

COURTESY TRANSLATION OF THE WITNESS STATEMENT OF HORACIO SÁNCHEZ UNZUETA

My name is Horacio Sánchez Unzueta. I provide this statement for the case brought forth under Chapter XI of the North American Free Trade Agreement (NAFTA) against the Mexican State, with respect to the hazardous waste landfill in the municipality of Guadalcázar, San Luis Potosí. Metalclad Corporation (Metalclad) has made reference to various events that allegedly occurred during my administration and has made several allegations against me that I would like to respond to and clarify before this Honorable Tribunal.

I was the Constitutional Governor of the State of San Luis Potosí, Mexico from May 18, 1993 to September 26, 1997.

I. CHRONOLOGY OF THE FACTS

COTERIN AND THE SOCIAL CONFLICT IN LA PEDRERA (1991 – 1993)

It is a known fact that the Adrett's company which was first established in the municipality of Mexquitic de Carmona and, later in the municipality of Guadalcázar under the name of Confinamiento Técnico de Residuos Hazardous (COTERIN), had been facing opposition and protests by the local community since 1991, as indicated by (Exhibits I, II, III, and IV):

- Letter dated February 9, 1991, signed by 12 local Municipal Presidents, in which they express their support for Guadalcázar's mayor, Salomón Ávila Pérez, **“who, echoing the residents of this Municipality definitively opposes the establishment of a hazardous wastes landfill in the La Pedrera site”** (letter sent to the then Governor Leopoldino Ortiz Santos).
- Agreement of the Guadalcázar Municipal Council dated January 20, 1992 affirming the 1989-1991 Municipal Administration's rejection of the construction of the hazardous waste landfill. The agreement is signed by 30 of the Municipality's direct community authorities. This Municipal Council agreement states that the installation of the hazardous waste landfill “was carried out essentially in secret, under the guise of drilling wells to improve agriculture in the area,” and that “presently, in view of its possible re-opening, this Honorable Council, after having listen to the public sentiment directly from the very voice of the residents of Guadalcázar, through their community

representatives and through their *ejidos*, has resolved to DENY ALL PERMITS IN FAVOR OF THE PRESENCE OF THIS COMPANY IN GUADALCÁZAR”.

- Nine letters dated between February 12 and 27, 1992, addressed to the state Governor, Eng. Gonzalo Martínez Corbalá, from same number of Municipal Presidents supporting their fellow Municipal President of Guadalcázar, Juan Carrera Mendoza, in his request for the final closure of the La Pedrera site.
- Recommendation 021/92 of the Comisión Nacional de Derechos Humanos (CNDH) (*National Human Rights Commission*) of February 19, 1992, addressed to Governor Gonzalo Martínez Corbalá, regarding environmental damages related to the COTERIN case in La Pedrera, Municipality of Guadalcázar, S.L.P. The CNDH recommended “that the legal status of this company be determined in order to decide whether or not to grant an operation license....”

The fact that in 1992, Mr. Humberto C. Rodarte Ramón, formerly the State Deputy-Delegate for the Secretariat of Urban Development and Ecology (SEDUE) and, later employed by Metalclad, carried out the closure of the landfill.

All of which provides the background proving the existence of public controversy surrounding La Pedrera, when it was owned by local investors, in this case, the Aldretts.

The protests by the local community have not ceased since then. During President Carlos Salinas de Gortari's visit on April 29, 1992, Governor Gonzalo Martínez Corbalá took him to Guadalcázar. The President ordered that the landfill be definitely closed down.

MY POSITION ON THE LA PEDRERA CONTROVERSY DURING THE ELECTION CAMPAIGN OF JANUARY 1993

On December 1992, I was appointed the PRI candidate for state governor by PRI. It was not a joint appointment with the *Nava Partido Político* (NPP) as alleged by Mr. Grant S. Kesler. That political party had its own candidate.

During my campaign, I toured the Municipality of Guadalcázar and realized that the people were very concerned by the damage that the landfill could potentially cause to their health and their farmland.

On January 29, 1993, in a meeting held at the head town of the Municipality, I made a clear commitment to the people of Guadalcázar in the following terms: “**The hazardous waste landfill has been discussed at length. I simply want to tell you that, even before I learn of this initiative in detail given that I presently do not, if the will of the people of Guadalcázar is not to open the hazardous waste landfill, you will have a government that will not reopen it.**” This is the position that I took with respect to a very serious social problem that was in the interest of the community. It must be pointed out that, at that time, we did not know of Metalclad's presence in SLP at all. The conflict that the community had endured was entirely attributed to a local enterprise (Exhibit V).

During my campaign, I was advised by Dr. Fernando Díaz Barriga and Dr. Pedro Medellín Milán, both university professors and renowned scholars. Through their advice, I was better informed of the need to have an adequate means to control the waste of the local industry.

Upon winning the elections, I prepared the State Development Plan, that, in fact, contains a chapter on Ecology and the Environment. In preparing this chapter, I was advised by Dr. Fernando Díaz Barriga and Dr. Pedro Medellín Milán whom I later appointed as the officials responsible for the State Coordination of Ecological and Environmental Matters. The objective of this chapter is "to establish the regulatory and operative means to achieve the reasonable exploitation of the four state regions, by preserving the ecosystems and guaranteeing the basis for sustainable development." Not one of the strategies and actions set out in the Plan contains my government's commitment to establish a hazardous waste landfill. However, the Plan does recognize the situation at La Pedrera as a problem, but discusses it in the following general terms: "to study and solve the situation of the hazardous waste landfills located in the Municipalities of Mexquitic and Guadalcázar, to determine whether they are suitable, operationally viable and what their real environmental impact is." (Exhibit VI).

MY GOVERNMENT'S FIRST CONTACT WITH METALCLAD (JUNE 1993)

My first contact with Metalclad, was the result of a request for a meeting by the firm's representatives which took place on June 11, 1993. According to my schedule for that day, the reason for the meeting was that they wanted to inform us of their firm's services. During our discussion, that lasted less than 30 minutes, they told me that their company was one of the leaders in the United States in the treatment of hazardous waste. Their representatives explained that they had plans to invest in the state. They did not show any projects, plans, designs, videos or any other documents.

During our meeting we discussed our government's idea of promoting an industrial park to minimize or incinerate waste for companies that generate highly hazardous waste. In very general terms, I informed them of our environmental policy objectives, noting that it was in our interest to have the infrastructure in our state capable of controlling hazardous waste, which would make our state more attractive for the establishments of new enterprises. I told them that I believed that if the NAFTA was formalized, the Mexican industry would have to comply with international environmental standards, and that my government was willing to take the first steps to make industrial development in San Luis Potosí more competitive. At the end of the meeting, they requested that I state in writing that the government's support for investment in the state. Of course, I had no objection whatsoever to this, and I did it. I told them that they were welcome as investors and that we would view their projects favorably, if they complied with the law at the federal, state and municipal levels and were supported by the local community. I want to point out that this letter (Exhibit VII) is dated on the same day of the meeting in which I met the investors for the very first time. Therefore, I had not been able to investigate their company's seriousness, veracity or even its experience in order to formalize a governmental commitment or agreement. However, what I did insist upon was that it was fundamental

that any initiative involving this or any other similar project had to comply with the requirements and decisions of the three levels of government and also had to respect the genuine interests of the community. The letter, as it reads, only welcomes Metalclad's interest in my government's environmental policy programs.

