

FILE SECOND

RECORDATION NO 17221  
FEB 11 1991

**ITEL**

February 11, 1991

**Istel Rail Corporation**  
550 California Street  
San Francisco, CA 94104  
(415) 984-4200

INTERSTATE COMMERCE COMMISSION  
FEB 11 1991 9 55 AM

1-042A005

Hon. Sidney L. Strickland, Jr., Esq.  
Secretary  
Interstate Commerce Commission  
Washington, DC 20423

\$45.00 Filing Fee

NEW  
NUMBER

Re: Lease Assignment Dated As of February 11, 1991  
Between Istel Rail Corporation, as Debtor/Assignor, and NMB  
Lease NV, as Secured Party/Assignee (the "Lease Assignment")

Dear Mr. Strickland:

On behalf of Istel Rail Corporation, the above instrument, a primary document not previously filed, in five (5) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$15.00 recordation fee and a \$30.00 cross-indexing fee.

Please cross-index this Lease Assignment under the name of The Dow Chemical Company. Please also cross-index this Lease Assignment under the Chattel Mortgage and Security Agreement dated as of January 30, 1991, between Istel Rail Corporation and NMB Lease NV, which was filed simultaneously with the ICC on February 11, 1991, under Recordation No. 17219.

The parties to the aforementioned instrument are listed below:

Istel Rail Corporation (Debtor/Assignor)  
550 California Street  
San Francisco, CA 94104

NMB Lease NV (Secured Party/Assignee)  
Gebouw Nieuw Amsterdam  
Hoekenrode 8  
1102 Amsterdam Zuidoost  
The Netherlands

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MOTOR VEHICLE UNIT

The Lease Assignment assigns the Debtors right's, including rights to payments, under a Lease of Railroad Equipment, dated as of March 1, 1976, by and between Pullman Leasing Company and The Dow Chemical Company, as amended by Amendment No 1, dated as of March 1, 1976, between Istel Rail Corporation, as successor by name change to Pullman Leasing Company, and the Dow Chemical Company, as and to the Lease extent such lease relates to the railcars listed on Exhibit B to the Lease Assignment, as collateral security for the obligations of the Debtor under the Chattel Mortgage and Security Agreement referred to above. Please return to the undersigned, the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

*Howard L. Chabner*  
Howard L. Chabner  
Assistant General Counsel

*Handwritten signature/initials on the left margin.*

REGISTRATION NO 17221  
FEB 11 1991

9 55 AM  
INTERSTATE COMMERCE COMMISSION

LEASE ASSIGNMENT

THIS ASSIGNMENT OF LEASE, dated as of February 11, 1991 (this "Assignment"), by and between ITEL RAIL CORPORATION, a Delaware corporation (the "Debtor"), and NMB LEASE NV, a company organized under the laws of The Netherlands, as agent for the Note Purchasers (as defined in the Security Agreement (as defined below)) (in such capacity, the "Secured Party").

WITNESSETH:

WHEREAS, the Secured Party has entered into a Note Purchase Agreement, dated as of January 30, 1991 (the "Note Purchase Agreement"), with the Debtor pursuant to which the Debtor will sell to the Secured Party secured notes in an amount not to exceed Thirty Million Dollars (\$30,000,000) (the "Secured Notes") to finance the acquisition and purchase of certain units of rolling stock (the "Equipment"); and

WHEREAS, the Secured Party and the Debtor have entered into a Chattel Mortgage and Security Agreement, dated as of January 30, 1991 (the "Security Agreement"), pursuant to which the Debtor has granted the Secured Party a security interest in the Equipment; and

WHEREAS, the Debtor has entered into that certain lease attached as Exhibit A hereto (the Lease) with the respective lessee named therein (the "Lessee"), providing for the leasing by the Debtor to the Lessee of the Equipment listed on Exhibit B hereto; and

WHEREAS, the Lease may also cover the leasing to the Lessee of rolling stock with respect to which the Debtor has not granted a security interest to the Secured Party.

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

1. The Debtor hereby assigns, transfers and sets over to and unto the Secured Party, to secure the payment

of the Secured Notes and all other amounts at any time payable by the Debtor under the terms of the Secured Notes, the Note Purchase Agreement and the Security Agreement and the performance and observance of the Debtor's covenants contained in the Secured Notes, in the Note Purchase Agreement and in the Security Agreement, all of the Debtor's right, title and interest, in and to the Lease to the extent that the Lease relates to the Equipment, including, but not limited to:

(i) all payments due and to become due under the Lease whether as contractual obligations, damages or otherwise (to the extent the foregoing relates to the Equipment);

(ii) all of the Debtor's claims, rights, powers, or privileges and remedies under the Lease only to the extent permitted by the Lessee (to the extent the foregoing relates to the Equipment); and

