

## DECLARATION OF

GRANT S. KESLER  
30 September 1997

### PREFACE

I am Grant S. Kesler, President and Chief Executive Officer of Metalclad Corporation and declare as follows:

Metalclad Corporation (Metalclad) is a U.S. Delaware Corporation. It has several subsidiaries in the U.S. and Mexico, all of which are wholly owned. Included are Ecosistemas del Potosi, S.A. de C.V. (ECOPSA), Ecosistemas del Nacional, S.A. de C.V. (ECONSA), Quimica Omega, S.A. de C.V., Administracion de Residuos Industriales, S.A. de C.V. (ARI), and Confinamiento Technico de Residuos Industriales, S.A. de C.V. (COTERIN).

Metalclad holds both equity and debt securities of COTERIN, having advanced funds both as capital and as loans. By virtue of this and its ownership of COTERIN, Metalclad is entitled to share in the income and profits of COTERIN.

I joined Metalclad on March 1, 1991 and became the President and Chief Executive Officer on June 1, 1991. Metalclad, at that time, was more than 50 years old, had completed more than One Billion Dollars worth of environmental construction projects all over the world and had a reputation with the Environmental Protection Agency and the Occupational Safety and Health Administration and other agencies that was as perfect and clean as any company in America.

The Company was public at that time, with 1,000 or so stockholders and one or two market makers. We have now grown to 4,000 shareholders with 50 market makers and have a very liquid stock that trades on the NASDAQ Exchange.

Our interest in Mexico began in the Fall of 1991. For the remainder of that year and 1992 we worked on a project with some executives at Ford, Bacon and Davis (a German owned engineering firm) who wanted to build a hazardous waste incinerator in San Luis Potosi, Mexico. We went through the processes of obtaining permits for the project and looked at other potential opportunities in Mexico. During 1992 we attended a conference in New York City sponsored by Mexico. One of the primary speakers was Santiago Oñate, who invited us to come to Mexico to make investments in the environmental field. We later got to know Dr. Oñate as he became the first environmental attorney general, then head of the agency SEDESOL, then on to the department of labor as Secretary under the Zedillo administration, later to the head of the PRI party, after which he has been named as the Ambassador to Great Britain. We also attended a conference in Boston during that year, presided over by Dr. Sergio Reyes Lujan, the President of the National

Institute of Ecology from Mexico and Rene Altamirano, who at that time was head of all permitting for hazardous waste projects in Mexico. Both of them also invited us to come to Mexico and offered their support and help if we would do so.

#### EARLY 1993

In early 1993, we met with Humberto Rodarte, who at that time was an official in the Mexican federal government, working in the area of environment. He indicated that one of his responsibilities was to encourage U.S. investment in Mexican environmental projects and that Mexico needed both capital and technology from the United States to make its environmental program a success. He wanted to introduce us to some gentlemen who had been working on a hazardous waste landfill and had received a permit to construct such a landfill, but did not have either the capital or the technology to complete one according to the new standards in Mexico, which are very similar to the standards that have been in effect in the United States for some time.

Thereafter, at the introduction of Humberto Rodarte, we met with Salvador and Guillermo Aldrett. For about a three-month period we investigated the federal climate, the local community environment and whether or not there would be available political support from the State of San Luis Potosi, whose support we deemed would be essential to the success of any project in the state. (This is primarily because tradition accords such great support and respect to a governor of an individual state.) During that Spring, 1993, there was a Gubernatorial election campaign going on. The likely winner was expected to be Horacio Sanchez Unzueta, who represented not only the PRI party, but because of his family, was also a spokesperson for the NAVA party, another minor but influential party in the state. (When those two parties combined, it pretty much assured victory for a candidate in the State of San Luis Potosi.) In Horacio Sanchez Unzueta's campaign platform, he called for the creation of a hazardous waste incinerator and a hazardous waste landfill. This gave us great encouragement toward our project but we felt it would be wise to follow up and get his personal support before actually purchasing the landfill site.

#### APRIL 1993

In April, we signed a six-month option to purchase the Aldrett property and all the existing permits which at that time included only the federal construction permit. The next month, in May of 1993, the state land use permit was granted. On approximately May 19, the new governor, Horacio Sanchez Unzueta, was inaugurated and became the sitting governor. At that time we were aware that the property included a transfer station where some 55,000 drums of hazardous waste was being improperly stored. In our negotiations with federal and state officials we knew and they knew everyone would benefit from our purchasing the site because they knew we had the capital and technology to properly remediate the site as part of our agreement to move forward.

JUNE 1993

We met with federal officials, including Sergio Reyes Lujan, President of the Institute of Ecology and Rene Altamirano, the official in charge of all permitting. Both of these officials indicated that we lacked the federal operating permit, but that all other permits were already in place with the land use permit granted by the state and the construction permit granted by the federal government. They both indicated this was an area of federal preemption, that federal law took precedence over state and local law and that the only control that could be imposed by a state or local community was administrative control. During June, we met with Governor Horacio Sanchez Unzueta. I personally was ill at the time, but sent with Company officials a letter from me personally, asking for his support and endorsement as an encouragement for us to move forward with the acquisition of the site and development of a landfill for hazardous waste in his state. The meeting was held, support was offered and a letter was given by the Governor to us after review of the project itself and all that it entailed.

