

COURTESY TRANSLATION OF THE WITNESS STATEMENT OF
ANTONIO AZUELA DE LA CUEVA

1. My name is Antonio Azuela de la Cueva. I was appointed Federal Attorney General for Environmental Protection (PROFEPA) by President Ernesto Zedillo Ponce de Leon on December 14, 1994. My background includes both academic and professional experience in the areas of environmental and municipal law. After obtaining my law degree from the Iberoamericana University in Mexico City in 1975, I undertook postgraduate studies in the Faculty of Law of London University College and at the University of Warwick Law School in England. I returned to Mexico in 1981 and my academic work focused on the relation between urban development and the judicial system. Towards the end of the nineteen eighties, my academic interests shifted to environmental law. This was reflected in a number of publications, among them: Sustainable Development: Towards an Environmental Policy, published by the Universidad Nacional Autonoma de Mexico (The National Autonomous University of Mexico) in 1993, which I co-authored with Julia Carabias, Enrique Provencio and Gabriel Quadri. I was a researcher at the Center for Environmental Studies and the Law and Sociology Departments at the Universidad Autonoma Metropolitana (The Autonomous Metropolitan Univeristy), Azcapotzalco Campus (from 1975 to 1987); from 1987 to 1990 at El Colegio de México (The College of Mexico); and from 1990 to 1994 at the Instituto de Investigaciones Sociales (Institute of Social Studies), Universidad Nacional Autonoma de Mexico (The National Autonomous University of Mexico). Currently, I am a member of the Sistema Nacional de Investigadores (National Order of Researchers).

2. I became involved in the Metalclad issue through my position as Attorney General for the Environment. I had no previous knowledge of the issue. This is one of the most controversial matters that I have had to deal with since my appointment as Attorney General.

3. I was first briefed with respect to this matter on February 17, 1995 as a result of the request by Metalclad-Ecpsa, through Dr. Humberto Rodarte Ramón in its attempts to start up operations in March of that year. During the next eight months, I had various meetings with the representatives of Metalclad, and several meetings with officials of the San Luis Potosí State Government, including with then-Governor Horacio Sánchez Unzueta, and meetings with members of Greenpeace Mexico and Pro San Luis Ecológico.

4. When I was appointed Federal Attorney General for the Environment, the COTERIN controversy had already started some three years before. Since that time, the federal environmental authorities believed that the site could be operated in a safe manner, in spite of the serious concerns raised by many members of the neighboring communities with respect to the waste deposited there, as well as with the work carried out by COTERIN which had resulted in a number of violations in the management of hazardous waste. From our perspective, the site met the federal regulatory requirements, the new facility provided a needed operation for the disposal of hazardous

waste, and there was a commitment by the company to remediate the site. I have repeatedly expressed the opinion that the site met with both the legal and technical federal requirements and I continue to maintain this position. However, the aforementioned does not constitute a favorable opinion of the company, and instead is limited to the project over which I had to make decisions in my capacity as a public servant.

5. Despite my opinion that the site can be operated in a safe manner, it would be an error to deny that the opposition to this project by many members of the community was genuine. I am not in agreement with those who were opposed to the project, but I cannot agree with the argument put forth by Metalclad that the opposition was artificially contrived. In my opinion, as I will explain in my statement, this argument ignores a series of very complex matters, which have arisen in the La Pedrera issue.

6. PROFERA's involvement in the La Pedrera site has been limited to ascertaining whether the legal requirements have been met, which primarily consists of monitoring compliance with the applicable federal environmental regulations related to the management, generation and disposal of the hazardous wastes, as well as the enforcement of technical requirements and penalties that are within its respective legal jurisdiction and authority. It is important to clarify that PROFEPA does not have within its jurisdiction the granting of licenses or permits (this is the responsibility of INE). The Tribunal will note that when PROFEPA was created in 1992, the site known as La Pedrera had been closed as of September 25, 1991 (Exhibit 1) by the then Secretary for Urban Development and Ecology; and it was not until February 2, 1996 that the lifting of the closure was agreed to for the purposes mentioned below (Exhibit 2).

