

# Southern Pacific Transportation Company

CHARLES W. BURKETT  
JOHN J. CORRIGAN  
THORMUND A. MILLER  
GENERAL SOLICITORS

Southern Pacific Building • One Market Plaza  
San Francisco, California 94105  
(415) 362-1212

ARNOLD I. WEBER  
SENIOR GENERAL ATTORNEY

WALDRON A. GREGORY  
JOHN MACDONALD SMITH  
RICHARD J. LATHROP  
W. HARNEY WILSON  
JAMES J. TRABUCCO  
ROBERT W. TAGGART  
LARRY W. TELFORD  
ROBERT S. BOGASON  
DOUGLAS E. STEPHENSON  
GENERAL ATTORNEYS

7-229A071  
Date AUG 26 1977

ALAN C. FURTH  
EXECUTIVE VICE PRESIDENT-LAW

HERBERT A. WATERMAN  
GENERAL COUNSEL

cc Washington, D. C.

August 25, 1977

RECORDATION NO. 8937-A Filed & Recorded

AUG 26 1977 - 2 15 PM

INTERSTATE COMMERCE COMMISSION

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

**SUBJECT:** Recording Pursuant to the Provisions of Section 20c of the Interstate Commerce Act --- Southern Pacific Transportation Company Conditional Sale Agreement dated as of April 1, 1976

Dear Sir:

Enclosed for recording with the Interstate Commerce Commission pursuant to Section 20c are executed counterparts of Agreement and Assignment dated as of April 1, 1976, between FMC Corporation and First Pennsylvania Bank N.A., as Agent. This document is being recorded in connection with the Conditional Sale Agreement dated as of April 1, 1976, between FMC Corporation and Southern Pacific Transportation Company, executed counterparts of which were recorded with your Commission at 2:55 p.m. on August 16, 1977, and assigned Recordation No. 8937.

The names and addresses of the parties and the description of the equipment covered by the above transaction are as follows:

Conditional Sale Agreement:

(A) Vendee:

Southern Pacific Transportation Company  
Southern Pacific Building  
One Market Plaza  
San Francisco, California 94105

RECEIVED

FREDERICK E. FUHRMAN  
HAROLD S. LENTZ  
PAUL V. LUFZ  
ASSISTANT GENERAL ATTORNEYS

I.C.C. FEE OPERATION BR. I.C.C. I.C.C. BR.

RICHARD S. KOFF  
MICHAEL A. SMITH  
RAMON J. POITEVIN  
LOUIS P. WARCHOT  
DONALD S. BRITT  
JAMES M. TOBIN  
WILLIAM F. ADAMS  
RICHARD D. SILVESTER  
DAVID W. LONG  
GARY O. ALEXANDER  
ATTORNEYS

*Charles W. Burkett  
Paul J. Goffman*

(B) Vendor:

FMC Corporation  
4700 Northwest Front Avenue  
Portland, Oregon 97210

Agreement and Assignment:

(A) Assignee:

First Pennsylvania Bank N.A.  
Fifteenth & Chestnut Streets  
Philadelphia, Pennsylvania 19101

(B) Assignor:

FMC Corporation  
4700 Northwest Front Avenue  
Portland, Oregon 97210

Description of the Equipment Covered by the Conditional  
Sale Agreement and Agreement and Assignment:

- 8 100-ton 40'6" box cars; AAR Mechanical Designation -  
XL; FMC Corporation, builder; lettered SP and numbered  
605550-605557, both inclusive.

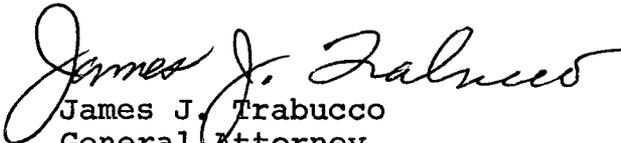
Please file and record the Agreement and Assignment and cross-index it under the names of the Vendor, Vendee, Assignor and the Assignee. A check made payable to your Commission in the sum of \$10 is enclosed for payment of the recording fee for the Agreement and Assignment.

When recording of the foregoing document has been completed, will you kindly endorse, with the pertinent recording information, all executed counterparts thereof, not required for filing, which are presented to you by our representative, and return the same to him. Our representative will also present three (3) copies of this transmittal letter, which you are requested to stamp with the

Page 3 - Mr. R. L. Oswald

pertinent recording numbers and other recording data, and return  
the same to him.

