

11396

RECORDATION NO. Filed 1425



THE DOW CHEMICAL COMPANY

JAN 21 1980 - 3 45 PM

INTERSTATE COMMERCE COMMISSION

MIDLAND, MICHIGAN 48644

11396 A

11396

January 21, 1980

RECORDATION NO. Filed 1425

RECORDATION NO. Filed 1425

JAN 21 1980 - 3 45 PM

JAN 21 1980 - 3 45 PM

0-022AC77

JAN 21 1980 - 3 45 PM

Secretary of the Interstate Commerce Commission
Commerce Commission
Constitution and 12th Street, N. W.
Washington, D.C. 20423

Date JAN 21 1980

Fee \$ 100.00

Dear Sir:

ICC Washington

Pursuant to Part 1116 of the regulations of the Interstate Commerce Commission, 49 CFR Part 1116, I hereby request that you record under 49 U.S.C. Section 11303 the following documents:

1. Lease of Railroad Equipment dated as of January 14, 1980 between The Dow Chemical Company and Security Pacific Equipment Leasing, Inc.;
2. Conditional Sale Agreement dated as of January 14, 1980 between Security Pacific Equipment Leasing, Inc., ACF Industries, Incorporated and Richmond Tank Car Company;
3. Assignment of Lease and Agreement dated as of January 14, 1980 between Security Pacific Equipment Leasing, Inc. and The Prudential Insurance Company of America; and
4. Agreement and Assignment dated as of January 14, 1980 between ACF Industries, Incorporated, Richmond Tank Car Company, and The Prudential Insurance Company of America.

The original and one counterpart of each of the above-listed documents are enclosed herewith for filing purposes.

The parties to the subject transaction, and their addresses, are as follows:

Lessee

The Dow Chemical Company
2020 Dow Center
Midland, Michigan 48640
Attention: Dow Chemical U.S.A., Treasury Department

Lessor/Vendee

Security Pacific Equipment Leasing, Inc.
One Embarcadero Center, Suite 710
San Francisco, California 94111

Handwritten signatures and notes on the left margin, including 'A B...', 'Dum', and 'C Counterpart'.

Vendors

ACF Industries, Incorporated
750 Third Avenue
New York, New York 10017

Richmond Tank Car Company
Suite 1500
1700 West Loop South
Houston, Texas 77027

The equipment covered by the aforesaid Lease and Conditional Sale Agreement is 502 tank cars. The A.A.R. mechanical designation of the equipment and the car numbers are set forth in Schedule A hereto.

The original and all extra copies of the enclosed documents should be returned to Mr. Donn Beloff of Schiff Hardin & Waite, 1101 Connecticut Avenue, N.W., Washington, D.C. 20036.

A \$100.00 check, payable to the Interstate Commerce Commission, also is enclosed to cover the required recordation fee.

I am an officer of The Dow Chemical Company and have knowledge of the matters set forth herein.

Very truly yours,

THE DOW CHEMICAL COMPANY

By ^{sdw} B. J. Williams

Dated: January 21, 1980.

11396-C

RECORDATION NO. Filed 1425

JAN 21 1980 - 3 15 PM

INTERSTATE COMMERCE COMMISSION

ANNEX D
TO
Conditional Sale Agreement

ASSIGNMENT OF LEASE AND AGREEMENT
dated as of January 14, 1980 (this
"Assignment"), by and between SECURITY
PACIFIC EQUIPMENT LEASING, INC. (the
"Lessor" or the "Vendee") and THE PRUDEN-
TIAL LIFE INSURANCE COMPANY OF AMERICA
(the "Investor").

The Vendee is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with ACF Industries, Incorporated, and Richmond Tank Car Company (the "Builders"), providing for the sale to the Vendee of such units of railroad equipment (the "Units") described in the Annex thereto as are delivered to and accepted by the Vendee thereunder.

The Lessor and The Dow Chemical Company (the "Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease"), providing for the leasing of the Units to the Lessee by the Lessor.

The Investor is a party to the Participation Agreement dated as of the date hereof (the "Participation Agreement") among the Lessor, the Lessee, and the Investor. As used herein, the term "Vendor" shall refer to the Investor.

In order to provide security for the obligations of the Lessor under the CSA and as an inducement to the Vendor to invest in the CSA Indebtedness (as defined in Article 4 of the CSA), the Lessor agrees to assign to the Vendor for security purposes the Lessor's rights in, to and under the Lease.

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. (a) The Lessor hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the obligations of the Lessor as Vendee under the CSA, all the Lessor's right, title

[Filed and recorded with the Interstate
Commerce Commission pursuant to 49 U.S.C. § 11303
on January __, 1980, at _____.m., recorda-
tion number _____.]

and interest, powers, privileges, and other benefits under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Lessor from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty or termination payment, indemnity, liquidated damages, or otherwise (such moneys being hereinafter called the "Payments"), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Lessor or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

(b) The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease; and to the extent received, the Vendor will apply such Payments to satisfy the obligations of the Lessor under the CSA, and, so long as no event of default shall have occurred and be continuing under the CSA, any balance shall be paid to the Lessor on the same date such Payment is applied to satisfy such obligations of the Lessor, by check mailed to the Lessor on such date or, upon written request of the Lessor, by bank wire to the Lessor at such address as may be specified to the Vendor in writing, and such balance shall be retained by the Lessor.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Lessor under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Vendor.

