



SEABOARD COAST LINE RAILROAD COMPANY

Law Department
500 Water Street
Jacksonville, Florida 32202

Edward C. Tannen
Assistant General Attorney

13124

RECORDATION NO. Filed 1425

May 27, 1981

MAY 28 1981 - 2 50 PM

105890(2)

INTERSTATE COMMERCE COMMISSION

Honorable Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
Washington, D. C. 20423

NO. 1-145A130
MAY 28 1981
Date.....
Fee \$ 10.00 + 7.00 P

RECEIVED
MAY 28 2 45 PM '81
I.C.C.
FEE OPERATIONS

Dear Mrs. Mergenovich:

ICC Washington, D. C.

I am enclosing for filing and recordation under the provisions of 49 U.S.C. § 11303 executed counterparts No. 1 and 2 of an Equipment Lease Agreement dated as of May 15, 1981, described in detail below.

1. Names and addresses of the parties to the Equipment Lease Agreement
 - (a) Lessor - Bethlehem Steel Corporation,
Bethlehem, Pennsylvania 18016
 - (b) Lessee - Seaboard Coast Line Railroad
Company, 500 Water Street, Jacksonville,
Florida 32202
2. Description of equipment covered by Equipment Lease Agreement

Identifying marks:

"Ownership Subject to a Security Agreement
Filed with the Interstate Commerce Commission"

Countyparts
Ed Whitt

Honorable Agatha L. Mergenovich

May 27, 1981

105890(2)

<u>General Description</u>	<u>Type of Equipment</u>	<u>A.A.R.Mech. Design</u>	<u>Number</u>	<u>SCL Road Nos.</u>
Covered Gondola Cars	Rotary Dump	GTR	200	201200-201399, inclusive

3. Counterpart No. 2 of the above-mentioned document should be returned to the undersigned, 500 Water Street, Jacksonville, Florida 32202

I am enclosing this company's draft for \$50.00 covering the recordation fee.

Very truly yours,


Edward C. Tannen

13124

RECORDATION NO. _____ Filed 1981

MAY 28 1981 - 2 50 PM

INTERSTATE COMMERCE COMMISSION

RAILROAD EQUIPMENT LEASE

Between

BETHLEHEM STEEL CORPORATION

And

SEABOARD COAST LINE RAILROAD COMPANY

Dated as of May 15, 1981

AGREEMENT dated as of May 15, 1981 between BETHLEHEM STEEL CORPORATION, a Delaware corporation with a principal place of business at Bethlehem, Pennsylvania ("Lessor"), and SEABOARD COAST LINE RAILROAD COMPANY, a Virginia corporation with a place of business at 500 Water Street, Jacksonville, Florida ("Lessee").

W I T N E S S E T H:

1. Construction and Lease. The Lessor shall construct at its manufacturing plant at Johnstown, Pennsylvania, two hundred (200) 100-Ton Rotary Dump Covered Gondola Cars bearing Numbers SCL 201200 to 201399, inclusive, ("Cars") in accordance with the Lessor's proposal dated January 15, 1980, (Estimate #19237) the Lessor's Specification No. X-300-507, dated December 21, 1979, the Lessee's order letter, dated February 8, 1980, and any modifications thereof ("Specifications").

The Lessor hereby leases to the Lessee and the Lessee hereby leases from the Lessor each Car upon the terms and subject to the conditions hereinafter set forth, effective as to each Car for a period beginning with the delivery of such Car and ending at the earliest of (a) payment to the Lessor by or on behalf of the Lessee under a conditional sale agreement, equipment trust agreement or other equipment financing agreement, (b) purchase by or on behalf of an assignee of the Lessor or Lessee or (c) purchase by the Lessee pursuant to Articles 5 or 14 hereof.

Such termination may be confirmed by an instrument executed by the Lessor and the Lessee.

For such Lease the Lessee agrees to pay the sum of One Dollar (\$1.00) upon the execution and delivery of this Agreement.

2. Delivery. The Lessor shall deliver the Cars to the Lessee in groups f.o.b. Johnstown, Pennsylvania, beginning on or about May 20, 1981.