In summary, I met with the representatives of a company that claimed to be highly specialized in the treatment of hazardous waste and I appreciated their interest in the state's environmental programs. In this meeting, I was never informed that they were negotiating the acquisition of La Pedrera or that they had already acquired it. In the interest of resolving the local industry's practice of disposing of waste in clandestine dumps, La Pedrera was the last site I would have recommended to any national or foreign investor. The more than three consecutive years of controversy regarding this site, Mexquitic and Villela in Santa María del Río, had taught us a very important lesson: every project must comply with the environmental policy requirements of the three levels of government and have the full support of the local community. This had been clearly stated, both in my position as candidate for governor as well as in the welcome letter requested by Metalclad, as set out in the last paragraph.

Moreover, in the case of Villela in the community of Santa Maria del Rio, Metalclad attempted to develop a hazardous waste incinerator project even though it had been opposed by the local community and did not have any authorization from the state or local authorities. In fact, Metalclad went ahead and publicly announced the imminent commercial opening of the incinerator.(Exhibit VIII)

One month after this introductory meeting, I received some very surprising news: Mr. Grant S. Kesler was announcing the establishment of a government-private sector partnership in San Antonio, Texas (Exhibit IX), supposedly created by Mr. Kesler and me. Mr. Kesler was not present at the June 11th meeting and, consequently, I had never met him. According to this announcement, Metalclad would be the first company in Mexico to develop a commercial landfill for the treatment of hazardous waste. This announcement, lead me to instruct the State Ecological Coordination that they be especially careful and cautious with respect to the Metalclad representatives given their obvious lack of responsibility and honesty. Moreover, their experience in the management of hazardous waste was completely unknown to us.

METALCLAD ACQUIRES LA PEDRERA (SEPTEMBER 1993)

In September 1993, I had a meeting with Pedro Medellín Milán, the State Coordinator of Ecology, who informed me that the representatives of Metalclad had come to his office to inform him that they had acquired COTERIN and that they intended to build a hazardous waste landfill. He reported that he had told the Metalclad representatives that their decision to establish themselves in Guadalcázar was truly regrettable. That such a decision would only further complicate the conflict with the municipality and the community that had not yet been resolved. In addition, he informed them that the unilateral decision by Metalclad fell outside of the terms discussed in their first meeting with the Governor which provided that any project had to comply with the requirements of the three

levels of government and have the full support of the community. In the development of any such projects, the technical requirements for the location of suitable sites is crucial. In addition, it was also crucial as well as evident to recognize that the political and public situation was completely unfavorable for La Pedrera, given the site's history and the fact that the municipal authorities had repeatedly refused to grant the permits needed for the construction and operation of the hazardous waste landfill.

FIRST MEETING WITH THE FEDERAL GOVERNMENT (OCTOBER 1993)

On October 7, 1993, Sergio Reyes Luján, a physicist and then President of the National Institute of Ecology (INE), traveled to SLP to meet with me. I expressed my concern regarding the news that the North American company, Metalclad, had acquired La Pedrera to develop a landfill. I told him that I did not know anything about the company's background nor any of the details of their project in Guadalcázar. Consequently, I suggested that we be extremely careful in analyzing any alternatives to solve both the problem of the 20,000 tons of hazardous waste as well as the selection of a suitable site for their final disposal. With respect to the possibility of reopening La Pedrera to receive new waste, I said that the project would, once again, face the strong opposition of the Municipal Government and the local community, as had been the case in the last few years. At the end of our meeting, Reyes Luján told me that the Federal government would act prudently and with respect for the local authorities, and that he would recommend that the same approach be taken by the Metalclad representatives.

One week after Mr. Reyes Luján's visit, Pedro Medellín showed me an advertisement that Metalclad was distributing in the United States offering their services in the municipality of Guadalcázar. The company announced that they had all the necessary permits to operate, which was not true. The Government of Guadalcázar had not yet accepted the construction of the landfill and the community continued to oppose it. This worried me a great deal and I called Sergio Reyes Luján to express my concern. I told him that I did not consider it to be appropriate that Metalclad advertise their services while the problems had yet to be resolved and the necessary agreements to authorize the construction of the hazardous waste landfill had yet to be adopted in accordance with the law. Despite this, Metalclad was, unduly and without any legal basis, advertising the opening of the landfill.

METALCLAD AS A MATTER OF PUBLIC CONTROVERSY (JANUARY 1994)

Since the beginning of January 1994, Metalclad became a matter of public controversy. The company that on September 1993, took the operation of the landfill as a given, through its publicity in the United States, was now advertising through specialized publications, such as the December 1993 edition of the "*Chemical Marketing Reporter*," a North American magazine. Due to this publication, on January 8, 1994, the local media in San Luis Potosí reported the on "authorization of the landfill in Guadalcázar" (Exhibit X). They also reported, for the first time, the August 10, 1993 authorization granted by INE to

operate of the landfill in Guadalcázar. In response to this publication, I was forced to publicly announce that the landfill, which was closed at the time, would not be reopened if the local authorities did not consent to it, that Metalclad had been irresponsible in announcing the opening of the landfill's services and that the location of suitable alternate sites was urgent.

In reaction to the public position I had adopted, which definitely reiterated the response that my government's Ecology Coordinator had given Metalclad's representatives in private when they informed him that they had decided to acquire COTERIN and La Pedrera, Metalclad responded with newspaper spreads. (Exhibit XI) This forced my government, on January 12, 1994, to state the following points publicly:

- The State Government was not formally aware of Metalclad's acquisition of COTERIN or that the INE granted an authorization for the operation of a landfill, and;
- The State Government acknowledges the urgent need of having a system to control hazardous waste in order to protect the environment. Such a system must comply with the federal, state and municipal legal requirements and authorizations, and have the consent of the community where the facilities are located. Finally, my government states that Metalclad might or might not be selected to operate in San Luis Potosí, depending on the studies undertaken in this case (Exhibit XII), that is the technical and environmental impact studies which warrant the issuing of new land use permits.

Our uneasiness with respect to Metalclad's behavior was always justified. As is shown by the apologies offered by Mr. Grant S. Kesler as a result of their announcement of Metalclad's operations and the offering of their services in Guadalcázar (Exhibit XIII) which caused great concern and confusion in San Luis Potosí. **In a letter dated January 13, 1994, Mr. Kesler acknowledges that he had erred in not provided my government with sufficient information on his company or the full details of their project in Guadalcázar.** He also stated that Metalclad would offer a public apology the following day. The following is worth noting:

- "We are in agreement with you that the consent of the people of Guadalcázar is needed in order to build and operate a landfill;"
- "We are completely willing to meet all the requirements that the State Ecology Coordination requires in order to fulfill any state or municipal requirements;" and
- "We recognize the sovereignty of the State of San Luis Potosí and the autonomy of the Municipality of Guadalcázar" (Exhibit XIV).

SECOND MEETING WITH METALCLAD (JANUARY 1994)

On January 28, 1994 I had a second meeting with Metalclad representatives at the Governor's Residence. It was arranged through Mr. Luis Manuel Abella, a local businessman whom I had known for several years, and who was a friend of Mr. José Mario de la Garza, a San Luis Potosí lawyer, I had not previously met, who was acting as counsel for Metalclad. José Mario de la Garza, Grant S. Kesler, Daniel Neveau and Abella attended

the meeting. We had a discussion, and I reiterated that the opposition to the landfill project by the people of Guadalcázar and its municipal authorities was a very serious problem. I also noted that the Municipal Government was not willing to support the construction of a landfill nor issue the necessary municipal permits. Moreover, I noted that this was not a new position, but dated back to at least 1991.