(iii) all of the Debtor's rights under the Lease to make determinations, to exercise any election (including, but not limited to, election of remedies) or option or to give or receive any notice, consent, waiver or approval together with full power and authority with respect to the Lease to demand, receive, enforce, collect or give receipt for any of the foregoing rights or any property the subject of the Lease, to enforce or execute any checks, or other instruments or orders, to file any claims and to take any action which (in the opinion of the Secured Party) may be necessary or advisable in connection with any of the foregoing insofar, but only insofar, as such rights relate to the Equipment which is subject to the Lease, together with all extensions, renewals and replacements of the Lease (which do not constitute Nonassigned Leases (as defined in the Security Agreement)), whether now owned or hereafter acquired, and all income, profits and avails therefrom, all rights thereunder and all proceeds thereof (to the extent the foregoing relates to the Equipment).

provided, however, that this Assignment shall not subject the Secured Party to, or transfer, or pass, or in any way affect or modify, the obligations of the Debtor under the Lease or relieve the Lessee from its obligations to the Debtor therein, it being understood and agreed that, notwithstanding this Assignment, all obligations of the Debtor to the Lessee with respect to the Equipment shall be and remain enforceable by the Lessee, its successors and assigns, against and only against the Debtor.

2. Upon the full and final discharge and satisfaction of all of the Debtor's obligations under the Security Agreement and this Assignment, all rights herein assigned, transferred and set over to and unto the Secured Party shall terminate, and all estate, right, title, and interest of the Secured Party in and to the Lease shall revert to the Debtor.

3. The Debtor will, from time to time, perform any other act and will execute, acknowledge, and deliver and file, register, deposit, and record (and will refile, reregister, rerecord, or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Secured Party in order to confirm or further assure the interests of the Secured Party hereunder.

4. This Assignment is supplemental to and shall be construed in connection with and as part of the Security Agreement, and all terms, conditions and covenants contained in the Security Agreement are hereby incorporated herein by reference.

5. This Assignment shall be governed by the internal laws and decisions (as opposed to conflicts of law provisions) of the State of California; provided, however, that the parties shall be entitled to all the rights conferred by 49 U.S.C. § 11303.

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

ITEL RAIL CORPORATION

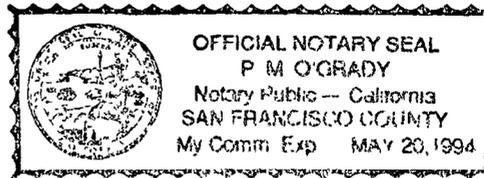
By Robert C. Kiehnle  
Name: Robert C. Kiehnle  
Title: Vice President-Finance

C:0068U

STATE OF CALIFORNIA )  
 )  
COUNTY OF SAN FRANCISCO )

On this 6<sup>th</sup> day of FEBRUARY, 1991, before me personally appeared Robert C. Kiehnle to me personally known, who, being by me duly sworn, says that he is Vice President-Finance of Itel Rail Corporation, that said instrument was signed and sealed on FEBRUARY 6, 1991, 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.

P. M. O'Grady  
Notary Public



LEASE OF RAILROAD EQUIPMENT

Exhibit A to  
Lease Assignment

This Lease dated as of the 1st day of March, 1976, by and between PULLMAN LEASING COMPANY, a Delaware corporation, (hereinafter referred to as "Lessor"), and

THE DOW CHEMICAL COMPANY

a Delaware corporation

(hereinafter referred to as "Lessee").