JULY 1993

In July, 1993, there was scheduled the first NAFTA (at this time it was pre-NAFTA) Border Conference. Five members of President Salinas' cabinet attended and five members of President Clinton's cabinet attended. The whole purpose of the conference was to talk about the practicalities of the NAFTA treaty and the improvement of the relationship that would take place as a result of the treaty. It was also to gain additional public support for approval of the treaty. Because Dr. Pedro Medellin had been appointed as the State Environmental Coordinator by that time, we invited him to join us as our guest in San Antonio to participate in the conference and to help us in securing additional federal support for the project so that we could gain the operating permit necessary to move forward. At that conference we met with Donaldo Colossio, who at that time was the head of SEDESOL, the parent to the environmental agency in Mexico and the predecessor to the environmental agency that is now known as SEMARNAP. (Donaldo Colossio later became a candidate for the Presidency of Mexico and was regrettably and tragically assassinated on March 22, 1994.) We also met with Dr. Santiago Oñate, who at that time was the environmental attorney general. He introduced us as well to Mexican Ambassador Negra Ponte, who was also attending the conference, and both Mr. Colossio and Dr. Oñate agreed they would use their influence to expedite the awarding of the operating permit that was necessary for us to go forward with our project. We also used the opportunity of the conference to make a press release read and approved by Dr. Pedro Medellin, announcing the accord that had been achieved between our Company and the State of San Luis Potosi in moving forward on this much-heralded and much-needed environmental project in the State of San Luis Potosi.

## AUGUST 1993

The operating permit was granted by the federal government. At the time it was granted, Rene Altimirano said that it would be the federal government's responsibility to obtain any needed political support necessary in the state and local community. He assured us we had all of the legal authority we now needed to build and operate, but that Mexico was a country that worked on the basis of broad-based political support, which he said they would obtain on our behalf. In the meantime, he asked us to not announce the fact that we had been given the operating permit until he had the opportunity actually make the announcement in the state himself, with the state and local authorities.

We also met with Dr. Sergio Reyes Lujan in the month of August and he reiterated the fact that we had all of the legal authority we now needed to build and operate our facility. He also asked us to not make any public announcements until he had the chance to visit in person with the Governor and prepare the way for the actual construction start.

## SEPTEMBER 1993

Now that we had received all of the legal permits required to construct and operate and assurances of the political support necessary, we exercised our option to purchase the site and went forward with the exchange of cash for property. But for the strong and repeated assertions from both federal and state governmental officials, we would not have exercised our option.

## OCTOBER 1993

Dr. Sergio Reyes Lujan asked us to join him as he came to San Luis Potosi to meet with the Governor and tour the landfill site. His meeting with the Governor was private. However, on the trip from the Governor's office to the landfill site, he indicated that the Governor had requested two things. The first was he wanted us to inform the local community about the project to be developed. Secondly, he wanted the University of San Luis Potosi to review the technology of the project and give it their approval. Based upon that, Dr. Reyes Lujan suggested that we not begin construction immediately, even though we had the right to do so, if we wanted the Governor to give us the political support that he and all of us believed was necessary to the ultimate successful operation of this project.

## OCTOBER TO DECEMBER 1993

During this period of time we opened the landfill site to tours for people in the local community and the state, we delivered brochures explaining the project and its technology and delivered them door-to-door, we conducted meetings, we began the community water program and we provided medical help to the local community. Prior to this time, we had done a very detailed study about the demographics of the

local community so we could understand the special needs that were unique to this community over any other community. We became aware that the Municipality of Guadalucazar is a very large geographical area, but not widely populated. There are approximately 26,000 people in the entire municipality. In addition, the municipality is bisected by a very significant mountain range so there becomes the north end and the south end. Most of the population that exists is in the south end. Because there are no roads through the mountain range from the south to the north, communication between the north and the south is somewhat limited, as it takes a trip of approximately 70 kilometers to drive from the City of Guadalucazar in the Municipality of Guadalucazar to the landfill site, which is in the less populated north end of the municipality at a place called La Pedrera.

We surveyed the small, micro communities near the site and within about 10 kilometers we found primarily four small communities inhabited by approximately 800 adults. As you go outward from this radius of 10 kilometers, the population becomes even more sparse. We determined that only these four micro-communities would realize any negative impact from the construction or operation of the landfill facility. By negative aspects, I mean noise, dust, the inconvenience of large trucks on the road, the potential spills that have to be dealt with, and the like. We concentrated most of our efforts on the 800 or so adults that live in these communities.

As mentioned above, we began a water program. Because these micro-communities do not have running water, but there is a community well some four or five kilometers to the west, we purchased a water truck and began daily shipments of water to these micro-communities so they would have available potable water. In coordination of this program with the State of San Luis Potosi and at the request of Dr. Pedro Medellin, we put a sign on the side of the truck informing the community that the water was being delivered to them compliments of the State Environmental Coordinator of San Luis Potosi. We had no problem giving him credit for this service since he had agreed to give us his political backing for the project.

By mid-December we felt we had about 70 percent of the adults in the community fully informed and fully supportive of our project and we had been attempting to reach the Governor to schedule a meeting with him to explain the success we had achieved in the local community. We also had a number of meetings with prominent members of the University of San Luis Potosi to seek their support and involvement in some form of oversight or joint cooperation. They had suggested we share a laboratory, for example, or have some on-going relationship between the landfill site and the University in exchange for their support.