This being said, Metalclad's representatives frankly and directly asked my opinion on whether the landfill in Guadalcázar could or could not be opened. I responded with the same frankness. I told them that, in my opinion, the opposition by the municipal authorities of Guadalcázar and the community would prevent the development of their project as a result of the La Pedrera controversy which originates in a long chain of lies made to the community for more than three years. I added that I thought this situation would be very difficult to overcome, and that the only opportunity to open a landfill would be to find a place other than Guadalcázar. Mr. Kesler said that the most important thing was not La Pedrera itself, but the fact that the site already had all the federal permits. He said that it would take them more than three years to obtain the same permits for new site, and that they would rather risk resources to finance studies to show that La Pedrera was a safe site. Due to their position, I suggested that we engage the assistance of the most competent researchers at the Autonomous University of San Luis Potosí (UASLP), who had gathered information throughout the years, to identify various alternate sites that presented no problems and that would initially fulfill the appropriate characteristics needed to establish a landfill.

I also expressed my concern that, even if La Pedrera were confirmed to be a safe site, this would not solve the opposition by the municipal authorities and the community *per se*. I insisted that it would be preferable to begin conducting environmental impact studies on other sites that could be selected, and, in this way the State Government could commit its full support, even with the federal authorities.

I never decided that we should formalize the establishment of a "university commission" as Metalclad alleges, nor did I designate the people who would comprise it. I simply said that it would be important to have the assistance of university researchers in finding alternate sites, but never with regards to undertaking studies on the viability of La Pedrera. The establishment of a University—State Government Commission would have required a formal agreement with the university authorities. This never happened.

METALCLAD ACCEPTS TO SEARCH FOR AN ALTERNATE SITE

(APRIL-MAY 1994)

As a result of my recommendation to Metalclad that they find an alternate site with the assistance of the UASLP researchers—from a list of more than 30 sites that had been preliminarily identified as suitable by previous studies. On April 25, 1994, Mr. Kesler stated that "in accordance with the (Ecology) Coordination's suggestion, Metalclad, based on the studies by the UASLP with respect to the location of an alternate site for a controlled landfill, will immediately initiate the studies in order to obtain the respective authorizations. For this reason, we very much appreciate the State

Government's offer to lend us all their support and cooperation to expedite these procedures at the state and federal levels.” (Exhibit XV). Soon thereafter, on May 28, that same year, the Secretary of Industrial Promotion and the Ecology Coordinator, on behalf of the State Government, and METALCLAD had a meeting. With respect to this meeting, the press reported the following commitments undertaken by Metalclad:

1. METALCLAD will remediate the La Pedrera site, in which 55 thousand containers of hazardous waste are stored;
2. To carry out studies (of an alternate site) within a period of no more than 12 months in order to obtain the permits; and
3. The construction of the controlled landfill (Exhibit XVI). These conditions precedent clearly set out the basic agreement between the State Government and Metalclad at that time: to find an alternate site (other than La Pedrera) for the construction of a landfill, with the full support of the state authorities.

The substantive points of the agreement were made public by Mr. Grant S. Kesler through a press release on May 31, 1994 from Newport Beach, California (Exhibit XVII). In this document it is clearly stated that Metalclad will remediate the transference station at La Pedrera and that the State will cooperate with Metalclad in locating additional sites in San Luis Potosí for its future use. Nowhere in this press release is it stated that an agreement had been reached to proceed with the commercial operation of the La Pedrera site.

METALCLAD'S CONSTRUCTION LICENSE IS DENIED (DECEMBER 1995)

On November 15, 1994, Metalclad sent me a letter acknowledging my “political leadership and decision in identifying the management of hazardous waste as a problem that has to be solved in a serious manner and without prejudice” (in reference to the content of my report on the State of Government, on September 25, 1994). Metalclad requested that the State Government intervene before the Guadalcázar municipal authorities, in order to obtain a positive decision with regards to their application for a construction license, that we so made, that very same day, to the Guadalcázar Municipal Government. **On December 5, 1994⁵ in an extraordinary session of the Municipal Council, the Guadalcázar Government “denied, for all effects and purposes, the construction license for the site referred to by the petitioner”** (Exhibits XVIII, XIX y XX).

GRAND OPENING OF THE LA PEDRERA LANDFILL (MARCH 1995)

The lawyers for the Mexican government have shown me a letter dated February 23 1995, from Daniel Neveau addressed to the Governor of San Luis Potosí, in which he thanks me for having held a meeting with Dr. Humberto Rodarte, Dr. Pedro Medellin,

Ramón Zamanillo, Eng., and Jose Mario de la Garza on February 18, 1995. This is false, I was never present at that meeting, nor did such a meeting even take place. Furthermore, it is mentioned in the letter that the United States Department of Commerce along with the Mexican Embassy in the United States and the United States Embassy in México had joined forces with the objective of reestablishing confidence in Mexico. To these ends, they wished to inform to the investment community of the progress of the hazardous wastes landfill program in Guadalcázar on March 10, 1995. I was never informed of any such project, and if any information had entered my office, I never received it. This is why I never responded to any of the mentioned points of this supposed letter. What is perfectly clear is that an agreement was never entered into between the Governor of San Luis Potosí and Metalclad about any of the points included in the letter showed to me by the Mexican Government Attorneys. In the letter, there is also mention of a work schedule that is attached to it which sets out the pending activities required in order to initiate the remediation and operation of the Guadalcázar landfill. May I state, that if I had known about it, I would never have accepted such a work schedule. The position of my government had always been that they could not initiate commercial operations, if they did not have the prior authorization of the three levels government and the community's support.

Dr. Pedro Medellín informed me on March 6, 1995, that he had just received an invitation for the "grand opening" of the landfill in Guadalcázar, which was scheduled for March 10th (Exhibit XXI). I had never been informed of their intention to hold such an event, and I obviously never agreed to participate in it, as Metalclad announced irresponsibly. Through the invitation that was given to Dr. Medellín, I learned that State and Federal Government officials as well as the United States Ambassador to Mexico were supposedly attending.

After Mr. Kesler's statement published in San Antonio, Texas; his admission of his mistake in announcing Metalclad's services, commercially, at the landfill in September 1993; their public recognition that Metalclad had not met all the legal requirements; the confirmation of their respect for the sovereignty of the state of San Luis Potosí and the autonomy of the Guadalcázar Municipality, I was not surprised by the attempt to hold a "grand opening." Given this, I instructed Dr. Medellín to get in touch with Metalclad and warn them that, under no circumstances, were they to go ahead with the supposed grand opening, nor any other act that would violate the law or would provoke a confrontational situation. Especially given that the site was still closed and the company did not have the authorizations nor the community's support. Therefore, this would only further complicate the matter. I cannot comprehend how they could have thought of holding a grand opening ceremony under the circumstances surrounding the case. Moreover, I had consistently insisted on the conditions that had to be complied with in order to operate, and Metalclad had even publicly acknowledged them. I thought that the attempt to hold a "grand opening" at the landfill was an extremely irresponsibility act and an outright disregard for the law.

That very day, I was informed that the attempted grand opening had been obstructed by a demonstration by the local residents. The attendees to the event were detained for more than three hours, until the Municipal President intervened. He calmed the protestors down and everybody was able to leave without any major mishaps. As a result of this

altercation, the Government's Secretary General ordered that the Department of Social Protection to place a police vehicle at the site, to prevent further confrontations and to report any acts that could entail the involvement of the authorities.