7. The Tribunal will also recall that PROFERA, in the previous administration, decided to initiate and carry out an environmental audit on the La Pedrera facility, with the object of gathering more information, basically in two areas. First, the status of the hazardous waste which COTERIN had stored without prior authorization and, second, the geological and geohydrological characteristics of the site as set out by the official Mexican standards which provide the technical requirements for the establishment of a hazardous waste facility. I believe that this decision *was made as a result* of the exhaustive audit of the site, which provided the federal authorities with better information to support the decision to either open or close the site to alleviate the concerns raised by both the residents of La Pedrera and the local authorities. Certainly, this was the hope and expectation of Secretary Julia Carabias and myself when we became responsible for the matter.

8. It is important to note, that the environmental audit for this hazardous waste facility was ordered of Metalclad by the PROFEPA, through its Office in the State of San Luis Potosi. Therefore, in the administrative resolution dated August 30, 1994 (Exhibit 3), the first resolution ordered the execution of various technical measures, among them the environmental audit of the La Pedrera facility.

9. The environmental audit was initiated in a preliminary manner in March of 1994 and the fieldwork was carried out from December of the same year up to the end of

March of 1995. On March 10, 1995 I received an invitation to attend Metalclad's grand opening ceremony. I was surprised to receive the invitation because the site was still subject to a federal closure order. On August 30, 1994, the lifting of the closure and the withdrawal of the respective closure seals was agreed to, but only to enable the environmental audit to be carried out (Exhibit 4). For any other purpose, the site remained officially closed. In addition, the audit, while almost concluded, was still under review. We had not yet established a plan of action and it was not clear if COTERIN and PROFEPA would be able to agree to the terms for the remediation of the site. At that time, we were all aware that the governments of the State of San Luis Potosí and the Municipality of Guadalcázar had not yet approved the project and we did not know if the results of the audit would assist in alleviating their concerns and objections.

10. It is important to emphasize that while the environmental audit was carried out and the result were being analyzed, in order to define a plan of action, the hazardous waste facility remained formally closed. That is to say, the site could not be operated nor receive any new hazardous waste, it was only possible to carry out the technical measures ordered by PROFEPA, among them the environmental audit. Therefore, its opening or operation, as the Company claimed, was not authorized.

11. The decision to base the opening of the hazardous waste facility of La Pedrera on the results of the environmental audit was reinforced by the fact that on date that it was ordered (August 30, 1994), the National Institute of Ecology had already issued its authorizations for the operation of the site, both the environmental impact matter (January 27, 1993) and the management and final disposal of hazardous wastes (August 10, 1993). In the respective documents, it is established that these authorizations are issued without prejudice to the permits, licenses or authorizations which are required by the state or municipal governments (Exhibit 5 and 6).

12. Under these circumstances, the decision to hold a "grand opening" was ill advised and certainly gave the erroneous impression to those persons interested in the project, as this would suggest that they had obtained all the permits to operate the site, when, in reality, this impression was far from showing what really was happening.

13. I turned down the invitation and instructed other PROFEPA staff members not to attend. For this reason I can confidently object to the claim put forth by Metalclad on page 9 of their Memorial, that the event was attended by officials from England, Mexico, Europe and the United States, including members of the American Embassy in Mexico, Antonio Azuela de la Cueva of PROFEPA..." I did not attend. To date, I have never been on the site, and it is important to note that I am not in a position to testify as to what occurred on March 10th. Even more so, as far as I know, none of the public servants of this office were present, for the same reasons I have stated. The decision to carry out a "grand opening," even when it was referred to as a "facilities tour" cannot be described as anything more than a completely illogical act which showed great insensitivity to the political situation in both the State and the local community. Acting as if the opening of the site were a *fait accompli* without the necessary permits, was

nothing less than a provocation.

14. Shortly after the "facilities tour," we received the results of the environmental audit. It was my understanding that it was absolutely essential that the audit be conducted independently. For this reason, it was requested that a specialized company carry out these respective works, as in fact occurred. Although we inherited the audit, we were confident that the person and the company responsible for its preparation had excellent reputations and were independent. As is evident from my conduct following the environmental audit, both Secretary Julia Carabias and myself were confident in the credibility of the audit.

15. In preparing my evidence for this case, I was advised by our legal consultants that Metalclad's SEC filing had reported that in August of 1994, while the environmental audit was being conducted at the La Pedrera facility, Metalclad reported that it had appointed Dr. José Antonio Ortega Rivero, the expert responsible for the audit, to be a member of its Board of Directors. Attached to my witness statement, as Exhibit 7 is a copy of the relevant part of their 10K filing in 1994. I was both surprised and disturbed by this statement. I consider Dr. Ortega to be a man of strong ethics and credibility. We had placed our confidence in his work and we had appointed the company that conducted the environmental audit as an expert in the field. Therefore, it was very unsettling to be told that Dr. Ortega, who had carried out the audit, was a member of Metalclad's Board of Directors.