DECEMBER 1993

Without any warning or notice of any kind, the Governor called a press conference and announced that when it came to the La Pedrera hazardous waste landfill he was

the final word and the final word was: "no". We were astounded by this public declaration in view of the support we were getting from the local communities and the state through Dr. Pedro Medellin and since, to our knowledge, we had done everything that had been requested of us by anyone. Our response to the Governor's declaration was to seek a meeting and when that was refused, we took out a full page ad in a local newspaper and responded to the Governor's attack by simply saying we intended to operate with absolute transparency and our only objective would be to inform the community and, indeed, the entire population of the state of every aspect of the project we contemplated in La Pedrera. We challenged the Governor to join with us in this open, public debate and disclosure so there could be no possibility of misunderstanding.

#### JANUARY 1994

A short time after the newspaper ad ran, we received an unsolicited offer from Jose Mario de la Garza (a local San Luis Potosi attorney that had assisted us in an unrelated matter) to help. He suggested that we meet with him immediately and that he could arrange a meeting with the Governor, which he said was the answer to solving our problem. He offered to work for free, indicating that he would be compensated for services by other companies that would come to San Luis Potosi as the result of the very substantial project that Metalclad would be building. (We later discovered he represented the family of the Governor and family members of Dr. Pedro Medellin, at which time we discharged the de la Garza law firm. In addition, as the probability of opening got closer we began to receive invoices from Mr. de la Garza and at one time he was proposing a very substantial success fee if the landfill opened.)

As a result of the intercession by Jose Mario de la Garza we did, in fact, meet with Governor Horacio Sanchez Unzueta. He agreed to support our project on two conditions. The first was that the University of San Luis Potosi be given the right to review the project and determine whether or not it was safe and the second was that there be no publicity and that all dealings with him be in secret and that a written agreement be used to assure no misunderstanding between us on that subject.

#### FEBRUARY 1994

Governor Horacio Sanchez Unzueta set up a commission consisting of professors from the University of San Luis Potosi. It was given the charge to study the site and was prepared to defend publicly the viability and the safety of the site. All expenses of their inquiry were to be borne by Metalclad.

The commission referred to above started a process that lasted for more than a year. Hundreds of thousands of dollars were spent on core samples, test holes, radar tests, seismic tests and the like, all by independent experts who would then have their material reviewed by the University professors.

In addition, this began a process of proposed agreements between the state and Metalclad that went back and forth for more than 90 days. (Two of these drafts are attached to this declaration.) We would work tirelessly to get a draft of an agreement to be exactly what Dr. Medellin wanted, only to have him find some other excuse not to execute it. The drafts were consistent with what had been agreed to verbally. Basically, we had the right to begin construction of the first cell and begin operations so long as we agreed to make any necessary modifications requested by the University.

#### MARCH 1994

On March 22, 1994, Donaldo Colosio was assassinated as he was campaigning to become President of Mexico. Because 1994 was a federal election year we were very vigilant about watching changes being made in personnel at key posts and actively sought and received support from new Zedillo appointees as they occurred. If anything the Zedillo government was more pro infrastructure development than the Salinas government and were welcomed and supported by these new officials.

On March 30, Dr. Pedro Medellin approved yet another draft agreement. He then requested an elaborate method to communicate it to him and the state but agreed to sign it. When it was presented in the way he requested on April 4, he then said he had agreed to go to Orange County with the UASLP commission and it would be more appropriate to sign the document after the trip.

At no time during any of our negotiations with the state did anyone ever mention the need for a local construction permit. All drafts of these agreements are silent on the subject because the subject was never raised.

#### APRIL 1994

We offered to bring all members of the University of San Luis Potosi commission and Dr. Pedro Medellin and others to the United States at our expense to tour a landfill facility in Orange County, California and to listen to a presentation made by Harding Lawson and Associates, our engineers who had designed more than 100 landfills worldwide. Harding Lawson had actually designed the landfill that was toured by these gentlemen in Orange County, California and also had provided the design for the landfill to be built in San Luis Potosi. During that trip, yet another draft of an agreement between us and the state was agreed to by Dr. Pedro Medellin and the Company. The fact of the agreement (though unsigned) was announced by Dr. Pedro Medellin himself in Metalclad's conference room in Newport Beach, California. A copy is attached to this declaration. All those in attendance literally applauded his decision. This included every member of the University of San Luis Potosi commission, except one.

After seeing the landfill in Orange County, California that sits above the major population center of the County, surrounded by agriculture and after a presentation

in the office of Harding Lawson and Associates, all present became convinced that regardless of what the University of San Luis Potosi's studies found (whether faults, caves, water or whatever), the landfill in La Pedrera could be constructed safely. Everyone, therefore, agreed that we could begin construction so long as we would make any necessary changes if the University of San Luis Potosi's studies recommended them.

During the last half of May, we began construction. The state had still not signed a written agreement but Dr. Pedro Medellin discounted the need for it by saying that we are going to make a joint public announcement with respect to the start of construction and our support for your project so we don't need a written agreement to that effect anymore.

Dr. Pedro Medellin did, in fact, along with our chairman, announce publicly at the Governor's Palace the start of construction. But his public comments gave emphasis to the fact that we would be remediating the old Aldrett transfer station site and not that we would be building and operating the first hazardous waste treatment facility in Mexico. (The property we purchased included a transfer station with approximately 55,000 drums of hazardous waste that needed treatment (remediation) and disposal).

#### JUNE TO AUGUST 1994

Construction continued without interruption. There were weekly federal inspections and also additional inspections by the local community by representatives of the Town Council. We employed several hundred people from the local area, we continued the water delivery service and health care and things went fairly smoothly.

#### AUGUST 1994

President Ernesto Zedillo was elected the President of Mexico. The election was certified by international observers as fair and a new wave of optimism swept over the country. The Zedillo administration included elevating environment to a cabinet level post. Julia Carabias was appointed Secretary and began immediately to make a positive contribution to our project by her public support.

