

14946
RECORDATION NO. _____ Filed 1428



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APR 17 1986 -3 00 PM

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INTERSTATE COMMERCE COMMISSION

LEASE CONSULTANTS CORPORATION

INTERSTATE COMMERCE COMMISSION

April 17, 1986

Ms. Mildred Lee
Room 2303
Interstate Commerce Commission
12th Street & Constitution Avenue, N.W.
Washington, D.C. 20423

Date 4/17/86
Fee \$ 20.00

ICC Washington, D.C.

Dear Ms. Lee:

Please file our Lease Document Number 13524. I have enclosed the following:

- Item 1 Original Lease Document with Attachment A
- Item 2 Notarized copy of Lease document with copy of Attachment A
- Item 3 Filing Fee Check in the amount of \$20.00

PARTICIPATING PARTIES

SELLER: Wilson Railway Corporation
901 Thomas Beck Road
P.O. Box 697
Des Moines, Iowa 50315

LESSEE: International Minerals & Chemical Corporation
421 East Hawley Street
Mundelein, Illinois 60060

LESSOR: Lease Consultants Corporation
2520 Harding Road, Suite 5
P.O. Box 4972
Des Moines, Iowa 50306

DESCRIPTION OF LEASED EQUIPMENT

1 NW-2,1000 HP, EMD Locomotive. Road Unit #9548. Serial #7833

Thank you for your prompt assistance.

Best Regards,

Steve Brooks

Steve Brooks
President

Handwritten signatures and notes on the left margin.

Interstate Commerce Commission
Washington, D.C. 20423

4/17/86

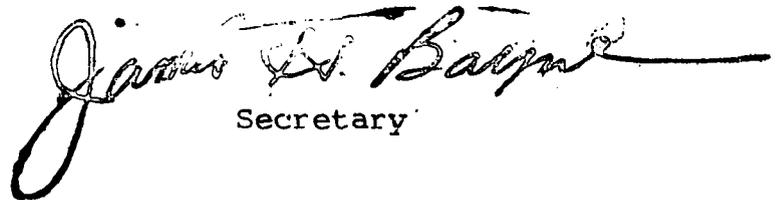
OFFICE OF THE SECRETARY

Steve Brooks
President
Lease Consultants Corporation
P.O.Box 4972
Des Moines, Iowa 50306

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 4/17/86 at 3:00pm and assigned re-
recordation number(s). 14946 & 14946-A

Sincerely yours,


Secretary

Enclosure(s)



LEASE CONSULTANTS CORPORATION

Box 4972 • Des Moines, Iowa 50306

EQUIPMENT LEASE

Lease No. 13524
Date of Delivery of Equipment To Lessee

(A) LESSEE Name: INTERNATIONAL MINERALS & CHEMICAL CORPORATION; SUPPLIER Name: WILSON RAILWAY CORP.

Address: 901 THOMAS BECK ROAD, DES MOINES, IOWA 50303
Date: APR 17 1986 - 3 00 PM

(C) SCHEDULE OF EQUIPMENT LEASED
Table with 2 columns: QUANTITY, DESCRIPTION, MODEL NO., SERIAL NO., OR OTHER IDENTIFICATION. Includes description of NW-2 1000HP locomotive and a notary signature.

(D) Equipment Location if other than Lessee's Address

(E) SCHEDULE OF RENTAL PAYMENTS and SECURITY DEPOSIT table. Includes columns for Term of Lease, Total Number of Rental Payments, Amount of Each Payment, and Security Deposit.

TERMS AND CONDITIONS—PLEASE READ CAREFULLY BEFORE SIGNING

- 1. ENTIRE AGREEMENT: This Lease, which includes the provisions on the reverse side hereof...
2. LEASE: Lessee hereby leases from Lease Consultants Corporation...
3. RENT: Lessee agrees to pay during the term of this Lease aggregate rent equal to the total number of rental payments...
4. TERMS OF LEASE; RENEWAL TERM: THIS LEASE IS IRREVOCABLE UNTIL TERMINATED AS PROVIDED HEREIN...
5. WARRANTIES: Lessor will request supplier to authorize Lessee to enforce in its own name all warranties...

(F) Accepted by Lessor on this 17 day of April 1986; Dated this 15 day of April 1986. Includes signatures and titles for both parties.