16. Upon learning of the above mentioned, I asked José Luis Calderón, an Engineer and PROFEPA's Deputy Attorney General for the environmental audit, to call Dr. Ortega to clarify the situation. I am informed that Dr. Ortega was very annoyed and he informed Mr. Calderón that, in fact, in September of 1994, while he was carrying out the preparatory works for the audit, he had received an offer to become a member of Metalclad's Board of Directors, which he had turned down because there was a clear conflict of interest, a rejection which he even confirmed by letter. He was very disturbed by the fact that even though he turned down the offer, the company had nevertheless reported his appointment to the Board of Directors. I understand that Dr. Ortega has presented a statement to the Tribunal to this effect.

17. I cannot fully articulate to the Tribunal how damaging this event could have been to the credibility of the federal authorities, not only with respect to the project but also at the national level with regards to the other projects under our responsibility. If the company subject to the audit had compromised the audit through this action, this would have been a great set back in our attempts to advance and manage the environment nationally. In this way, Metalclad's conduct could weaken the argument that they had the technical capacity to manage and adequately dispose of hazardous waste.

18. After having concluded the environmental audit towards the end of March of 1995, Secretary Julia Carabais and I decided that the only way to handle the controversy generated around La Pedrera was to be as open and transparent as possible. We were convinced that the experts in the area should review the audit results, and that the auditors should analyze the results of the audit with those experts and that non-

governmental organizations opposed to the project, such as Greenpeace, should be invited to participate in this review process. This is exactly what we did. As a result of Greenpeace Mexico's persistence, we included the Instituto de Geología de la UNAM (Geological Institute of UNAM), as part of the group of experts appointed to analyze the results of the environmental audit, and the viability of the site for the establishment of a hazardous waste facility was verified. It is important to note that the technical assessment by the researcher from that Institute was favorable to the project (Exhibit 8).

19. From March of 1994, upon concluding the corresponding works for the environmental audit aimed at COTERIN, this office initiated a technical consulting process with the goal that the federal and local authorities would have all the available technical information regarding the particular matter and, in this way, the necessary measures would be adopted to deal with the problems surrounding the facility.

20. In fact, as of May 2, 1995, the documentation from the environmental audit was made available to the public and on the following June 6th a meeting was held which was attended by representatives of the National Water Commission, the Engineering Institute of UNAM, the Government of the State of San Luis Potosí, the organizations of Pro-San Luis Ecológico and Greenpeace Mexico, A.C., as well as representatives from the National Institute of Ecology, from this Attorney General's office and those of the Municipality of Guadalcázar. In this meeting, the results of the environmental audit were presented and discussions of the same were initiated.

21. Following this, with the object of having the greatest number of expert opinions regarding the conditions of the site and the fulfillment of the applicable official Mexican standards, the College of Civil Engineers of Mexico, A.C. and the Geological Institute of UNAM were invited. With the representation of these and other institutions, meetings focusing on technical issues were carried out at the offices of said College on June 19 and 26, 1994 and July 10, 1994.

22. As a result of the meetings outlined, the Geological Institute of UNAM, the Engineering Institute of UNAM, the College of Civil Engineers of Mexico, the National Water Commission and the National Commission on Nuclear Security and Protection, were of the opinion that the site in which the facility is located is suitable for the establishment of this type of environmental infrastructure (Exhibit 9). Moreover, these Institutes submitted various recommendations, which were to be followed in the operation of the facility. At the end of the process, I was satisfied with the knowledge that the experts had determined that the place was appropriate for the ends proposed. Nevertheless, I should mention that these meetings did not persuade those who were opposed to the project to accept the operation.

23. Upon the request of the State Government of San Luis Potosí, on October 26 and 27 of the same year, meetings were held in the City of San Luis Potosí to explain the results of the technical consultation with members of the community of Guadalcázar, the state legislature, the media, the managing organizations and with officials from the local Government.