Upon delivery of each Car by the Lessor, the Lessee shall assume the risk of loss with respect to it.

The Lessee shall cause each Car to be inspected by its agent at Johnstown, Pennsylvania, at the time it is tendered for delivery. If the Car is in good order and conforms to the Specifications, to all applicable Interstate Commerce Commission requirements and to all standards of the Association of American Railroads reasonably interpreted as applying to the Cars, then such agent shall execute and deliver to the Lessor a certificate or certificates of acceptance ("Certificate of Acceptance") in the form attached hereto. The Certificate of Acceptance shall be conclusive evidence that the Car named therein has been delivered to and accepted by the Lessee in accordance with this Agreement; provided, however, that the Lessor shall not thereby be relieved of its warranties set forth in Article 7 hereof. Prior to delivery, the Lessee shall notify the Lessor of the person authorized to execute and deliver on its behalf the Certificates of Acceptance.

3. Title; Car Numbers. The Lessor shall retain legal title to the Cars notwithstanding the delivery, possession and use thereof by the Lessee.

During the term of this Agreement, the Lessee shall keep the Cars marked with their identifying numbers. No other number shall be placed on a Car until the parties have executed an amendment to this Agreement and filed such amendment in all places in which this Agreement has been filed pursuant to Article 13 hereof.

4. Maintenance and Repair. During the term of this Agreement, the Lessee shall maintain the Cars in good order and at its cost. The Lessor may inspect the cars at any reasonable time and supervise their maintenance but it shall be under no obligation to do so. The Lessee shall not change the design, construction or specifications of any Car or part thereof without the prior approval of the Lessor.

5. Loss or Destruction. In the event of loss or destruction of, or irreparable damage to, any Car from any cause during the term of this Agreement, the Lessee shall promptly and fully inform the Lessor about such event, and shall promptly pay to the Lessor a sum equal to the Purchase Price of such Car, as defined in Article 14 hereof. Upon such payment, title to such Car shall pass to the Lessee.

6. Taxes; Compliance with Laws, Rules and Regulations.

The Lessee shall promptly pay all taxes (other than income taxes imposed upon the Lessor), fees and assessments on, or in respect of, the Cars (including any which may be imposed upon or in respect of the Cars by reason of or in connection with the Lessee's possession or use of the Cars under this Agreement), shall not encumber the title to the Cars and shall maintain, use and operate the Cars in compliance with all applicable laws, rules and regulations. If the Lessor pays any such tax, fee or assessment, the Lessee shall on demand pay the Lessor the amount thereof plus interest thereon at the prime rate per annum then charged by Morgan Guaranty Trust Company of New York.

7. Lessor's Warranty of Workmanship and Material.

(a) The Lessor warrants to the Lessee that each Car will comply on the date of its delivery with the Standards of the Association of American Railroads and with all governmental regulations and requirements reasonably interpreted as applying to such Car.

(b) The Lessor warrants to the Lessee that each Car will comply on the date of its delivery with the Specifications and be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Lessee and not manufactured by the Lessor) and workmanship and design (except as to designs specified by the Lessee and not developed or purported to be developed by the Lessor) under normal use and service; provided, however, that the Lessor's obligations

under this Article 7(b) with respect to any Car shall be limited to making good at its manufacturing plant any part or parts of such Car which shall, within one year after the delivery of such Car, be returned to the Lessor with transportation charges prepaid and which the Lessor's examination shall disclose to its satisfaction to have been defective. The Lessor shall not be liable for indirect or consequential damage resulting from defects in material, workmanship or design.

(c) THE LESSOR'S WARRANTIES SET FORTH IN THIS ARTICLE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES BY THE LESSOR, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EXCEPT WITH RESPECT TO TITLE OF THE LESSOR TO THE CARS.

8. Prohibition Against Liens. The Lessee shall discharge all claims by any party, by, through or against the Lessee and its successors, substitutes or assigns, or any person, firm or corporation using a Car, which, if unpaid, might become an encumbrance upon the title to the Car; provided, that the Lessee need not pay or discharge any such claim which it is contesting in good faith and by appropriate legal proceedings in a reasonable manner and which has not encumbered such title.