#### SEPTEMBER 1994

Antonio Azuela, the Federal Attorney General in charge of the Environment, wanted to add his voice of public support to our project and, as a result, he called a press conference in Mexico City. He invited the United States Ambassador, Dr. Pedro Medellin and other dignitaries and publicly announced the construction of Mexico's first state-of-the-art landfill facility to handle hazardous waste. He saw this as a validation of the project by the new Zedillo administration which is important



because in Mexico successor administrations many times fail to support predecessor administrations.

#### FALL 1994

A member of the community council served a notice that construction should stop until we received a local construction permit. This request had never been made before, even though we had been under construction for five months. The federal inspector told us that we should humor the man by making a request for a construction permit, but (1) it wasn't necessary; (2) they couldn't deny it if we asked for it; and (3) we shouldn't under any circumstances stop construction. So, we asked for such a permit and went on building. We were also performing remediation and preventive maintenance construction at the transfer station site. In the late fall, we had successfully completed a massive amount of new hydrogeology work at the site and it was obvious that no changes in design were going to be necessary. The geology studies were validating the site as perfect.

During October 1994, I had mentioned to our then local attorney, Jose Mario de la Garza, that I was discouraged with the time and money it had taken to get this far and was seriously looking into investing in a state other than San Luis Potosi. I mentioned that it was difficult being unable to respond to complaints in the press while the state would talk positively and supportively in private but would not say much positive in the press while a so-called local environmental group known as Pro-Ecologico San Luis would continue to publish lie after lie about our project. Mr. de la Garza mentioned my mood to Dr. Pedro Medellin and Dr. Medellin then called me in the United States to offer words of encouragement. He told me that most U.S. investments in Mexico fail because of cultural difficulties. He said I shouldn't be discouraged, that we were almost there, and that he could and would control the environmental group that was criticizing us.

The transition from construction to operation is a massive and complicated endeavor. More than 200 people need to be trained for their particular jobs. Training began in the fall of 1994 in anticipation of an opening in March 1995. We notified the state that we expected to be ready to operate by March and together began to coordinate the grand opening. The date agreed upon with Dr. Pedro Medellin was March 10, 1995.

#### SPRING 1995

The University of San Luis Potosi study was completed in February and the state was notified. (Although the commission had insisted that additional test holes be drilled and core samples analyzed, the results confirmed that no water could be found down to a depth of 350 meters (1,000 feet). These studies confirmed earlier positive findings.) In February, at a meeting of the University of San Luis Potosi commission, the various findings were reviewed. At the conclusion of this very positive presentation, Dr. Pedro Medellin said, "Now we have a problem; we have

to inform the people." (Emphasis added.) Dr. Pedro Medellin said both he and the Governor would be attending the opening scheduled March 10. In keeping with our agreement with the state not to do anything publicly without notice and approval, Dr. Pedro Medellin was given a copy of the proposed invitations, which he approved before they were sent. One week before the grand opening he indicated that the Governor would be unable to attend but that he personally would be in attendance. Two days before the scheduled grand opening Dr. Pedro Medellin indicated that he had changed his mind, that the construction wasn't really complete yet, that he would not be willing to attend and that we should cancel the whole event. We indicated that there had been three hundred invitations that had been sent out to people in the United States and Europe as well as Mexico, and that to cancel the event at this stage would be impossible, but that we would make a public announcement to the effect that it was not a grand opening but an inauguration and would be used to simply show people the facility.

MARCH 10, 1995

I was not in attendance at the landfill on March 10, 1995, so I will leave the description of what happened to others. The report I got back was to the effect that the people protesting at the site were not from the local community but had been bussed in and given food, alcohol and money for their participation. Many in the local community wanted to protect us and their interests by fighting with the people that had been bussed in. Our people, however, encouraged them to back off and not create any further confrontation, whether they were from outside or not.

APRIL 20, 1995

On approximately April 20, 1995 I met personally with Governor Horacio Sanchez Unzueta and Dr. Pedro Medellin. The purpose of the meeting was for me to ask for his endorsement of the project since we had completed the University study (which was favorable to the site and the project) and every other request that had been made of us up to that point in time. In addition, we had completed a massive 2,000 page audit by PROFEPA (the federal attorney general) that also validated the site and technology. These studies, tests and audits cost the company \$1.5 Million over the 14-month time period they consumed. In my presence the Governor asked Dr. Pedro Medellin, "Is the technology of the site correct?" Dr. Medellin then went on to begin an explanation at which time the Governor interrupted him and said, "Yes or no. Is it correct?" Dr. Medellin said, "Yes, it is correct." The Governor then acknowledged that the only problem left was to gain the support of the people, which he had always acknowledged to be his responsibility. (From our standpoint, we simply wanted him to be neutral. We knew more than 70 percent of the real, local community supported the project and we had no fears whatsoever about any problem from them. We simply wanted protection from anyone outside.) The Governor instructed one of his aides to telephone Julia Carabias, the Secretary of SEMARNAP, in Mexico City and arrange a meeting as soon as possible. I believe it was set from about the 3rd to the 10th of May. The Governor indicated he would fly

to Mexico City and meet with Mrs. Carabias, discover what should be done next and then meet with me again, within one week of that meeting. Such a subsequent meeting did not occur.