DE LA GARZA LAW FIRM CEASES TO REPRESENT METALCLAD (APRIL 1995)

On April 29, 1995, I received a letter from José Mario de la Garza, managing partner of the law firm that was retained by Metalclad, in which he informed me that he had ended his professional relationship with the company, **due to ethical differences**. This unusual letter caught my attention, so I sought to speak directly to Lic. de la Garza whom I asked what kind of ethical differences he had had with Metalclad. Before answering, he advised me that it was a very delicate matter, and because of its implications, he would inform me on a strictly confidential basis which he did so out of respect for me personally and for my official position. **He then told me he was very annoyed with Mr. Grant S. Kesler, because he had asked him to bribe me with one million dollars, in exchange for my doing whatever was necessary to open the La Pedrera landfill.**

MEETING WITH THE ENVIRONMENTAL FEDERAL AUTHORITY (OCTOBER 1995)

By the end of October 1995, President Ernesto Zedillo was going to make a State visit to the United States. Julia Carabias, Secretary for the Environment, Natural Resources and Fisheries (SEMARNAP) informed me that one of the issues that Washington wanted to include on the agenda for the Presidents' Meeting was that of Metalclad. For this reason, a meeting was held on October 18, 1995, and was attended by Lic. Emilio Chuayfet Government Secretary and myself. We discussed this issue and all its possible solutions at length. I clearly stated the State Government's position in two points:

- Metalclad is not complying with the law. We have consistently indicated the need of obtaining the municipal permits, in addition to the federal and state permits.
- The local community was greatly opposed to opening the landfill. In order to succeed in opening it, the use of the police would be needed, this was unjustified and the State Government was not willing to do so.

I explained the need for Metalclad to remediate the site. Upon acquiring the site, Metalclad had also acquired this obligation. Once the remediation was complete, and the company was in compliance with the law, then the possibility of establishing the landfill would be studied, so long as the municipal authority approved and the community accepted it. Secretary Carabias argued that the company had insisted on their need to operate commercially, while simultaneously remediating the site. The company backed itself with financial reasons: Metalclad argued that it would be impossible to remedy the site without obtaining any revenue from the commercial operation. They also had an urgent need to show their stockholders that the landfill was operating, since Metalclad had consistently lied by telling them that they had the necessary permits to operate as well as the community's support. I was very clear in saying that that was Metalclad's problem, not the

State's and that the government could not ignore the law or the community. Naturally, I objected to this deceitful way out of the problem, because, far from resolving it, the social controversy would escalate. It was inconceivable that vehicles loaded with new hazardous waste would begin to drive into the landfill. This would have given rise to political and social problems with far-reaching negative implications. I reminded Secretary Carabias that the closure of 1992, was the result of a blockade and the civil resistance of the residents against the attempt to introduce new shipments of waste into the site.

As far as I know, faced with Metalclad's use of political pressure to open the landfill, the political solution that Secretary Carabias found for President Zedillo meeting with President Clinton, was to propose that an environmental audit and a remediation plan for the site be carried out as a necessary step prior to its commercial opening. The studies ordered by Secretary Carabias, resulted in the agreement of November 24, 1995 between Metalclad and SEMARNAP. The night before the signature, Secretary Carabias informed me by phone that SEMARNAP and Metalclad would sign an agreement to proceed to the remediation and opening of La Pedrera landfill. She told me that compliance with the applicable local law was protected in the agreement. During that call, she did not inform me of the terms of the agreement. In fact, I knew about the precise terms of the agreement through the press. Nevertheless, the public announcement of the agreement stated verbatim **"it is important to clarify that the federal authorizations are a necessary requirement, but they are not sufficient to operate a hazardous waste landfill. The company must comply with the respective state law, whose interpretation and application is within the exclusive jurisdiction of the local authorities"** (Exhibit XXII).

My Government's public position with respect to the agreement can be summarized as follows:

- The state authority does not know the terms of the agreement and did not sign it;
- The issuance of the construction license is within the exclusive jurisdiction of the municipal authority. This license has, until now, been denied by the Municipal Council of Guadalcázar;
- The State Government has clearly shown its will to seek, at first instance, the remediation of the waste that was illegally disposed of at the La Pedrera landfill;
- We will support the decision set out in the administrative decision issued by the Office of the Attorney General for the Protection of the Environment on August 30, 1994, which sets out that: **"it is strictly forbidden to introduce any kind of waste into the landfill facilities, until the studies had been carried out and remediation actions that could result from the audit conclusions."**
- In solving of this case, the full respect of the will of the people and of the authority of the sovereign Municipality of Guadalcázar is essential.

INFORMATIVE LETTERS TO CONGRESSMEN IN THE UNITED STATES
(NOVEMBER 1995)

On November 10th, I received a letter in which Raúl Urteaga-Trani, Director of the NAFTA Office of the Mexican Embassy in Washington, forwarded me a copy of the letters sent by Senators Paul Simon and Barbara Boxer to Ambassador Silva Herzog, regarding the La Pedrera issue in Guadalcázar. In those letters, the following inaccuracies are stated:

1. That Metalclad's project has obtained all the necessary permits to construct a landfill at La Pedrera;
2. Even though the plant is ready to operate, Governor Sánchez Unzueta of San Luis Potosí has delayed approval for its opening; and
3. Actions such as the ones, carried out by a government official (the Governor) would only discourage other United States companies from investing in similar projects in Mexico (Exhibit XXIII).

It was obvious that, given this information forwarded by the Mexican Embassy in the United States and the serious accusations contained in the letters from the American Legislators, my Government had to respond. Our government's basic position was to provide the congress members with accurate information and to explain the legal status of La Pedrera at that time. This was set out in my letters dated December 10, 1995 (Exhibit XXIV). These letters highlight the following: even if COTERIN has the necessary permits to operate, such as the technical environmental standards, it does not have the municipal construction permit; and, despite the fact that COTERIN failed to obtain such a permit, the company initiated the illegal construction of a landfill on the site, which had never been authorized by the municipal authorities. As a consequence of the above, COTERIN has also infringed the terms and conditions of the land use permit issued by the State Government of San Luis Potosí, and as a consequence COTERIN is violating the state and municipal laws. Finally, the fact that the company has obtained the pertinent federal permits, does not mean that it is exempted from obtaining the permits that are within the Municipality's exclusive jurisdiction.

DIPLOMATIC PRESSURE FROM THE UNITED STATES EMBASSY **(MAY/AUGUST/SEPTEMBER, 1996)**

In May of 1996, I received a phone call from the Minister of Commerce and Hazardous Development, Herminio Blanco. He informed me that the United States Ambassador, Mr. James Jones, whom he had met in Houston, informed him that the State of San Luis Potosí was at risk of being designated as unreliable for United States investors, as a result of the stalled opening of the Guadalcázar landfill. I told Secretary Blanco, that if the landfill remained closed, it was due to a Federal court order and that Metalclad had sought to commercially operate the site illegally, because they did not have the corresponding Municipal permits.

Some weeks later, as a result of the concern caused by the statements made by Ambassador Jones, I held my first meeting with him at Dr. Luis Telles office at the Presidency. At the end of the meeting, I proposed that Ambassador Jones and I exchange

information as it was obvious that the embassy was only aware of Metalclad's version. I also informed him that with the goal of finding a solution to this conflict, my Government was fully prepared to provide all the relevant information.

Following this agreement, a dinner in the official residence of Ambassador Jones was held. I had the opportunity to listen Mr. Jones position, that was provided in a diplomatic note, he emphasized the obvious and serious consequences against San Luis Potosí and the American investors already settled in the state. On my part, I insisted that Metalclad could never prove, in accordance with Mexican laws, the issuance of the Municipal permits that would allow them to commercially operate the landfill. I further expressed my concern that the Ambassador's good faith was being used as a result of inaccurate and incomplete information. The company was, in my understanding, dishonoring the legal tradition in the United States.