24. On October 5, 1995, PROFEPA started the negotiation of an agreement with Metalclad. The purpose of this instrument was to establish the terms which would lead to the lifting of the closure of the site and would permit COTERIN to operate the facility at the same time that it carried out the necessary measures to remediate the site. I am not in agreement at all with the description given by Mr. Kesler regarding the manner in which the aforementioned agreement was negotiated. First, with respect to PROFEPA, I want to emphasize that on page 15 of Mr. Kesler's statement, he mentions that in Metalclad's opinion, the negotiation of the agreement was a trilateral one between the Federal Government, the State Government and the company. In fact, the content of the Agreement only makes reference to authorities and matters within federal jurisdiction. State officials were not involved in the negotiation of the terms of the agreement. Given this, if the State Government received copies of the drafts, this must have been through Metalclad. I definitively did not do so prior to the formalization of the agreement. Consequently, my second observation is that I did not have any expectation that Governor Sánchez Unzueta would participate in the agreement. Therefore, there was not any need to provide a space for his signature. Under these circumstances, I did not indicate that "there was no need legally to have the signature of the Governor" because we had not contemplated his participation. Finally, with respect to the agreement between Metalclad and federal environmental authorities, it is incorrect to state, as does Mr. Kesler, that "The purpose of the agreement was to give the company the right to operate immediately as long as they carried out the remediation activities at the hazardous waste facility that the prior owner left." The aforementioned, in fact, discredits that set out by Metalclad in Paragraph 40 of their Memorial with respect to the company's allegations that the state government refused to sign the mentioned Agreement.

25. In fact, proof which lends support to my testimony, in addition to the provisions of the agreement entered into on November 24, 1995 (Exhibit 10), is found in the press release that we issued on the day of its signing. A copy of the press release is attached to this statement (Exhibit 11). In the last paragraph of the press release, it is noted that "it is important to clarify that the federal authorizations are a necessary requirement but are not sufficient for the operation of a hazardous waste facility. The company should comply with state legislation on the matter, whose interpretation and application falls exclusively to the local authorities."

26. At paragraph 40 in the Memorial, Metalclad notes that in a public statement regarding the agreement entered into between the company and federal environmental authorities, I commented that there would be no turning back and that the controversy which had been generated with Metalclad, was the responsibility of the Governor Sánchez Unzueta. As well, it is noted that I mentioned that I had information which showed that a genuine opposition to the operation of the hazardous waste landfill in La Pedrera did not exist.

27. With respect to this matter, I would like to note that, in effect, I stated that there would be no turning back with respect to the conditions agree to with the company given that I had the full assurance that they were based on the analysis of the results of the environmental audit carried out on the hazardous waste landfill in La Pedrera, on the

technical measures that were planned for the remediation of the site and by the fact that INE had granted the respective federal authorizations. Given this, the fulfillment of the agreement would address the existing problem. The aforementioned in no way means that the requirements of the state and municipal governments do not have to be met in order to issue authorizations and, much less, that it encourages the Company to believe that it need not obtain the permits or local licenses.

28. As such, upon stating that the opposition to the Agreement by Governor Sánchez Unzueta was his responsibility, it is one way to reiterate the recognition by this office of the Federal Attorney General for the Environment of the full autonomy that the local governments have to authorize the undertaking of works or activities which in accordance with the state and municipal legislation, requires a decision by those governments, independently of the authorizations which they may have obtained from the federal environmental authorities on the same issue.

29. On December 19 1995, the Municipality of Guadalcázar filed an administrative challenge of the agreement entered into by PROFEPA and INE with COTERIN in which the company was authorized to carry out the remedial works simultaneously with the establishment of a hazardous waste facility, on the basis that this agreement "is contrary to environmental standards, notwithstanding that on August 30, 1994 PROFEPA decided, as a corrective measure, to prohibit the introduction of any type of waste into the facility until such time as the studies are completed and the corresponding remedial works are carried out. As well, it is alleged that the actions appealed encroach on the Municipality of Guadalcázar's sphere of jurisdiction." As the Tribunal will note in Secretary Julia Carabias' witness statement, as head of SEMARNAP she rejected this challenge, because it had been filed outside of the time limitation period and the municipality did not have the legal standing to challenge the issue.

30. On January 31, 1996, the Municipality of Guadalcázar filed a writ of *amparo* before the District Judge of San Luis Potosí, against the decision issued by Secretary Julia Carabias, rejecting the challenge brought forth. The Federal Judge not only allowed the request, but also granted the temporary injunction on February 6, 1996 and after that, the definitive one by way of an injunction on February 23, 1996. This hindered the opening and operation of the facility until such time as the *amparo* brought forth was concluded. A copy of the injunction is attached to this statement as Exhibit 12.

