

CITY COUNCIL  
ATLANTA, GEORGIA

A RESOLUTION

BY TRANSPORTATION COMMITTEE

01- R -0298

**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH NORTHWEST AIRLINES, GIVING CONSENT AND APPROVAL FOR NORTHWEST AIRLINES TO ENTER INTO A CONSENT ORDER WITH THE GEORGIA ENVIRONMENTAL PROTECTION DIVISION, COVERING CLOSURE AND CARE OF A CONTAMINATED AREA WITHIN THE LEASED PREMISES OF NORTHWEST AIRLINES AIR LINES' AIRCRAFT MAINTENANCE BASE ("AMB") AT HARTSFIELD ATLANTA INTERNATIONAL AIRPORT, PURSUANT TO 40 CFR 264.310; AND FOR OTHER PURPOSES.**

**WHEREAS**, the City and Northwest Airlines, are parties to an Amended and Restated Lease Agreement, dated January 1, 1974, under which Northwest Airlines leases its Aircraft Maintenance Base ("AMB") at Hartsfield Atlanta International Airport from the City; and

**WHEREAS**, Northwest Airlines formerly operated an underground storage tank ("UST") for storage of waste varsol (the "System") at the AMB, and

**WHEREAS**, Northwest Airlines and the Georgia Environmental Protection Division ("EPD") have agreed to resolve a dispute over the regulatory status of the System and how to address contamination resulting from releases from the System by entering into a Consent Order under which a small area of the Exclusively Leased Premises under the AMB Lease Agreement will be closed as a landfill and provide for post-closure care of that area for up to 30 years, as may be required by the EPD; and

**WHEREAS**, Northwest Airlines will assume responsibility for taking all actions and for assuming all costs of complying with the Consent Order, including post-closure care as required thereby, and for indemnification of the City of Atlanta in connection therewith; and

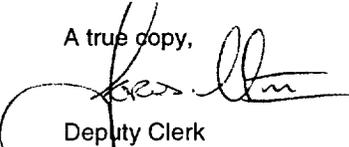
**WHEREAS**, it is reasonable and appropriate for the City, as landlord under the Lease Agreement, to give consent and approval for Northwest Airlines' entering into the Consent Order, as hereinafter set forth.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA** that the Mayor be and hereby is authorized to execute on behalf of the City of Atlanta an Agreement with Northwest Airlines, which shall give consent to Northwest Airlines' entering into the said Consent Order with the EPD, with said Agreement to be substantially in the form and manner of that copy of same attached hereto as Attachment I and made a part hereof by reference.

**BE IT FURTHER RESOLVED** that the City Attorney be and hereby is directed to prepare said Agreement for execution by the Mayor.

**BE IT FINALLY RESOLVED** that the said Agreement shall not become binding upon the City of Atlanta, and the City shall incur no obligation nor liability thereunder until the same has been signed by the Mayor and delivered to Northwest Airlines.

A true copy,

  
Deputy Clerk

ADOPTED by the City Council  
APPROVED by the Mayor

March 5, 2001  
March 13, 2001



## AGREEMENT

THIS AGREEMENT (the "Agreement"), made and entered into as of \_\_\_\_\_, 2000, by and between the CITY OF ATLANTA, a duly chartered municipal corporation existing under the laws of the State of Georgia (the "City"), and Northwest Airlines, Inc., a corporation organized and existing under the laws of the State of Minnesota (NWA),

### WITNESSETH:

WHEREAS, NWA leases its Aircraft Maintenance Base (AMB) at Hartsfield Atlanta International Airport from the City pursuant to an AMENDED AND RESTATED LEASE AGREEMENT, dated as of **January 1, 1974** (the "Lease"); and

WHEREAS, NWA formerly utilized an underground storage tank (UST) for storage of waste varsol at the AMB, and

WHEREAS, the waste varsol UST and soil containing waste varsol were removed in 1989, the appurtenant piping cleaned, and the excavation backfilled with soil obtained from off-site, and

WHEREAS, NWA replaced the UST with an aboveground storage tank (AST) at essentially the same location for storage of waste varsol; and

WHEREAS, NWA discontinued use of the AST and removed it on August 18, 1997, and obtained written approval from the Environmental Protection Division of the Georgia Department of Natural Resources (EPD) in doing so; and

WHEREAS, NWA and the Georgia Environmental Protection Division ("EPD") have agreed to resolve a dispute over the regulatory status of the site of the former waste varsol UST and AST and how to address contamination resulting from releases from that site by entering into a Consent Order in the form attached hereto as Exhibit 1, and as the same may hereafter be modified (the "Consent Order"); and

WHEREAS, the Consent Order provides for closure of the site of the former waste varsol UST and AST under the requirements of the Resource Conservation and Recovery Act (RCRA) pursuant to 40 CFR 264.310, which among other things, would require closure of a small area as a landfill and postclosure care of that area for up to 30 years, as may be determined necessary by EPD and federal EPA; and

WHEREAS, NWA will assume responsibility for taking all actions and for assuming all costs of complying with the Consent Order and all state and federal environmental regulations related to compliance with the Consent Order including providing post-closure care as required thereby; and

WHEREAS, the parties hereto desire to agree on matters permitting the Consent Order to be effectuated;



NOW THEREFORE, in consideration of the foregoing premises, the mutual agreements herein contained, and other consideration, the sufficiency and receipt of which is hereby acknowledged, the parties agree as follows:

1. The City hereby consents to NWA entering into the Consent Order and to NWA taking all actions and performing any and all acts required by or that are otherwise necessary and appropriate to comply with the terms and conditions of the Consent Order. As more fully provided below, NWA shall indemnify and hold harmless the City, its Mayor, Council members, commissioner, officers, officials, agents and employees from all costs, damages and expenses necessary to comply with the terms and conditions of the Consent Order. NWA will provide the City with a copy of all documents it submits or receives from the State EPD or the Federal EPA related to compliance with the Consent Order, including but not limited to "work plans", "closure plans", "post closure care plans and certification of final post closure care. Further NWA shall permit the City to review, inspect and copy all current and future documents and records of whatever type, related to the consent order, except such documents which are subject to attorney-client privilege or other applicable privilege.

