

13276-A
RECORDATION NO. Filed 1425

OCT 13 1981 10 30 AM

INTERSTATE COMMERCE COMMISSION
Interstate Commerce Commission
Washington, D.C.

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INTERSTATE COMMERCE COMMISSION
Interstate Commerce Commission

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New No. and

1-286A047

No. [Stamp]
Date [Stamp]
Fee \$ 50.00

ICC Washington, D. C.

OCT 13 10 23 AM '81

Gentlemen:

Enclosed for recordation under the provisions of 49 USC Section 11303(a) are the original and ten counterparts of a North American Car Corporation Car Leasing Agreement dated as of September 1, 1981 with Rider No. 1 attached thereto.

The general description of the railroad equipment covered by the enclosed document is set forth in Schedule A attached to this letter and made a part hereof.

The names and addresses of the parties are:

Lessor: North American Car Corporation
33 West Monroe
Chicago, Illinois 60603

Lessee: FMC Corporation
200 Randolph Drive
Chicago, Illinois 60601

The undersigned is the Lessor mentioned in the enclosed document and has knowledge of the matters set forth therein.

Please return the original and eight counterparts of the Equipment Lease to Gary Green, Esq., Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

Also enclosed is a check in the amount of \$50.00 covering the required recording fee.

Very truly yours,

NORTH AMERICAN
CAR CORPORATION

By [Signature]
LESSOR AS AFORESAID

Enclosures

Chapman and Cutler
G. K. Kessler

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RIDER NO. 1
Forming Part of
NORTH AMERICAN CAR CORPORATION
CAR LEASING AGREEMENT NO. 2865-1

INTERSTATE COMMERCE COMMISSION

This rider ("Rider") and the above Car Leasing Agreement constitute a separate agreement ("Agreement") which, together with all rights under the Agreement, may be assigned, in whole or in part, as security or otherwise. No subsequent amendment to the Agreement shall be effective against any assignee hereof. The cars described herein shall be subject to the terms and conditions of the Agreement and this Rider during the term of use and for the rental set forth below:

<u>NUMBER OF CARS</u>	<u>DESCRIPTION OF CARS</u>	<u>INITIALS</u>	<u>SERIAL NUMBERS</u>
225	100-ton, 4750 cubic foot capacity covered hopper railcars	NAHX	900000 - 900224 (both inclusive)

The Commencement Date hereunder shall be the first day of the calendar month next succeeding the earlier of (i) the sending of notice by North American to Lessee of the commencement of rental installments hereunder and (ii) December 31, 1981.

The Lessee agrees to pay North American the following rent for each car:

A. For the period beginning with the delivery of the car up to the Commencement Date, (1) an Interim Fixed Rent of \$17.56 per car per day, from the delivery date thereof up to the Commencement Date, and (2) an Interim Administrative Rent of \$4.00 per car per day, from the delivery date thereof up to the Commencement Date; payable in arrears on the Commencement Date.

B. For the period on and after the Commencement Date, the following installments of rent for each car, payable in advance: (1) 144 monthly installments of Fixed Rent, each in the amount of \$527.01; and (2) 144 monthly installments of Administrative Rent, each in the amount of \$119.99. The first installment of Fixed Rent and Administrative Rent for each car shall be due and payable on the Commencement Date and the balance of said installments shall be payable on the first day of each month thereafter with the final installments of Fixed Rent and Administrative Rent payable

143 months after the Commencement Date. If any of the rent payment dates is not a business day, the rent payment otherwise payable on that date will be payable on the next succeeding business day. For the purposes hereof, the term "business day" shall mean calendar days, excluding Saturdays, Sundays, and holidays on which banks in the States of Illinois, New York, Connecticut or Arizona, are authorized or required to remain closed.

C. For all periods during the term hereof, an additional annual Administrative Rent in an amount equal to \$0.025 for each mile in excess of $\frac{36,000 \times \text{days in service}}{365}$

that each car covered by this Agreement travels in each calendar year, payable annually in arrears, promptly upon invoice therefor by North American.

