

REXRAILWAYS

RECORDATION NO. 14372 Filed 1425

JUL 16 1984 9 32 AM
INTERSTATE COMMERCE COMMISSION

4-198A020

JUL 16 1984

10.00

July 11, 1984

Washington, D. C.

Mrs. Mildred Lee
Interstate Commerce Commission
Recordation Department, Room 2227
12th and Constitutional Avenue, N.W.
Washington, D.C. 20423

Dear Mrs. Lee:

Please find enclosed a Lease Agreement in triplicate dated June 26, 1984 between Rex Railways, Inc., lessor and Sohio Electro Minerals Company, lessee.

*Blk 76-3 P.O. Box 423
Waynes Falls, N.Y. 14302*

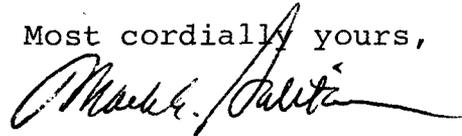
This lease is for a two year term covering ten cars, numbers RREX 4350, 4351, 4353, 4363, 4366, 4368, 4370, 4375, 4377, and 4382 inclusive.

Would you please be kind enough to file and record one set of the Lease Agreement and return the other two copies showing the recording numbers and filing dates thereon.

For this purpose, we are enclosing a check to the order of the ICC in the sum of \$50.00.

Thanking you for your courtesy and cooperation, I am

Most cordially yours,



Mark A. Salitan
President

MAS/dmh
Enclosures- Check

CERT. RRR

RECEIVED

JUL 16 9 25 AM '84

FEE OPERATION RR
I.C.C.

Interstate Commerce Commission
Washington, D.C. 20423

7/16/84

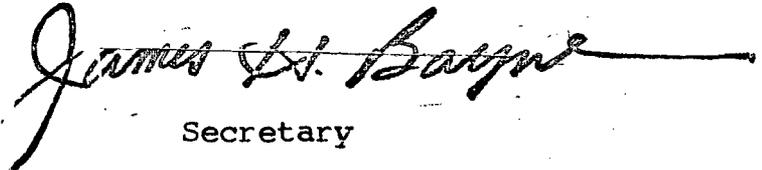
OFFICE OF THE SECRETARY

Mark A. Salitan, Pres.
RexRailways, Inc.
616 Palisade Ave.
Englewood Cliffs, New Jersey 07632

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 7/16/84 at 9:30am and assigned re-
recording number(s). 14372

Sincerely yours,


Secretary

Enclosure(s)

REX AGREEMENT

JUL 16 1984 -9 20 AM

INTERSTATE COMMERCE COMMISSION

THIS LEASE AGREEMENT, made as of this 26th day of June, 1984 between REX RAILWAYS, INC., a New Jersey corporation, 616 Palisade Ave., Englewood Cliffs, N.J. as Agent for Car Owners (hereinafter referred to as "REX" or "LESSOR"), and Sohio Electro Minerals Company (the "LESSEE"), as Lessee, located in Niagara Falls, New York.

RECITALS

Lessee desires to lease from REX as Lessor certain railroad cars hereinafter specifically designated, all upon the rentals, terms and conditions set forth in this lease.

It is Agreed:

1. Lease of Cars. REX agrees to lease to Lessee and Lessee agrees to and does hereby lease from REX railroad cars of the number of units, model, type, construction and such other description (hereinafter referred to as the "Cars") as is set forth in Schedule 1 attached hereto and by this reference made a part hereof and as set forth in Schedules which may from time to time be added to this Lease and thereby made a part hereof.
2. Delivery of Cars. REX shall deliver the cars immediately. For purposes of earning, delivery shall be considered to be the date of the actual arrival of each car at lessee's locations.

For the purpose of lease term, delivery of the cars shall be considered to be the date of arrival of the last car to any lessee location.