I believe that I did convince Ambassador Jones of the honesty and legality of our actions. I told him that it was not true that my Government's attitude was biased against Metalclad, as the company maintained. I had no prejudices against METALCLAD. What I had were only good and solid arguments regarding its representative's inappropriate, unethical and unscrupulous behavior. I told him, frankly, that Metalclad was not a company that deserved to be defended, given the longstanding tradition of work and respect for the law that the United States had represented throughout the world. I even told him that I had justified suspicions that Metalclad had committed acts that could be charged under the *Foreign Corrupt Practices Act*. As a result of this second meeting, Ambassador Jones required an affidavit from me which provided evidence to prove improper behavior by the company. We agreed to hold a third meeting at the Ambassadors house, in which I would deliver the relevant information regarding this issue.

As evidence of Metalclad's lack of honesty, which, in my view, had been exhibited in San Luis Potosí, on September 21st I offered Ambassador Jones the following evidence:

- Confidential letter dated September 16, 1996 in which José Mario de la Garza writes with regard to how Mr. Grant S. Kesler had attempted to bribe the State Governor (Exhibit XXV). Upon my request, and in view of the need to provide evidence to Ambassador Jones, I requested in early September 1996 to written statement of what he had told me in April of last year. The company's attempted bribe did not materialize and the Government of San Luis Potosí did not prosecute Metalclad. However, this attempt was enough for me to be aware of Mr. Grant S. Kesler's lack of integrity.
- The evidence shows that physicist Humberto C. Rodarte Ramón was a public official of the Federal Government at the *Secretaría de Desarrollo Urbano y Ecología*. On June 16, 1993 the Dow Jones Agency announced that Eco-Metalclad had hired Rodarte Ramón. Therefore, Rodarte Ramón started providing his services to Metalclad, after having been an advisor to the highest ranking ecology official of the Mexican Federal Government.
- Leopoldo Stevens Amaro, then the State Government's Secretary of Urban Development and Ecology signed the state land use license issued to COTERIN on May 11, 1993

(Exhibit XXVI). Stevens Amaro told me that when METALCLAD and COTERIN were in the process of obtaining the state land use license from him, they offered him a contract to participate as an independent contractor in the construction of the La Pedrera landfill. In support of this statement, Stevens Amaro has provided a "Standard Form of Agreement between Owner and Design/Builder" (Exhibit XXVII) and he confirms that it was given to him by Eco-Metalclad soon after he left his official position. In his professional career, Stevens had never provided services for the design and construction of such specialized work that were required by Metalclad. Instead, Mr. Stevens Amaro's specialty was housing.

As a result of the information provided in the *affidavit* to Ambassador Jones, and the in depth and detailed discussions, we agreed to make a last effort to reconcile the differences between the Municipal Council and Metalclad. I clearly stated that the only role that the San Luis Potosí Governor could perform, within his powers, was to act as mediator. That the State Government could in no way supersede the powers of the Municipal authority or that of the community of Guadalcázar. Within these terms, another meeting was soon held between the Municipal Authorities of Guadalcázar and Metalclad in the Government State house of San Luis Potosí. The results of this meeting will be discussed later.

Ambassador Jones' response as a result of these meetings, can be summed up in three points:

1. He will send the evidence regarding the behavior of the company in San Luis Potosí to the State Department of the United States Government;
2. He discarded his intention of circulating an official diplomatic recommendation to declare the State as unreliable for United States investors. He had already informed the Federal Government's high officials as well as those of the State of San Luis Potosí of these intentions; and
3. In a letter, he applauded my Government's last effort to facilitate an agreement between the Guadalcázar Municipal Council and Metalclad (Exhibit XXVIII).

This letter responds to my proposal, to hold a meeting between the municipal authority and the Metalclad representatives with the objective of reaching an agreement. This initiative was well received by Ambassador Jones. I organized a meeting between the company and the Municipality which took place on December 1996. As a result of this meeting the Guadalcázar Municipal President and Gustavo Carvjal, Metalclad's legal counsel, signed the Agreement of Understanding on January 8th, 1997 (Exhibit XIX). Nevertheless, these efforts were not successful, because the parties returned to their original positions:

- A Metalclad returned to its original request to operate for 5 years, as opposed to my proposal of six months (the time left in my administration and that of the Guadalcázar Authority) and;
- B The Municipal Authority returned to its position of not permitting the entry of new hazardous wastes and to insist on the remediation and permanent closure of the La Pedrera site.

During my administration, I believe that I undertook all the necessary efforts to reach an agreement in favor of both the local community and Metalclad interests. I committed myself, as it is sufficiently documented, to support the location of alternate sites and to use all my governmental capacity to expedite the issuing of the new federal permits for these sites. The only thing I refused to do, was to trample over the community rights and breach the law I was sworn to uphold and enforce as State Governor.

II. RESPONSE TO THE FALSE ACCUSATIONS MADE BY METALCLAD

I believe that it is imperative that I respond, in this witness statement, to the false accusations made by Metalclad in its Memorial. I believe that the preceding account of the facts provides enough evidence that discredits the outrageous allegations that Metalclad has repeatedly made. Therefore, it is important to make the following clarifications:

1.- Metalclad accuses me of denying for three and a half years, through actions of my government, its right to commercially operate the La Pedrera site in Guadalcázar. Metalclad alleges that I have personally or through my agents inflamed the local opposition to the landfill, thus challenging the federal authorities.

- This is absolutely false. I never conducted a public campaign against Metalclad. When I was forced to make public statements regarding La Pedrera, I always acted in my capacity as State Governor, and it was never an attack on the company. As I have proved, there was a strong pre-existing opposition by the local community to the establishment of a landfill, since 1991. The fact is that Metalclad was never able to solve the opposition of the local authorities and the community. Since the first contact I ever had with the company as State Governor, I stated clearly the two conditions that had to be met in order to develop any project that complied with my Government's environmental policies, and even stated it in writing. First, compliance with the legal requirements of the three levels of government. Second, the need to respect the genuine interest of the community. Metalclad failed to satisfy either of these conditions.

2.- Metalclad accuses me of using armed State police to deny its right to operate the site.

- This is absolutely false. As I have already stated, the public security forces only intervened to prevent further confrontations, such as the one that occurred on May, 10

1995 – the most serious altercation in the last three and a half years of conflict. This issue lead COTERIN to seek the protection of the Federal Court on January 25, 1996, against the acts of the State Governor, claiming “the order he has issued or that he will imminently issue to close down the controlled landfill at La Pedrera, as well as any decision that he may issue or will issue in the future in order to prevent the total or partial operation, performance and remediation of the site”. The federal court denied the protection requested by COTERIN with respect police intervention, in the following terms: “With respect to the circumstance on January 18, of the current year, outside the facilities of the hazardous landfill, vehicle 1,013 of the State’s General Direction for Social Protection and Transit inspected vehicles entering or leaving such landfill and the inspection that personnel of the General Direction of Social Protection and Transit conducted of two vehicles heading to the hazardous waste landfill, does not imply that these are actions necessarily directed to issuing a closure order, nor does it reveal the imminence of such a measure by the head of that agency. This is held because inspection of the entry and exit of vehicles does not imply that conduct of their activities is interfered with, and for another part, performing the inspections referred to is not an action directed at closing the site down or impeding the operation of the complainant, more so because, as stated by the notary public (taken there by the enterprise) who certified the facts, the trucks that were inspected were not even stopped, nor were they prevented from entering or exiting the place they were heading to”. This judicial decision legally confirms that my government in no way tried to prevent COTERIN’s activities in anyway through the presence of the police. This was resolved by a judicial decision rendered February 20, 1996 (Exhibit XXX).

