

**TAFT, STETTINIUS & HOLLISTER**

1800 STAR BANK CENTER  
425 WALNUT STREET  
CINCINNATI, OHIO 45202-3957

WASHINGTON, D C OFFICE  
SUITE 500 - 825 INDIANA AVENUE, N W  
WASHINGTON, D C 20004-2901  
202-628-2838  
FAX 202-347-3419

513-381-2838  
CABLE TAFTHOL TWX 810-461-2623  
FAX 513-381-0205

COLUMBUS, OHIO OFFICE  
21 EAST STATE STREET  
COLUMBUS, OHIO 43215-4221  
614-221-2838  
FAX 614-221-2007

October 13, 1993

NORTHERN KENTUCKY OFFICE  
THOMAS MORE CENTRE  
2670 CHANCELLOR DRIVE  
CRESTVIEW HILLS, KENTUCKY 41017-3491  
606-331-2838  
513-381-2838  
FAX 513-381-6613

**CERTIFIED MAIL/RETURN RECEIPT REQUESTED**

18458  
SERIALIZED BY \_\_\_\_\_ FILED

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

NOV 8 1993 - 3 40 PM  
INTERSTATE COMMERCE COMMISSION

Dear Ms. Lee:

I have enclosed herewith an original and one copy of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a Short Term Lease of Railroad Cars, a primary document, dated August 18, 1993.

The names and addresses of the parties to the document are as follows:

LESSOR: The David Joseph Company  
300 Pike Street  
Cincinnati, Ohio 45202

LESSEE: ECDC Environmental LC  
660 South 600 East  
Suite 150  
Salt Lake City, Utah 84010

The equipment covered by the enclosed document is three (3) 1976 Ortner built, 5000 cubic foot gondola railcars, currently bearing the reporting marks set forth in Exhibit A attached hereto.

A fee of \$16.00 is enclosed. Please return the original executed copy of the enclosed document to:

Philip F. Schultz, Esq.  
Taft, Stettinius & Hollister  
1800 Star Bank Center  
425 Walnut Street  
Cincinnati, Ohio 45202-3957

Ms. Mildred Lee  
October 13, 1993  
Page 2

A short summary of the document to appear in the index follows:

A Short Term Lease of Railroad Cars between ECDC Environmental LC, 660 South 600 East, Suite 150, Salt Lake City, Utah 84010, as Lessee, and The David J. Joseph Company, 300 Pike Street, Cincinnati, Ohio 45202, as Lessor, dated August 18, 1993 and covering three (3) 1976 Ortner built, 5000 cubic foot gondola railcars.

Please call me if you should have any questions.

Yours truly,



Philip E. Schultz  
Attorney for  
The David J. Joseph Company

PFS/AKW/taj  
encl.

**EXHIBIT A**

Three (3) 1976 Ortner built, 5000 cube gondola railcars currently bearing the reporting marks as follows:

ECXX 3001  
ECXX 3002  
ECXX 3003

18458  
NOV 1992  
INTERSTATE DOCUMENT COMMISSION

CERTIFICATE

The undersigned, Stephen M. Griffith, Jr., a notary public in and for the County of Hamilton, State of Ohio, hereby certifies that the copy of the document attached hereto has been compared with the original and that the undersigned has found the copy to be complete and identical in all respects to the original document.



Notary Public

STEPHEN M. GRIFFITH JR., Attorney at Law  
NOTARY PUBLIC - STATE OF OHIO  
My Commission has no expiration  
date Section 147.03 O.R.C.