2. Without limiting Section 1 hereof, the City agrees that after expiration of the Lease, NWA will continue to have the limited right to enter the AMB premises for the sole purpose of fulfilling its obligations under the Consent Order with respect to the area addressed in the Consent Order (the "Affected Area") at NWA's sole cost.

3.A. To the fullest extent permitted by law, NWA shall indemnify and hold harmless the City, its Mayor, Council members, commissioner, officers, officials, agents and employees ("Indemnitee" or "Indemnitees") from and against all claims, lawsuits, damages, claims of damages, injuries, obligations, losses, demands, causes of actions, judgments, attorney's fees, costs and charges, including, but not limited to claims by third parties for expenses of any nature or form, by or on behalf of any person or entity arising in any manner out of or by reason of NWA's failure to comply with the requirements of the Consent Order or any issues arising out of or caused as a result of NWA's use of the former waste varsol UST and AST site; provided, however, that NWA's obligation to pay or reimburse any Indemnitee for attorneys fees, expenses, costs or charges relating to the defense or settlement of any of the matters covered by the indemnification provisions of paragraphs 1. and 3.A. shall be governed exclusively by subparagraphs 3.B., 3.C., 3.D. and 3.E. below. The indemnity provided in this Section shall not apply to any liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the City, its agents or employees. (This exception is included solely to insure the validity and enforceability of this indemnity provision under Georgia law and, in particular, O.C.G.A. Section 13-8-2, as amended, and not otherwise intended to narrow the indemnification contained in this Section.)

3.B. If any claim, action, lawsuit, or proceeding seeking or asserting damages, claims of damages, injuries, obligations, losses, demands, causes of actions, judgments, attorney's fees costs and charges, within the meaning of paragraphs 1 and 3.A above ("Claim") is brought against any Indemnitee, the Indemnitee shall give written notice of such Claim to NWA within fifteen (15) days after the earlier of the date on which Indemnitee is properly served with or receives any notice of the Claim. NWA shall have both the right and the duty to assume the



defense of the Claim. NWA shall give written notice showing that NWA will assume defense of the Claim (i) within thirty (30) days after NWA receives such written notice of a Claim or (ii) if the claim requires a response in any legal action against the Indemnatee in less than thirty (30) days (and such response deadline cannot be postponed) or reasonably requires that the Indemnatee file a legal action of its own in less than thirty (30) days (and the Indemnatee's notice of the Claim to NWA specifies which event applies) then the date shall be ten (10) days after NWA receives such written notice of Claim.

3.C. Any Indemnatee's failure to give NWA written notice of a Claim shall not relieve NWA of its obligations under this Section unless (i) the Indemnatee failed to give NWA the required written notice of Claim within the time provided herein, and (ii) NWA or any of its defenses against the Claim is prejudiced by the failure of Indemnatee to give such notice or if there is a default of the action and said action cannot be reopened by order of court. If both of the conditions in the foregoing 3.C.(i) and (ii) exist as to a Claim, then NWA shall be relieved of any further obligation to the Indemnatee (or parties claiming through the Indemnatee) as to that Claim.

3.D. NWA may litigate or settle such Claim in NWA's discretion, and in any manner NWA deems appropriate, using counsel selected by NWA. Said counsel may not have a conflict of interest with Indemnatee; provided, however, that said counsel shall not be deemed to have a conflict of interest solely because said counsel represents, is selected by, or is paid by, NWA. The Indemnatee may participate in the defense to the extent of its interest at the Indemnatee's expense and NWA shall have no obligation to reimburse the Indemnatee for such expense.

3.E. If NWA fails to assume the defense of any Claim on behalf of Indemnatee after receiving written notice as prescribed in paragraph 3.B. above, or if NWA abandons the defense of any Claim after assuming its defense, the Indemnatee may defend against such Claim in such manner as it deems appropriate; provided, however, that the Indemnatee must give written notice to NWA of the Indemnatee's decision to defend the Claim. NWA shall have the right to cure its failure or abandonment of the defense of the Claim, and to assume or resume exclusive control of the defense of the Claim, by giving notice to Indemnatee, within fifteen (15) days of NWA's receipt of the Indemnatee's written notice under this subparagraph 3.D., that NWA is assuming or resuming the defense of the Claim. If NWA gives such notice of cure stating that it assumes or resumes the defense of the Claim, then immediately upon receipt of NWA's notice of cure the Indemnatee shall relinquish control of the defense of the Claim to NWA. NWA shall within ninety (90) days reimburse the Indemnatee for the amount of all expenses, legal and otherwise, reasonably and necessarily incurred by the Indemnatee in connection with the defense against such Claim after NWA's failure to defend or abandonment of the defense of the Claim, through the date on which Indemnatee receives NWA's notice of cure. Any attorney fees, costs, charges or expenses of Indemnatee incurred after the date on which Indemnatee receives NWA's notice of cure shall be governed exclusively by subparagraph 3.C. above. If NWA does not so cure, then NWA nevertheless may participate in the defense to the extent of its interest at NWA's expense). If NWA does not so cure as provided herein, then NWA shall within ninety (90) days of receipt of each of Indemnatee's bills reimburse the Indemnatee for the amount of all expenses, legal and otherwise, reasonably and necessarily incurred by the Indemnatee in connection with the defense against such Claim. No such Claim shall be settled without NWA's prior written approval and NWA shall not be responsible for any liability arising out of or related to any settlement entered