WITNESSETH THAT

- ARTICLE 1 Lessor agrees to furnish to Lessee and Lessee agrees to accept and use upon the terms and conditions herein set forth the railroad cars, (hereinafter collectively referred to as the "cars" and separately as a "car"), shown on Riders, that may be added to this Lease from time to time by mutual agreement of Lessor and Lessee
- ARTICLE 2 The term of this Lease with respect to each of the cars shall be the term specified on the Rider to this Lease that is applicable to such car, unless sooner terminated in accordance with Article 24 hereof, subject to any extension thereof as may be agreed upon in writing by Lessor and Lessee
- ARTICLE 3A Each of the cars shall be considered as delivered to Lessee hereunder upon the date of the arrival of each of the cars in the yards of delivering railroads, at the point mutually agreed upon by Lessor and Lessee, (hereinafter referred to as the "Effective Date") Furnishing of the cars by Lessor shall be subject to all causes beyond the control of Lessor
- B Each of the cars shall be subject to Lessee's inspection after delivery to Lessee hereunder and before loading The loading of each such car by or on behalf of Lessee shall constitute acceptance thereof by Lessee hereunder and shall be conclusive evidence of the fit and suitable condition of each such car for the purpose of transporting the commodities then and thereafter loaded therein
- ARTICLE 4A At the time of delivery of the cars by Lessor to Lessee, each car will be plainly marked on each side with Lessor's identification mark If during the continuance of this Lease such marking shall at any time be removed or become illegible, wholly or in part, Lessee shall immediately cause such marking to be restored or replaced at Lessor's expense
- B Lessee shall not place nor permit any lettering or marking of any kind to be placed upon the cars without Lessor's prior written consent, except that, for the purpose of evidencing the operation of the cars in Lessee's service hereunder, Lessee shall be permitted to board, placard or stencil the cars with letters not to exceed two inches (2") in height
- ARTICLE 5 The fixed rental with respect to each of the cars shall be the rental specified on the Rider to this Lease that is applicable to such car and such fixed rental shall become effective with respect to each of the cars covered by such Rider upon the Effective Date and shall continue in effect with respect to each such car throughout the term of this Lease with respect to such car unless such car is redelivered to Lessor at an earlier date, as provided in Article 25 hereof Payment of said fixed rental shall be made in advance The first fixed rental payment for each car shall be made at the pro rata daily rate for the number of days from the Effective Date to the end of the month in which the Effective Date falls All subsequent payments of fixed rental shall be made on or before the first day of each succeeding month of the term of this Lease The last payment of rental shall cover the number of days from the first day of the final month to the termination date of this Lease at the pro rata rate per day.

All right, title and interest of Itef Rail Corporation in and to Lease Receivable Payments due under this Lease Contract relating to Equipment designated on the Lease Schedule attached to the Contribution Agreement dated 3/27/90 by and between Itef Rail Corporation and Itef Rail Funding Corporation have as of 3/27/90 been transferred, contributed and assigned to Itef Rail Funding Corporation.

ARTICLE 6 Immediately after the end of each year of this Lease, Lessor shall determine the total number of miles that each car traveled during such year, loaded and empty. If it is determined that any car traveled more than \_\_\_\_\_ miles during such year, Lessee agrees to pay Lessor as additional rent for such car for such year the sum of \_\_\_\_\_ multiplied by the number of miles in excess of \_\_\_\_\_, that such car traveled during such year. The determination of the total number of miles traveled by each car during any year shall be made by multiplying the total number of miles that such car traveled while loaded by two (2), unless Lessor has in its possession information sufficient to ascertain the exact mileage traveled by such car during such year.

ARTICLE 7A Lessee agrees to report promptly to Lessor each movement of the cars. Such report shall contain the date, car number, destination and routing of such movement and any other information which Lessee receives from railroad or other sources concerning such movement. Lessor agrees to use such reports and any other information which is received by Lessor to maintain records to be used to collect any mileage allowances, rentals and/or other compensation payable by railroads by reason of the use of the cars, (hereinafter referred to as "allowances").

B Insofar as applicable laws and regulations permit, Lessee, unless an event of default specified in Article 24 hereof shall have occurred and be continuing, shall be entitled to all allowances collected by Lessor from railroads as a credit against fixed rents, and any other amounts that Lessee may be required to pay Lessor, but in no event shall such credit exceed the sum of such obligations.

ARTICLE 8 Lessee agrees, insofar as possible, to so use the cars that their total mileage under load will equal or exceed their mileage empty on each railroad over which the cars move. In the event that the empty mileage of the cars should exceed their loaded mileage on any railroad and Lessor is notified by such railroad to equalize such mileage with loaded mileage or to pay for such excess empty mileage, Lessee, after notice from Lessor, shall equalize such excess empty mileage within the time limit established by such railroad or pay Lessor for such excess at the rate established by the governing tariff.

ARTICLE 9 Lessee will preserve the cars in good condition and will not alter the physical structure of any of the cars without the approval in writing of Lessor.

ARTICLE 10 Except where responsibility is placed upon others as provided in Article 12A hereof, Lessor, at its expense, agrees to maintain the cars, exclusive of interior lading protection devices, special interior linings and removable parts, if any, in good condition and repair according to the Code of Rules hereinafter mentioned. Lessee, at its expense, agrees to maintain all interior lading protection devices, special interior linings and removable parts, if any, in good condition and repair. No repairs other than ordinary running repairs and repairs to interior lading protection devices, special interior linings and removable parts, if any, shall be made without Lessor's prior written consent.

ARTICLE 11 If any car becomes unfit for any reason unrelated to interior lading protection devices, special interior linings and/or removable parts referred to in Section 10 hereof, if any, and if such condition is not due to damage to such car for which Lessee is responsible under this Lease, the following provisions of this Article 11 shall govern the abatement of rental for such car.