18458

RECEIVED NO. \_\_\_\_\_ FILED MS

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**SHORT TERM LEASE OF RAILROAD CARS INTERSTATE COMMERCE COMMISSION**

This will confirm our agreement to lease to you the railroad cars described below on the following terms and conditions:

**LESSOR:** The David J. Joseph Company  
RELM Division  
300 Pike Street  
Cincinnati, Ohio 45202  
Attn: Vice President

**LESSEE:** ECDC Environmental LC  
660 South 600 East  
Suite 150  
Salt Lake City, UT 84010  
Attn: Mr. Steve Creamer

**UNITS:** Three (3) 125 ton, 5000 CF, Ortner built gondola railcars, bearing reporting marks as listed on Exhibit A, (such railcars hereinafter collectively referred to as "Units" and individually as a "Unit").

**TERM:** Commencing for each Unit upon the earlier of acceptance of such Unit by Lessee or the use of such Unit by Lessee and terminating with respect to all Units at [REDACTED] full calendar month following the acceptance of the last Unit under this Lease.

1. **DELIVERY AND ACCEPTANCE:** Lessor will cause the Units to be tendered to the Lessee at Birmingham, AL (the "Delivery Point"). Immediately upon such tender, Lessee shall inspect and accept the Units and execute the Acceptance Certificate attached hereto as Exhibit B, accepting the Units as being empty, free from residue and in good and loadable operating order, repair, and condition, and shall meet the standards of condition and repair then in effect under the Interchange Rule of the Association of American Railroads, except for certain repairs as noted on the Acceptance Certificate. Lessee shall arrange to have such defects repaired at Lessor's expense.

2. **MAINTENANCE AND REPAIRS:** During the term of the Lease, Lessee shall, at its sole expense, keep and maintain the Units in good working order, condition and repair and in conformance with the Interchange Rules of the Association of American Railroads, the FRA Railroad Freight Car Safety Standards and all other applicable laws, rules and regulations. Any additions or parts installed on any Unit by Lessee shall immediately become the

property of Lessor, provided that Lessee shall not modify the Units without Lessor's prior written consent. Maintenance and repair billings received by Lessor will be forwarded to Lessee for payment.

3. **DISCLAIMER OF WARRANTIES:** LESSOR HEREBY EXPRESSLY DISCLAIMS AND MAKES TO LESSEE NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE UNITS OR OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR OTHERWISE. LESSOR IS NOT RESPONSIBLE OR LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOSSES RESULTING FROM THE INSTALLATION, OPERATION OR USE OF THE UNITS OR ANY UNIT. LESSEE'S ACCEPTANCE OF ANY UNIT SHALL BE CONCLUSIVE AS BETWEEN LESSOR AND LESSEE THAT SAID UNIT IS IN ALL OF THE FOREGOING RESPECTS SATISFACTORY TO LESSEE.

4. **USE:** Lessee agrees not to use the Units outside the United States of America for more than 180 days in any consecutive twelve (12) month period. Lessee agrees to comply in all respects with all laws of all jurisdictions in which Lessee operates the Units. Lessee covenants that the Units shall be used only for such commodities for which the Units are designed. Lessee shall provide to Lessor reporting of total miles travelled by all Units on a monthly basis, summarized by state.

5. **RENTAL:** Lessee agrees to pay to Lessor, at Lessor's address set forth above, [REDACTED] per Unit, monthly in advance. Lessor will invoice Lessee monthly. Lessee agrees to pay such invoice without notice, demand, deduction or set off, with said amount being prorated on a per diem basis for any partial month.

6. **TAXES:** Lessee shall pay, and shall indemnify and hold Lessor harmless from, all taxes, fees, assessments, charges, duties, fines and penalties imposed by any local, federal or foreign authority upon or in connection with or measured by this Lease or Rental paid hereunder, or imposed upon the Units or for the possession, rental, return, delivery, use or operation thereof or on the earnings therefrom, excluding only, taxes imposed upon or measured by the net income of Lessor.

7. **INDEMNIFICATION:** Lessee assumes all risk of loss of the Units during the Term, and Lessee shall indemnify and hold Lessor harmless from any and all liabilities, losses, damages, expenses (including attorney's fees) or claims of whatsoever nature arising out of or relating to the possession, use, condition or operation of the Units or any Unit, regardless of where, how, and by whom operated.