into by the Indemnitee in violation of this provision, unless NWA has a bill from Indemnitee which is one hundred and twenty (120) days or more in arrears, which it has failed to pay within thirty (30) days following written reminder notice of the unpaid balance on the bill. (Said reminder notice may be given by the City to NWA at any time at least thirty (30) days after the bill is first sent to NWA, and is intended by the parties as a means to avoid defaults caused by inadvertent loss or misdirection of any bill.) If no settlement of such Claim is made in accordance with this provision, NWA shall satisfy and pay in full any judgment rendered with respect to such Claim before the Indemnitee is required to do so, unless, at NWA's expense and direction, an appeal is taken under which the execution of the judgment is stayed. If and when a final judgment is rendered with respect to such Claim, NWA will satisfy and pay in full such judgment before the Indemnitee is compelled to do so.

3.F. No assumption of any defense by NWA or other action by NWA under this Section shall constitute a waiver of NWA's right to contest any Indemnitee's right to indemnification.

3.G. This Section shall survive after termination of this Agreement; provided, however, that the indemnity provided for in this Section shall apply only to events, fact or circumstances arising, occurring or in existence prior to any such termination.

4. Nothing in the Agreement provides or implies that the parties hereto may not at some future date agree to extend the Lease or otherwise enter into an agreement pursuant to which NWA would continue to lease part of all of the AMB premises after the expiration date of the Lease.

5. Unless any future Lease amendment, Lease extension or other lease agreement expressly so provides, this Agreement shall continue in full force and effect until all obligations of NWA under the Consent Order are fully satisfied.

6. In the event that any one or more of the provisions of this Agreement shall, for any reason, be held illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Agreement, and this Agreement shall be construed and enforced as if such illegal or invalid provisions had not been contained herein.

7. Neither party hereto shall be deemed to be in breach of this Agreement by reason of failure to perform any of its obligations hereunder if, while and to the extent that such failure is due to strikes, boycotts, labor disputes, embargoes, shortages of materials, act of God, acts of public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or other circumstances of any nature which are not within the control of that party.

8. In no event shall the term of this Agreement extend for a period greater than fifty (50) years from the above-stated effective date thereof.

9. This agreement respects the complete and entire agreement between the parties regarding the Consent Order and there are no other agreements, representations or understandings, either oral or written, between the parties with respect to the subject matter of

this agreement, except as set forth herein. This agreement cannot be modified except in mutual agreement by both parties as evidenced in writing.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the day and year first written above.

APPROVED AS TO INTENT

CITY OF ATLANTA

\_\_\_\_\_  
General Manager of Aviation

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Acting Commissioner of Finance

\_\_\_\_\_  
Clerk of Council  
[SEAL]

RECOMMENDED:

APPROVED AS TO FORM:

\_\_\_\_\_  
Chief Administrative Officer

\_\_\_\_\_  
City Attorney

NORTHWEST AIRLINES, INC.



Title: JAMES M. GREENWALD, VP  
FACILITIES AND AIRPORT AFFAIRS

ATTEST:

*Bonnie Smith*  
Title: Administrative Associate



DEPARTMENT OF NATURAL RESOURCES  
ENVIRONMENTAL PROTECTION DIVISION  
STATE OF GEORGIA

IN RE:

Northwest Airlines, Inc. #  
Hartsfield Atlanta #  
International Airport #  
Atlanta, Georgia #

Order No. EPD-HW-

Respondent.

CONSENT ORDER

WHEREAS, Northwest Airlines, Inc. (hereinafter referred to as "Respondent"), is a United States commercial air carrier that operates a fleet of commercial aircraft; and

WHEREAS, Respondent operates an aircraft maintenance facility on a 45.6 acre parcel of land located at the Hartsfield Atlanta International Airport, Atlanta, Georgia (hereinafter referred to as the "Facility") which conducts overhaul, service and repairs of aircraft; and

WHEREAS, Respondent is subject to the provisions of the Georgia Hazardous Waste Management Act, O.C.G.A. Section 12-8-60, et seq., as amended (hereinafter referred to as the "Act") and the Georgia Rules for Hazardous Waste Management, Chapter 391-3-11, promulgated pursuant thereto (hereinafter referred to as the "Rules"); and

WHEREAS, Respondent was issued a Hazardous Waste Storage Permit HW-058(S) (hereinafter referred to as the "RCRA Permit") on March 30, 1988, for the storage of up to nine thousand-three hundred and seventy-one (9,371) gallons of hazardous waste generated at the Facility; and

WHEREAS, Respondent notified EPD on September 25, 1997, of its decision to close its RCRA Permitted Units (the Hazardous Waste Storage Building and the Sludge Trailer Containment Area) and allow the RCRA Permit to expire on March 30, 1998; and

WHEREAS, EPD prepared a RCRA Facility Assessment for the Facility in September 1997 (hereinafter referred to as the "RFA"); and



WHEREAS, Respondent was issued Hazardous Waste Facility Permit No. HW-058(CA), corrective action permit, on May 13, 1998, (hereinafter referred to as the "CA Permit") for further investigation of Solid Waste Management Units (SWMUs) and Areas of Concern (AOC) identified in the RFA and closure of RCRA hazardous waste management units. The CA Permit expires on May 13, 2008; and