MAY 1995

Governor Horacio Sanchez Unzueta did, in fact, meet with Secretary Julia Carabias. Regrettably, however, we learned that he challenged the technology, science and safety of the site and requested a full federal review of the operating permit. He indicated to her that he had information that the geology of the site was wrong and that it could not operate safely. We also read in the newspapers an account of a meeting he had with local industrialists wherein he indicated he could not support our project and asked them to build one so that he could support it. It was at this point in time, I believe, we all realized once and for all and for certain that Governor Horacio Sanchez Unzueta and Dr. Pedro Medellin were not being honest with us and had not been honest with us for a long, long time. We knew the site was perfect and safe and we knew the Governor and Medellin knew the site was perfect and safe. We also learned at this time that the University of San Luis Potosi commission was unwilling to release its study to the public as agreed because the Governor refused to give his permission to have the study released to the public. One member of the commission resigned in protest and to this day the results of their study have never been released to us or to the public or to anyone else that we are aware of. Although we know from a meeting of the commission that their findings support the project. We began to ask ourselves why did they keep drawing us in with promises of support and success only to betray those promises in the end. Why was the threat of our opening and their keeping us from doing so of value to them?

After Governor Horacio Sanchez Unzueta and Secretary Julia Carabias met and after the subsequent meetings between our company officials and federal officials, we determined the following:

1. That for some inexplicable reason, Governor Horacio Sanchez Unzueta was opposed to us or our project.
2. That the real community (meaning those 800 or so adults and their families around our site) aggressively supported our project. On the other hand, the broader community (meaning the Municipality of Guadalcázar in total) was supportive to the extent they were informed. There was clearly an opportunity to gain very broad-based support, provided Governor Horacio Sanchez Unzueta would lead the way in informing the Municipal President and other elected officials they would also give the project their support. Because the municipality is separated by a mountain range, with our project in the north and the municipal headquarters in the south, with a small population in the north and a larger population in the south, it appeared to us that very broad-based support in the south would be very easy by virtue of the fact that all of the

negative impacts were in the north where the project was already heavily supported and most of the positive impacts of the project coming from large financial contributions to community projects, and the like, would impact the south.

3. We determined that the federal government wanted to help in every way possible and they indicated that they could pressure Horacio Sanchez Unzueta to change his mind and give his support to this federally-mandated project.
4. Everyone recognized that because of the political system in Mexico that accords great respect to a sitting governor, and because of President Ernesto Zedillo's newly announced campaign to de-centralize and spread power away from the PRI and the federal government to the states (his "new federalism"), that the Governor's support for this project was simply essential, even though there was no legal requirement for it.
5. We never forgot the importance of having community support. Indeed, we got broad-based community support before we ever began construction and were able to successfully complete the construction of the project using largely local labor, without any opposition whatsoever from the local community. We had a policy all during construction that allowed anyone that wanted to come in to visit the site to do so by simply letting us know. But, our main emphasis was clearly on Horacio Sanchez Unzueta because without his support it was clear that the sitting municipal president would not stand up and favor the project. Municipalities in Mexico get most of their funding from the state and in this particular instance, because of the poverty in Guadalupe, this was even more true. In addition, both the municipal president and the governor are from the same political party. Everyone knows it is very rare for a municipal president to stand up against a governor. We had concluded by this time, because of several solicitations for bribes, that this particular municipal president was corrupt. But, whether corrupt or not, it was clear he would follow Horacio Sanchez Unzueta.
6. We decided to work with the federal government and other local and state governmental organizations and non-governmental organization in an attempt to use the compelling science in support of this project as the way to gain the support of Horacio Sanchez Unzueta. We agreed to continue to stay away from the media, never attacking the Governor and always staying positive. We believed, that even if Horacio Sanchez Unzueta was corrupt (which we were beginning to conclude because there was simply no rational reason for his opposition), he would be convinced by overwhelming federal and other public support that he needed to join and give his support as well.

We were told that in the meeting between Governor Horacio Sanchez Unzueta and Secretary Julia Carabias that the Governor had asked for a review of all the technology and science of the project and we were also told that the Governor

agreed to support Secretary Carabias in support of the project provided it was scientifically and technologically sound. Secretary Cariabias' actions in the next few months certainly support the belief that she was acting under that kind of an agreement.

JUNE 1995

Because the office of the Federal Attorney for Environmental Protection (PROFEPA) had conducted a thorough audit of the site, including a legal and technological review comprising eleven volumes and more than 2,000 pages of documents, and, because we agreed that the document could be released to the public, it was, in fact, released on May 2. On June 6, Secretary Carabias called a meeting that included representatives of the National Water Commission, the Institute of Engineering of the National Autonomous University of Mexico (UNAM), PROFEPA, INE, the state government of San Luis Potosi (in the form of Dr. Pedro Medellin), the Town Council of Guadalcazar and the non-governmental organizations, Pro-Ecologico San Luis and Greenpeace of Mexico. At that meeting results of the audit were presented and an open discussion ensued.

It was agreed by all of the parties at the meeting that the project would receive further technical reviews by the National Water Commission, the National Commission on Nuclear Safety, the Association of Civil Engineers of Mexico, the Geology Institute of UNAM, the Institute of Engineers of UNAM and PROFEPA. As these various studies (reported in the public as dictámenes) were completed, there were further public meetings where the technology was presented and the conclusions of the various reports were made. Those meetings were held on June 19, June 26 and July 10. All of these reports given to the public concluded that the project could and would operate with the highest degree of safety, that all appropriate norms were complied with, that the former transfer station at the site could properly and easily be remediated to avoid any further danger and that the overall need for such a facility was absolutely compelling. It was pointed out, for example, that over 30 clandestine dumpsites exist in the State of San Luis Potosi. It was pointed out that 2,500 tons of wastes of all types are generated on a daily basis in San Luis Potosi, with 130 tons per day being considered hazardous. One expert from the National Water Commission concluded that this was the best site in all of Mexico; another concluded that because of the geology and seismic conditions in Mexico this general area of Mexico afforded the best opportunity for this kind of facility.