3.- The company alleges that there is proof of attempted bribery and corruption in the San Luis Potosí Government and in the Municipality of Guadalcázar, with evidence that point directly towards the involvement of personnel from the competing company (RIMSA).

- I categorically deny having ever solicited or received any bribe personally or through any member of my family. I do not know any of RIMSA’s employees or representatives. I have never had any contact with personnel or officers of such enterprise. Metalclad accuses and even goes so far as to allege that Pedro Medellín and his wife received payments from the “competing company.” A brief biographical note makes this damaging allegation unsustainable: at the time, Medellín Milán did not have a wife. He was a widower.

4.- Metalclad accuses me of saying that their company could not legally operate without first obtaining a local construction permit.

- Indeed, if I ever made anything perfectly clear, it was that the enterprise required the municipal permits. Therefore, it is true that Metalclad was outside the law because it did not obtain them. As I have already said, the company had to comply with every legal requirement at the federal, state and municipal levels of government, including, of course, the construction permit that is within the Municipality’s jurisdiction to issue. The company’s allegation and its supposed surprise are completely without basis, since it is obvious that everyone must comply with the law. Moreover, it is a general legal principle that ignorance of the law does not excuse anyone from observing it. However,

regardless of my insisting on the need to obtain the municipal permits, there is irrefutable evidence that they knew of this and that they were acted outside the law. In the Option Agreement (Exhibit XXXI) of April 23, 1993 Metalclad stipulated that COTERIN is to "obtain all the state and *other* permits required by the law."

5.-In his witness statement, Mr. Humberto Rodarte Ramón alleges that on June 1993, Luis Donaldo Colosio, Secretary of Urban and Environmental Development, the Governor of San Luis Potosí and the Metalclad representatives attended a meeting in order to discuss the landfill development in Guadalcázar.

- This statement is absolutely false. This meeting never took place, and I have never discussed any issue with Secretary Colosio in relation to the La Pedrera case. It is also false, as Mr. Humberto Rodarte alleges in his witness statement, that the SEDESOL (Secretary that did not exist in Mexico during 1993) sent him to the first introductory meeting that I held with the Metalclad representatives on June 11, 1993.

It would be very useful for the finding of the truth if Mr. Humberto Rodarte could elaborate in his witness statement and inform the Honourable Tribunal of the exact date and place in which this supposed meeting took place between Secretary Colosio and those who attended on behalf of Metalclad. I can assure, as it would be very easy to find evidence that the work schedules of Secretary Colosio, the State Governor and the Metalclad representatives never coincided. Therefore, it was very clear, as I have categorically stated, that this meeting only exists in the imagination of Mr. Humberto Rodarte.

The inaccuracies of Mr. Humberto Rodarte's witness statement, is further shown by what follows. Mr. Humberto Rodarte alleges that in June of 1993 he met with Colosio, Governor Sanchez and the Metalclad representatives, and that, later, SEDESOL sent him to the meeting between the Governor and Metalclad, in which Sánchez Unzueta signed a "letter of intent" for Metalclad. That is, the meeting and the letter (of welcome not intention) are events that took place precisely on June 11, 1993. Therefore, it is obvious that the supposed meeting necessarily took place before this date. This is clearly set out in Metalclad's Memorial submitted to this Honorable Tribunal, in which they clearly state that the first meeting between the Governor of San Luis Potosí and Metalclad representatives took place on June 11, 1993. This statement, therefore, discredits Mr. Humberto Rodarte's witness statement, given that the alleged encounter between Colosio, Governor Sanchez and Mr. Humberto Rodarte would have taken place before this day. Finally, the inaccuracies in the allegations by Mr. Humberto Rodarte are further evidenced in that neither Grant Kesler's witness statement nor in the Memorial alludes to such a meeting having taken place in which Secretario Colosio, the Governor or the representative of Metalclad had participated in.

6.- Mr. Humberto Rodarte alleges that with respect to the needed municipal permit to construct the hazardous waste facility in Guadalcázar, the Governor Sanchez Unzueta and Pedro Medellín, stated: "do not worry about the mayor we will take care of him just get the federal permits and we will solve all the municipal and state political issues."

This allegation is a flagrant lie. Mr. Humberto Rodarte will never be able to show that the Governor of San Luis Potosí has ever made a statement of this sort. The very events with respect to the political and social conflict pertaining to La Pedrera site in the municipality of Guadalcázar and of the State of San Luis Potosí, as well as the circumstances of the COTERIN-Metalclad matter, which are set out in this witness statement, make it absurd that the Governor of San Luis Potosí will compromise his word in such an irresponsible offer. Above all, after having throughout the entire history of this conflict, maintained the exact opposite position. That position has been that "the La Pedrera site could not be opened due to the opposition of both the municipality of Guadalcázar and the community, facts that had already become a social controversy even before Metalclad's presence in San Luis Potosí. Given that the issuing of the federal permits were not sufficient to operate the facility, if the full support of the community and its municipal authority was not obtained, the public position of my administration was inevitable. This situation was recognized by Mr. Grant Kesler in public announcement through the local media since the beginning of 1994, in which Metalclad recognizes the sovereignty of San Luis Potosí and the autonomy of the municipality of Guadalcázar; a statement that on its own is in contradiction with the absurd offer to which Mr. Humberto Rodarte alludes in his witness statement. The most reasonable extension of this hypothesis would be that if I had already committed myself to take care of the municipal president and the political problems in Guadalcázar, it would have been that Mr. Grant Kesler instead of apologizing and recognizing the autonomy of the municipality of Guadalcázar would instead demand that the Governor of San Luis Potosí to fulfil his commitment to intervene in order to obtain the consent of the municipal authority and the support of the community of Guadalcázar.

7.- Metalclad accuses my government of using state police to transport demonstrators from more than 75 kilometers away from the landfill on March 10, 1995, the date of the "Grand opening" of the facility. That these protestors were given alcohol and that more than 200 people, including women and children, were detained in a completely illegal demonstration on behalf of my government.

- I categorically deny all these allegations. I never used the state police for such purposes. The State Government never organized nor participated in any demonstration, except to ensure that they were conducted peacefully. It is a lie that the participants were transported in official vehicles and even less yet in police vehicles. It is also a lie, and truly scandalous to say that they were given alcohol. The company has not been able to provide any proof because there simply is none. The truth is that the company tried to surprise the state and municipal authorities, and the local community. There was never a prior agreement that gave the consent and participation of the State and Municipal governments. This irresponsible behavior triggered a completely spontaneous demonstration at the landfill's entrance, which was finally dissolved by the Municipal President. These totally false accusations cannot conceal reality nor obscure it. The opposition of the community was a notorious and known fact, as I have documented throughout this statement. Demonstrations were always led and organized by the residents of Guadalcázar. COTERIN had deceived them with the promise of developing

a hydro-agricultural project (Exhibit XXXII), and, instead, they introduced 20 thousand tons of hazardous waste.

With respect to the March 10, 1995 "opening" of the site, the landfill could not be legally opened, because, even though it had obtained the permits from the appropriate federal authorities, this was not enough to operate, since it lacked the construction and operation licenses that only the municipal authority is competent to issue. COTERIN was never able to satisfy these requirements. Noncompliance with this, by itself, legally prevented the landfill from opening.

8.- Metalclad accuses my government having an anti-North American attitude because I unveiled a statue of Benito Juárez on highway 57 between the City of San Luis Potosí and Matehuala.