(G) AGREEMENT OF UNCONDITIONAL GUARANTY
This guaranty agreement is executed for the benefit of Lease Consultants Corporation, its successors and assigns, to induce Lease Consultants Corporation to enter into the above Lease with the above named Lessee.

(H) CERTIFICATE OF ACKNOWLEDGEMENT & ACCEPTANCE OF LEASED EQUIPMENT-LEASE No. 13524
TO: LEASE CONSULTANTS CORP.
We hereby acknowledge that on the date indicated below we received delivery of all the equipment described in the Lease numbered above.

INTERNATIONAL MINERALS & CHEMICAL CORPORATION
CORRECT LEGAL NAME OF LESSEE
By: [Signature] VP, Transp/Distr.

DATE OF DELIVERY

ORIGINAL

6. **JURISDICTION:** This Lease regardless of situs of final signature, shall be deemed to be executed in Polk County Iowa, and shall be governed by and construed in accordance with the laws of Iowa. Lessee hereby consents and submits to the jurisdiction of the respective courts of Polk County Iowa for the purposes of enforcement of this Lease.
7. **EQUIPMENT DELIVERY:** Lessee has requested equipment of the type and quantity specified herein and has selected the supplier named herein. Lessor agrees to order such equipment from said supplier, but shall have no liability to Lessee, to the supplier or to any other person for transportation, delivery or installation of the equipment or for the failure by the supplier to fill the purchase order or meet the conditions thereof. Lessee hereby authorizes Lessor to add to this Lease the serial number of each item of equipment so delivered. Lessee agrees that if the equipment is not properly installed, does not operate as represented or warranted by the supplier, or is unsatisfactory for any reason, Lessee shall make any claim on account thereof solely against supplier and shall nevertheless, continue to pay Lessor all rent payable under this Lease.
8. **LOCATION:** The equipment shall be delivered and thereafter kept, maintained and located at the location specified herein and shall not be removed therefrom without Lessor's written consent.
9. **OWNERSHIP OF EQUIPMENT:** Title to the equipment shall remain with Lessor and no title or right in the equipment shall pass to Lessee except the Lease rights herein expressly granted. If requested by Lessor, plates or other markings shall be affixed to or placed on the equipment indicating that Lessor, (or assignee) is the owner thereof and Lessee will not alter, deface, cover or remove the same. Lessee, at its expense, will protect and defend Lessor's title to the equipment and will keep the equipment free and clear of any and all claims, liens, encumbrances and legal processes by Lessee's creditors and other persons. Lessor assumes no liability and makes no representation to Lessee as to the treatment of this Lease, the equipment or the rental payments for financial statement or tax purposes. The equipment shall always remain and be deemed personal property even though attached to realty. All replacement equipment, repairs, or accessories made to or placed in or upon the equipment shall become a component part thereof and title thereto shall be immediately vested in Lessor and shall be included under the terms hereof. Lessee shall not make any alterations, additions or improvements to the equipment without prior written consent of Lessor.
10. **ASSIGNMENT:** Lessor may assign this lease and the equipment and its assignee may also assign the same. All rights of Lessor hereunder shall be succeeded to by any assignee hereof and said assignee's title to this Lease, to the rental herein provided for to be paid and in and to the equipment shall be free from all defenses, setoffs or counterclaims of any kind or character which Lessee may be entitled to assert against Lessor, it being understood and agreed that any assignee of Lessor does not assume any obligations of the Lessor herein named. It is further understood and agreed, however, that Lessee may separately claim against Lessor as to any matters which Lessee may be entitled to assert against Lessor. Lessee may not, without Lessor's written consent, by operation of law or otherwise, assign, transfer, pledge, hypothecate or otherwise dispose of this Lease or any interest of Lessee therein.
11. **INDEMNITY:** Lessee hereby indemnifies Lessor against and holds Lessor harmless from any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including attorney's fees, arising out of or connected with the equipment or the use thereof, including without limiting the generality of the foregoing, its manufacture, selection, delivery, possession, use, leasing, fitness, operation, return, or latent or other defects, whether or not discoverable, or arising out of any failure by Lessee to perform or comply with any of the terms and conditions of this Lease. The indemnities contained in this paragraph shall continue in full force and effect notwithstanding the termination of this Lease, whether by expiration of time, by operation of law, or otherwise. Lessee is an independent contractor and nothing contained in this Lease shall authorize Lessee or any other person to operate or use any equipment so as to incur any obligation on behalf of Lessor or impose any liability on Lessor.