31. The Federal Attorney General for the Protection of the Environment (PROFEPA) and the National Institute for Ecology (INE) defended the action and finally on July 15, 1997, the case was resolved. In the decision, the District Judge decided to dismiss the case because "the *amparo* proceeding had been established to protect individual rights, and in this case, the appeal by the complainant against the actions were not carried out in its character as a private person, but instead as a public entity, it is unquestionable that it does not provide for the protection of individual rights by which there is no standing to pursue such a challenge." Against that decision, the municipality of Guadalcázar filed an appeal and that appeal was granted. The court ordered a retrial on two grounds: the municipality shall provide an address in Mexico

City to be legally notified of any decision issued by the District Judge; and to conduct another constitutional hearing which would be held on March 3, 1998. Thus the decision of the *amparo* is pending.

32. I want to point out that in their Memorial, Metalclad referred to the injunction noting on page 45 that: "Suddenly, after extensive newspaper coverage by *Excelsior*, a major newspaper in Mexico City, of the political problems and the questionable conduct of the Governor of San Luis Potosí regarding the La Pedrera landfill, the federal court issued a brief decision on August 29, 1997 finding that the Municipality was not an appropriate party to bring an *amparo*." If it is suggested that what occurred was a form of conspiracy on the part of the Federal Judiciary to delay the project, this allegation appears to me to be totally questionable. Throughout this complex case, PROFEPA has acted with the highest degree of professional ethics. There is no proof to support Metalclad's allegation, and, instead, this is an insult to the Federal Judiciary. While the decision is favorable for PROFERA, I am fully confident that it was a result of the legal arguments we presented.

33. In my opinion, as I previously stated in paragraph 5, Metalclad overly simplified the complex issues which comprise this case. I believe that there are a series of factors which this Tribunal ought to take into consideration. First, in relation to Governor Horacio Sánchez Unzueta, I have the impression that he always took the position of never siding against the community. My understanding was that he was in favor of establishing a hazardous waste facility in the State and, although he did not have any personal objections to La Pedrera, he believed that it was his duty to defer to the will of the local residents and to support their concerns and objections.

34. Moreover, it was clear to me that the Governor was in a difficult and unusual position. For many years, Mr. Salvador Nava was the leader of the opposition political party in San Luis Potosí. He was an advocate of state autonomy and, until his death in 1991, he headed a movement for the decentralization of federal power. This movement, continued by his followers, is known as Navismo. Before Horacio Sánchez Unzueta was elected State Governor of San Luis Potosí, within a period of five years, four different governors had ruled the State. Sánchez Unzueta was appointed as the candidate for PRI. His election as governor was a surprise to political analysts and was attributed, to some extent, to the fact that he was married to Mr. Nava's daughter and was, therefore, close to the Navista movement which, to a great extent, provided his support.

35. In my opinion, Governor Horacio Sánchez Unzueta's political obligation to Navismo was compounded by the fact that a number of his advisors, including Dr. Medellín who was appointed Ecological Coordinator, were strong supporters of the decentralization of federal power in favor of the local government. Moreover, I believe that the Governor himself was sympathetic to the idea of local autonomy. Given this, in the context of this case, the Governor and his advisors were not pleased that the Federal Government had given the authorizations for the La Pedrera site before the local government had considered the issue. In general, I can say that I respect the Governor's views with regards to decentralization, given that I myself empathize with the strengthening of local governments, as is demonstrated by the various articles I have

written in the areas of urban planning and environmental law. However, I cannot ignore the fact that in a federal system like ours, the jurisdictions of the Federal Government, the state governments and the municipalities ought to be based on what is set out in our Constitution and the laws derived from it. In this sense, in the matter that concerns us, I have always held that the authorizations and permits which are granted by the federal environmental authorities for the execution of works or activities, under no circumstances, affect or prejudice those which correspond to matters within the jurisdiction of local governments.

36. I am aware that both Metalclad and Governor Sánchez Unzueta accuse one another of corruption. I do not have any personal knowledge of this nor any reason to believe that the Governor sought a bribe from Metalclad nor that Metalclad sought to bribe the Governor or his associates. However, I want to emphasize that these types of allegations are not rare in Mexico when controversies, such as the one before us, arise.