- I consider that this issue is totally irrelevant and lacks any seriousness. The statue project was started in the mid-eighties, when Professor Carlos Jonguitud Barrios was Governor. It was abandoned at the workshop of its sculptor, Joaquín Arias. Several Municipal presidents had asked that the State Government donate the statue to them. During my term in office, the statue was finally erected on a hill near the intersection of the road going to the municipality's main city and the highway to Matehuala, because the local authorities considered this to be the most attractive and appropriate site. National history, as taught in primary schools, recalls that this was precisely the route that Benito Juárez followed north, when pursued by the interventionist French forces. So these allegations by Metalclad to prove my government's alleged antagonism to North American investors completely lack any basis. There are abundant public records that prove exactly the opposite to Metalclad's statement. In fact, during my administration more than 30 North American enterprises established or expanded in my state and, for the first time in the last three decades, a Potosinian governor conducted a very active personal campaign in the United States to promote the state of San Luis Potosí (Exhibit XXXIII). An indication of my personal attitude towards the North American investors is reflected in the October 3, 1995 letter that Mr. Terry L. Haines, Chairman of A. Schulman, Inc., sent me (Exhibit XXXIV).

9.- Metalclad accuses my government of having organized, through Pedro Medellín, a group of businessmen from the city of San Luis Potosí against Metalclad, or to compete with them.

- At one point, Metalclad claims that my government was favoring RIMSA, and now it destroys its own argument by saying that I was trying to favour local investors to their detriment. The truth is that both allegations are totally false. The facts happened as follows. There is a real problem regarding the treatment of hazardous waste in San Luis Potosí, which is totally independent of the La Pedrera issue. The problem is such, that part of the environmental policy was to develop the appropriate infrastructure in order to achieve a rational control of the waste generated in the State. It was, therefore, my responsibility as Governor, to encourage the development of this activity. Hence, in a meeting with Potosinian businessmen I explained the need for infrastructure and

encouraged them to explore the possibility of forming a partnership with more experienced foreign companies since they had no previous expertise in the area.

10.- Metalclad alleges that declaring the Guadalcázar region, "Real de Guadalcázar," a natural reserve, only three days before leaving office, was done to deliberately injure the company.

- It is absolutely false that the declaration damages the company in any way. The declaration of a natural reserve area in the form of a state reservation, does not affect COTERIN's rights nor those of its owner, Metalclad. The objective of the declaration is based on a conservation model for dry and semidry areas in which animal and plant species with economic potential and scientific interest exist, making it necessary for the State to protect them. The declaration contains no provision that could translate into injury to Metalclad, since article seven of the Order precisely provides that **the competent authorities may authorize execution of public or private works within the core areas of the "Real de Guadalcázar" state reservation, on the only condition that the respective projects prove and assure the sustainability of natural resources and observe the environmental regulations in force.** Similarly, article four of the transitory provisions of the Order provides that **the permits, licenses or authorizations previously granted regarding the natural protected area, will continue to have its legal force, and will not be affected by the entry into force of the declaration (Exhibit XXXV).**

11.- Metalclad accuses me of bringing a deformed child from Matehuala and raising her in front of a crowd as proof of what the landfill could cause, in order to increase opposition to the company's project.

- This assertion is absolutely false. On November 27, 1995, I was invited by the Guadalcázar Municipal Council. Three days before, the press had informed that SEMARNAP and Metalclad had reached an agreement to remediate the site and open it for commercial operation. The impact of this news demanded an immediate response from my Government, that was also made public through the media, as has already been mentioned. I decided to go directly to the Municipality of Guadalcázar and take control of the situation, in order to prevent predictable conflicts, given the announcement that was made on the 24th. A crowd that was very upset because of the announcement concerning the opening of the landfill had gathered outside the Municipal Palace. On that occasion, one of the residents showed the crowd visibly deformed baby. It is absolutely false that I brought the baby from Matehuala and declared that that was proof of what could happen as a consequence of the landfill. This is not only false, but is also truly offensive and absurd that Mr. Grant S. Kesler allege that I took the child in my arms to expose her, claiming that these were the consequences that the community faced if the landfill were to open. If it is necessary to document this fact, I am sure that there would be over 500 testimonies among the people that attended to confirm it.

12.- Mr. Grant S. Kesler claims in his statement that my government, in collusion with RIMSA, encouraged landless peasants to invade the "El Palmar" lot in the municipality of Villa de Arriaga, owned by the Garfias family. This was done in order to develop a new landfill, since this site had been identified by the Autonomous University of San Luis Potosí as suitable to establish a toxic waste landfill. As proof, Mr. Kesler claims that the Garfias family accused me of trying to buy the invaded property in collusion with RIMSA.

- This allegation is absolutely false. The agrarian conflict that my government had to face in the matter of "El Palmar" dates back to 1952 (when I was a mere three years old). Nobody ever intended to acquire this lot for any purpose. This problem is in the hands of the country's agrarian authorities. At the time this statement was prepared, it has not been resolved, and it is a matter in which the State Government has no jurisdiction.

13.- Mr. Kesler refers to a newspaper article entitled "Lord and Master of the Hazardous Waste Treatment Monopoly" (*El Herald*, December 4, 1995) according to which the San Luis Potosí Governor was obstructing Metalclad in favor of a friend of his named Alfonso Martínez Domínguez, the alleged owner of RIMSA. Mr. Kesler asserts that until the date of that publication, they had certain knowledge of the relations between RIMSA and the State, but they were not aware that there was an actual relationship between RIMSA and the Governor himself.

- This is absolutely false. Mr. Alfonso Martínez Domínguez is not a friend of mine and I have never spoken with him. Neither the State Government nor I have ever had any sort of relationship with RIMSA. I do not know if Mr. Martínez Domínguez is in anyway connected with RIMSA.

It should be noted that the local newspaper, *El Herald*, frequently cited by Metalclad throughout its allegations is, indeed, the most discredited medium in San Luis Potosí. To date, it has a daily circulation of around 800 to 1,000 newspapers. Its owners were criminally prosecuted by the *Procuraduría Federal de la República* (PGR) for tax evasion in 1994. A son-in-law of the owner is in prison, convicted of kidnapping and murdering his own father. The owner's eldest son, Vicente Villasana Mena, spent several years in the penitentiary of Uruapan, Michoacán, accused of drug trafficking. Moreover, its owner, Rodrigo Villasana López is Salomon Leyva Sáinz's godfather, who is known as Metalclad's public relations agent in San Luis Potosí. I was, therefore, not surprised in the least bit by the defamatory tone of "*El Herald*," upon which Grant S. Kesler's allegations are based.

14.- Mr. Grant S. Kesler stated that on December 1993, without warning or previous notice of any sort, the Governor called a press conference to announce that he had the final word in the La Pedrera issue, and that it was "no." The company's response was a newspaper spread challenging the Governor to a public debate.

- I called this press conference on January 8, 1994, not on December of 1993, in response to the local press announcing that day that the Guadalcázar landfill had been authorized (such authorization was issued by the INE on August 10, 1993). The local press reproduced an article published in *Chemical Marketing Reporter* (as I have already

stated). This article was preceded by another one that took place on September 1993 in which Metalclad had advertised La Pedrera landfill's services. These actions lead a public apology by Mr. Kesler on January 14, 1994, in which he admitted that Metalclad had made mistakes and fully recognized the sovereignty of the State of San Luis Potosí and the autonomy of the Municipality of Guadalcázar.