Very truly yours,

  
James J. Trabucco  
General Attorney

**Interstate Commerce Commission**  
Washington, D.C. 20423

8/26/77

OFFICE OF THE SECRETARY

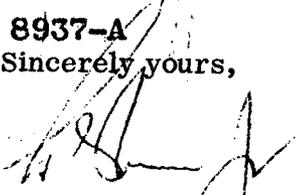
James J. Trabucco, Gen Atty.  
Southern Pacific Transp. Co.  
Southern Pacific Building  
One Market Plaza  
San Francisco, Calif. 94105

Dear

**Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on **8/26/77** at **2:15pm** and assigned recordation number(s)

**8937-A**  
Sincerely yours,

  
H.G. Homme, Jr.  
Acting Secretary

Enclosure(s)

SE-30-T  
(6/77)

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RECORDATION NO. 8937 Filed & Recorded

AUG 26 1977 -2 15 PM

INTRA-STATE COMMERCE COMMISSION

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AGREEMENT AND ASSIGNMENT

Dated as of April 1, 1976

Between

FMC CORPORATION

and

FIRST PENNSYLVANIA BANK, N.A.,  
as Agent

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AGREEMENT AND ASSIGNMENT dated as of April 1, 1976, between FMC CORPORATION, a Delaware corporation (hereinafter called the Builder) and FIRST PENNSYLVANIA BANK N.A., a national banking association acting as Agent under a Finance Agreement dated as of the date hereof (said Finance Agreement being hereinafter called the Finance Agreement and said First Pennsylvania Bank N.A., in its capacity as such Agent being hereinafter called the Assignee).

WHEREAS the Builder and SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation (hereinafter called the Railroad), 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 Builder and the purchase by the Railroad of the new standard gauge railroad rolling-stock equipment described in Schedule B to the Conditional Sale Agreement (said equipment being hereinafter called 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 the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties do hereby agree as follows:

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

(a) all the right, title and interest of the Builder in and to each unit of the Equipment when and as delivered to and accepted by the Railroad, subject to payment by the Assignee to the Builder of the amount required to be paid under Section 4 hereof;

(b) all the right, title and interest of the 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 the third paragraph of Article 3

thereof and in subparagraph (a) of the third paragraph of Article 4 thereof and the last paragraph of Article 15 thereof and reimbursements for taxes paid or incurred by the Builder as provided in Article 5 thereof), and in and to any and all amounts which may be or become due or owing by the Railroad to the Builder under the Conditional Sale Agreement in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and premium, if any, and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded; and

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

without any recourse against the Builder for or on account of the failure of the Railroad 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 liability of the Builder to construct and deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its obligations contained or referred to in Article 14 of the Conditional Sale Agreement, or relieve the Railroad from its obligations to the Builder contained or referred to in Articles 2, 3, 4, 5, 13, 14 and 15 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of the Builder to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the 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 the 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 to ask, demand, sue for and enforce compliance by the Railroad 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. The 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 Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of each unit of the Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement); and the Builder further agrees that it will defend the title to each unit of the Equipment against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the Conditional Sale Agreement; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder. The Builder will not deliver any of the Equipment to the Railroad under the Conditional Sale Agreement until the filings and recordations referred to in Article 19 of the Conditional Sale Agreement have been effected (the Builder and its counsel being entitled to rely on advice from special counsel for the Assignee that such filings and recordations have been effected).

SECTION 3. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or premium, if any, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Builder will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, 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 Railroad by the Builder. The 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 15 of

the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad 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 Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Builder the right, at the 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 Railroad and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by the Builder, the Builder agrees 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 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 Builder of any such liability or claim actually known to the Assignee and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim.

The Builder agrees that any amounts payable to it by the Railroad 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 Builder an amount equal to the portion of the Purchase Price of the Equipment for which settlement is to be made on such Closing Date which, under the terms of said Article 4, is payable in instalments, provided that there shall have been delivered to the Assignee,

as provided in Article 15 of the Conditional Sale Agreement, at least five business days (as defined in said Article 4) 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 of sale from the Builder to the Assignee transferring to the Assignee security title to the units of the Equipment in such Group, warranting to the Assignee and to the Railroad that at the time of delivery of such units under the Conditional Sale Agreement the Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement), and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the Conditional Sale Agreement;

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

(c) an invoice of the Builder for the units of Equipment in such Group and any supplemental invoice (as contemplated by the last sentence of the third paragraph of said Article 4) separately stating that portion of the Purchase Price applicable to the automobile rack superstructures affixed to the units in such Group and accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices of such units;

(d) an opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and the Investors named in the Finance Agreement, dated as of such Closing Date, stating that (i) the Finance Agreement, assuming due authorization, execution and delivery thereof by such Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Railroad and the Builder and is a legal, valid and binding instrument enforceable against the Railroad and the Builder in accordance with its terms, (iii) this Assignment has been

duly authorized, executed and delivered by the Builder and the Assignee and is a legal, valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by the Builder under this Assignment, (v) security title to the units of the Equipment in such Group is validly vested in the Assignee and title to such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, was free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement), (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the Conditional Sale Agreement or this Assignment, or if any such authority is necessary, it has been obtained, (vii) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia and (viii) registration of the Conditional Sale Agreement and this Assignment or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee;