37. Moreover, I believe that it is useful for this Tribunal to know that the relation with Pedro Medellín in this case was very difficult. This was so principally because, in my opinion, he never accepted the intervention of the Federal Government in matters which he considered to be within the state government's sphere of jurisdiction. This was consistent with his position with respect to decentralization. Nevertheless, I do not believe that he had other motives for siding in favor of the community and opposing himself to the Le Pedrera facility and I do not have any proof or reason to think that he was motivated by bribes or personal financial interests.

38. The Metalclad official with whom I met most often with was Mr. Dan Neveau. I met with him on various occasions. I understood that he was Metalclad's top official in Mexico. He was generally found, if not always found, in the company of Dr. Humberto Rodarte Ramón, a past official of SEDUE who was Metalclad's Mexican representative. It always seemed strange to me that the top official of Metalclad, in charge of such an important project, did not speak Spanish. I met with Mr. Grant Kesler once or twice and I spoke with him by telephone once. I recall that he was present in the meeting with Secretary Julia Carabias held in mid-1995.

39. I do not recall having met Ariel Miranda Nieto, José Rodríguez or Lee Deets. I met Javier Guerra once, but not in relation with the La Pedrera facility. He became the head of operations for Metalclad in Mexico and, on one occasion, he visited me with other company officials in my office. It appeared to me that he wanted to show that he knew the important officials and we discussed the Federal Government's continued commitment to encourage its program for the proper management of hazardous wastes.

40. Before preparing for this case, I believed that Metalclad was an experienced and well-established waste management company, which had carried out similar projects in the United States. Of course, Metalclad had initiated its negotiations in Mexico several years prior to my arrival when I took over the file. I was surprised, when the lawyers for the Mexican government informed me that, in accordance with the information filed with the United States Securities Exchange Commission (SEC), Metalclad did not have any experience in the area.

41. I was also surprised to learn that Metalclad alleges that federal environmental officials repeatedly assured them that the federal permits were all that the company required, and that the federal officials would handle any state or local matters. In my role as a senior official for PROFEPA, I have always been careful to ensure that authorizations granted by federal environmental authorities only apply to matters within the jurisdiction of that level of government, and that they do not prejudice the need to comply with any other applicable federal, state or local laws. The amendment to the Federal Environmental and Ecological Law, in which I participated, was approved by the State Congress towards the end of 1996. It established in Article 33, that the authorization on environmental matters issued by SEMARNAP, do not, in any way, obligate the local authorities to issue the authorizations which fall within their sphere of jurisdiction.

42. I definitely did not make any such statements to the Metalclad officials. On the contrary, I commented to them that they should work towards establishing good relations with the state and municipal authorities and that they should comply with state and local laws.

43. I believe that it is very odd that federal officials would offer an opinion with respect to the application of state or municipal law, particularly if they know that those who receive the information will attempt to use it to decide if they will or will not make an important investment in the country's environmental infrastructure. In the same way, I believe that it is very strange that, if such statements were made, an investor would support or justify a decision or make an investment on such casual statements by officials, without first retaining properly qualified lawyers to independently assess all the applicable legal requirements. If Metalclad failed to do this when they made their investment, they should assume the responsibility stemming from this. Finally, I find it totally illogical that a federal official would assure a prospective investor that federal authorities would take care of any concerns or issues at the state or local level. I can conceive of no reason why a federal official would make a commitment so completely beyond his or her ability to control and which exceeds their responsibility and authority. It is even more difficult to maintain the belief that an investor would risk their resources in a scenario like the one mentioned above.

44. My personal relation with the local community was limited to attending two meetings in Mexico City on April 10th and August 17th of 1995 and a meeting in the City of San Luis Potosí on October 26th of the same year. The purpose of these meetings was to provide an opportunity for the expert engineers and geologists and other specialists contracted by SEMARNAP to present their findings and to hear the concerns of the local people, on matters regarding the health of the population and the protection of the ecosystems in regards to the La Pedrera hazardous waste facility. The local residents who attended the meetings were polite and orderly. The majority of them were women, some of whom appeared to be *campesinas*. There was no disorderly conduct or any threatening behavior during the meetings nor, at any time, during my stay in San Luis Potosí.