If such car is damaged but not damaged beyond repair and, at Lessor's request, it is moved to a non-railroad shop for repair, rental shall abate as of the date on which such car is switched into the property of such repair shop and shall be reinstated effective as of the fourth (4th) calendar date following the date on which Lessee is notified that such car has been repaired and is ready for redelivery to Lessee. If such car is delivered to a railroad shop for repairs and is not released for shipment to Lessee within five (5) calendar days after such delivery, rental shall abate as of the sixth (6th) calendar day after the date on which such car is switched into the property of such railroad shop and shall be reinstated as of the date on which such car is released from such shop.

If a car is derailed and is not rerailed within five (5) calendar days following such derailment, rental shall abate as of the date of such derailment and shall be reinstated as of the date of rerailment, unless such car requires repairs, in which case the applicable preceding paragraph of this Article 11 shall determine the date on which such reinstatement shall occur.

If any car is damaged beyond repair or is destroyed, rental for such car shall abate as of the date of such damage or destruction. If such car is replaced by another car in accordance with Article 12B hereof, rental for such replacement car shall commence on delivery of such replacement car to Lessee.

Responsibility for loss or destruction of or damage to cars or parts thereof or appurtenances thereto furnished under this Lease shall be as fixed by the then prevailing Code of Rules Governing the Condition of and Repairs to Freight and Passenger Cars for the Interchange of Traffic promulgated by the Association of American Railroads. Said Code of Rules shall establish the rights, obligations and liabilities of Lessor, Lessee and any railroad subscribing to such Code of Rules and moving the cars over its lines in respect of matters to which said Code of Rules relate. In the event that any car is lost, damaged or destroyed while on the tracks of Lessee or any private track, or in the event that any car is damaged by any commodity which may be transported or stored in or on such car, such repairs, renewals or replacements as may be necessary to replace the car or to place it in good order and repair shall be at the sole cost and expense of Lessee. Lessor and Lessee agree to cooperate with and to assist each other in any reasonable manner requested but without affecting their respective obligations under this Article to establish proper claims against parties responsible for loss, or destruction of or damage to the cars.

- B Lessor, at its election, may substitute another car of approximately the same age, type and capacity for any car which is damaged or destroyed during the term of this Lease. The rental for such replacement car shall be the same as the rental for the damaged or destroyed car, and it shall commence to accrue on the date of arrival of the replacement car in the yards of the delivering railroad at the point mutually agreed upon by Lessor and Lessee.

ARTICLE 13 Except where responsibility is placed on others, as provided in Article 12A hereof, Lessee agrees to indemnify and save harmless Lessor and the manufacturer of the cars from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and any expenses in connection therewith, including counsel fees arising out of, or as a result of, the use and/or operation of the cars during the term of this Lease.

ARTICLE 14 Neither Lessor nor the manufacturer of the cars shall be liable for any loss of, or damage to, commodities or any part thereof, loaded or shipped in the cars, however such loss or damage shall be caused, or shall result. The Lessee agrees to assume responsibility for, to indemnify Lessor and the manufacturer of the cars against and to save them harmless from any such loss or damage or claim therefor, and to assume responsibility for any damage caused to the car by such commodities.

ARTICLE 15 Neither Lessor nor the manufacturer of the cars shall have any liability to Lessee for loss of use of any car or cars, in whole or in part, regardless of the cause thereof.

ARTICLE 16 Lessor agrees to assume responsibility for and to pay all property taxes levied upon the cars and to file all property tax reports relating thereto.

ARTICLE 17 Lessor will not be responsible for the payment of any sales and/or use taxes or similar taxes, tariff, duty, customs, switching, demurrage or other charges made by any governmental, railroad or other agency in respect of any of the cars except as specifically provided herein, and Lessee agrees to reimburse Lessor for any such charges.

ARTICLE 18 All rights of Lessor hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of, either in whole or in part, and/or Lessor may assign, pledge, mortgage, transfer or otherwise dispose of title to the cars with or without notice to Lessee. In the event of any such assignment, pledge, mortgage, transfer or other disposition, this Lease and all of Lessee's rights under this Lease and all rights of any person, firm or corporation who claims or who may hereafter claim any rights under this Lease under or through Lessee are hereby made subject and subordinate to the terms, covenants and conditions of any chattel mortgages, conditional sale agreements, agreements and assignments and/or equipment trust agreements covering the cars or any of them heretofore or hereafter created and entered into by Lessor, its successors or assigns and to all of the rights of any such chattel mortgagee, assignee, trustee or other holder of the legal title to the cars. Any sublease of the cars or any of them permitted by Article 19 hereof that is entered into by Lessee, its successors or assigns shall contain language which expressly makes such sublease subject to the subordination contained in this Article 18. At the request of Lessor or any chattel mortgagee, assignee, trustee or other holder of the legal title to the cars, the cars may be lettered or marked to identify the legal owner of the cars at no expense to Lessee. If during the continuance of this Lease any such marking shall at any time be removed or become illegible, wholly or in part, Lessee shall immediately cause such marking to be restored or replaced at Lessor's expense.