WHEREAS, Respondent has reported to EPD that it formerly operated a varsol distribution system that included an underground varsol supply tank located approximately 300 feet outside the east end of the Maintenance Hangar Building; underground piping from the varsol supply tank to the Maintenance Hangar Building; above-ground piping to another a varsol supply tank and three (3) cleaning booths located inside the Maintenance Hangar Building; and underground piping from the three (3) cleaning booths and various drains to one (1) underground storage tank (UST) identified as Tank TA-107, which was subsequently replaced by one (1) above-ground storage tank (AST) housed in a vault, both of which were located outside of the west side of the Maintenance Hangar Building; (hereinafter referred to collectively as the "Varsol System") and

WHEREAS, Respondent has reported to EPD that the underground piping from the three (3) cleaning booths and various drains to UST Tank TA-107 and subsequently to the AST (hereinafter referred to as the "waste varsol drain piping system") was operated from the time the Facility opened for operation in 1975 (or within the first few years thereafter) until 1995 to transfer waste varsol at the Facility. Until late 1994, waste varsol was transferred from the three (3) cleaning booths first to UST Tank TA-107 and subsequently to the AST. From late 1994 until early 1995, waste varsol from two (2) self-contained cleaning booths was drained into a portable container and poured into the waste varsol drain piping system through a floor drain; and



WHEREAS, varsol is a mineral spirit based solvent used for cleaning jet engine parts; waste varsol has been determined to be hazardous because of its ignitability characteristic (D001); and

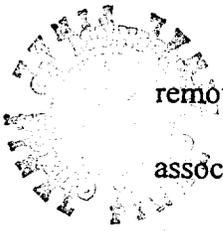
WHEREAS, Respondent has reported to EPD that UST TA-107 used to store waste varsol was removed from the Facility in early 1990, and that UST's TA-104, TA-105, and TA-106 were removed in late 1989; and

WHEREAS, the AST used to store waste varsol at the Facility from approximately 1990 to 1995 was removed by Respondent in August 1997 using the June 16, 1997 workplan approved by EPD. EPD approved the October 16, 1997 closure report by letter dated December 1, 1997, but informed Respondent that because of the groundwater contamination found near the site of the former AST, corrective action in the area may be required; and

WHEREAS, in 1990, Respondent hired a contractor to conduct a Phase I Investigation in the area where UST Tank TA-107 was excavated. Total Petroleum Hydrocarbons (TPHs) were detected in the soil during this investigation; and

WHEREAS, in 1990, as part of a Phase II Investigation, Respondent installed three (3) monitoring wells (hereinafter referred to as "MW") in the excavated area of UST Tank TA-107 to investigate potential groundwater contamination at the Facility, i.e., MW-1, MW-2, and MW-3; these wells were installed to depths ranging from nine (9) to eleven (11) feet below ground surface (bgs) in the excavated area of UST Tank TA-107. During installation of the wells, volatile organic compounds (VOCs) were detected in the soil samples at levels up to 1,000 parts per million (ppm); and

WHEREAS, Respondent entered into Consent Order EPD-HW-1069 with EPD on March 11, 1994, for the purpose of resolving alleged violations of the Act and Rules associated with the



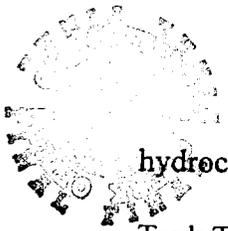
removal of UST Tanks TA-104, -105, -106, -107 and -108 and contaminated soil and groundwater associated with the removal of these UST's, in addition to other alleged violations noted in the Consent Order; and

WHEREAS, Respondent submitted an amended closure plan for UST Tanks TA-104, -105, -106, -107, and -108 in May 1994 (hereinafter referred to as the "Amended Closure Plan"), which Amended Closure Plan was approved by EPD by letter dated December 28, 1994; and

WHEREAS, pursuant to Consent Order EPD-HW-1069 and the approved Amended Closure Plan, Respondent submitted a Closure Sampling Report to EPD in May 1995 (hereinafter referred to as the "Closure Sampling Report") to address closure and further soil and groundwater investigation for UST Tanks TA-104, -105, -106, -107, and -108 (said Closure Sampling Report was updated in September 1996); and

WHEREAS, EPD approved the May 1995 Closure Sampling Report by letter dated August 20, 1996; and

WHEREAS, Respondent reported in the Closure Sampling Report that UST Tanks TA-104, -105, -106, -107 and -108 were used at the Facility to store hazardous waste: Tank TA-104 had been used to store spent 1,1,1-trichloroethane (TCA); Tank TA-105 had been used to store waste varsol and oil; Tank TA-106 had been used to store waste oil; Tank TA-107 had been used to store waste varsol and oil; and Tank TA-108 had been used to store aircraft paint strippings; these USTs were removed by Respondent in 1989 (TA-104, -105 and 106), in 1990 (TA-107) and prior to 1989 (TA-108). During the removal activities, Respondent discovered that UST Tank TA-107 had leaked and caused contamination of the surrounding soils and groundwater; and



WHEREAS, Respondent reported in the Closure Sampling Report that free-phase hydrocarbons were detected in the soil samples and the groundwater in the excavated area of UST Tank TA-107; and

WHEREAS, Respondent reported in the Closure Sampling Report that varsol was found in monitoring wells MW-1 and MW-3; and