For the next few months, continuing through the end of the year, Secretary Carabias and the people in her agency, did everything in their power to bring to the public attention in San Luis Potosi the importance of the project and the fact that the science of the project was state-of-the-art and met all requirements for such a project. This included personal visits to the state by her and by her attorney general, meetings with the community and community leaders, submission of her findings to the local congress, publications in state and national newspapers, a complete

summary of all findings made by her agency officials and all of the outside independent experts that had been hired to review and opine on the project, and additional personal meetings with Governor Horacio Sanchez Unzueta.

#### JUNE TO DECEMBER, 1995

In addition to the program being conducted with the federal government, we continued active involvement in the community surrounding the site. We obtained signatures from more than 70 percent of the adults in the area, which were given in front of a notary public and were done in support of the project. We hired an economist to do a survey in the broader community showing more than 85 percent support. We gave this information to state officials. We set up a display in the largest shopping mall in San Luis Potosi that included a model of the landfill facility with experts to explain to any interested party how the technology worked. We solicited and obtained the support of Mexico's largest environmental movement called Movimiento En Mexico (MEM). We met with the State Legislature and got the Environmental Committee to endorse the project. We met with industrialists and industrial groups, like CANACINTRA and COPIERMEX, and got their endorsement for the project.

#### OCTOBER 1995

President Zedillo announced a meeting in Washington, D.C. with President Clinton for October 11th. We had been working with the White House to bring our problem to the attention of President Zedillo. Counselor to the President, Thomas F. "Mack" McLarty, had a meeting in advance of the presidential meeting with President Zedillo's advisors. He reported to us that when the Metalclad issue came up he received assurances the Mexican Federal Government would solve the problem and the item should be taken off the presidential agenda.

I had a meeting with Ambassador Jesus Silva Herzog in Washington in advance of the presidential visit. I gave him a draft of a proposed NAFTA complaint and sought his support in order to avoid filing it. He said he would take it up with Mexican officials.

On the weekend before the presidential visit, Secretary Julia Carabias (Secretary of SEMARNAP) called the Chairman of our company at home and asked him not to embarrass her President while in Washington. Our Chairman assured her we would not. She indicated her optimism for opening and assured the company she would do everything in her power to help. We immediately halted our efforts in Washington and returned our focus to Mexico, buoyed by the strong assurances we had received from the highest ranking officials from the Government of Mexico.

NOVEMBER 1995

After all the public disclosure of the studies done by the federal government, it was proposed that we enter into an agreement between the Company and the federal government and the state of San Luis Potosi that would include all of the details and the terms and conditions relating to operation and remediation, including the additional considerations wanted by the state with respect to payment of impact fees, and the supervision of operations by municipal officials. The state government had been given several drafts of this agreement and had continuously agreed to give their response and input in preparing a final agreement. By the middle of November, the state had refused further response to either the Company or the federal government with respect to this issue. Therefore, the agreement was modified to eliminate the signature line for the State of San Luis Potosi and it was executed between the Company and PROFEPA on November 24, 1995. The head of PROFEPA indicated there was no legal need for the Governor's signature. The agreement was meant to give the Company the right of immediate operation as long as they conduct remediation activities for the transfer station left by the prior owner.

#### GOVERNOR HORACIO SANCHEZ UNZUETA'S RESPONSE

The response by Horacio Sanchez Unzueta to this massive eight-month campaign was to gradually step up his opposition to the project and to the Company. During this period of time he had Dr. Pedro Medellin make several public statements to the effect that the state will not become a hazardous waste landfill, the state will not be forced into supporting a federal project, and the people don't want it. In addition, Dr. Pedro Medellin, in July, met with Gabriel Quadri, who is the President of the INE and the individual in charge of all federal permitting. He made a proposal to Mr. Quadri that in order to solve the Metalclad problem, the federal government should withdraw the INE approval for Metalclad and instead support a new site with local Mexican developers. Mr. Quadri invited Dr. Medellin to make a separate proposal if he chose to, but that the Metalclad project would continue to get federal support. In August, Dr. Medellin in joint participation of nine San Luis Potosi companies, and formed a new company known as Promocion Y Desarrollo de Infaestructura, S.A. de C.V. The purpose of the company is to build and operate a hazardous waste landfill in place of, or in competition with, the Metalclad project. The attorney for the company is a man by the name of Jose Mario de la Garza, an attorney dismissed by Metalclad. In combination between Jose Mario de la Garza and Dr. Pedro Medellin, they have every document necessary to build and operate a hazardous waste landfill, including operating manuals, safety manuals, plans, specifications, financial and market information and the like, all of which had been given to them by Metalclad, at their request.

The Governor announced publicly that he had an opinion poll indicating that most of the people were opposed to the landfill. He did not site the source and the poll was never released to the public, even though we requested it. In addition, he went

into the community on a number of occasions and gave speeches against the Company and against the project. On one occasion he took with him a deformed child and held the child up as an example of what can happen if projects like the Metalclad project are allowed to proceed. He also gave a very fiery speech about the invasion of the North Americans and proposed to erect a statue of Benito Juarez to remind Metalclad and America that in Mexico, Mexicans come first. He, in fact and indeed, later on did erect such a statue and chose as the site for it El Entronque, one of the four micro communities surrounding the hazardous waste landfill. He then faced the statue North, toward the United States, and indicated he had purposely faced the statue that way to remind people from the North they were in Mexico.