9. Lessee's Indemnity. The Lessee shall indemnify and save harmless the Lessor, and its successors and assigns, from and against all losses, damages, injuries, claims and demands

regardless of the cause thereof, arising on account of its use or operation of the Cars.

10. Patent Indemnities. The Lessor, for itself and all successors to its manufacturing business, shall indemnify and save harmless the Lessee from and against all damages, costs, royalties and claims arising out of infringement of United States patents which may be alleged to cover the Cars, articles, or parts thereof, excepting those patents covering the manufacture, sale or use in said Cars, articles, or parts thereof, of designs, devices, parts, arrangements, specialties or equipment furnished or specified by the Lessee and as to such excepted patents the Lessee shall in like manner indemnify and save the Lessor and its successors harmless.

The Lessee shall give prompt notice in writing to the Lessor of the commencement of any action in respect of which the Lessor may be charged with liability hereunder, and the Lessor agrees to give prompt notice in writing to the Lessee of the commencement of any action in respect of which the Lessee may be charged with liability hereunder.

11. Assignment by the Lessor. Any of the rights, benefits and advantages of the Lessor under this Agreement may be assigned by the Lessor and reassigned by any assignee at any time and from time to time, provided, however, that no such assignment shall relieve the Lessor or any successor to its manufacturing business from the obligations to construct and deliver each Car in

accordance with the Specifications or from the warranties or indemnity contained in this Agreement or relieve the Lessee from its obligations under Articles 6, 9 and 10 hereof or any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment, either the Lessor or the assignee shall give written notice of such assignment to the Lessee, together with a counterpart or copy of it, stating the identity and post office address of the assignee. Such assignee shall by virtue of the assignment acquire all of the Lessor's right, title and interest, subject only to such reservations as may be contained in the assignment. After receipt of such notice, the Lessee shall make all payments under this Agreement, to the extent so assigned, to the assignee.

The rights of an assignee of the Lessor shall not be subject to any defense, set-off, counterclaim or recoupment arising out of any breach of this Agreement by the Lessor in respect of the manufacture, construction, delivery or warranty of the Cars, or in respect of any indemnity contained in this Agreement, nor subject to any defense, set-off, counterclaim or recoupment arising by reason of any other indebtedness or liability at any time owing to the Lessee by the Lessor. All such obligations shall remain enforceable by the Lessee, its successors and assigns, against the Lessor, its successors and assigns (other than assignees which have not assumed such obligations). The provisions of this paragraph may be relied upon by an assignee as a

continuing offer by the Lessee to waive as against such assignee all remedies which it might otherwise possess for the enforcement of the obligations of the Lessor, which offer shall be conclusively presumed for all purposes to be accepted by the assignee by payment to the Lessor of the consideration for such assignment.

12. Assignment by the Lessee. The Lessee shall not sell, assign, transfer or otherwise dispose of its rights under this Agreement nor transfer possession of any Car to any other firm, person or corporation without first obtaining the written consent of the Lessor.

13. Recording. Prior to delivery of the Cars, the Lessee shall, at its expense, file a signed counterpart of this Agreement with the Interstate Commerce Commission in accordance with 49 U.S.C. Section 11303 and wherever else required to protect the Lessor's title to the Cars.

14. Agreement of the Lessee to Purchase. The Lessee shall purchase on or before August 15, 1981 all Cars delivered and unpurchased as of that date.

The base purchase price of each Car ("Purchase Price") is set forth in the Specifications and is subject to increase or decrease in accordance therewith.

15. Default. Upon a default by the Lessee in its performance hereunder, this Agreement shall terminate and the Lessor may, without notice or demand, take or cause to be taken immediate possession of the Cars, and, at such time, all of the Lessee's rights in the Cars will terminate; provided, however, that such retaking shall not be a waiver by the Lessor of its right to receive from the Lessee the Purchase Price of the Cars or of any other rights or remedies conferred upon the Lessor by this Agreement or by law. The Lessor, at its option, may within a reasonable time after such retaking sell the Cars and, in such event, the Lessee shall pay any deficiency between the amount of such sales price and the Purchase Price plus the costs (including reasonable attorney's fees) incurred by the Lessor in retaking and selling the Cars. Such sale may be by public or private sale, all together or in groups, at any reasonable place and time and in accordance with such terms as the Lessor may obtain.