WHEREAS, Respondent reported in the Closure Sampling Report that near the excavated areas of UST Tanks TA-104, -105, and -106, "soil boring SB 456-7 at 12 to 14 feet and 14 to 16 feet depth had high detection limits for 1,1,1-trichloroethane (900 and (960 ppb) due to matrix interference" and "No 1,1,1-TCA was detected. It should be noted that for two of the 16 (and one duplicate) samples, the detection limits for 1,1,1-TCA were 900 and 960 ug/kg" ; and

WHEREAS, EPD contends that Respondent's conclusion in the Closure Sampling Report that no TCA was detected is invalid, because the detection limits are too high and samples should have been re-taken; and

WHEREAS, Respondent reported in the Closure Sampling Report that methylene chloride was also detected in the soil borings near the excavated area of UST Tanks TA-104, -105, and -106. Respondent claimed that the level of methylene chloride was comparable to background levels at the site; and

WHEREAS, EPD contends that Respondent has not demonstrated that methylene chloride occurs in background at that level; and

WHEREAS, EPD prepared a RCRA Facility Assessment for the Facility in September 1997 (hereinafter referred to as the "RFA"); and



WHEREAS, the site of the former AST used to store waste varsol at the Facility was identified in the RFA as SWMU #14; and

WHEREAS, the sites of the former 1,000-gallon UST Tank TA-107 used to store waste varsol and UST Tank TA-108 used to store aircraft paint strippings at the Facility were identified collectively in the RFA as SWMU #15; and

WHEREAS, the sites of the three former UST Tanks TA-104, TA-105 and TA-106 used to store waste varsol and/or oil were identified in the RFA as SWMU #16; and

WHEREAS, the waste varsol drain piping system (which includes three (3) varsol cleaning booths located in the Maintenance Hangar Building and the associated waste varsol drain piping, most of which is underground) was identified in the RFA as SWMU #19; and

WHEREAS, an amended RCRA Facility Investigation (hereinafter referred to as the "RFI") Workplan for the Facility was submitted by the Respondent in March 1999 for the SWMUs identified in the RFA; and

WHEREAS, EPD has determined that the presence of hazardous waste, hazardous constituents, or hazardous waste constituents in the soil and groundwater at the Facility may pose a threat to human health and the environment; and

WHEREAS, EPD has determined that Respondent needs to implement corrective action measures at the Facility in order to prevent further migration of hazardous waste, hazardous constituents, or hazardous waste constituents and to remediate the soil and groundwater; and

WHEREAS, EPD has determined that further investigation of the sites of former UST Tanks TA-104, -105, and -106 needs to be conducted during the RFI process to determine whether there were any releases of hazardous waste from those UST's; and



WHEREAS, Rule 391-3-11-.10, which incorporates the federal regulations at 40 CFR §264.197(a) and (b) by reference, provides that at closure of a hazardous waste tank system (defined under §260.10 as “a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system”), the owner or operator must remove or decontaminate all waste residues, contaminated containment system components, contaminated soils and structures and equipment contaminated with waste or, in the alternative, must close the tank system and perform post-closure care on such tank system as a landfill; and

WHEREAS, the Director contends that Respondent is in violation of Section 391-3-11-.10 of the Rules, “Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities” [40 CFR §262.34 and §264.111, §264.114 of Subpart G and § 264.197], for failure to close the Varsol System, including the associated piping, in accordance with the required regulations; and

WHEREAS, Respondent denies that contention and asserts, among other things, that the matter was fully and finally resolved by Consent Order EPD-HW-1069 and the Amended Closure Plan previously submitted by Respondent and approved by EPD; and

WHEREAS, EPD contends that Respondent did not fully comply with the requirements of Consent Order EPD-HW-1069; and

WHEREAS, Respondent contends that to the extent that Respondent has not yet fully complied with the requirements of Consent Order EPD-HW-1069, it has deferred compliance with those requirements because in 1997 EPD instructed Respondent to defer further compliance with the requirements of Consent Order EPD-HW-1069, because these matters would instead be addressed in connection with the RFA that EPD intended to perform at Respondent’s facility; and



WHEREAS, EPD denies that it instructed Respondent to defer compliance with Consent Order EPD-HW-1069 because these matters would be addressed in the RFA.

NOW, THEREFORE, before the taking of any testimony and without adjudicating the merits of the parties' position in this matter, the parties hereby resolve the issues in this case by agreement and upon the Order of the Director of EPD and the Consent of Respondent as follows:

1. Within thirty (30) days after the execution date of this Consent Order, Respondent shall submit written certification that Respondent has discontinued use of the Varsol System as described herein and shown on Exhibit A, which is attached hereto and incorporated by reference. The Varsol System does not include any free-standing cleaning booths currently in use that are not connected to the said waste varsol drain piping system.
2. Within sixty (60) days after the execution date of this Consent Order, Respondent shall provide written documentation, certified by a registered professional engineer, that all varsol product and/or waste has been removed, to the maximum extent practicable, from the waste varsol drain piping system located underneath or within the slab or foundation of the Maintenance Hangar Building, and that said piping has been grouted. As used in this Condition, the phrase "maximum extent practicable" shall include at a minimum three (3) rinses with water.
3. Within sixty (60) days after the execution date of this Consent Order, Respondent shall provide written documentation, certified by a registered professional engineer, that all varsol product and/or waste has been removed, to the maximum extent practicable, from the above-ground varsol supply piping system located in the Maintenance Hangar Building, and that said piping has been capped at every open end. As used in this Condition, the phrase "maximum extent practicable" shall include at a minimum three (3) rinses with water.
4. Within sixty (60) days after the execution date of this Consent Order, Respondent shall submit a closure plan and post-closure care permit application to perform closure and post-closure care pursuant to 40 CFR 264.310 and 40 CFR Part 264, Subparts G and H, in accordance with the requirements that apply to landfills, for the excavated area of the former waste varsol UST Tank TA-107 (identified in the RFA as part of SWMU #15; identified in the RFI Workplan as SWMU #15a), the former waste varsol AST housed in a vault (identified in the RFA and the RFI Workplan as SWMU #14), and all piping associated with these tanks, except for the underground varsol supply piping on the east side of the Maintenance Hangar Building between the site of the underground storage tank formerly used as the varsol supply tank and the Maintenance Hangar Building and the waste varsol drain piping system located underneath or within the slab or foundation of the Maintenance Hangar Building (which excepted piping and varsol supply tank shall be investigated under the approved RFI Workplan). The included areas and items above are hereinafter