After the signing of the agreement with PROFEPA, the Governor immediately went public to criticize it and indicate he was never invited to participate in the agreement, that he did not endorse the agreement and that he, in fact, repudiated the agreement and would not respect it. In December, at his urging and using the same law firm, the principal of whom is Jose Mario de la Garza, filed a lawsuit on behalf of the community against the federal government to prevent the enforcement of the agreement signed by Metalclad and the federal government on November 24, 1995. A local judge granted an amparo preventing the operation of the facility and the enforcement of the agreement. It was appealed to a higher court, where it sat for approximately 19 months before a decision was finally handed down in late August 1997. The decision came in favor of the federal government and against the local community and the Governor. The Governor, with his term running out on September 26th then made one last desperate attempt to prevent the project from going forward and that was to declare the entire region surrounding and including the hazardous waste landfill as an ecological reserve due to the fact that there are several rare species of cacti in the area. While the legal effect of this is not known, the Governor in his speech on Independence Day, September 16, 1997, made it clear he was doing this act as a way to further prevent the Metalclad project from operating.

In addition to all the foregoing, on November 13, 1995, Horacio Sanchez Unzueta publicly declared that Metalclad does not have a construction permit and therefore cannot operate. This is the first time in our entire relationship with him or the state that he or anyone at the state has even discussed the need for a local construction permit.

#### DECEMBER 1995

Because of the actions of Governor Horacio Sanchez Unzueta in publicly opposing us and our project, in campaigning in the community against the project, and in standing up to pressure from the executive branch of the federal government from several directions, and as a result of some other public disclosures, we began to believe that it was not only Horacio Sanchez Unzueta's objective to prevent the project from going forward, but his objective rather was to destroy our company. Several things led us to believe this, including the following:



1. On December 4, 1995, a local newspaper announced that Governor Horacio Sanchez Unzueta is blocking Metalclad for the Governor's friend, a man named Alfonso Martinez Dominguez, the "lord and master of the toxic waste treatment monopoly" and the presumed controlling owner of the only large hazardous waste landfill in the country at Mina, Nuevo Leon, the RIMSA facility. Theretofore, we had known there were certain relationships between RIMSA and the state, but we didn't know there was a relationship between RIMSA and the Governor himself.
2. On December 10, 1995, Governor Horacio Sanchez Unzueta sent a letter to U.S. Senator Paul Simon claiming that Metalclad had violated state and local laws and that the company and those that support it are "cheapened" and "discredited" by their actions. As far as we know this letter was not in response to any correspondence from Senator Simon, but curiously, a copy of the letter was sent to Herbert L. Oakes Jr., Chief Executive Officer of Oakes Fitzwilliams & Company of London, England. Oakes Fitzwilliams is Metalclad's investment banker and was at that very moment engaged in placing approximately \$15,000,000 worth of stock to institutional investors in Great Britain on behalf of Metalclad. Copies of the letter were also sent to Brian Hand, the Managing Director of First Analysis Group in Chicago, Illinois, Metalclad's largest U.S. institutional investor. Additional copies were sent to Secretary Carabias, Secretary of Commerce Ronald Brown and U.S. Ambassador to Mexico, James Jones and the Mexican Ambassador to the United States, Jesus Silva-Herzog. We were mystified as to why the Governor would extend the reach of his attack against the Company.
3. In January, 1996, a telephone call was made by representatives of two Metalclad's strongest broker dealers and market makers in New York to the Director General of the RIMSA facility, Hector Vargas Garza. The U.S. brokers were Mike Kaminsky, of Neuberger and Berman, and his brother, Gary Kaminsky, of Cowan Securities. Both have indicated a willingness to testify before the Tribunal. They were on the telephone together and simply indicated to the Director General of RIMSA that they were investors in Metalclad and were doing certain due diligence and wanted to know if he knew of the company and had an opinion about their business in Mexico. Hector Vargas Garza responded that yes, he knew about the company; no, the project in San Luis Potosi would not succeed and in fact, Metalclad would never have any project in Mexico succeed as long as he was alive. He went on to tell them that he personally had sold Metalclad stock short in the market place (this is an action taken by an investor who believes that a stock price will fall and his purpose is to sell before the fall and buy back in later after the fall). At that time, Metalclad stock was trading in the \$5 to \$6 per share range and, indeed, as a result of the actions of the Governor, the stock began to fall and continued to fall, at one time trading at less than \$1 per share.

Two additional incidents led us to conclude that RIMSA in Neuvo Leon was financially involved in campaigning for the defeat of the Metalclad project and the promotion of their own project. The first was the discovery that an employee of RIMSA was involved in the creation of the new company Pedro Medellin was promoting in San Luis Potosi for the development of a new landfill. Second, in the summer of 1996, there came to public light an incident involving Governor Horacio Sanchez Unzueta and a man by the name of Simon Garfias. Garfias is an owner of a large tract of land in San Luis Potosi, part of which had been endorsed by the University of San Luis Potosi for use as a hazardous waste landfill. In the fall of 1995, several hundred peasants invaded and occupied that portion of the property approved for a hazardous waste landfill. Garfias requested the Governor to send police to remove the peasants, but for approximately nine months the Governor's only response was to personally meet with the peasants to whom (along with his wife) he gave food and supplies in order to encourage the peasants to stay. After about nine months, Garfias received a visit from a man identifying himself as an employee of RIMSA. He offered to purchase the inhabited property. Garfias smelled a rat and went to the news media accusing Horacio Sanchez Unzueta of involvement with RIMSA in a scheme to acquire his property. Horacio Sanchez Unzueta vehemently denied the accusations but by sundown the police had removed the peasants.