3. The Lessor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides is to be performed by the Lessor; without the written consent of the Vendor, the

Lessor will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease, and the Lessor agrees that any amendment, modification or termination thereof without such consent shall be void.

4. The Lessor does hereby constitute the Vendor the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor, or otherwise), to ask, require, demand, receive and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all sums due from the Lessor under the CSA, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor.

6. The Lessor will pay and discharge any and all taxes, claims, liens, charges or security interests (other than the security interest created by the CSA) on the Lease or the rentals or other payments due or to become due thereunder claimed by any party from, through or under the Lessor, or its successors and assigns (other than the Vendor), not arising out of the transactions contemplated by the CSA or the Lease (but including income taxes arising out of rentals and any other payments under the Lease and any other proceeds of the Units) which, if unpaid, might become a claim, lien, charge or security interest on or with respect to the Lease or such rentals, other payments or proceeds, unless the Lessor shall be contesting the same in good faith by appropriate proceedings in any reasonable manner, and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect such interests of the Vendor. The Lessor agrees to give the Vendor notice of such contest at least 20 days before institution thereof.

7. The Lessor will, from time to time, execute, acknowledge and deliver any and all further instruments required by law as reasonably requested by the Vendor in order to confirm or further assure the interest of the Vendor hereunder.

8. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. 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 Vendor hereunder.

9. This Assignment shall be governed by the laws of the State of Michigan, but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

10. The Lessor shall cause copies of all notices received in connection with the Lease to be immediately delivered to the Vendor at its address in Paragraph 11 of the Participation Agreement and all payments hereunder to be promptly made to the Vendor's account as set forth in Schedule A to the Participation Agreement, or at such other address or to such other account as the Vendor shall designate in writing.

11. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Vendor shall be deemed to be the original and all others shall be deemed to be duplicates thereof. It shall not be necessary that any counterpart be signed by both parties so long as each party shall sign at least one counterpart.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

SECURITY PACIFIC EQUIPMENT LEASING,
INC.

By Charles D. Pearce

[Corporate Seal]

Attest:

Mered Mackey
Asst Secretary

THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA

By Dean D. Payne *DP*

[Corporate Seal]

Attest:

James D. Dolan
Secretary

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

On this 11th day of January, 1980 before me personally appeared DEAN D. PROPER, to me personally known, who, being by me duly sworn, says that he is Vice President of THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, 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.

Bernadette Muttlerin
Notary Public

[Notarial Seal]

My Commission Expires:

August 21, 1982

STATE OF CALIFORNIA,)
) ss.:
COUNTY OF SAN FRANCISCO)

On this 14th day of January, 1980 before me personally appeared CHARLES D. PEARCE, to me personally known, who, being by me duly sworn, says that he is the EXECUTIVE VICE PRESIDENT of SECURITY PACIFIC EQUIPMENT LEASING, INC., 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.

Gail D. Smedal
Notary Public

[Notarial Seal]

My Commission Expires: 4/21/81



CONSENT AND AGREEMENT

The undersigned, THE DOW CHEMICAL COMPANY, a Delaware corporation (the "Lessee"), the Lessee named in the Lease (the "Lease") referred to in the foregoing Assignment of Lease and Agreement (the "Lease Assignment"), hereby acknowledges receipt of a copy of the Lease Assignment, consents to all the terms and conditions of the Lease Assignment, and agrees that:

(1) it will pay all rentals, casualty and termination payments, liquidated damages, indemnities and other moneys provided for in the Lease (which moneys are hereinafter called the "Payments") due and to become due under the Lease or otherwise in respect of the Units leased thereunder, to the extent such Payments are required to satisfy the obligations of the Lessor under the CSA (as defined in the Lease), by transfer of immediately available funds directly to the account of the Vendor (as defined in the Lease Assignment) at its place of payment specified in Schedule A of the Participation Agreement, each such payment to be accompanied by sufficient information to identify the source and application of such funds (or by such other method or at such other place of payment as may be furnished in writing to the Lessee by the Vendor, including without limitation payment of applicable portions directly to Lessor and Vendor respectively); any balance shall be paid by the Lessee to the Lessor (by check at its address set forth in § 17 of the Lease, or at such other place and in such other manner as the Lessor may indicate to the Lessee in writing) unless and until the Vendor shall otherwise direct the Lessee in writing;

(2) the Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Vendor were named therein as the Lessor;

(3) the Vendor shall not, by virtue of the Lease Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise; and

(4) the Lease shall not, without the prior written consent of the Vendor, be terminated or modified, nor shall any action be taken or

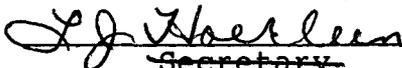
omitted by the Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Vendor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of Michigan and, for all purposes, shall be construed in accordance with the laws of said State.

THE DOW CHEMICAL COMPANY

[Corporate Seal]

Attest:


~~Secretary~~
L. J. HOERLEIN, Assistant Secretary

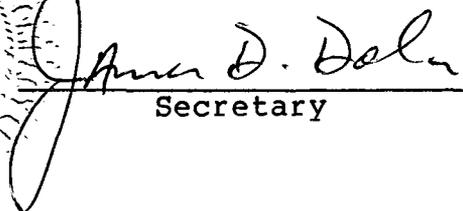
By G. J. Williams
by Emery L. Stora
his Attorney in Fact

The foregoing Consent and Agreement is hereby accepted, as of the 14th day of January, 1980.

THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA

[Corporate Seal]

Attest:



Secretary

By Dean Q. Popper