ARTICLE 19 Lessee agrees to use the cars exclusively within the boundaries of the continental United States (exclusive of Alaska and Hawaii) or in international service between Canada and the United States and to make no transfer or assignment of this Lease or of the cars by operation of law or otherwise without Lessor's prior written consent. However, Lessee may sublease any of the cars for use in such areas without securing the prior written consent of Lessor. Such subleasing shall in no way relieve Lessee from any of its obligations to Lessor under this Lease.

ARTICLE 20 Lessee acknowledges and agrees that by the execution hereof it does not obtain and by payments and performance hereunder it does not and will not have or obtain any title to the cars or any of them at any time subject to this Lease nor any property right or interest legal or equitable therein, except solely as Lessee hereunder and subject to all of the terms hereof. Lessee shall keep the cars free from any encumbrances or liens which may be a cloud upon or otherwise affect Lessor's title.

governmental laws, regulations, requirements and rules, and to all of the standards recommended by the Association of American Railroads interpreted as being applicable to railroad equipment of the character of the cars as of the date of delivery to Lessee. Lessee agrees to comply with all governmental laws, regulations, requirements and rules, and with the Code of Rules of the Association of American Railroads with respect to the use and operation of each of the cars during the term of this Lease. In case any equipment or appliance on any of the cars shall be required to be changed or replaced or in case any additional or other equipment or appliance is required to be installed on any of the cars during the term of this Lease in order to comply with such laws, regulations, requirements, rules and/or Code of Rules as a result of any changes or revisions made therein during the term of this Lease, Lessee agrees to cause such changes, replacements and/or additions to be made at its cost and expense. Any part or parts changed, replaced or added to any of the cars by Lessee shall be considered accessions to such cars and title thereto shall be immediately vested in Lessor, without cost or expense to Lessor.

ARTICLE 22 Lessee agrees to furnish Lessor promptly, at Lessor's request with complete and accurate information reasonably required for the efficient administration of this Lease.

ARTICLE 23 Lessor or its assignee shall have the right by its authorized representatives to inspect the cars at the sole cost and expense of Lessor at such times as shall be deemed necessary.

ARTICLE 24 If (a) Lessee shall fail to carry out and perform any of its obligations under this Lease within twenty (20) days after Lessor shall have demanded in writing performance thereof, or (b) if a petition in bankruptcy or for reorganization or for a trustee or receiver is filed by or against Lessee and all of the obligations of Lessee under this Lease shall not have been duly assumed by the trustee or receiver appointed, if any, in such proceeding or otherwise given the same status as obligations assumed by the trustee or receiver within thirty (30) days after the appointment, if any, or sixty (60) days after such proceedings shall have been commenced, whichever shall be earlier, Lessor may take possession of the cars and any accessions thereto wherever they may be found and at the election of Lessor, or its assignee as the case may be, either (i) declare the Lease terminated in which event all rights and obligations of the parties hereunder shall cease except only the obligations of Lessee to pay accrued rentals to the date of retaking, or (ii) attempt to relet the cars as agent of Lessee, apply the proceeds of such reletting first to the expenses that may be incurred in the retaking and delivery of the cars to the new Lessee, then the payment of amounts due Lessor under this Lease, and Lessee shall remain liable for any sums remaining due after so applying the proceeds so realized. Lessee shall pay said deficit monthly as the same may accrue.

ARTICLE 25 At the termination of this Lease or applicable Rider, Lessee, at its expense, shall return each of the cars and each part thereof to Lessor at either the loading point at which Lessor delivered the cars to Lessee in accordance with Article 3A hereof, or to such other point or points as may be mutually agreed upon by Lessor and Lessee, on the date on which the term of this Lease or applicable Rider expires, empty, free from residue and in the same good order and condition as it was delivered by Lessor to Lessee, ordinary wear and tear and repairs that Lessor is required to make pursuant to Article 10 hereof excepted. Lessee, on demand, shall reimburse Lessor for the cost of cleaning any cars that contain residue. Lessee, at its option, may redeliver any or all of the cars to Lessor during the thirty (30) calendar day period immediately preceding the date on which the term of this Lease or applicable Rider expires. If Lessee shall elect to so redeliver any or all of the cars, the rental on such cars shall cease on the date on which such cars are so redelivered to Lessor. In the event that any or all of the cars are not redelivered to Lessor on or before the date on which the term of this Lease or applicable Rider with respect to such cars expires, all of the obligations of Lessee under this Lease with respect to such cars shall remain in full force and effect until such cars are redelivered to Lessor, provided, however, that the daily rental for each of such cars during such period shall be one and one-half times the pro rata daily rate of the rental specified in the Rider applicable to such cars.