3. Use and Possession. Throughout the continuance of this Lease so long as Lessee is not in default hereunder, Lessee shall be entitled to possession of each Car from the date the Lease becomes effective as to such Car and shall use such Car on its own property or lines or in the usual interchange of traffic; provided, however, that Lessee agrees that the Cars shall at all times be used (i) in conformity with Interchange Rules; (ii) in compliance with the terms and provisions of this Lease; (iii) in a careful and prudent manner, solely in the use, service and manner for which they were designed; (iv) only within the continental limits of the United States of America and Canada or in temporary or incidental use in Mexico.

4. Term. This Lease shall be effective through and including three (3) years from the date of delivery as defined in paragraph 2 subject however to Lessee's right to terminate at the end of the second year on the giving or not less than ninety (90) days written notice. In the event Lessee exercises its right to terminate at the end of the second year and if it is proposing to lease alternative cars from another lessor on more favorable terms and conditions, REX shall have the opportunity to at least equal such terms and conditions in which case this Lease shall not terminate.

5. Rental Per Car. (See Schedule I).

6. Payment. Lessee shall make payment of all sums due hereunder to REX in immediately available funds at the address provided in Paragraph 18 hereof, or such other place as REX may direct. Rental payments shall be made monthly in accordance with normal car hire.

7. Title. Title to the Cars shall remain that of the Lessor.

8. Maintenance. All running repairs will be for the account of REX. Any parts replacements or additions made to any Car shall be accessions to such Car and title thereto shall immediately vest in REX. Improvements, changes and remarking will be at the expense of the Lessee.

9. Abatement of Rent. If cars are out of service for repairs, or destroyed, these cars will be removed from any calculations used to arrive at take back of equipment.

10. Liens. Lessee shall keep the Cars free from any and all encumbrances or liens in favor of anyone claiming by, through or under Lessee which may be a cloud upon or otherwise affect REX' title, including, but not limited to liens or encumbrances which arise out of any suit involving Lessee, or any act or omission of Lessee or Lessee's failure to comply with the provisions of this Lease, and Lessee shall promptly discharge any such lien, encumbrances or legal process.

11. Indemnities and Patent Covenants. Lessee agrees to indemnify REX and hold it harmless from any loss, expense or liability which REX may suffer or incur from any charge, claim, proceeding, suit or other event which in any manner or from any cause arises in connection with the use, possession or operation of a Car while subject to this Lease, excepting only any such loss, expense or liability which arises solely from REX' negligence, failure to comply with this Lease, or failure to permit Lessee quiet enjoyment of the Cars for any reason attributable to REX.

REX agrees to indemnify Lessee and save it harmless against any charge, loss, claim, suit, expense or liability arising out of or on account of the use or incorporation by REX upon delivery of a Car or upon the making of repairs thereto by REX, of any invention or the infringement of any patents, except if such invention was used or incorporated by reason of Lessee's specifications. The term "REX" shall mean and include any subsidiary, parent or affiliated corporation for all purposes of this Paragraph 11. Lessee's indemnity shall not eliminate the rights given Lessee under any manufacturer's warranty assigned to it pursuant to Paragraph 20. The indemnities and assumptions of liability herein contained shall survive the termination of this Lease. Each party shall, upon learning of same, give the other prompt notice of any claim or liability hereby indemnified against.

12. Lettering -- Inventory. At REX' election all Cars may be marked to indicate the rights of REX, or an assignee, mortgagee, trustee, pledgee or security holder of REX or a lessor to REX and may bear the following inscription: "Title to this Car subject to documents recorded under Section 11505 of the Interstate Commerce Act." Except for renewal and maintenance of the aforesaid lettering or lettering indicating that the Car is leased to the Lessee or to a sublessee in accordance with demurrage tariffs, no lettering or marking (other than Lessee's reporting marks) shall be placed upon any of the Cars by Lessee and Lessee will not remove or change the reporting marks and numbers indicated on the applicable schedule except upon the written direction consent of REX. REX may at its own cost and expense inspect the Cars from time to time wherever they may be, and Lessee shall, upon request of REX, but not more than once every year, furnish to REX its certified inventory of all Cars then covered by this Lease.