Lessee's obligation to pay Fixed Rent hereunder shall be absolute and unconditional under any and all circumstances, and, without limiting the generality of the foregoing, the Lessee shall not be entitled to any abatement of Fixed Rent or reduction thereof, or setoff against Fixed Rent, including but not limited to, abatements, reductions or setoffs due to any present or future claims under this Lease or otherwise of Lessee against North American or against any assignee thereof; nor, except as expressly provided herein shall Lessee's obligation to pay Fixed Rent terminate, or be otherwise affected, by reason of any defect in or damage to or loss of or destruction of all or any of the cars from whatsoever cause, the taking or requisitioning of the cars by condemnation or otherwise, the prohibition of Lessee's use of the cars, the interference with such use by any person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Agreement or the lack of right, power or authority of North American or any assignee thereof to enter into this Agreement, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the Fixed Rent payable by the Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to the express provisions hereof. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel or quit its obligation to pay Fixed Rent in accordance with the terms hereof, except in accordance with the express terms hereof. Each payment of Fixed Rent made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from North American or any assignee thereof for any reason whatsoever; provided, however, nothing contained herein shall be construed as a

waiver of the Lessee's right to seek, or its entitlement to, monetary damages or specific performance on account of any material failure of North American to perform its obligations under this Agreement or on account of any material act of North American so long as Lessee shall continue to make the payments of Fixed Rent and all other payments due hereunder and continue to perform its obligations under this Agreement.

Lessee agrees, notwithstanding Section 3 of Car Leasing Agreement No. 2865-1, that it will make all payments of Fixed Rent, Administrative Rent, Interim Fixed Rent and/or Administrative Rent to the assignee thereof as specified by North American in writing at the times and in the amounts provided in the Agreement, and that it will forward to North American a copy of each remittance advice reflecting each such payment of such rent. Lessee further agrees to execute and deliver to North American and such assignee such documents as North American may reasonably request for the purpose of evidencing Lessee's acceptance of the cars under the lease created hereby, Lessee's consent to North American's assignment of any of its rights hereunder, the binding nature and effect of the lease created hereby on Lessee, and such other related and other matters as may be reasonably requested by North American.

Anything to the contrary herein contained notwithstanding, any nonpayment of rent due hereunder, or other amounts which may become payable to North American by the Lessee, when due, shall result in the additional obligation on the part of the Lessee to pay also an amount equal to 17.0% per annum on demand (or the lawful rate, whichever is less) on such overdue rentals and other amounts which may become payable to North American by the Lessee, for the period of time during which they are overdue and not paid.

Payment due hereunder shall be made by wire transfer at the opening of business of the office of the transferring bank on the due date of each such payment of Federal or otherwise immediately available funds to the party to whom the payment is to be made, or by other means consented to by such party, which consent will not be unreasonably withheld.

If any of said cars becomes unfit for service (except from some cause which is Lessee's responsibility) and shall be held in a car shop for repairs and shall remain therein for a period in excess of five days, the monthly Administrative Rent (or Interim Administrative Rent, but not the Fixed Rent or Interim Fixed Rent) with respect thereto shall abate from and after that period of five days, until said car is released from the shop, and for each such period during which Administrative Rent or Interim Administrative Rent shall abate pursuant to this paragraph, North American shall pay to Lessee an amount equal to \$17.56 per day for

such abatement period for each such car to which abatement shall apply hereunder.

Any of the following events shall constitute an Event of Default hereunder:

(a) default shall be made in the payment of any part of the rental payable hereunder, and such default shall continue for five days;

(b) the Lessee shall make or permit any assignment or transfer of this Agreement, or of possession of the cars leased hereunder, or any portion thereof not permitted hereby;

(c) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for thirty days after receipt of actual knowledge of that default by any responsible officer of Lessee (a "responsible officer" of Lessee meaning, for the purposes hereof, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Agreement contained, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Agreement with respect thereto);

(d) any representation or warranty made by the Lessee herein or in any certificate furnished to North American or its assignee hereunder, pursuant to or in connection with this Agreement, is untrue as of the date of issuance or making thereof;

(e) Lessee becomes insolvent or fails generally to pay its debts as such debts become due, or causes or suffers an order for relief to be entered against it under applicable federal or state bankruptcy law, or makes an assignment for the benefit of creditors or applies for or consents to the appointment of a custodian, trustee or receiver for Lessee or for the major part of its property;

(f) A custodian, trustee or receiver is appointed for Lessee or for the major part of its property and is not discharged within 30 days after such appointment; or

(g) Bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or other proceedings for relief under any bankruptcy law or similar law for the relief of debtors, are instituted by or against the Lessee and, if instituted against the Lessee, are consented to or are not dismissed within 30 days after such institution.