AMENDMENTS: It is hereby agreed that, despite any foregoing terms and conditions of this Lease:

Article 3B shall be amended as follows:

Each of the cars shall be subject to Lessee's inspection after delivery to Lessee hereunder and before loading. The loading of each such car on behalf of Lessee shall constitute acceptance thereof by Lessee hereunder and shall be conclusive evidence of the fit and suitable condition of each such car for the purpose of transporting the commodities then and thereafter loaded therein, except for latent defects.

Article 4B shall be amended as follows:

Lessee shall not place nor permit any lettering or marking of any kind to be placed upon the cars without Lessor's prior written consent, except that, for the purpose of evidencing the operation of the cars in Lessee's service hereunder, Lessee shall be permitted to board placard or stencil the cars with letters not to exceed six (6) inches in height.

Article 6 shall be amended as follows:

Immediately after the end of each year of this Lease, Lessor shall determine the total number of miles that each car traveled during such year, loaded and empty. If it is determined that any car traveled more than forty thousand (40,000) miles during such year, Lessee agrees to pay Lessor as additional rent for such car for such year the sum of two cents (\$.02) multiplied by the number of miles in excess of forty thousand (40,000) that such car traveled during such year. Mileage shall be figured as the average miles traveled per (car group) Rider.

Article 11 shall be amended as follows:

If any car becomes unfit for any reason unrelated to interior lading protection devices, special interior linings and/or removable parts referred to in Article 10 hereof, if any, and if such condition is not due to damage to such car for which Lessee is responsible under this Lease, the following provisions of this Article 11 shall govern the abatement of rental for such car.

If such car is damaged but not damaged beyond repair and at Lessor's request it is moved to a non-railroad shop for repair, rental shall abate as of the date on which Lessor is notified of such damage and shall be reinstated effective as of the date on which Lessee is notified that such car has been repaired and is ready for redelivery to Lessee. If such car is delivered to a railroad shop for repairs and is not released for shipment to Lessee within five (5) calendar days after such delivery, rental shall abate as of the date on which such car is switched into the property of such railroad shop and shall be reinstated as of the date on which such car is released from such shop.

If a car is derailed and damaged, rental shall abate as of the date of such derailment and shall be reinstated effective as of the date on which Lessee is notified that such car has been repaired and is ready for redelivery to Lessee. If a car is derailed and rerailed without damage, rental shall not abate.

If any car is damaged beyond repair or is destroyed, rental for such car shall abate as of the date of such damage or destruction. If such car is replaced by another car in accordance with Article 12B hereof, rental for such replacement car shall commence on delivery of such replacement car to Lessee.

Article 13 shall be amended as follows:

Except where responsibility is placed on others, as provided in Article 12A hereof, Lessee agrees to indemnify and save harmless Lessor and Pullman Incorporated, a Delaware corporation, from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and any expenses in connection therewith, including counsel fees arising out of, or as a result of, the use and/or operation of the cars during the term of this Lease, other than losses, damages, injuries, claims, demands and expenses attributable to defects in workmanship and/or material incorporated into the cars by Lessor or Pullman Incorporated, or by their agents or representatives.

Article 14 shall be amended as follows:

Neither Lessor nor Pullman Incorporated shall be liable for any loss of, or damage to, commodities or any part thereof, loaded or shipped in the cars, however such loss or damage shall be caused, or shall result. The Lessee agrees to assume responsibility for, to indemnify Lessor and Pullman Incorporated against and to save them harmless from any such loss or damage or claim therefor, and to assume responsibility for any damage caused to the car by such commodities.

Article 15 shall be amended as follows:

Neither Lessor nor Pullman Incorporated shall have any liability to Lessee for loss of use of any car or cars, in whole or in part, regardless of the cause therefor, except as otherwise provided in Article 11, as amended, hereof.

Article 18 shall be amended as follows:

All rights of Lessor hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of, either in whole or in part, and/or Lessor may assign, pledge, mortgage, transfer or otherwise dispose of title to the cars with or without notice to Lessee. In the event of any such assignment, pledge, mortgage, transfer or other disposition in connection with the financing or refinancing of the purchase of the cars or any of them and in the event of the occurrence of an event of default by Lessor under such mortgage or agreement, this Lease and all of Lessee's rights under this Lease and all rights of any person, firm or corporation who claims or who may hereafter claim any rights under this Lease under or through Lessee are hereby made subject and subordinate to the rights of any chattel mortgagee, assignee, trustee or other holder of the legal title to the cars under any chattel mortgages, conditional sale agreements, agreements and assignments and/or equipment trust agreements covering the cars or any of them heretofore or hereafter created and entered into by Lessor, its successors or assigns. If at any time during the continuance of this Lease, Lessor determines that an event of default is likely to occur under any such chattel mortgages, conditional sale agreements, agreements and assignments and/or equipment trust agreements, Lessor agrees to give Lessee written notice thereof immediately after such determination is made. Any sublease of the cars or any of them permitted by Article 19 hereof that is entered into by Lessee, its successors or assigns shall contain language which expressly makes such sublease subject to the subordination contained in this Article 18. At the request of Lessor or any chattel mortgagee, assignee, trustee or other holder of the legal title to the cars, the cars may be lettered or marked to identify the legal owner of the cars at no expense to Lessee. If during the continuance of this Lease any such marking shall at any time be removed or become illegible, wholly or in part, Lessee shall immediately cause such marking to be restored or replaced at Lessor's expense.