collectively referred to as the "Regulated Unit". Exhibit A (attached hereto and incorporated herein by reference) depicts the footprint of the Regulated Unit, in the labelled area on the west side of the Maintenance Hangar Building.

5. Respondent shall investigate the soil and groundwater for the waste varsol drain piping system located underneath or within the slab or foundation of the Maintenance Hangar Building (identified in the RFA and RFI Workplan as SWMU #19) along with the Solid Waste Management Area (SWMA) in accordance with an RFI Workplan approved by EPD.
6. Respondent shall investigate the soil and groundwater for the excavated areas of former UST Tanks TA-104, -105, and -106 (identified in the RFA and RFI Workplan as SWMU #16) in accordance with an RFI Workplan approved by EPD. Within thirty (30) days after the execution date of this Consent Order, Respondent shall revise its RFI Workplan and submit to EPD for approval a plan to include investigation of groundwater for SWMU #16 by obtaining and analyzing groundwater samples drawn from a minimum of four (4) groundwater monitoring wells to be installed in the immediate area of SWMU #16 at locations approved by EPD.

If the investigation of SWMU #16 performed pursuant to the approved RFI Workplan finds any of the hazardous waste, hazardous constituents or hazardous waste constituents that were formerly stored in UST Tanks TA-104, -105, or -106, as determined by EPD, then within one hundred and eighty (180) days of a written determination by EPD that such hazardous waste and/or constituents are present, Respondent may close SWMU #16 pursuant to 40 CFR 264.197(a) by removing all contaminated waste, soils, and residues in accordance with a closure plan approved by EPD; the one hundred and eighty (180) days shall not include EPD's review of Respondent's closure plan. In the event Respondent demonstrates that not all contaminated soils can be practically removed within the 180 day period, Respondent shall, no later than sixty (60) days after expiration of the 180 day period, submit a closure plan and post-closure care permit application to perform closure and post-closure care pursuant to 40 CFR 264.310 and 40 CFR Part 264, Subparts G and H, for the excavated areas of the former UST Tanks TA-104, -105, and -106, in accordance with the requirements that apply to landfills. Respondent shall at the same time submit an exhibit proposing a footprint for the regulated unit for these UST's. The proposed footprint shall be subject to approval by EPD.

In the event Respondent demonstrates within the 180 day period that not all contaminated soils can be practically removed for the excavated areas of the former UST Tanks TA-104, -105, and -106, Respondent shall, no later than sixty (60) days after expiration of the 180 day period, in good faith seek consent of the Owner of the property to close these excavated areas as landfills, with written notice to EPD of this effort and future efforts. Closure of these excavated areas shall be deferred pending approval or failure or refusal of the Owner to approve, whichever occurs first. Should the Owner fail or refuse to give approval to close these excavated areas as landfills, Respondent shall notify EPD in writing. Notification of the Owner's refusal, including a copy of the refusal, shall be mailed to EPD by certified mail



within ten (10) days of such refusal. Notification of the Owner's failure shall be mailed to EPD by certified mailed within four (4) months of Respondent seeking the Owner's approval. Should the Owner fail or refuse to give approval to close these excavated areas as landfills, Respondent shall implement the closure plan and post closure care permit application approved by EPD to perform closure and post-closure care pursuant to 40 CFR 264.310 and 40 CFR Part 264, Subparts G and H, for the excavated areas of the former UST Tanks TA-104, -105, and -106, in accordance with the requirements that apply to landfills, except for appropriate exceptions approved by EPD. Respondent is under a continuing obligation to seek approval from the Owner to close these excavated areas as landfills; such continuing obligation terminates when the Owner's approval is received. Respondent must report its efforts to obtain the Owner's approval to EPD in writing at least once per year.

7. Within thirty (30) days after the execution date of this Consent Order, Respondent shall revise its RFI Workplan and submit to EPD for approval a plan to include investigation of the soil and groundwater for the underground varsol supply piping and underground storage tank formerly used as the varsol supply tank on the east side of the Maintenance Hangar Building.
8. The designation, size, and closure and/or corrective action requirements in this Consent Order (and Exhibit A) for SWMU #14, SWMU #15, SWMU #15a, SWMU #16, SWMU #19 and the Regulated Unit (comprised of SWMU #14 and SWMU #15a), are based on information known by or reported to the Hazardous Waste Management Branch of EPD (or the predecessor Hazardous Waste Management Program of EPD) and the laws and regulations in effect as of the execution date of this Consent Order.
9. If Respondent fails to investigate SWMU #16 and SWMU #19 in accordance with the terms of an approved RFI Workplan or should Respondent fail to amend its RFI Workplan within thirty (30) days of the execution date of this Consent Order (or such other amount of time agreed to by EPD) and obtain approval of its RFI Workplan, EPD reserves the right to terminate this consent order.
10. Upon EPD's approval of the closure plan and/or post-closure care permit application, the Respondent shall implement said plan in accordance with the schedule(s) contained therein.
11. All investigations, work plans, and plans for closure, removal or corrective action activities required by the RFI Workplan, closure plan, or post-closure care permit shall be submitted to EPD and approved before any such action is performed at the Facility.
12. All investigations, work plans, and plans for closure, removal or corrective action activities shall include, but are not limited to, the following:
  - a. a description of the activities to be taken at the Facility
  - b. a schedule of implementation and completion
  - c. a cost estimate for completion of the activities