13. Loss, Theft, or Destruction of Cars. In the event any Car is lost, stolen, destroyed or damaged beyond economic repair, Lessee shall, within five days of its knowledge thereof, by written notice, fully advise REX of such occurrence. Lessee shall, within 45 days after demand by REX promptly make payment to REX in accordance with AAR Rulings. This Lease shall continue in full force and effect with respect to any Casualty Car irrespective of the cause, place or extent or any casualty occurrence, the risk of which shall be borne by Lessee, provided however, that this Lease shall terminate with respect to a Casualty Car on the date REX shall receive all amounts and things granted it on account of such Car under this Paragraph 13 and thereafter Lessee shall have no further liability to REX hereunder with respect thereto excepting accrued rent and liabilities arising under Paragraphs 10, 11 and 12 hereof.

14. Return of Cars. Upon the expiration or termination of this Lease, Lessee shall at its sole cost and expense forthwith surrender possession of each Car to REX by delivering to the nearest interchange. Each Car so surrendered shall be in the same or as good condition, order and repair as it was when it was delivered to Lessee, wear and tear from ordinary use and the passage of time excepted, shall be in need of no repairs, and shall be free from all accumulations or deposits from commodities transported in or on the Cars while in the service of Lessee. If any of the Cars do not bear REX's reporting marks and numbers, Lessee shall place such reporting marks and numbers on any or all of the Cars as REX shall designate in writing to Lessee prior to the end of the Lease term. This may be done by blocking out BAR markings and applying temporary markings. Until the delivery of possession to REX pursuant to this Paragraph 14, Lessee shall continue to be liable for and shall pay rental at the rate being paid immediately prior to termination or expiration, and Lessee shall continue to be obligated as though such termination or expiration had not occurred. Nothing in this Paragraph 14 shall give Lessee the right to retain possession of any Car after expiration or termination of this Lease with respect to each Car except as provided herein.

15. Default. If Lessee shall fail to make any payment required hereunder within 30 days after such payment shall have become due or shall default or fail for a period of 30 days after notice thereof in the due observance or performance of any covenant, condition or agreement required to be observed or performed on its part hereunder, or if a proceeding shall have been commenced by or against Lessee under any bankruptcy laws, Federal or State, or for the appointment of a receiver, assignee or trustee of Lessee or its property, or if Lessee shall make a general assignment for the benefit of creditors, then and in any of said events REX may at its election;

(a) terminate this Lease by written notice to such effect, and retake the Cars and thereafter recover as liquidated damages for loss of a bargain and not as a penalty, any and all damages sustained by reason of Lessee's default in addition to all rental unpaid as of said date less any earnings of REX on such Cars during what would, absent such default, have been the balance of the Term; or

(b) without terminating the Lease, repossess the Cars, and may lease the same or any part thereafter to others upon such rental and other terms as it may see fit. The proceeds of any such reletting shall first be applied to the expenses (including reasonable attorney's fees) of retaking and reletting of the Cars

and delivery to the new lessee and then to the payment of rent due under this Lease. Lessee shall pay any deficiency remaining due after so applying the proceeds as the same shall accrue. The election by REX to relet the Cars and the acceptance of a new lessee shall not operate to release Lessee from liability for any existing or future default in any other covenant or promise herein contained. The obligation to pay such deficiency or any sum or sums due and unpaid or any damages suffered by reason of Lessee's default hereunder shall survive the termination of the Lease and the retaking of the Cars.

The remedies provided in this Paragraph 15 in favor of REX shall not be deemed exclusive but shall, where not by rule of law be inconsistent with each other, be cumulative and may be availed of singly, in combination, or all together and in any order, and shall be in addition to all other remedies in REX' favor existing at law or in equity.

16. Sublease and Assignment. The right to assign this Lease by either party and the Lessee's right to sublease shall exist only as follows:

(a) Lessee shall have no right to assign or sublease or loan any of the Cars without the prior written consent of REX, which consent shall not be unreasonably withheld, provided, however, that Lessee shall have the right without consent to sublease any of the Cars to its parent, subsidiaries or related companies, or may sublease, for a term not exceeding one year to a responsible company as determined by the Lessee (without being released from the obligations hereunder). Any such sublease shall be upon terms which are in compliance with all applicable Interchange Rules, tariffs, regulations and laws and all terms and conditions of this Lease.