12. **LOSS AND DAMAGE:** Lessee shall bear the entire risk of loss, theft, destruction or damage of the equipment or any part thereof from any cause whatsoever. No loss, theft, destruction or damage of the equipment shall relieve Lessee of the obligation to pay rent or any other obligation under this Lease. In the event of loss, theft, destruction or damage of any kind to any item of equipment, Lessee, at the option of Lessor, shall (a) place the same in first-class condition and repair, or (b) replace the same with like equipment in first-class condition and repair. Lessee will promptly notify Lessor in reasonable detail of any lien placed upon or asserted against the equipment, of any damage to or material change in the equipment; and of the occurrence of any other event which has had or may have a material effect on the value of the equipment.
13. **INSURANCE:** Lessee agrees to keep the equipment insured to protect all interests of Lessor, at Lessee's expense, for such risks, in such amounts, in such forms and with such companies as Lessor may require, including but not limited to fire and extended coverage insurance, explosion and collision coverage, and personal liability and property damage liability insurance. Lessor may, but shall not be obligated to, insure the equipment at the expense of Lessee. Any insurance policies relating to loss or damage to the equipment will name Lessor and Lessor's lenders as loss payees as their interests may appear and the proceeds may be applied toward the replacement or repair of the equipment or the payment of the obligations of Lessee hereunder, at the option of Lessor. Any such policies shall contain a provision that they may not be cancelled or the coverage reduced without (10) ten days prior written notice to Lessor and Lessor's lenders. Any liability insurance policies will name Lessee and Lessor as co-insured and the proceeds shall be applied first to Lessor to the extent of its liability, if any, and the balance to Lessee. Lessee shall furnish certificates, policies or endorsements to Lessor as proof of such insurance. Lessee hereby appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payment of and execute or endorse all documents, checks or drafts for loss or damage or return premiums under any insurance policy issued on the equipment and hereby assigns to Lessor all of its right, title and interest in and to such insurance policies and the proceeds thereof.
14. **TAXES, MAINTENANCE, AND INSPECTION OF LEASED EQUIPMENT:** Lessee agrees to use, operate and maintain the equipment in accordance with all laws, regulations and ordinances and in accordance with the provisions of any policies of insurance covering the equipment, not to sublet the same or permit the same to be used by anyone other than Lessee or Lessee's employees, to pay all licensing or registration fees for the equipment, and to pay all taxes, assessments and governmental charges levied on or in relation to the equipment or the use thereof. Lessee agrees to keep the equipment in first-class condition and repair at its own expense, to repair and house the same in suitable shelter, and to permit Lessor and its lenders to inspect the equipment at any time and to otherwise protect their interests therein. Lessee shall use the equipment in a careful and proper manner and only for the purpose contemplated by the manufacturer. The equipment shall be used in the conduct of the lawful business of Lessee. Property taxes due for the last year of the Lease will be paid for by Lessee when the lease expires or terminates.
15. **WAIVERS:** No delay and/or omission to exercise any right, power or remedy accruing to Lessor upon any breach or default by Lessee under this Lease shall impair any such right, power or remedy of Lessor, or shall be construed as a waiver of any such breach of default, or of any similar breach or default thereafter occurring nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers under this Lease must be in writing and shall be effective only to the extent specifically set forth therein.
16. **COLLECTION EXPENSES, INTEREST, AND ADVANCES:** Should Lessee fail to pay any part of the rent herein reserved or any other sum required to be paid by Lessee to Lessor hereunder, Lessee shall pay Lessor interest on such delinquent payment at the highest legal contract rate from the date when such payment was due until paid, and the expenses of any collection agency or service employed by Lessor to collect said payments. In the event Lessor employs the services of any attorney to enforce any of the terms of this Lease, Lessee agrees to pay reasonable attorneys' fees and court costs so incurred by Lessor. All advances made by Lessor to preserve said property or to pay insurance premiums for insurance thereon or to discharge and pay any taxes, liens or encumbrances thereon shall be added to the unpaid balance of rentals due hereunder and shall be repayable by Lessee to Lessor together with interest thereon at the highest legal contract rate until paid.