8. **INSURANCE:** Lessee shall, at its sole expense, carry insurance with respect to all of the Units in such amounts and with respect to such risks as Lessor may reasonably require. Lessee shall, prior to using any Unit and thereafter upon Lessor's request, furnish certificates, policies or endorsements to Lessor as proof of such insurance.

9. **CASUALTY OCCURRENCES:** In the event any Unit shall become lost, stolen, damaged or destroyed beyond repair or to the extent that it would not be economical to repair said Unit, Lessee shall promptly notify Lessor of same in writing and shall pay Lessor the settlement value for said Unit as determined pursuant to Rule 107 of the AAR Interchange Rules. Lessee's obligations to pay Rental with respect to any Unit so lost, stolen, damaged or destroyed shall cease on the date the settlement value for said Unit is paid to Lessor pursuant to the preceding sentence.

10. **RETURN:** At the expiration or earlier termination of the Term, Lessee will return the Units at its sole risk and expense as follows:

- (a) Each Unit shall be empty, free from residue and in good and loadable operating order, repair and condition and shall meet the standards of condition and repair then in effect under the Interchange Rules of the Association of American Railroads;
- (b) Lessee shall assemble the Units on such storage tracks as Lessor may designate;
- (c) Lessee shall permit Lessor to inspect the Units and store the Units on such tracks at Lessee's risk until the Units have been sold, or otherwise disposed of by the Lessor, provided that Lessor shall not be entitled to store the Units on such tracks for more than 120 days after all of the Units have been assembled; and
- (d) Lessee will transport the Units to any place on the lines of any railroad, all as directed by and at no cost to Lessor.

Lessee's total combined expense for transporting the Units as required in Section 10(b) and 10(d) shall not exceed [REDACTED] per Unit. Return of the Units as required herein is of the essence of this letter agreement, and Lessee hereby agrees that Lessor may obtain an order requiring Return of the Units by Lessee in accordance herewith from any court situated in Cincinnati, Ohio, and that such order shall be enforceable against Lessee.

11. **NOTICES:** Notice given pursuant to this letter agreement shall be deemed to have been given when actually received if personally delivered or five days after deposited in the United States certified or registered mail, return receipt requested, postage prepaid, addressed to the parties at the addresses set forth above.

12. **GOVERNING LAW:** This letter agreement is made and entered into in Cincinnati, Ohio, and shall be governed by, and construed and enforced in accordance with the laws of the State of Ohio.

13. **ASSIGNMENT:** Lessee shall not assign or transfer (by operation of law or otherwise) any of its rights under this letter agreement, or sublet any of the Units, without Lessor's prior written consent.

14. **DEFAULT AND REMEDIES:** In the event Lessee fails to timely perform any of its obligations hereunder, in addition to any and all other remedies available to Lessor at law or in equity for such failure, Lessor shall be entitled to terminate this letter agreement and to cause Lessee to return the Units to Lessor pursuant to the Return provisions of this letter agreement, and Lessee shall, within ten days of Lessor's demand therefore, return the Units to Lessor pursuant to the Return provisions of this letter agreement.

15. **JURISDICTION AND VENUE:** The parties agree that any action, or proceeding to enforce or in respect of this (lease or letter agreement) shall be initiated and prosecuted as to all parties in Cincinnati, Ohio. The parties hereby consent and submit to the exercise of exclusive jurisdiction over their person by any court situated in Cincinnati, Ohio, having jurisdiction over the subject matter hereof, waive personal service of and all process upon them and consent that all such service of process may be made by certified mail directed to the parties at the addresses set forth above, or as otherwise permitted under the laws of the State of Ohio. Each party hereby waives any objection based on forum non conveniens or venue and consents to the granting of such legal or equitable relief as any such court deems appropriate.

16. **SURVIVAL:** Lessee's obligations hereunder shall survive the expiration or earlier termination of this letter agreement.

