the HGA Area. This Statement of Principles (“SOP”) describes the joint understanding of the Signatories and the future actions that are intended to be undertaken by the Participating Railroads, HGAC, TNRCC and EPA.

#### **II. Background**

2. Locomotives are an environmentally efficient way to move goods [See EPA’s Notice of Proposed Rulemaking for locomotives at 62 Fed. Reg. 6368 (Feb. 11, 1997)]. Railroads operate national locomotive fleets that travel between states daily, currently moving more than 40 percent of the total intercity revenue ton-miles of freight in the United States. Railroad networks are geographically widespread across the country, serving every major city in the United States. Efficient train transportation is an important factor in the regional and national economy. Railroads continue to improve their efficiency and reduce emissions per ton-mile by utilizing more efficient locomotives, improving freight movement operations, and other means.

3. Recognizing that railroads are an environmentally efficient way to move goods, the parties acknowledge that this SOP shall not be interpreted in a manner that would serve to cap or limit railroad traffic growth.

4. EPA proposed emissions standards for new locomotives and new engines used in locomotives on January 31, 1997, pursuant to Section 213 of the Clean Air Act (“CAA” or “the Act”) [See 62 Fed. Reg. 6366 (Feb. 11, 1997)]. In the same notice, EPA also proposed to adopt regulations to implement CAA Section 209’s preemption of state and local standards or other requirements relating to the control of emissions from new locomotives or new engines used in locomotives. In 1998, EPA promulgated final emission standards for oxides of nitrogen (“NO<sub>x</sub>”), carbon monoxide (“CO”), particulate matter (“PM”) and smoke for newly manufactured and remanufactured locomotives and locomotive engines [See 63 Fed. Reg. 18978 (April 16, 1998)]. The requirements for compliance with these emission standards are described in 40 CFR part 92. There are three sets (or tiers) of emission standards. The Tier 0 standards

apply only to locomotives originally manufactured before 2002. The Tier 1 standards apply to locomotives manufactured in 2002-2004, and the Tier 2 standards apply to locomotives manufactured in 2005 and later. The applicability of the Tier 1 and Tier 2 standards is based on the date of manufacture of the locomotive, rather than the engine. Thus, a newly manufactured engine in 2005 that is used to repower a 1990 model year locomotive would be subject to the Tier 0 emission standards, which are also applicable to all other 1990 model year locomotives. These new emission standards will achieve approximately a two-third reduction in NO<sub>x</sub> emissions when fully implemented. Similarly, hydrocarbons (“HC”) and PM emissions will be reduced by 50 percent. The Participating Railroads, TNRCC, and the HGAC acknowledge that EPA’s new emissions standards will achieve the greatest degree of emissions reductions available through the use of technology for new locomotives and new locomotive engines. This SOP outlines further efforts that the participating railroads will voluntarily make in the HGA Area to achieve an additional reduction of emissions that will be granted as a SIP credit under the Voluntary Mobile Source Emission Reduction Program (“VMEP”).

5. The HGA Area has exceptional and unique emissions reduction needs. The area’s exceptionally high level of ozone pollution result from the large amount of emissions generated in the HGA Area, combined with the area’s unique meteorology. The HGA Area is classified under the CAA as a “Severe” nonattainment area for ozone. This area has, and will continue to have, unique air quality problems that necessitate unique, exceptional solutions.

6. The TNRCC is preparing a State Implementation Plan (“SIP”) for the HGA Area and plans to include the NO<sub>x</sub> reductions expected as a result of this SOP as part of the VMEP portion of the SIP. Under the VMEP, a State can satisfy up to 3% of the required reductions by the VMEP program. The reductions expected from the Participating Railroads are approximately 2.0 tons per day which represents approximately a 17 percent reduction from the SIP inventory baseline level in emissions of NO<sub>x</sub> from railroads operating in the HGA Area by 2007, and is in addition to the NO<sub>x</sub> reductions expected to result from EPA’s emissions standards.

