

## DECLARATION OF HUMBERTO C. RODARTE RAMON

1. My name is Humberto C. Rodarte Ramón. I am a citizen of Mexico and currently a professor at the National Autonomous University of Mexico ("UNAM") in the University Program on Environment.
2. I have previously submitted a declaration in this case with Metalclad's Memorial. I have read pertinent parts of the Respondent's Counter-Memorial and make this additional declaration to respond to certain of Respondent's misstatements, accusations and falsehoods against me personally and against Metalclad. I have personal knowledge of the events described in this declaration and am willing and available to testify before the Tribunal if requested.

### CLARIFICATION OF DATES OF WORK AND POSITIONS HELD

3. I worked for Metalclad from June of 1993 to March of 1996. Previous to working for Metalclad, I held the position of Technical Coordinator for the Integrated Border Environmental Plan from September 1991 through May 1992. [This post was created through a plan called "PAM" ("Environment Program of Mexico"), administered by SEDESOL through the INE and funded by a grant from the World Bank.] Beginning June 1992, I served as an outside consultant and special advisor to the president of the INE. I served in this capacity until May 1993. I am aware of the law and policy of the government of Mexico precluding employees from working for private companies. At no time did I violate this policy or law. While working as an external consultant for the INE, my position was funded not by the federal government of Mexico, but by an external World Bank grant.

4. Before working in this capacity, I worked for SEDUE in San Luis Potosi and later in the central offices in Mexico City.

**THE JUNE 11, 1993 MEETING WITH THE GOVERNOR**

**AND THE PURCHASE OF COTERIN**

5. On June 11, 1993, I attended a meeting at the Governor's palace with Dr. Fernando Diaz Barriga, acting state ecology coordinator, and Ron Robertson, Lee Deets, and Antonio Soto Ravize of Metalclad.
6. The meeting had been arranged by the president of the INE as a way for Metalclad officials to introduce the company to Governor Sanchez Unzueta who had just recently been elected. Metalclad had just purchased an option to buy COTERIN, the Mexican company that owned La Pedrera. COTERIN had already obtained the federal construction permit, and INE was well-aware of Metalclad's intentions to buy COTERIN based on SEDESOL's invitation to invest in Mexico's environmental infrastructure. INE set up this meeting because they wanted Metalclad to get the new governor's political support before authorizing the federal operating permit.
7. The Metalclad representatives presented the project for the hazardous waste landfill at La Pedrera in full detail, including design scope, operations, and community awareness program. The representatives of the company also demonstrated the economic benefits that would be created by the construction and operation of a landfill at La Pedrera, which is in one of the poorest parts of Mexico. All of this was shown to the Governor in the form of a bound booklet which encapsulated and expanded upon the presentation. While I worked with Metalclad, it was often a point of reference for our dealings with the

community and the programs we later implemented. (See exhibit 1 attached to this declaration).

8. They also explained that they had purchased an option to buy COTERIN, and then elaborated on the tests that were done in order to obtain the state congress's approval of the environmental impact statement and the state use land permit.

9. The Governor stated that Metalclad's plans for La Pedrera were well-suited for inclusion in his state developmental plan and industrial park. He never mentioned that the Company would have to procure a municipal construction permit in addition to the federal and state permits already obtained. I recall that he said all of the local issues would be handled by his staff.

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10. One of the Metalclad representatives then asked Governor Sanchez Unzueta to sign a letter of support for the project. Sanchez Unzueta agreed to sign a letter, which is a rare thing for a Mexican government official. Dr. Diaz Barriga then took the draft letter brought by Metalclad and had it prepared for the Governor's signature.

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Governor Sanchez Unzueta's testimony that Metalclad never showed him any projects, plans, or any other documents with regard to La Pedrera and never informed him of its option to purchase COTERIN is completely false. On the contrary, the presentation of the project for La Pedrera was one of the main reasons for holding the meeting.

12. Similarly, Dr. Medellin Milan's statement that the first time that he learned of Metalclad's intention to buy COTERIN was in September of 1993 is false. Dr. Medellin alleges that Metalclad tried to hide the fact of its intent to purchase COTERIN so as to make state officials believe that Metalclad was open to developing other sites in the state.