(b) all rights of REX hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part without notice to or consent of Lessee. This Lease and Lessee's rights hereunder are and shall be subject and subordinate to any lease to REX, any chattel mortgage, security agreement or equipment trust or other security instrument covering the Cars heretofore or hereafter created by REX provided only that so long as Lessee is not in default under the Lease; Lessee shall be entitled to the peaceful and quiet possession of the Cars. If REX shall have given written notice to Lessee stating the identity and post office address of any assignee entitled to receive future rentals and any other sums payable to Lessee hereunder, Lessee shall thereafter make such payments to the designated assignee.

The making of an assignment or sublease by Lessee or an assignment by REX shall not serve to relieve such party of any liability or undertaking hereunder nor to impose any liability or undertaking hereunder upon any such assignee or sublessee except as otherwise provided herein or unless expressly assumed in writing by such sublessee or assignee.

17. Opinion of Counsel. Upon the request of REX or its assignee, Lessee will deliver to REX an opinion of counsel for Lessee, addressed to REX or its assignee in form and substance satisfactory to counsel for REX or its assignee, which opinion shall be to the effect that:

(a) the Cars which are then subject to the Lease are held by Lessee under and subject to the provisions of the Lease prior to any lien, charge or encumbrance in favor of anyone claiming by, through or under Lessee; and

(b) no governmental, administrative or judicial authorization, permission, consent, or approval or recording is necessary on the part of Lessee in connection with this Lease or any action contemplated on its part hereunder.

18. Notice. Any notice required or permitted to be given pursuant to the terms of this Lease shall be properly given when made in writing, deposited in the United State mail, registered or certified, postage prepaid, addressed, etc.

REX at: P.O. Box 968
Englewood Cliffs, NY
07632

Sohio Electo Minerals Company
Lessee at: Building 76-3
P.O. Box 423
Niagara Falls, NY
14302

Attention of: Frank Talarico
Traffic Manager

or at such other addresses as the parties may from time to time designate by such notice in writing.

19. Warranty. REX agrees to assign to Lessee such rights as it may have under warranties, if any, which it may have received from the manufacturer of any Cars or parts therefor and shall at Lessee's expense cooperate with Lessee and take such action as may be reasonably requested to enable Lessee to enforce such rights. REX makes no warranty or representation of any kind, either express or implied, as to any matter whatsoever, including specifically but not exclusively, merchantability, fitness for a

particular purpose extending beyond the description in the applicable Schedule, or the design, workmanship, condition or quality of the Cars or parts thereof which Cars have been accepted by Lessee hereunder; and REX shall have no liability hereunder for damages of any kind, including specifically but not exclusively, special, indirect, incidental, or consequential damages on account of any of any matter which might otherwise constitute a breach of warranty or representation. Lessee represents that all of the matters set forth in Paragraphs 17 (a) and (b) shall be and are true and correct at all times that any Car is subject to this Lease.

20. Governing Law -- Writing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New Jersey. The terms of this Lease and the rights and obligations of the parties hereto may not be changed or terminated orally, but only by agreement in writing signed by the party against whom enforcement of such change or termination is sought.

21. Counterparts. This Lease may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which may be evidenced by any such signed counterpart.

22. Severability -- Waiver. If any term or provision of this Lease or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law. Failure of either party to exercise any of its rights hereunder shall not constitute a waiver of any such rights upon the continuation or recurrence of the situation or contingency giving rise to such right.

23. Terminology. In construing any language contained in this Lease, no reference shall be made and no significance given to paragraph titles, such titles being used only for convenience of reference. Where the context so permits, the singular shall include the plural and vice versa.