If any Event of Default has occurred and is continuing, North American or its assignee hereunder, at its option, may:

(a) Proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Agreement or to recover damages for the breach hereof, including reasonable attorneys' fees; and/or

(b) By notice in writing to the Lessee, terminate this Agreement whereupon all right of the Lessee to the use of the cars leased hereunder shall absolutely cease and terminate as though this Agreement had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, North American may by its agents enter upon the premises of the Lessee or other premises where any of the cars leased hereunder may be located and take possession of all or any of the cars leased hereunder and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use such cars leased hereunder for any purpose whatever, but North American and/or its assignee hereunder shall nevertheless have a right to recover from the Lessee any and all amounts which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum with respect to each car leased hereunder which represents the excess of the present worth at the time of such termination, of all rentals for such car leased hereunder which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Agreement over the then present worth of the Fair Rental Value of such car for such period computed by discounting from the end of such term to the date of such termination, such present worth to be computed in each case on a basis of a 10% per annum discount, compounded monthly from the respective dates upon which rentals would have been payable hereunder had this Agreement not been terminated or (y) an amount equal to the excess if any of the Casualty Value of such car, determined in accordance with Schedule A hereto, as of the rental payment date on or immediately preceding the date of termination over the Fair Market Value thereof at such time; provided, however, that in the event North American or its assignee or agents shall have sold any car leased hereunder, North American or its assignee or agents, in lieu of collecting any

amounts payable to North American by the Lessee pursuant to the preceding clauses (x) and (y) of this part (i) with respect thereto may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor, on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value of such car as of the rent payment date on or immediately preceding the date of termination over the net proceeds of such sale, and (ii) damages and expenses, other than for a failure to pay rental, in addition thereto, including reasonable attorneys' fees, which North American and/or its assignee hereunder shall have sustained by reason of the breach of any covenant or covenants of this Agreement other than for the payment of rental.

For purposes of the preceding paragraph, the Fair Rental Value and Fair Market Value for any car shall be determined in the following manner; provided, that any sale in a commercially reasonable manner of any car prior to any such determination shall conclusively establish the Fair Market Value of that car and any rental in a commercially reasonable manner of any car prior to any such determination shall conclusively establish the Fair Rental Value of that car: the Fair Rental Value or Fair Market Value, as the case may be, of each car shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee or buyer, as the case may be (other than a lessee or buyer, as the case may be, currently in possession) and an informed and willing lessor or seller, as the case may be, under no compulsion to lease or sell, as the case may be.

The remedies in this Agreement provided in favor of North American and/or its assignee hereunder shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. The failure of North American and/or assignee hereunder to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

In the event that any of the above-described cars shall become lost, stolen, destroyed, or (in the opinion of North American) irreparably damaged or permanently rendered unfit for use from any cause whatsoever, or in the event that the title or use of any thereof shall be requisitioned or taken by any governmental authority under the power of eminent domain or otherwise during the term hereof for a stated period exceeding the then-remaining term of the lease hereunder (any such event being referred to herein as a "Casualty Occurrence"), Lessee agrees that the Fixed Rent and Administrative Rent hereunder

State of Illinois)
) SS:
County of Cook)

On this 9th day of October, 1981, before me personally appeared Roger A. Nosack, to me personally known, who, being by me duly sworn, says that he is a Vice President of North American Car Corporation, that said instrument was signed on behalf of said corporation by authority of its Board of Directors or other due authority, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Jana Prewitt

Notary Public

My Commission expires March 26, 1983

(Notarial Seal)

State of Illinois)
) SS:
County of Cook)

On this 9th day of October, 1981, before me personally appeared B.R. van Eck, to me personally known, who, being by me duly sworn, says that he is a Vice President of FMC Corporation, that said instrument was signed on behalf of said corporation by authority of its Board of Directors or other due authority, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Jana M. Geard

Notary Public

My Commission expires

My Commission Expires Dec. 16, 1984

(Notarial Seal)