17. **DEFAULT; REMEDIES:** If (a) Lessee shall default in the payment of any rent or in making any other payment hereunder when due, or (b) Lessee shall default in the payment when due of any indebtedness of Lessee to Lessor arising independently of this Lease, or (c) Lessee shall default in the performance of any other covenant herein and such default shall continue for 5 days after written notice thereof to Lessee by Lessor, or (d) Lessee becomes insolvent or makes an assignment for the benefit of creditors, or (e) Lessee applies for or consents to the appointment of a receiver, trustee or liquidator of Lessee or of all or a substantial part of the assets of Lessee, or if such receiver, trustee or liquidator is appointed without the application or consent of Lessee, or (f) any proceeding is commenced or other action taken by or against Lessee under the Bankruptcy Act or any amendment thereto (including, without limitation, a petition for reorganization, arrangement or extension), or under any other insolvency law or law providing for the relief of debtors, or (g) any of Lessee's property is subject to any levy, seizure, assignment, application, or sale for or by any creditor or governmental agency, or (h) Lessee dies or is judicially declared incompetent, or (i) Lessee is an individual, or (j) any event described in Paragraph (d), (e), (f), (g) or (h) above occurs with respect to any guarantor or any other party liable for payment or performance of this Lease, or (k) any certificate, statement, representation, audit or warranty heretofore or hereafter furnished by or on behalf of Lessee pursuant to or in connection with this Lease was false in any material respect or omitted to state any material fact necessary to make the statements contained therein not misleading as of the date furnished, or (l) Lessee discontinues business, dissolves, sells or otherwise disposes of substantially all of its assets, enters into any consolidation or merger with any other person or entity, or the existence of the Lessee terminates, or (m) Lessor otherwise deems itself insecure or the equipment unsafe, then, if and to the extent permitted by applicable law, Lessor shall have the right to exercise any one or more of the following remedies: (1) to declare the entire amount of unpaid total rent for the balance of the term of this Lease immediately due and payable, (2) without demand or legal process, to enter onto the premises where the equipment may be found and take possession of and remove the same, without any liability to Lessee, (3) to sell, lease, assign or otherwise dispose of the equipment or any part thereof at public or private sale, with or without notice to Lessee (provided that if notice is required by law, Lessor and Lessee agree that ten (10) days notice in writing to Lessee shall constitute reasonable notice to Lessee) and with or without having the equipment at the sale, at which sale Lessor may purchase all or any of the equipment and without any right of redemption by Lessee, (4) to hold or use the equipment without affecting the obligations of Lessee under this Lease, (5) to proceed by appropriate action at law or in equity to specifically enforce the performance by Lessee of its obligations under this lease, (6) to cause Lessee at Lessee's expense to promptly return the equipment to Lessor, (7) to terminate this Lease as to any or all items of the equipment, or (8) to pursue any other remedy available to Lessor at law or in equity.
- In addition, Lessor shall be entitled to recover immediately as liquidated damages, and not as a penalty, a sum equal to the aggregate of the following:
- (i) All unpaid rentals or other sums which are due and payable for any items of equipment up to the date of redelivery to or repossession of such items by Lessor;
 - (ii) Any expenses paid or incurred by Lessor in connection with the repossession, return, holding, repair and subsequent sale, lease or other disposition of the equipment, including attorneys' fees;
 - (iii) All unpaid rentals due and to become due under this Lease for any items of equipment which Lessee fails to return to Lessor or which Lessor is unable to repossess, plus an amount equal to the unamortized cost, utilizing the straight line method of depreciating such equipment over its useful life, which Lessor would have had in such item of equipment at the end of the term of this Lease had Lessee not defaulted; and
 - (iv) An amount equal to (a) all unpaid rentals for any item of equipment returned to or repossessed by Lessor from the date of redelivery or repossession to the end of the respective rental term thereof, less (b) the unexpired rental value (Unexpired Rental Value) of such item of equipment. The Unexpired Rental Value of each item of equipment shall be deemed to be an amount equal to either (A) the proceeds of any sale of such item of equipment by Lessor, less the unamortized cost, utilizing the straight line method of depreciating such item of equipment over its useful life, which Lessor would have had in such item of equipment at the end of the term of this Lease had Lessee not defaulted, or (B) the aggregate of rentals due under any lease of such item of equipment which Lessor enters into with any third person for a period substantially similar to the unexpired rental term of such item of equipment under this Lease.