Article 19 shall be amended as follows:

Lessee agrees to use the cars exclusively within the continental United States (exclusive of Alaska and Hawaii), Canada and Mexico, and to make no transfer or assignment of this Lease, or of any of the cars, by operation of law or otherwise, without Lessor's prior written consent. However, Lessee may sublease any of the cars for use in such areas without securing the prior written consent of Lessor. Such subleasing shall in no way relieve Lessee of any of its obligations to Lessor under this Lease.

Article 21 shall be amended as follows:

At the time of delivery of the cars by Lessor to Lessee, the cars will conform to the applicable specifications and to all of the governmental laws, regulations, requirements and rules, and to all of the standards recommended by the Association of American Railroads interpreted as being applicable to railroad equipment of the character of the cars as of the date of delivery to Lessee. Lessee agrees to comply with all governmental laws, regulations, requirements and rules, and with the Code of Rules of the Association of American Railroads with respect to the use and operation of each of the cars during the term of this Lease.

In case any equipment or appliance on any of the cars shall be required to be changed or replaced or in case any additional or other equipment or appliance is required to be installed on any of the cars during the term of this Lease in order to comply with such laws, regulations, requirements, rules and/or Code of Rules as a result of any changes or revisions made therein during the term of this Lease, Lessor shall promptly notify Lessee of such required changes, replacements and/or installations and Lessor and Lessee shall agree upon the action that is required in order to comply with such changed or revised laws, regulations, requirements, rules and/or Code of Rules. If such required action can be avoided by Lessee transferring such car or cars to a different type of service, Lessee shall be permitted to make such transfer if it elects to do so.

If such required action cannot be avoided by such transfer to a different type of service or if Lessee elects not to make such transfer, Lessor may elect to either (i) terminate this Lease, effective as of the date on which such action is required to be taken, or (ii) make such agreed upon changes, replacements and or installations, pay the cost thereof, and recover from Lessee a portion of such cost determined by dividing the total cost of such changes, replacements and/or installations by the number of months of expected useful life of such cars, as determined from Lessor's books, remaining as of the date on which such changes, replacements and/or installations are completed and by multiplying such result by the number of months remaining in the term of this Lease as of such date.

If Lessor elects to make such agreed upon changes, replacements and/or installations, Lessee may elect to pay its prorata share of such cost in cash promptly after the date on which such work is completed or to pay such prorata share of such cost by increasing the monthly rental for such cars during the then remaining term of this Lease by an amount to be determined by Lessor based on the actual cost of such changes, replacements and/or installations, the estimated maintenance costs associated with such changes, revisions and/or installations and Lessor's cost of financing Lessee's prorata share of such cost over the then remaining term of this Lease.

Any part or parts changed, replaced and/or added to any of the cars shall be considered accessions to such cars and title thereto shall immediately vest in Lessor.

Article 25 shall be amended as follows:

At the termination of this Lease or applicable Rider, Lessee, at its expense, shall return each of the cars and each part thereof to Lessor at either the loading point at which Lessor delivered the cars to Lessee in accordance with Article 3A hereof, or to such other point or points as may be mutually agreed upon by Lessor and Lessee, on the date on which the term of this Lease or applicable Rider expires, empty, free from residue and in the same good order and condition as it was delivered by Lessor to Lessee, ordinary wear and tear and repairs that Lessor is required to make pursuant to Article 10 hereof excepted. Lessee, on demand, shall reimburse Lessor for the cost of cleaning any cars that contain residue. Lessee, at its option, may redeliver any or all of the cars to Lessor during the thirty (30) calendar day period immediately preceding the date on which the term of this Lease or applicable Rider expires. If

Lessee shall elect to so redeliver any or all of the cars, the rental on such cars shall cease on the date on which such cars are so redelivered to Lessor. In the event that any or all of the cars are not redelivered to Lessor on or before the date on which the term of this Lease or applicable Rider with respect to such cars expires, all of the obligations of Lessee under this Lease with respect to such cars shall remain in full force and effect until such cars are redelivered to Lessor, provided, however, that the daily rental for each of such cars during such period shall be one and one-half times the prorata daily rate of the rental specified in the Rider applicable to such cars for a maximum period of one (1) year after such termination. If Lessee shall for any reason fail to redeliver any of such cars during such one (1) year period, Lessee shall pay to Lessor on the date that such one (1) year period expires a sum equal to the then depreciated value of such car or cars using the AAR schedule of depreciation.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed and delivered as of the day and year first above written

ATTEST.