The newspaper article reporting that the State Governor has the final word regarding the opening of the landfill that was shut down, and that it is "no," of course means that the federal authorization was not sufficient, without the agreement of the local authorities under the law; it alone is not enough. The Governor certainly is a local authority, just as Guadalcázar's Municipal President is. I stated that "the opinion of the community was not taken into consideration, and that this could not be decided without the consent of the community." (Exhibit XXXVI).

15.- Mr. Grant S. Kesler alleges that he found out that José Mario de la Garza had legally represented the Governor's family, and that this was the reason they dismissed the De la Garza law firm.

- This is absolutely false. Neither José Mario de la Garza nor his law firm have ever provided professional services to my family. As I have already stated, I had never before dealt personally or professionally with him, until the January 28, 1994 meeting, when Luis Manuel Abella introduced me to him.

In the third meeting I had with Ambassador James Jones, he told me that the Metalclad representatives had informed him that they had fired Jose Mariode la Garza due to incompetence and his lack of experience in the types of legal matters that Metalclad was involved in. Mr. Grant Kesler is lying to someone; either he lied to Ambassador Jones or he is lying in his witness statement submitted to the Tribunal with respect to the reasons why he terminated the services of the law firm, given that the accounts are totally different.

16.- Mr. Grant S. Kesler alleges that, as a result of the José Mario de la Garza's links they met with me in January 1994.

- This allegation is a false. The one who arranged the meeting, as I have already said, was Luis Manuel Abella, a Potosinian businessman and that I had long been acquainted with.

17.- Mr. Grant S. Kesler asserts that on May 1995, "We also learned at this time that the University of San Luis Potosí commission was unwilling to release its study to the public as agreed because the Governor refused to give his permission to have the study made public."

- This is absolutely false. This "report" never existed, just as an agreement between the State Government and the authorities of the Autonomous University of San Luis Potosí was never formalized, establishing the instructions to prepare a research report. Therefore, I could not have denied permission to publish an supposed report that nobody knows of.

18.- Mr. Kesler stated that "We believed, that even if Horacio Sánchez Unzueta was corrupt (which we were beginning to conclude because there was simply no rational reason for his opposition), he would be convinced by the overwhelming federal and other public support..."

- I have never attempted to control anybody's assumptions and those of Mr. Kesler are no exception. I am amazed that Mr. Kesler did not understand my Government's rationale, a position that was obvious from day one. Metalclad could not and would not be allowed to operate the landfill outside the law, without the authorization conferred by the permits that are within the exclusive jurisdiction of the municipal authority. However, I believe that the conclusion that Mr. Kesler arrived at, at that time—that the Governor was corrupt—, was what lead him to instruct José Mario de la Garza on April 1995, to offer me a bribe of one million dollars. His assumption was entirely mistaken.

19.- Mr. Grant S. Kesler alleges that on December 1995, given my urgency and, using the same law firm whose managing partner is José Mario de la Garza, I prepared a lawsuit jointly with the community's representatives against the Federal Government to stop the execution of the Agreement signed by Metalclad and the Federal Government on November 24, 1995.

- This allegation is absolutely false. My Government did not prepare any lawsuit on behalf of the Guadalcázar Municipal Government. It is equally false that I ever retained or used the services of the de la Garza law firm in any way or retained José Mario de la Garza.

20.- Mr. Grant S. Kesler argues that on December 1995, "we began to believe that it was not only Horacio Sánchez Unzueta's objective to prevent the project from going forward, but his objective rather was to destroy our company." In order to support this statement, Mr. Kesler refers to the fact that, on December 10, 1995, the Governor sent a letter to Senator Paul Simon in which he declares that Metalclad has violated the state and local laws. Mr. Kesler also states that as far as he knew, that letter was not in response to any correspondence sent to him by the Senator Simon, but, curiously, a copy of the letter was also sent to Mr. Herbert L. Oakes Jr., who is an executive of Metalclad's Investment Bank in London, England.

- In fact, Senator Paul Simon never wrote me any letter. As I have mentioned, I was provided this information by Mr. Raúl Urteaga-Trani, Director at the NAFTA Office in the Mexican Embassy in Washington, where he said that "it would be beneficial if the Governor of San Luis Potosí expressed his position regarding the operation of the La Pedrera hazardous waste landfill" (Exhibit XXXVII).

Among the documents that I received, a letter from Mr. Oakes Jr. to Mr. Kesler, dated May 12, 1995 was included. In the letter the following should be highlighted: "**but our investors no longer understand what is preventing the opening since you have all necessary permits and the construction is now fully complete.**" It is obvious and perfectly clear that, at the time, Metalclad did not have all necessary the permits to

construct the landfill, as Mr. Kesler had made Metalclad's Investment Bank believe (Exhibit XXXIII).

In addition, on May 18, 1995, Mr. David Robinson, an Environment and Infrastructure Consultant, contracted by Metalclad, sent a letter to Pedro Medellín, the State Government's Ecology Coordinator, in which he said that "As a courtesy, I am sending a copy of a letter I am sending to my friends of twenty years, Congressman Dick Durbin and Senator Paul Simon...". In Mr. Robinson's draft letters, it is asserted that "... the Governor of San Luis Potosí, through his action over the last year, is on the verge of the de facto expropriation of Metalclad's property" (Exhibit XXXIX).

In summary, Metalclad, through its consultant, made my Government directly aware of his intention to send United States Congressmen truly baseless allegations. This, as well as the request from the Mexican Embassy in the United States, irrespective of the direct or personal references to the Governor of San Luis Potosí and the misinformation on the landfill issue, led my Government to send letters to the United States Congressmen referred to above, in order to inform them, as an act of courtesy, of the prevailing legal situation of La Pedrera landfill at the time. Consequently, Mr. Grant S. Kesler's allegation that my letters to the North American congressmen (and their copies) were directed at destroying his company is absolutely false.

21.- Mr. Kesler stated that the greatest emphasis had been placed on Horacio Sánchez Unzueta to obtain the necessary support for the landfill project, because without his support, the Guadalcázar's Municipal President would not favor the project. Additionally he states that because both the Municipal President and the Governor are members of the same political party, it was, therefore, clear that the Municipal President would follow the instructions of the Horacio Sánchez Unzueta.

- This observation is evidently wrong. As I said before, since 1991, two municipal administrations and the municipal governments of the Potosinian region complained and requested the remediation and final closure of La Pedrera from two successive Governors. The fact that the then Municipal President was from the same political party as the Governor, is completely irrelevant in view of the magnitude of the problem. An example of this are the commitments undertaken on June 2, 1997, before a Notary Public, by the Municipal President candidates of every contending political party (PRI, PAN y PRD), regarding the La Pedrera site: **"To all residents of our and the neighboring Municipalities whose health and ecology is being affected by the toxic waste deposited in the La Pedrera landfill; should I succeed in coming to office, as the Municipality's first authority, I commit not to yield to the pressure of any authority or organization, national or international, and I will decisively deny the enterprise that owns the aforementioned landfill, the permit to operate that it has been requesting for years. I also state that, if I succeed through the majority vote before the people I will demand the unconditional remediation of the site, and I will resolutely and steadfastly fight for the total closure of the landfill"** (Exhibit XL). The same text was signed by each and every candidate.

I make this statement with the intention of assisting the Tribunal to have a better understanding of the facts of this case. I acknowledge that I can be required to appear before the Tribunal to provide further testimony and to be cross-examined on my evidence. I make this declaration with the promise to tell the truth and in those areas where I have testified on matters which I did not witness directly, I declare that the information contained in my witness statement is in my understanding and to the best of my knowledge the most accurate and truthful information.

SIGNED IN THE ORIGINAL:

Horacio Sánchez Unzueta