13. This is not true. In the first instance, Medellín knew about Metalclad's plans to buy COTERIN at least by July, 1993 when he attended the pre-NAFTA border conference in San Antonio, Texas, as Metalclad's guest, the same which I also attended. I and others at Metalclad specifically discussed with him the company's plans to build a hazardous waste landfill at La Pedrera at the conference. In fact, Dr. Medellín approved a press release prepared by Metalclad regarding the development of La Pedrera to this end.
14. Secondly, the notion that Metalclad secretly planned the acquisition of COTERIN is preposterous. Metalclad wanted the Sanchez Unzueta administration's support for its projects in the state and deliberately hiding their existence would have been foolish and counterproductive. In fact, to reiterate, one of the main points of the June 11, 1993 meeting with the Governor was Metalclad's option to purchase COTERIN.

**THE JANUARY 28, 1994 MEETING WITH GOVERNOR SANCHEZ UNZUETA**

15. Metalclad arranged a January 28, 1994 meeting through its Mexican counsel in San Luis Potosí, Lic. Jose Mario de la Garza. We arranged this meeting to provide the Governor with additional information and to clear up the misinformation that had spread. Metalclad had not been able get an audience with the Governor since the June 1993 meeting.
16. In my previous witness statement, I stated on page 6 that Governor Sanchez Unzueta and Dr. Medellín said: "Do not worry about the Municipal President of Guadalcázar. We will take care of him. Just get the federal permits and we will solve all of the municipal and state political issues." I hereby confirm that these were the Governor's precise words to Dr. Medellín, with which Medellín concurred. Governor Sanchez Unzueta said this in front of all of his aids and the Metalclad officials who attended this meeting. (See p. 17

of Sanchez Unzueta's witness statement.)

### CONSTRUCTION OF THE HAZARDOUS WASTE LANDFILL

17. In April of 1994, several members of the UASLP commission and Medellin went to California to inspect a municipal waste landfill partially designed by Harding Lawson Associates, the engineering company that also designed the facilities for La Pedrera. Metalclad management chose to bring them to this landfill because the liner that was then being installed was very similar to the one that would be used at La Pedrera.
18. After touring the landfill and hearing a detailed presentation on the technical aspects of the design of the landfill for La Pedrera, Dr. Medellin agreed in public to support the remediation and *operation* of a hazardous waste landfill at La Pedrera. This was a significant event given Medellin's previous reluctance to approve and support the project. I believed this was a milestone in the advancement of the project, and from the reaction of almost everyone in the room, I knew they thought the same.

### FEDERAL OFFICIALS ASK METALCLAD TO GO SLOW WITH CONSTRUCTION

19. In March of 1994, Dr. Colosio was assassinated. He had been the PRI political candidate for president. The PRI was and is the political party governing Mexico. The entire country was in mourning, and the PRI took a low-key, cautious approach to its presidential campaigning for the elections in August.
20. One or two days before the press conference of May 27, 1994, where Pedro Medellin announced the state's support—but in different terms than agreed upon—there was a meeting in Mexico City. The meeting was in the office of Miguel Limon Rojas of PROFEPA. Along with myself, T. Daniel Neveau, Ambassador James Jones and Pedro

Medellin were in attendance. The purpose of the meeting was to reconfirm federal support for the project before the public announcement was made. Limon Rojas assured us of the strong federal support. At this meeting, he asked us to go slow during the next few months until the federal elections were complete. As a result, an authority of PROFEPA asked Dan Neveau and me to slow down construction of the landfill during the summer. In exchange for our agreement, PROFEPA promised that after the elections it would officially state its support for Metalclad's agreement with the state government to remediate and operate at La Pedrera. We agreed and instructed Grupo Sitra S.A. de C.V., the contractor Metalclad had hired to do the construction, to move forward slowly. But we continued the maintenance work on the existing cells, which we were doing for reasons of environmental safety and caution.