By William O. O'Leary  
Assistant Secretary

PULLMAN LEASING COMPANY

By O. R. Pendley  
Vice President

ATTEST.

By \_\_\_\_\_  
Secretary

THE DOW CHEMICAL COMPANY

By J. H. Brown  
Supply Manager  
U.S.A. Purchasing WR

AMENDMENT NO. 1

THIS AMENDMENT NO. 1 (the "Amendment") to the Lease of Railroad Equipment dated as of March 1, 1976 (the "Lease") between ITEL RAIL CORPORATION ("Lessor"), as successor by name change to Pullman Leasing Company, and THE DOW CHEMICAL COMPANY ("Lessee") is made as of this 24th day of August, 1990 between Lessor and Lessee.

NOW, THEREFORE, the parties hereto agree to amend the Lease as follows:

1. The following sentence shall be added to Article 6:

If the term of the Lease with respect to any car covered by any Rider includes a period which is less than a full year, the calculations set forth in Article 6 of the Lease shall be prorated accordingly.

2. If Lessee desires to apply or have applied any interior or exterior protective coating to any car(s), the application, maintenance, renewal or removal of any interior or exterior protective coating shall be performed by Lessee at its expense. If any special paint, lettering or other marking is applied to any car(s) by or at the request of Lessee, it shall be removed at Lessee's expense prior to or upon the return of such car(s) to Lessor.

3. Article 10 shall be amended as follows:

- A. Lessee shall notify Lessor in writing of any cars which require repair or maintenance.
- B. All maintenance performed by the parties is subject to delays beyond each party's control.

4. The following provision shall be added to the Lease as follows:

If any car requires cleaning prior to any modification or repair or upon return of such car to Lessor, Lessee shall pay all costs associated with such cleaning.

5. Article 11 shall be amended by adding the following:

Rental shall not abate for any car that is lost, damaged, destroyed or derailed ("Damage") while on any railroad in Mexico until such car is switched into the property of a repair shop in the United States. In the event, within 6 months after the occurrence of any such Damage, Lessor has not received from the railroad the amount to which Lessor is entitled under the Code of Rules for such Damage, then Lessee shall, upon Lessor's request, pay to Lessor such amount ("Payment"). Lessor shall, upon receipt of any payment from the railroad, reimburse Lessee for such Payment.

6. Article 25 is amended as follows:

- A. The return location for each car shall be the repair shop, storage yard, terminal facility or other point designated by Lessor, <sup>IF</sup> ~~IF~~ ~~THE~~ ~~DESIGNATED~~ ~~LOCATION~~ ~~IS~~ ~~MUTUALLY~~ ~~AGREED~~ ~~UPON~~ ~~BY~~ ~~THE~~ ~~LESSEE.~~

- B. The third sentence of Article 25 is removed in its entirety.
- C. For cars in Lessee's possession after the Lease has expired for such cars, an increase of rental to one and one half times the pro rata daily rate of rental specified in the applicable rider shall not be automatic, it shall be at Lessor's option and only upon written notice from Lessor to Lessee.
- D. For any car in Lessee's possession 1 year after the Lease has expired, which Lessee has failed to redeliver to Lessor, at Lessor's option, Lessee shall pay to Lessor on the date that such 1 year period expires a sum equal to the then depreciated value of such car using the AAR schedule of depreciation.

7. All of the other terms of the Lease shall remain in full force and effect.

ITEL RAIL CORPORATION

By: *[Signature]*

Title: VP SALES

Date: 10/31/90

THE DOW CHEMICAL COMPANY

By: *[Signature]*

Title: Manager, Rail Fleet Administration

Date: 11/9/90

Exhibit B to  
Lease Assignment

<u>Quant.</u>	<u>Car Size &amp; Type</u>	<u>Builder</u>	<u>Car Marks</u>	<u>Lessee</u>
61	5851 CUBIC FT. 100 TON COVERED HOOPERS	TRINITY	PLCX 47749-47752, 47754-47760, 47762-47767, 47769-47771, 47773-47778, 47781-47787, 47789-47791, 47793-47796, 47798-47799, 47801, 47805, 47807-47808, 47815-47818, 47822, 47824-47826, 47829, 47831-47833, 47837-47839	Dow Chemical Company