

CRAVATH, SWAINE & MOORE CORPORATION NO. [REDACTED] Filed & Recorded

ONE CHASE MANHATTAN PLAZA JUN 30 1978-10 05 AM
NEW YORK, N.Y. 10005

MAURICE T. MOORE
BRUCE BROMLEY
ALBERT R. CONNELLY
FRANK H. DETWEILER
GEORGE G. TYLER
WILLIAM G. MARSHALL
RALPH L. MCAFEE
ROYALL VICTOR
ALLEN H. MERRILL
HENRY W. DE KOSMIAN
ALLEN F. MAULSBY
STEWART R. BROSS, JR.
HENRY P. RIORDAN
JOHN R. HUPPER
SAMUEL C. BUTLER
WILLIAM J. SCHRENK, JR.
BENJAMIN F. CRANE
FRANCIS F. RANDOLPH, JR.
JOHN F. HUNT
GEORGE J. GILLESPIE, III
RICHARD S. SIMMONS
WAYNE E. CHAPMAN
THOMAS D. BARR
MELVIN L. BEDRICK

GEORGE T. LOWY
ROBERT ROSENMAN
JAMES H. DUFFY
ALAN J. HRUSKA
JOHN E. YOUNG
JAMES M. EDWARDS
DAVID G. ORMSBY
DAVID L. SCHWARTZ
RICHARD J. HIEGEL
FREDERICK A. O. SCHWARTZ
CHRISTINE BERG
ROBERT S. RIFKIND
DAVID O. BROWNWOOD
PAUL M. DODYK
RICHARD M. ALLAN
THOMAS R. BROME
ROBERT D. JOFFE
ROBERT F. MANNING
ALLEN FINKELSON
RONALD S. ROLFE
JOSEPH R. SAHID
PAUL C. SAUNDERS
MARTIN L. SENZEL

212 HANOVER 2-3000

IN [REDACTED] TELEX: 620976

[REDACTED] TELEX: 710-581-0338

[REDACTED] TELEX: 125547

RECORDATION NO. [REDACTED] Filed & Recorded

JUN 30 1978-10 05 AM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. [REDACTED] Filed & Recorded

JUN 30 1978-10 05 AM

INTERSTATE COMMERCE COMMISSION June 30, 1978

COUNSEL
ROSSELL L. GILPATRICK
CARLYLE E. MAW

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9496-1

JUN 30 1978-10 05 AM

INTERSTATE COMMERCE COMMISSION

R. BRESLIN, JR.
GEORGE B. TURNER
JOHN H. MORSE
ROBERT R. MEDINA, JR.
CHARLES R. LINTON

PLACE DE LA CONCORDE
93008 PARIS, FRANCE
TELEPHONE: 265-81-54
TELEX: 2909330

100 MORTON STREET
LONDON, EC2N 2BR, ENGLAND
TELEPHONE 01-608-1421
TELEX: 6814901

CABLE ADDRESSES
CRAVATH, N. Y.
CRAVATH, PARIS
CRAVATH, LONDON E.C. 2

Dow Chemical Company
Lease Financing Dated as of May 15, 1978
8-7/8% Conditional Sale Indebtedness Due July 3, 1997
New England Merchants Leasing Corporation D, Owner

Dear Mr. Oswald:

Pursuant to Section 20c of the Interstate Commerce Act and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of Dow Chemical Company for filing and recordation counterparts of the following documents:

1(a) Conditional Sale Agreement dated as of May 15, 1978, between The Connecticut Bank and Trust Company, as Trustee, and each of Great American Transportation Corporation and Richmond Tank Car Company;

(b) Agreement and Assignment dated as of May 15, 1978, between Mercantile-Safe Deposit and Trust Company and each of Great American Transportation Corporation and Richmond Tank Car Company;

2(a) Lease of Railroad Equipment dated as of May 15, 1978, between Dow Chemical Company and The Connecticut Bank and Trust Company, as Trustee;

(b) Assignment of Lease and Agreement dated as of May 15, 1978, between The Connecticut Bank and Trust

W.C. Hughes
Conductor

RECEIVED
JUN 30 9 57 AM '78
I.C.C. OPERATION BR.

151A-21
JUN 30 1978
Date
Fee \$ 1.00

Company, as Trustee, and Mercantile-Safe Deposit and Trust Company, as Agent.

The names and addresses of the parties to the aforementioned Agreements are as follows:

(1) Vendor-Assignee-Agent:

Mercantile-Safe Deposit and
Trust Company,
Two Hopkins Plaza,
Baltimore, Maryland 21203.