21. The federal government did as Mr. Limon Rojas promised. On September 1, 1994, the attorney general for PROFEPA, called a press conference and made the announcement celebrating the accord between the company and the state regarding the La Pedrera landfill. (See exhibit 16 to the Memorial.)
22. During this time period, I was in regular correspondence with Lic. Francisco Giner de los Rios at the INE central offices in Mexico City and other officials of the state delegation in San Luis Potosi. I spoke with these officials on a regular basis about the progress of the construction at La Pedrera, both as to the building of the landfill facilities and the maintenance of the existing cells. They were all in accord with COTERIN's construction activities at the site.
23. After the federal elections were over and federal government had come out in public

support of the project, Metalclad upper management decided to begin construction of the landfill facilities. This was about mid-September 1994.

24. On a related note, PROFEPA lifted the seals on the transfer station at the end of August. COTERIN continued its maintenance of the existing cells at the transfer station along with the new construction activities.
25. On October 26, 1994, members of the Guadalcázar ayuntamiento came to the site and ordered that construction activities be ceased. They stated that COTERIN could not continue to build without a municipal construction permit.
26. We at Metalclad were confused by this turn of events. The federal authorities had always manifested that they had primary jurisdiction in the area of hazardous waste disposal to authorize the construction and operation of waste management facilities. This was always my understanding.
27. Mr. Salomon Avila alludes to this policy of the federal government in his witness statement. He testifies that he spoke with me while I was the regional delegate of SEDUE in San Luis Potosí around December, 1990. Mr. Avila states that I said it was not necessary for me as a federal government official to consult the municipal president or the community about the landfill since it was a federal government authorization.
28. This statement is partly true. The federal government viewed its authority as the primary one in the area of hazardous waste disposal, which was manifested by its ability to permit and enforce the law. But, at the same time, it was not completely oblivious of the political need to educate and persuade the local population. The objective of federal policy was to persuade the state and local community to go along with what the federal government

officials had decided was in the national interest, according to Mexico's national plan for environmental development. This was true while I was a federal official—the same time during which Mexico was negotiating the NAFTA and COTERIN was applying for the federal construction and operation permits—and all during Metalclad's attempts to open the landfill at La Pedrera.

29. After receiving this directive from the municipality, Ariel Miranda, the General Director of COTERIN, and I spoke with PROFEPA officials. As I stated in my first declaration, "Metalclad was told that other than the federal permits [the company] only required a state use of land permit. Company officials were told that after the state land use permit, the local construction permit, though not necessary, would be given routinely. It was the opinion of the federal and state authorities at the time that given Guadalupe lacked an urban development plan, no basis existed to either issue or deny construction permits." This was a remote rural area where construction permits were not needed. Besides, the municipality could not refuse a project that had all the federal and state approvals required. (See pages 6 and 7 of my first declaration.)
30. I affirm this statement and add that it was environmental authorities of the PROFEPA central offices who said this to Ariel Miranda and me in November of 1994. They also told us that the company should apply for the permits nonetheless out of respect for the local authorities. I also affirm that they told us that the municipality had no basis for denying the company's application for the municipal construction permit since Guadalupe had no urbanization plan and could not refuse a federally approved hazardous waste project in a rural area.



31. COTERIN subsequently submitted an application to the municipality in November of 1994. On the basis of PROFEPA's instructions, company officials told Sitra to continue with the construction of the facilities. In fact, the continued construction of the waste management facility was ratified by other PROFEPA officials who also came to the site to inspect it and monitor the environmental audit after the municipality's order to stop construction in October of 1994. Some of these federal officials were Ramiro Zaragoza Garcia, Jose Luis Medina, and Noe David Leon Calvo, who all worked for the state delegation of PROFEPA in San Luis Potosi.

#### THE MARCH 10, 1995 TOUR OF THE FACILITIES

32. Metalclad management in Mexico began planning for the inaugural event some time after the first of the year in 1995. Dan Neveau got Dr. Medellin's approval of the date and the wording of the invitations, as well as his assurances that both he and the Governor would attend the event. Ariel Miranda helped Neveau with the logistics.

33. Around this same time, I met with Federal Attorney Antonio Azuela de la Cueva. I updated him on the progress of construction and the environmental audit. I told him that Metalclad was planning to open the landfill in March. Lic. Azuela de la Cueva never told me that it would not be appropriate to either have the grand opening or begin operations. I would also like to state that he never mentioned at this time nor any other time that the company would have to procure a local construction permit.