- d. all records of sampling and analysis including the following:
- (1) The date, exact place and time of sampling measurements
  - (2) The individual(s) who performed the sampling
  - (3) The date(s) analyses were performed
  - (4) The individual(s) who performed or supervised the analyses
  - (5) The analytical techniques or methods used; the method of sample preservation; and quality assurance methods
  - (6) The results of such analyses
13. Respondent shall upon approval by EPD of the investigation, work plans, and/or plans for closure, removal or corrective action activities, implement the activities as described in the approved investigation, work plan, and/or plan for removal or corrective action activities.
14. All plans, reports and schedules required by the terms of this Consent Order are, upon approval by EPD, incorporated into this Consent Order. Any noncompliance with such approved plans, reports or schedules, unless an amendment thereto is approved in writing by EPD, shall be termed noncompliance with this Consent Order.
15. Upon receipt of any plan or report or any modified or amended plan or report required by this Order, EPD shall review the plan or report to determine its completeness with regard to this Order. Upon receipt of said plan or report, EPD may confer with Respondent in person, by telephone or in writing. If EPD determines that the plan or report is complete, it shall so notify Respondent in writing that the plan or report is approved. If EPD determines that the plan or report is incomplete, it shall provide the Respondent with written notice of any deficiencies. Respondent shall have thirty (30) days (or such other amount of time as to which the parties mutually agree) from the issuance of the written notice of deficiencies to submit a modified plan or report to EPD. Should Respondent take exception to all or part of EPD's notice of deficiency, Respondent shall, within fifteen (15) days (or such other amount of time as to which the parties mutually agree) after issuance of the written notice of deficiencies, submit to EPD a written statement of the grounds for the exception. Representatives of EPD and Respondent may confer by telephone or in person in an attempt to resolve any disagreement. If agreement is reached, the resolution shall be written and signed by representatives of each party. If agreement cannot be reached within thirty (30) days from the date of EPD's issuance of the notice of deficiency; Respondent shall modify the plan or report as required by EPD and submit such modified plan or report in accordance with a schedule to be specified by EPD.
16. If Respondent fails to comply with any part of this Consent Order, further enforcement action may be taken against it, including a civil penalty assessed against Respondent for up to \$25,000 per day/per violation.
17. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further action to comply with the Georgia Hazardous Waste Management

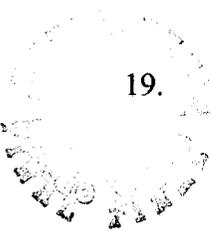


Act or other applicable State or Federal laws or any rules and regulations promulgated pursuant thereto.

If Respondent does not complete any of the actions mandated by this Consent Order (or any approved plan incorporated into the Consent Order pursuant to Condition 14 above) within the time period specified in this Consent Order or the respective approved plan, Respondent shall have the burden of proving to EPD that it was rendered unable, wholly or in part, by Force Majeure to carry out its obligations. The term "Force Majeure" as used herein shall include the following:

- (1) Act of God, act of war, blockade, or public riot;
- (2) unpreventable acts of nature (fire, storm, or flood);
- (3) strike, lockout, or other labor or industrial disturbance not caused by an unfair labor practice by Respondent;
- (4) failure to secure timely and necessary federal, state, or local approvals or permits, provided such approvals or permits have been timely and diligently sought;
- (5) any other delay caused by unforeseeable circumstances beyond the reasonable control of Respondent, as determined by the Director in his sole discretion.

Respondent shall notify EPD orally within seventy-two (72) hours (or at the beginning of the next business day if expiration of the 72 hours occurs on a weekend or holiday) of any circumstances that may reasonably be expected to cause a schedule or performance delay of more than ten (10) and less than twenty (20) working days; any circumstances that may reasonably be expected to cause a schedule or performance delay of twenty (20) working days or more shall be noticed to EPD in writing. Said written notice shall advise EPD of the anticipated length (if known) and cause of the delay. Respondent and EPD agree to negotiate informally and in good faith to schedule extensions resulting from such delays. If agreement is reached as to the length of such extension(s), the resolution shall be written and signed by representatives of each party. If agreement cannot be reached, Respondent shall comply with the Director's determination as to the appropriate extension, which shall be communicated to Respondent in writing. In the event that any circumstances or series of circumstances may reasonably be expected to cause a schedule or performance delay over thirty (30) calendar days, Respondent and EPD shall meet formally to assess the overall schedule impact and attempt to mitigate same. Any delay or series of delays due to force majeure events which may reasonably be expected to cause a schedule or performance delay exceeding sixty (60) calendar days may constitute cause for the Director to terminate this Consent Order. Respondent shall exercise due diligence and adopt all reasonable measures to avoid or minimize any delay.



19. This Consent Order shall terminate upon completion of all actions required hereby, notice in writing to EPD of such completion, and concurrence by EPD that all required actions have been completed in compliance with this Consent Order. Completion of all actions required by this Consent Order shall constitute a full settlement of the alleged violations set forth in this Consent Order.