16. Payments by Lessee. All payments to the Lessor shall be made by the transfer of Federal Funds to the account of the Lessor at the Morgan Guaranty Trust Company of New York (Account Number 006-18-116).

17. Survival of Warranties and Indemnities. The obligations of Articles 7, 8, 9 and 10, hereof shall remain in force after termination of this Agreement.

18. Extension Not a Waiver. Any extension of time granted by the Lessor to the Lessee for the payment of any sum under this Agreement, or for the performance of any other obligation hereunder, shall not be a waiver of any rights of the Lessor.

19. Notice. Notice to the Lessee shall be given by delivery or mail to the Lessee at 500 Water Street, Jacksonville, Florida. Notice to Lessor shall be given by delivery or mail to the Manager of Sales, Railroad Products, Bethlehem Steel Corporation, Bethlehem, Pennsylvania 18016. Notice to any assignee shall be given by delivery or mail to such assignee at the address furnished in writing by it.

20. Use of Counterparts. This Agreement may be signed in several counterparts and each signed counterpart shall be deemed to be an original counterpart. The agreement of the parties shall be evidenced by any one original counterpart.

21. Article Headings. All article headings are inserted for convenience only and they shall not be used to construe or interpret this Agreement.

22. Modification. No variation or modification of this Agreement and no waiver of any of its provisions or conditions

shall be valid unless in writing and signed by the duly authorized officers of the Lessor and the Lessee.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized officers and sealed with their corporate seals.

BETHLEHEM STEEL CORPORATION,

By

Robert W. McCann
Vice President

ATTEST:

M. W. Orabel
Assistant Secretary

SEABOARD COAST LINE RAILROAD
COMPANY,

By

Alfred J. Seawell
SENIOR VICE PRESIDENT - FINANCE

ATTEST:

F. L. Hunderland Assistant Secretary
Attesting Officer

COMMONWEALTH OF PENNSYLVANIA)
) ss.
COUNTY OF LEHIGH)

On this 8th day of May, 1981, before me personally appeared, Robert M. McCaslin, to me personally known, who being by me duly sworn, says that he is a Vice President of Bethlehem Steel Corporation, that the seal 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.

My Commission Expires
July 17, 1982
City of Bethlehem
Lehigh County

J. H. Vary

STATE OF FLORIDA)
) ss.
COUNTY OF Duval)

On this 15th day of May, 1981, before me personally appeared, Alex J. Marshall, to me personally known, who being by me duly sworn, says that he is Asst. Vice Pres - Finance of Seaboard Coast Line Railroad Company, that the seal 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.

James L. Hughett
NOTARY PUBLIC, STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES AUG. 5, 1984

CERTIFICATE OF ACCEPTANCE

TO: BETHELHEM STEEL CORPORATION
Bethlehem, Pennsylvania 18016
Attention: Manager, Railroad Products Sales

I, a duly appointed inspector and authorized representative of Seaboard Coast Line Railroad Company ("Lessee"), for the purpose of the Railroad Equipment Lease dated as of May 15, 1981 between Bethlehem Steel Corporation and the Lessee, do hereby certify that I have inspected, received, approved and accepted delivery of, on behalf of the Lessee under said Agreement the following units of railroad equipment:

Type of Units: 100-ton rotary dump covered gondola cars

Place Accepted: Johnstown, Pennsylvania

Dated Accepted:

Number of Units:

Numbered:

I do further certify that the foregoing units of Equipment are in good order and condition, and appear to conform to the Specifications applicable thereto, and that each unit has been labeled by means of a plate or a stencil printed in contrasting colors upon each side in letters not less than one inch in height as follows:

"Ownership subject to a Security Agreement
Filed with the Interstate Commerce Commission"

The execution of this Certificate will in no way relieve or decrease the responsibility of Bethlehem for any warranties it has made with respect to the Equipment.

Inspector for Seaboard Coast Line
Railroad Company