Please indicate your agreement to the foregoing by signing and dating this letter in the space provided below and returning it to me. This letter shall constitute a binding lease agreement upon receipt by us of a copy of this letter signed by you.

**LESSOR:**  
**THE DAVID J. JOSEPH COMPANY**

**BY:**

**NAME:** DOUGLAS F. McMILLAN

**TITLE:** VICE PRESIDENT

Accepted and agreed to this 18<sup>th</sup> day of AUGUST, 19 93.

**LESSEE:**  
**ECDC ENVIRONMENTAL LC**

**BY:**

**NAME:**

**TITLE:**

**EXHIBIT A**

Three (3) 1976 Ortner built, 5000 cube gondola railcars currently bearing the reporting marks as follows:

ECXX 3001  
ECXX 3002  
ECXX 3003

**EXHIBIT B**

**ACCEPTANCE CERTIFICATE**

The undersigned, \_\_\_\_\_, the duly authorized representative of \_\_\_\_\_ (the "Company"), hereby certifies to The David J. Joseph Company ("DJJ") that the three (3) Railcars bearing reporting marks listed below (the "Units") have been delivered to the Company, have been inspected and meet all regulatory requirements, and are in all respects acceptable to the Company. This certificate is being delivered pursuant to Section 1 of that certain Railroad Equipment Lease dated \_\_\_\_\_ by and between the Company and DJJ.

IN WITNESS WHEREOF, the undersigned, being the \_\_\_\_\_ of the Company, does hereunto set his hand as of this \_\_\_\_\_ day of \_\_\_\_\_, 199\_, on behalf of the Company.

**"UNITS"**

ECXX 3001  
ECXX 3002  
ECXX 3003

ECDC ENVIRONMENTAL LC

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

STATE OF OHIO            )  
                                  )  
COUNTY OF HAMILTON)    SS:

On this 18<sup>th</sup> day of AUGUST, 1993, before me the subscriber, JAMES H. GOETZ, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named DOUGLAS F. MCMLIAN to me personally known, who stated and acknowledged that he is the VICE PRESIDENT of The David J. Joseph Company, a Delaware corporation, and duly authorized by authority of the Board of Directors or by-laws of said corporation in his capacity as such officer to execute and acknowledge the foregoing instrument for and in the name and on behalf of said corporation and further stated and acknowledged that he has so signed, executed and delivered the foregoing instrument as the free and voluntary act and deed of said corporation, for the consideration, uses and purposes therein mentioned and set forth and desired that the same might be recorded as such.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 18<sup>th</sup> day of AUGUST, 1993.

  
\_\_\_\_\_  
(Notary Signature)

My commission expires:  
JAMES H. GOETZ  
Notary Public, State of Ohio  
My Commission Expires July 10, 1995

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STATE OF UTAH )  
COUNTY OF SALT LAKE )

SS:

On this 18th day of August, 1993, before me the subscriber, Sheri C. Harlan, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named R Steve Creamer to me personally known, who stated and acknowledged that he is the

President/CEO of ECDC Environmental, L.C.,  
(title) (company)

a Utah Limited Liability company ~~corporation~~, and duly authorized by  
(state)

authority of the Board of Directors or by-laws of said corporation in his capacity as such officer to execute and acknowledge the foregoing instrument for and in the name and on behalf of said

corporation and further stated and acknowledged that he has so signed, executed and delivered the foregoing instrument as the free and voluntary act and deed of said corporation, for the consideration, uses and purposes therein mentioned and set forth and desired that the same might be recorded as such.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 18th day of August, 1993.

*Sheri C Harlan*

(Notary Signature)

My commission expires:

6/21/97



NOTARY PUBLIC  
SHERI C. HARLAN  
60 South 800 East  
Salt Lake City, Utah 84102  
My Commission Expires  
June 21, 1997  
STATE OF UTAH