- Should Lessor, however, estimate its actual damages to exceed the foregoing, Lessor may, at its option, recover its actual damages in lieu of or in addition thereto. Lessor shall not be obligated to sell, lease or otherwise dispose of the item of repossessed equipment hereunder if it would impair the sale, lease or other disposition of similar equipment in the ordinary course of Lessor's business or similar equipment which was previously repossessed by Lessor from any person. Any repossession or subsequent sale or lease by Lessor of any item of equipment shall not bar an action for a deficiency as herein provided, and the bringing of an action or the entry of judgement against Lessee shall not bar Lessor's right to repossess any or all items of equipment.
18. **SURRENDER:** On or before the expiration or earlier termination of this Lease, Lessee, at its expense, shall return the equipment in first-class condition and repair, ordinary wear and tear from proper use excepted, by delivering it, packed and ready for shipment, to such place or on board such carrier as Lessor may specify. Lessee shall, upon demand by Lessor, pay to Lessor all amounts expended by Lessor to bring the equipment to first-class condition and repair, ordinary wear and tear from proper use excepted. This obligation of Lessee shall survive the expiration or earlier termination of this lease.
19. **NOTICES:** For the purpose of this Lease any notices required to be given, shall be given to the parties hereto in writing and by certified mail at the address herein set forth, or to such other addresses as each party may substitute by notice to the other, which notice shall be effective as to Lessor upon its receipt by Lessor and shall be effective as to Lessee when deposited in U. S. Mail duly addressed, postage prepaid.
20. **REMEDIES CUMULATIVE:** Lessor's rights and remedies are cumulative and may be exercised concurrently or separately. No such right or remedy is exclusive of any other right or remedy provided or permitted by this Lease or by law or in equity.
21. **UCC FILINGS:** Lessor and Lessee agree that a carbon, photographic or other reproduction of this Lease may be filed as a financing statement and shall be sufficient as a financing statement under the Uniform Commercial Code. Lessee shall execute or obtain and deliver to Lessor, upon Lessor's request, such instruments, financing statements and assurances, including without limitation waivers of interest of owners or mortgagees of real estate upon which the equipment is located, as Lessor deems necessary or advisable for the confirmation, protection or perfection of this Lease and Lessor's rights hereunder and will pay all costs incident thereto. Lessor may file or record a financing statement with respect to this Lease or the equipment so as to give notice to any interested parties. Any such execution, delivery, filing or recording shall not be deemed factors in determining whether or not this Lease is intended as security under the Uniform Commercial Code.
22. **MISCELLANEOUS:** Time is of the essence of this Lease and each and all of its provisions. This Lease may not be modified, amended, altered or changed except by a written agreement signed by the party sought to be charged. In the event any provision hereof shall be invalid or unenforceable, the remaining provisions hereof shall remain in full force and effect. The descriptive headings hereof do not constitute a part of this Lease and no inferences shall be drawn therefrom. Whenever the context of this Lease requires, the masculine gender includes the feminine or neuter, and the singular number includes the plural, and whenever the word Lessor is used herein, it shall include all assignees of Lessor. If there be more than one Lessee named in this Lease, the liability of each shall be joint and several. The provisions of this Lease shall be binding upon and shall inure to the benefit of the permitted assigns, successors, heirs and personal representatives of Lessor and Lessee.
23. **STATEMENT OF PURPOSE:** Lessee hereby warrants and represents that the Equipment will be used for business purposes, and not for personal, family, household or agricultural purposes. Lessee acknowledges that Lessor has relied upon this representation in entering into this Lease.
24. **AUTHORIZATION:** Lessee represents and warrants to Lessor that Lessee has complete and unrestricted power to enter into this Lease and that the persons executing this Lease have been duly authorized to execute the same on behalf of Lessee.
25. **NO OFFSET:** This Lease is a net lease and all of Lessee's obligations under this Lease shall be paid and performed by Lessee irrespective of any setoff, counterclaim, recoupment, defense or other right which Lessee may have against Lessor, the supplier of the equipment or any other person.
26. **NO THIRD PARTY BENEFICIARY:** Lessor and Lessee agree that this Lease is not intended to benefit any person or entity not a signatory hereto.

SEE ATTACHED ADDENDUM MADE A PART HEREOF.