45. As I initially noted in my statement, I believe that the local opposition to the confinement is genuine. I do not have any information or reason to believe that the local

opposition has been led by RIMSA or was instigated by Dr. Medellín or by Governor Sánchez Unzueta, as Metalclad has alleged in their Memorial.

46. I am personally acquainted with Fernando Bejarano, the ex-coordinator of Greenpeace Mexico's program for hazardous wastes. We worked together in the early eighties as advisors to organizations for low-income residents. At that time, he was a hard-working man. Our relationship suffered as a result of our different perspectives on La Pedrera. Simply put, Greenpeace is opposed to all hazardous waste facilities, with the conviction that they only discourage the development of what the organization believes to be the best and ultimate solution, that is, the total elimination of waste which cannot be reused or recycled. Accordingly, Greenpeace was opposed to the opening of La Pedrera under any circumstances, regardless of whether the technical and scientific evidence was favorable. Greenpeace representatives who attended the Outreach meetings did not participate in a cooperative manner and, within a short time, the meetings were suspended.

47. Greenpeace took the position that COTERIN should have been required to carry out the remediation of the facility before INE issued new permits, noting that by issuing the permits, INE rewarded a company that had committed what the organization considered to be an environmental crime. Moreover, Greenpeace went so far as to file a criminal complaint against the officials of the then SEDUE involved in issuing the permits for the transfer station (René Altamirano and Sergio Reyes Luján) and against me for my alleged participation in the concealment of criminal acts. I thought it was ironic, to say the least, given that I had made the results of the environmental audit public and that I had helped establish the Outreach program to solve the existing problems regarding the site.

48. I would characterize COTERIN's earlier conduct as an environmental misdemeanor, which resulted in the applicable regulatory penalties, but I would not characterize it as an environmental crime. There is, however, some merit in Greenpeace's "remediate first" position as a way to ensure that polluters will not be permitted to profit from violating the country's environmental laws. However, from my point of view, the practical exigencies in this case weighed in favor of allowing COTERIN (now under new ownership) to remediate the site while concurrently operating the hazardous wastes facility in compliance with the applicable environmental regulations. In this matter, it is important to emphasize that, given the violations incurred by the first company responsible for the facility (the Aldrett Family), the environmental authorities adopted various measures based on the applicable regulations (on September, 25 1991, the closure of the installations was ordered). However, when this Attorney General's office became aware that Metalclad acquired the majority of shares in COTERIN, and had the intention of assuming both the respective responsibilities to carry out the necessary remedial works and the appropriate operation of the facility, it was decided, based on the applicable legal requirements at the national level, to find the method of resolving this problematic situation and to support the program for the appropriate management of hazardous wastes.

49. It is difficult to measure what effect Greenpeace's participation had on public opinion, given that there was already an organized opposition, some two to three years

before. However, I believe that the local community would have eventually accepted the project if Greenpeace had not become so actively involved in opposing it.

50. I believe that Metalclad made many bad decisions. They ought to have conducted themselves better when they acquired COTERIN. It is difficult to believe that they would not have been aware that COTERIN had requested and been denied a municipal permit. They also ought to have been aware that they were acquiring a hazardous waste landfill in which the previous owners had committed violations in the management of hazardous waste. When the Governor assumed control, Metalclad needlessly exacerbated their relations with him. The attempt at a "grand opening" provides the best example of this type of conduct. I do not have any evidence that Metalclad intended to bribe officials and, prior to the preparation for this case, I had no knowledge of any such illicit behavior on their part. However, now that I am aware of Metalclad's intention to have Dr. Ortega join their Board of Directors while the audit was underway, I am not so sure. It was an untenable step to take and it can only be viewed as a questionable undertaking aimed at compromising an audit which, at that time, had received national attention.

51. Finally, I do not recall Secretary Julia Carabias saying that "economic interests" influenced the Metalclad situation. More accurately, she said that "this was not an environmental matter" and that there were various interests involved in the controversy, such as political, social and economic interests. I am certain that she did not say that if a NAFTA claim was filed "government authorities that were once friends of Metalclad would change their position." What I commented on, in this respect, was to the effect that, as a natural consequence of litigation, the parties involved become adversaries.

52. I provide this witness statement knowing that I may be called to provide further testimonial evidence and to be cross-examined on the evidence which I have presented. I affirm that the contents of this witness statements are true.

SIGNED IN THE ORIGINAL:

ANTONIO AZUELA DE LA CUEVA