34. The Governor is incorrect when he says that he did not attend and that there was no meeting on February 18, 1995. On the other hand, Lic. de la Garza and I attended a meeting at the Governor's palace on that date with Dr. Medellin, Sanchez Unzueta, and

Ing. Ramiro Zaragoza Garcia. In it, we discussed the fact that the audit was almost completed and that results of the audit and the GYMSA studies as directed by the UASLP commission would be forthcoming. Ing. Zaragoza Garcia indicated that the results of the audit were positive for the landfill, and he stated his support for the project. Lic. de la Garza and I also discussed the plans for the grand opening event. Medellin reiterated his approval and assured me that both he and the Governor were still planning to attend. Their personal invitations were hand-delivered by Ariel Miranda some time after this meeting.

35. The inaugural event was foiled first by the Sanchez Unzueta administration's last-minute decision not to attend the event, and then by Medellin's decision to poison the business community against us. He did this by letting it be known to San Luis Potosi businessmen that he and the Governor would not be attending the event, thus signaling to them to follow their lead, a form of intimidation commonly used in Mexican political arenas.

36. I also believe that Medellin orchestrated the demonstration that took place on the day of the proposed grand opening. Not only was there a mass of demonstrators who had supposedly just found out about the event on the same morning, but also I could see that they had been transported in only a few pick-up trucks, some of which bore the insignia "State Judicial Department." Moreover, some of the trucks had beer and soft drinks in the back, which were provided to the demonstrators as refreshments during the day.

#### RESULTS OF THE AUDIT AND GYMSA STUDIES

37. After the environmental audit and the UASLP studies performed by GYMSA were completed, Dan Neveau and I had a meeting with the President of the University. Jaime

Valle Mendez. Since he was not the university president who set up the commission, we explained to him that when Metalclad agreed to do the studies recommended by the UASLP commission, it had been contemplated that the commission would prepare a final report regarding their review of the results. We asked him to expedite the preparation of this report. In response to our request, he told us that it would not be possible because the Governor ordered that the university not take any action as to the results of the studies. The university would not authorize a final report for obvious political reasons.

38. I am aware that Dr. Leyva, the head of the university commission, was indignant at the Governor's political manipulation of this supposedly neutral forum. He subsequently renounced his post as the commission's spokesman and refused to participate any further.

#### DE LA GARZA'S FALSE ALLEGATIONS OF METALCLAD'S

##### ATTEMPT TO BRIBE THE GOVERNOR

39. I have read Lic. de la Garza's testimony and find the accusation that Mr. Kesler requested his assistance in bribing Governor Sanchez Unzueta to be unequivocally false. There never was any strategy meeting of April 28, 1995, and I can assure the Tribunal that at no time in any meeting did Grant Kesler—or anyone at Metalclad—ever ask Lic. de la Garza, or anyone else for that matter, to bribe the Governor. Unfortunately, seeking and offering bribes is too common in Mexico—especially in state and local politics and business—but this is simply out of line with everything that I know about Mr. Kesler and the people I worked with at Metalclad.

METALCLAD'S SUPPOSED POLITICAL ACTIVITY IN GUADALCAZAR

40. Mr. Leonel Ramos Torres' allegation that Metalclad supported and financed the political campaign of his opponent—Ms. Piñeda—for the presidency of the municipality is false.

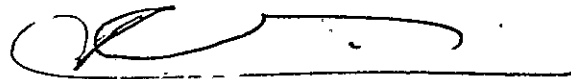
Metalclad never financed or supported anyone's political campaign.

41. Along the same lines, Mr. Hermilo Mendez Aguilar's testimony that Metalclad controlled the doctor, the drugstore employees and the teacher from El Huizache is not true.

Metalclad had an "open-door" policy at the landfill site, and I understand that various members of the local community came on their own to view the facilities at the landfill. If these people came to see the landfill, Metalclad would have welcomed them, and if they supported the opening of the landfill and Metalclad's efforts in the community, they did so of their own free accord.

I make these statements to assist the Tribunal in understanding the case before it and realizing that I might be invited by the Tribunal to appear before it as a witness to be examined as to my testimony.

Executed this 7<sup>th</sup> day of August, 1998, Mexico City, Mexico.



Humberto C. Rodarte Ramón