24. Past Due Payments. Any nonpayment of rentals or other sums due hereunder, whether during the period within which a default may be cured or for a longer period, and whether or not deemed a default or violation of this Lease, shall result in the obligation on the part of the Lessee to pay also an amount equal to twelve per cent per annum (or if such rate may not lawfully be charged, then the highest rate which may lawfully be charged) of such overdue sum for the period of time from one week after the due date until such overdue sum is paid.

25. Definitions. For all purposes of this Lease the following terms shall have the following meaning:

(a) "Interchange Rules" -- all codes, rules, interpretations, laws or orders governing hire, use, condition, repair and all other matters pertaining to the interchange of freight traffic reasonably interpreted as being applicable to the Cars, adopted and in effect from time to time by the Association of American Railroads and any other organization, association, agency, or governmental authority, including the Interstate Commerce Commission and the United States Department of Transportation, which may from time to time be responsible for or have authority to impose such codes, rules, interpretations, laws or orders.

(b) "Delivery Date" -- as specified in Paragraph 2, hereof.

(c) "Repair Work" -- all repairs, maintenance, modifications, additions or replacements required to keep and maintain the Cars in good working order and repair in accordance with an on the effective date of the requirements of all Interchange Rules and preventive maintenance necessary to keep and maintain the Cars in good working order and repair.

(d) "Casualty Cars" -- Cars which are lost, stolen, destroyed or damaged beyond economic repair.

26. Benefits. Except as otherwise provided herein the covenants conditions and agreements contained in this Lease shall bind and inure to the benefit of the parties and (to the extent permitted in Paragraph 18 hereof) their successors and assigns. Without limiting the generality of the foregoing, the indemnities of the Lessee contained in Paragraph 12 hereof shall apply to and inure to the benefit of any assignee of REX, and if such assignee is a trustee or secured party under an indenture under which evidence of indebtedness has been issued in connection with the financing of the Cars, then also to the benefit of any holder of such evidence of indebtedness.

27. Taxes. All property taxes which, from time to time, during the Lease term, shall be assessed against the Cars, shall be paid by Lessee for the account of REX. REX shall reimburse Lessee for such tax payments within thirty days of receipt of Lessee's billing for such tax payments.

REX RAILWAYS, INC.

By 

SOHIO ELECTRO MINERALS COMPANY

By 
Director Mfg., Silicon Carbide

SCHEDULE I

Description of Cars: Ten (10), 1980-built 4700 cubic foot Jumbo Covered Hopper Cars numbered: RREX 4350, 4351, 4353, 4363, 4366, 4368, 4370, 4375, 4377, 4382.

Lease Term: Two (2) years with an option to the Lessee to renew for a third year.

Rent: The first year rent will be \$275.00 per car per month, and the second year of the lease, the rent will be \$300.00 per car per month. In the event that the Lessee exercises its option to keep the cars for a third year, the rent will be \$325.00 per car per month.

Substitution of Equipment: Rex reserves the right to substitute cars from the same series as originally leased, if a car or cars are destroyed.

Corrosive Material: The Lessee agrees to return the cars to the Lessor at the termination of the Lease in a clean condition, both inside and outside, so that these cars can be re-leased in the ordinary course of business as this type of car is normally used.

OT-5 Approval: It is understood between the parties of this Lease that the Lease will become effective and operative on the date that OT-5 approval is granted. In the event that OT-5 is not granted, this Lease will be considered void and there will be no obligation on the part of the Lessor to deliver any cars to the Lessee nor will any other terms or conditions of the Lease be operative.

Earned Mileage: Rex Railways will rebate to lessee all mileage earned by the cars during a given year up to a maximum equal to the annual rental for the cars during such year. All Such rebates during the term shall be accomplished by crediting the next invoice after such mileage monies are received by Rex. Mileage monies not credited prior to the end of the term shall be rebated to lessee by check as soon as practical after receipt by Rex. The maximum mileage earned per car shall be that amount determined from time to time by the AAR, which, at the time of lease commencement, is 47¢ per car, per loaded mile, or that amount designated by special tariff or individual railroad.