### III. TNRCC, HGAC and the Participating Railroads Actions

7. Because of the exceptional and unique air quality problems in the 8-county area, the Participating Railroads have volunteered to implement measures to achieve the additional reduction mentioned in the previous paragraph. Examples of measures under consideration include but are not limited to: a) Operating practices measures, including application of methods to reduce locomotive idling time, b) Switch and local unit fleet management measures, including assignment of specific locomotives to the HGA Area, c) Modifications to the locomotive engine and support equipment, including adjustments to engine timing, d) Use of regulated fuels, and/or e) Other maintenance measures consistent with railroad support operations.

8. The parties understand and acknowledge that implementation of the measures under consideration will have substantial operational and financial impacts on the Participating Railroads over and above the cost of compliance with EPA’s emissions standards for new

locomotives and new locomotive engines. Because of this increased cost, the parties agree that the Participating Railroads have the flexibility to utilize new technology or other methods not included in the previous paragraph to achieve the targeted emission reductions consistent with applicable federal and State laws and regulations.

9. The Participating Railroads, HGAC, TNRCC, and EPA intend to consult and reasonably share information concerning implementation of this portion of the VMEP, and concerning the status of the Participating Railroads' emissions reduction measures.

10. In consideration of the voluntary commitments of the Participating Railroads as set forth herein, the Executive Director of the TNRCC agrees to recommend the withdrawal of the proposed diesel emulsion rules, published at 25 Tex. Reg. 8196-8203 (August 25, 2000), and the proposed NOx reduction system rules, published at 25 Tex. Reg. 8209-8216 (August 25, 2000).

#### IV. EPA Actions

11. The parties expect that the means necessary to achieve the targeted reductions are or will become available. The parties fully expect that the Participating Railroads will achieve the emissions reductions as expeditiously as practicable but not later than 2007. However, EPA, TNRCC and HGAC also believe that to fully satisfy their respective obligations pursuant to EPA's approval of the attainment demonstration for the HGA Area, the reductions identified must be submitted by the State as part of the VMEP program and acted upon by EPA.

#### V. Additional Provisions

12. The parties understand and acknowledge that the joint understandings and future actions described in this SOP will contribute to efforts in the HGA Area to achieve attainment of the national ambient air quality standard for ozone. The Participating Railroads, EPA, TNRCC, and the HGAC are committed to working together to ensure that the emission reduction measures described in this document are implemented.

13. The Participating Railroads may terminate the voluntary commitments under this SOP upon thirty days written notice in the event the TNRCC (a) rejects the Executive Director's recommendation of withdrawal of the diesel emulsion rules or the NOx reduction system rules or (b) proposes or adopts rules imposing requirements on the Participating Railroads that are inconsistent with or in addition to the measures set forth in this SOP. While nothing in this SOP shall prohibit the TNRCC from proposing or adopting such rules in the future, the Participating Railroads reserve in such event all of their rights and defenses to the promulgation and validity of such rules.

14. The parties agree to reasonably coordinate with one another concerning any communication or publicity regarding the contents of this SOP.

IN WITNESS WHEREOF, the parties have executed this Statement of Principles as of December 4, 2000.

**HOUSTON - GALVESTON AREA  
COUNSEL, an agency of the State of  
Texas**

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Signature

Jack Steele

Name

Executive Director

Position

**THE BURLINGTON NORTHERN AND  
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Mark P. Stehly

Name

Assistant Vice President Environmental  
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Position

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Signature

Jeffrey A. Saitas, P.E.

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Executive Director

Position

**UNITED STATES ENVIRONMENTAL  
AGENCY, an agency of the United States  
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Gregg A. Cooke

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Regional Administrator, Region 6

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**UNION PACIFIC RAILROAD  
COMPANY, a Delaware Corporation**

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Signature

Joseph J. Adams

Name

Special Executive Representative

Position