(2) Trustee-Owner-Trustee-Lessor-Vendee:

The Connecticut Bank and Trust Company,
One Constitution Plaza,
Hartford, Connecticut 06115.

(3) Builder-Vendor:

Richmond Tank Car Company,
1700 West Loop South (Suite 1500),
Houston, Texas 77027.

General American Transportation Corporation,
120 South Riverside Plaza,
Chicago, Illinois 60606.

(4) Lessee:

Dow Chemical Company,
2020 Dow Center,
Midland, Michigan 48640.

Please file and record the documents referred to in this letter and cross-index them under the names of the Vendor-Assignee-Agent, the Trustee-Owner-Trustee-Lessor-Vendee, the Builder-Vendor and the Lessee.

The equipment covered by the aforementioned documents consists of the following:

Seven General Service Tank Cars (20,000 gal. nom. cap.) bearing identifying numbers DOWX 3764-3766, 3768, 3769, 3772, 3773, 3775-3786, 3789-3797, 3802, 3804, 3806, 3807, 3810, 3811; Seven General Service Tank Cars (23,000 gal. nom. cap.) bearing identifying numbers DOWX

3895, 3915, 3917, 3937, 3939, 3941, 3945-3949, 3951, 3953-3955, 3957-3961, 3963-3965, 3967-3971, 3973-3987; nine General Service Tank Cars (30,000 gal. nom. cap.) bearing identifying numbers DOWX 4275-4299; twenty General Service Tank Cars (20,000 gal. nom. cap.) bearing identifying numbers DOWX 3838-3887; and six Propylene Oxide Tank Cars (25,000 gal. nom. cap.) bearing identifying numbers DOWX 4483-4503 and also bearing the legend "Ownership subject to a Security Agreement filed under the Interstate Commerce Act, Section 20c".

There is also enclosed a check for \$100 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agreement and Assignment (together constituting one document) and the Lease of Railroad Equipment and related Assignment of Lease and Agreement (together constituting one document).

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to retain one copy of the instruments for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,

Laurance V. Goodrich

Laurance V. Goodrich

As Agent for Dow Chemical Company

Robert L. Oswald, Esq., Secretary,
Interstate Commerce Commission,
Washington, D. C. 20423

Encls.

BY HAND

91496 ← A
RECORDATION NO. Filed & Recorded

JUN 30 1978 10 25 AM

INTRA-STATE COMMERCE COMMISSION

[CS&M Ref: 2043-838A]

AGREEMENT AND ASSIGNMENT

Dated as of May 15, 1978

between
each of

GENERAL AMERICAN TRANSPORTATION CORPORATION,

and

RICHMOND TANK CAR COMPANY

and

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,

as Agent.

AGREEMENT AND ASSIGNMENT dated as of May 15, 1978, between GENERAL AMERICAN TRANSPORTATION CORPORATION and RICHMOND TANK CAR COMPANY (hereinafter called the Builders) and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, acting as Agent under a Participation Agreement dated as of the date hereof (hereinafter called the Assignee).

WHEREAS the Builders and THE CONNECTICUT BANK AND TRUST COMPANY, as Trustee (hereinafter called the Vendee), under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement), with New England Merchants Leasing Corporation D, have entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Conditional Sale Agreement) covering the construction, sale and delivery, on the conditions therein set forth, by the Builders and the purchase by the Vendee of the railroad equipment described in Annex B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment); and

WHEREAS the Vendee and DOW CHEMICAL COMPANY (hereinafter called the Lessee) have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease) providing for the lease to the Lessee of the Equipment;

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: that in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to each Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. Each Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of such Builder in and to each unit of the Equipment manufactured by it when and as severally delivered to and accepted by the Vendee, subject to payment by the Assignee to such Builder of the amount required to be paid pursuant to Section 4 hereof and of the amounts due to such Builder under the Conditional Sale Agreement;

(b) all the right, title and interest of such Builder in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in subparagraph (a) of the third paragraph of Article 4 thereof and reimbursement for taxes paid or incurred by such Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to such Builder under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this paragraph, all such Builder's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse hereunder, however, against such Builder for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement, provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of such Builder to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements referred to in Article 13 of the Conditional Sale Agreement or relieve the Vendee from its obligations to either Builder contained in Articles 2, 3, 4, 6 and 13 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Agreement, or any subsequent assignment pursuant to the provisions of Article 14 of the Conditional Sale Agreement, all obligations of each Builder to the Vendee with respect to the Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against the appropriate Builder. In furtherance of the foregoing assignment and transfer, each Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for such Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee with the

terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. Each Builder agrees that it shall construct the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Vendee in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by such Builder. Each Builder further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of the Equipment manufactured by it under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease; and each Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by such Builder under the Conditional Sale Agreement; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Vendee thereunder. Neither Builder will deliver any of the Equipment to the Vendee under the Conditional Sale Agreement until the Conditional Sale Agreement and the Lease have been filed and recorded in accordance with Section 20c of the Interstate Commerce Act (each Builder and its counsel being entitled to rely on advice from special counsel for the Assignee that such filing and recordation have occurred).