(e) an opinion of counsel for the Railroad, dated as of such Closing Date, to the effect set forth in clauses (i), (ii), (vi) and (vii) of subparagraph (d) above and stating that (A) the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted and (B) assuming due authorization, execution and delivery thereof by the parties thereto, this Assignment is a legal, valid and binding instrument;

(f) an opinion of counsel for the Builder, dated as of such Closing Date, to the effect set forth in clauses (iv) and (v) of subparagraph (d) above and stating that (i) the Builder is a duly organized and

existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms and (iii) this Assignment has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder; and

(g) a receipt from the Builder 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 the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Railroad.

In giving the opinions specified in subparagraphs (d), (e) and (f) of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. Counsel for each of the parties may assume due authorization, execution and delivery of any document by the other parties in giving its opinion; in giving the opinions specified in subparagraphs (d) and (e) of this Section 4, counsel may rely on the opinion of counsel for the Builder as to title to the Equipment at the time of delivery thereof under the Conditional Sale Agreement; and in giving the opinion specified in said subparagraph (d), counsel may rely as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for the Builder or the opinion of counsel for the Railroad as to such matter.

The Assignee shall not be required to make payment for the Equipment assigned hereunder:

(i) on any Closing Date, unless the Assignee shall have on deposit on such Closing Date pursuant to the terms of the Finance Agreement sufficient funds available thereunder to make such payment; or

(ii) at any time after the commencement of any

proceedings specified in clause (c) or (d) of Article 16 of the Conditional Sale Agreement or if an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement could constitute an event of default, shall have occurred and be continuing under the Conditional Sale Agreement.

In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the 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, except that, if the Assignee shall not make payment in respect of a supplemental invoice for any Equipment after having made a payment in respect of a preliminary invoice for such Equipment, the Assignee shall retain all right, title and interest in and to such Equipment, but the Builder shall retain, as an unsecured obligation, the right to receive and collect from the Railroad the payment due under such supplemental invoice.

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 Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Assignee, its 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 Railroad, the Conditional Sale Agreement is a valid and existing agreement binding upon it and the Railroad in accordance with its terms and that, upon the execution and delivery of this Assignment, it is in force without amendment thereto;

(b) agrees that it will from time to time and at all times, 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 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 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 the 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 California; provided, however, that the parties shall be entitled to all the rights conferred as provided in Article 23 of the Conditional Sale Agreement.

SECTION 8. 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 this Assignment is dated for convenience as of the date first set forth above, 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 authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

FMC CORPORATION,

by

*Daniel C. Smith*

Vice President

[CORPORATE SEAL]

Attest:

*J. H. Hanson*  
ASSISTANT SECRETARY

FIRST PENNSYLVANIA BANK N.A.,  
as Agent,

by *A. P. Roman*  
Assistant Vice President

[CORPORATE SEAL]

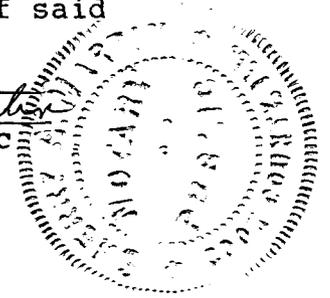
Attest:

*A. M. Sullivan*  
Assistant Secretary

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

On this <sup>12<sup>th</sup></sup> day of August 1977, before me personally appeared Daniel C Smith, to me personally known, who, being by me duly sworn, says that he is a Vice President of FMC 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.

Sherry A. Martin  
Notary Public



[NOTARIAL SEAL]

My Commission expires: **My Commission Expires December 10, 1980**

COMMONWEALTH OF PENNSYLVANIA, )  
 ) ss.:  
COUNTY OF PHILADELPHIA, )

On this *18<sup>th</sup>* day of August 1977, before me personally appeared D. P. Dorrian, to me personally known, who, being by me duly sworn, says that he is an Asst. Vice President of FIRST PENNSYLVANIA BANK N.A., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and 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.

[NOTARIAL SEAL]  
My Commission expires:

*Elizabeth J. Sabedra*  
Notary Public  
ELIZABETH J. SABEDRA  
Notary Public, State of Pa. Philadelphia, Co.  
My Commission Expires April 14, 1980

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

SOUTHERN PACIFIC TRANSPORTATION COMPANY hereby acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment as of April 1, 1976.

SOUTHERN PACIFIC TRANSPORTATION  
COMPANY,

by



Assistant Vice President and Assistant Treasurer