For the purpose of enforcement under applicable State law, this Consent Order shall be construed as, and have the same force as, a Final Order of the Director pursuant to the Georgia Hazardous Waste Management Act, O.C.G.A. § 12-8-60 et seq., as amended. By agreement of the parties, this Consent Order shall be considered final and effective immediately and shall not be appealable, and Respondent does hereby waive any hearing on the terms and conditions of same. This Consent Order shall not constitute any finding, determination or adjudication of liability nor any finding, determination or adjudication of a violation of any State or Federal laws, rules, standards or requirements. By entering into this Consent Order, Respondent does not admit any fact, conclusion of law or allegation contained in this Consent Order. Respondent does not admit liability for any purpose or any allegation of violation of any State or Federal laws, rules, standards or requirements.

It is so ORDERED, CONSENTED, and AGREED to this \_\_\_\_ day of \_\_\_\_\_, 2000.

GEORGIA ENVIRONMENTAL PROTECTION DIVISION

BY: \_\_\_\_\_  
 Harold F. Reheis  
 Director

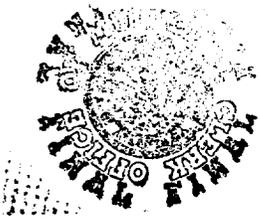
Northwest Airlines, Inc.

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_



RCS# 2689  
3/05/01  
6:36 PM

Atlanta City Council

Regular Session

CONSENT

Pages: 1 thru. 13

ADOPT

YEAS: 12  
NAYS: 0  
ABSTENTIONS: 0  
NOT VOTING: 3  
EXCUSED: 0  
ABSENT 1

SEE ATTACHED LISTING OF  
ITEMS ADOPTED/ADVERSED  
ON CONSENT AGENDA

NV McCarty	Y Dorsey	Y Moore	Y Thomas	ITEM (S) REMOVED FROM <u>CONSENT AGENDA</u> 01-O-0240 01-R-0307 01-R-0346
Y Starnes	Y Woolard	NV Martin	Y Emmons	
Y Bond	Y Morris	B Maddox	Y Alexander	
Y Winslow	Y Muller	Y Boazman	NV Pitts	

CONSENT

**ITEMS ADOPTED ON CONSENT  
AGENDA**

**ITEMS ADVERSED  
ON CONSENT AGENDA**

1. 01-O-0179
2. 01-O-0348
3. 00-O-1657
4. 01-O-0355
5. 01-O-0152
6. 01-R-0190
7. 01-R-0349
8. 01-R-0351
9. 01-R-0290
10. 01-R-0304
11. 01-R-0305
12. 01-R-0369
13. 01-R-0370
14. 01-R-0297
15. 01-R-0300
16. 01-R-0298
17. 01-R-0299
18. 01-R-0251
19. 01-R-0252
20. 01-R-0253
21. 01-R-0254
22. 01-R-0255
23. 01-R-0256
24. 01-R-0257
25. 01-R-0258
26. 01-R-0259
27. 01-R-0260
28. 01-R-0261
29. 01-R-0262
30. 01-R-0263
31. 01-R-0264
32. 01-R-0265
33. 01-R-0266
34. 01-R-0267
35. 01-R-0268
36. 01-R-0269
37. 01-R-0291
38. 01-R-0292

39. 01-R-0270
  40. 01-R-0271
  41. 01-R-0272
  42. 01-R-0273
  43. 01-R-0274
  44. 01-R-0275
  45. 01-R-0276
  46. 01-R-0277
  47. 01-R-0278
  48. 01-R-0279
  49. 01-R-0280
  50. 01-R-0281
  51. 01-R-0282
  52. 01-R-0283
  53. 01-R-0284
  54. 01-R-0285
  55. 01-R-0286
  56. 01-R-0287
  57. 01-R-0288
  58. 01-R-0289
-

01-2-0298

(Do Not Write Above This Line)

A RESOLUTION

BY TRANSPORTATION COMMITTEE

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH NORTHWEST AIRLINES, GIVING CONSENT AND APPROVAL FOR NORTHWEST AIRLINES TO ENTER INTO A CONSENT ORDER WITH THE GEORGIA ENVIRONMENTAL PROTECTION DIVISION, COVERING CLOSURE AND CARE OF A CONTAMINATED AREA WITHIN THE LEASED PREMISES OF NORTHWEST AIRLINES AIR LINES' AIRCRAFT MAINTENANCE BASE ("AMB") AT HARTSFIELD ATLANTA INTERNATIONAL AIRPORT, PURSUANT TO 40 CFR 264.310; AND FOR OTHER PURPOSES ADOPTED BY

MAR 05 2001

COUNCIL

- CONSENT REFER
REGULAR REPORT REFER
ADVERTISE & REFER
1st ADOPT 2nd READ & REFER
PERSONAL PAPER REFER

Date Referred

Referred To:

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee
Date
Chair
Referred to

Committee: Transportation
Date: 2-28-01
Chair: [Signature]
Action: Fav, Adv, Hold (see rev. side)
Members: [List of names]

Committee
Date
Chair
Action: Fav, Adv, Hold (see rev. side)
Other:
Members
Refer To

FINAL COUNCIL ACTION
2nd
1st & 2nd
3rd
Consent
V Vote
RC Vote

CERTIFIED

CERTIFIED
MAR 05 2001
ATLANTA CITY COUNCIL PRESIDENT
[Signature]

CERTIFIED
MAR 05 2001
Ronda Douglas Johnson
MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED
MAR 1 2001
[Signature]