SECTION 3. Each Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment manufactured by it or to enforce any provision of the Conditional Sale Agreement, such Builder will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee or the Lessee arising out of a breach by such Builder of any obligation with respect to such Equipment or the manufacture, construc-

tion, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by such Builder. Each Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 14 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee or the Lessee in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the appropriate Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving such Builder the right, at such Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Vendee or the Lessee and not manufactured by either Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by either Builder, each Builder agrees, except as otherwise specifically provided in Annex A to the Conditional Sale Agreement, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment manufactured by such Builder of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the appropriate Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give such Builder the right, at such Builder's expense, to compromise, settle or defend against such claim. Each Builder agrees that any amounts payable to it by the Vendee or the Lessee with respect to the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the appropriate Builder an amount equal to the portion of the Purchase Price thereof which, under the terms of said Article 4, is payable in instalments, provided that there shall have been delivered to the Assignee on or prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill or bills of sale from the Builder of the units being settled for to the Assignee transferring to the Assignee the security interest of such Builder in such units, warranting to the Assignee and to the Vendee that, at the time of delivery of such units under the Conditional Sale Agreement, such Builder had legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease, and covenanting to defend the title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units by such Builder under the Conditional Sale Agreement;

(b) a Certificate or Certificates of Acceptance with respect to the units of the Equipment in such Group as contemplated by Article 3 of the Conditional Sale Agreement and § 2 of the Lease;

(c) an invoice of the Builder of the units being settled for for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Vendee and the Lessee as to their approval thereof;

(d) an opinion of counsel for the Builder of the units being settled for, dated as of such Closing Date, addressed to the Assignee and the Vendee, to the effect that the aforesaid bill or bills of sale have been duly authorized, executed and delivered by such Builder and, assuming that the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the

Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act, are valid and effective to vest in the Assignee the security interest of such Builder in the units of the Equipment in such Group, free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement and the rights of the Lessee under the Lease) arising from, through or under such Builder; and

(e) a receipt from the Builder of the units being settled for for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to such Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

The obligation of the Assignee hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon payment by the Vendee of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 4 of the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the appropriate Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Vendee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 14 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. Each Builder hereby:

(a) represents and warrants to the Assignee, the Vendee and their successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Vendee,

the Conditional Sale Agreement is, in so far as such Builder is concerned, a legal, valid and existing agreement binding upon such Builder in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do all such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee by such Builder or intended so to be; and

(c) agrees that, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of such Builder therein or in the Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

SECTION 8. The rights and obligations of the Builders under this Assignment are several in accordance with their interests and not joint. Accordingly, whenever this Assignment, by use of such designation as "each Builder", "such Builder", or other similar term, confers a right or imposes an obligation upon any Builder or its successor, such right or obligation shall be construed to accrue to or to be enforceable against only the specific Builder giving rise to such right or obligation and its successors as herein provided.

SECTION 9. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

GENERAL AMERICAN TRANSPORTATION CORPORATION,

by



Chairman of the Board

[Corporate Seal]

Attest:


Assistant Secretary

RICHMOND TANK CAR COMPANY,

by

Vice President

[Corporate Seal]

Attest:

Secretary

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent,

by

Assistant Vice President

[Corporate Seal]

Attest:

Corporate Trust Officer

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this *28th* day of *June* 1978, before me personally appeared *C. E. COYL*, to me personally known, who being by me duly sworn, says that he is the Chairman of the Board of General American Transportation Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Paula L. Daly

Notary Public

[Notarial Seal]

My Commission expires *April 29, 1980*

STATE OF TEXAS,)
) ss.:
COUNTY OF HARRIS,)

On this _____ day of _____ 1978, before me personally appeared _____, to me personally known, who being by me duly sworn, says that he is a Vice President of Richmond Tank Car Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires _____

STATE OF MARYLAND,)
) ss.:
CITY OF BALTIMORE,)

On this day of 1978, before me personally appeared , to me personally known, who being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of May 15, 1978.

THE CONNECTICUT BANK AND TRUST
COMPANY, As Owner Trustee,

by

Authorized Officer