4. In November, 1996, one of our consultants whom we value and trust highly, was shown evidence of financial payments being made by RIMSA to the wife of Dr. Pedro Medellin. Additional payments, they said, were being made to the Mayor, Leonel Ramos and to a woman by the name of Angelina Nuñez, who was the founder and director of a group called Pro-Ecologico San Luis, a supposed environmental group formed for the purpose of defeating our project. This woman has said repeatedly, without rebuttal by the state, that our landfill would cause babies to be born without brains.
5. For some inexplicable reason beginning in the fall of 1995 and continuing to the present day, Governor Horacio Sanchez Unzueta and Dr. Pedro Medellin and Mayor Leonel Ramos begin attacking Metalclad for not remediating the old Aldrett transfer station. They attack the Company as though the Company had created a national pollution problem and had the responsibility to clean it up. If there were three people in the world that knew the truth on this issue, it would certainly be these three people who knew that the problem was created before Metalclad ever came to the state of San Luis Potosi and that from the beginning Metalclad had always agreed to remediate the old Aldrett transfer station site. They also know that it is impossible to remediate that site without having a place to re-deposit the material taken out of the ground for remediation once remediation is complete. In other words, without an active, operating hazardous waste landfill, there is no place to dispose of the remediated material. When challenged on this fact, Dr. Pedro Medellin suggested that Metalclad

should remediate the site and haul the remaining material to the RIMSA facility in Monterrey, Nuevo Leon.

All of these gentlemen are aware of the fact that Metalclad has no legal obligation to remediate; that such an obligation, if there is one, belongs to the prior owner. The federal government, through PROFEPA, recognized this situation and in the agreement they signed with us on November 24, 1995, in recognition of the problem, agreed there would be no obligation to remediate without full-scale operations as a hazardous waste treatment facility and landfill. Yet, in spite of all that is known, Dr. Medellin, Governor Sanchez Unzueta and Mayor Lionel Remos, right up through the present day, continue to attack the company and attack the federal government for not forcing Metalclad to remediate. This is their way to answer criticism of people in the area that have asked for remediation for several years.

6. In late 1994 we discovered a family relationship between the Director General of Rimsa and the geologist that had done an adverse geology report on our landfill site. This study has been proven to be fraudulent. When I brought this to the attention of our then counsel, Jose Mario de la Garza, he said he would show this to the Governor which would assure us of opening. If it was ever shown to the Governor, nothing ever was done about it.

1996

The campaign of pressure brought by the Company and the federal government of Mexico seemed to create a campaign for the opening of the project that gained a life of its own. Several commentators throughout the country, state and, indeed, the local community continued to call for the opening, continued to question the motives of the state government and continued to criticize the state administration for their promise of an industrial waste landfill without anything being delivered.

In the meantime, Dr. Pedro Medellin continued to work on an additional and alternate hazardous waste landfill. At a crucial meeting on May 9, 1996, he brought together several key people to kick off the development of the new landfill site. Those people included a federal SEMARNAP delegate in San Luis Potosi, a former employee of RIMSA and the leaders of the environmental group that so vehemently opposed Metalclad, whose name is Pro-Ecologico San Luis. The group also included other individuals from the created entity that would be providing the financial backing for the project. Dr. Medellin's announcement was, "This is the group of investors who will receive support from the state government for a hazardous waste landfill".

MAY 1996

We received word from our Mexico City attorney, Gustavo Carvajal, that Mario del Valle (Governor Horacio Sanchez Unzueta's Chief of Staff) was interested in

negotiating a solution to the Metalclad problem. At this point, since all other sources of opening had been foreclosed, the Company was seeking legal remedies and threatening to mount a public campaign in Mexico and United States. We now believe, in retrospect, that the approach by the Governor's Chief of Staff was simply a way to further delay any public criticism of the sitting governor until after he was out of office while, at the same time, never seriously wanting to find a way to allow the project to operate.

#### JUNE 1996

Our attorney and Mario del Valle had worked out a 12-point proposal that appeared to be acceptable to both the state and to the Company. There were certain restrictions placed on operating and an accelerated plan for remediation and larger financial benefits to the community, but it did provide that we could operate the hazardous waste landfill concurrently with remediation and it was acceptable to us. The Governor had indicated that he wanted to meet with Company officials directly to discuss it. On June 12, the Governor sent his private plane to Mexico City to transport Company officials to meet in private with him at a remote location in the State of San Luis Potosi. One of those Company officials was me. Present also was Mario del Valle and several other aides to the Governor. When the meeting began in earnest, we placed on the table the one page document that outlined the 12 parts of the proposal between the state and the Company. The Governor indicated that the proposal was acceptable. He pushed the agreement to the side, looked me in the eye and said, "The agreement is acceptable. We now have to talk about implementation." He indicated he had a study in his drawer that indicated the existence of several health problems caused by the landfill (meaning the former transfer station operated by the Aldrett's, since the landfill has never taken in any waste of any kind). The meeting adjourned with an agreement that we would jointly draft a detailed implementation plan of the proposal. A representative of BFI who was also at the meeting as our operating partner, invited the Governor and his staff to visit several BFI facilities in Houston, Texas. The Governor accepted and a time in early July was scheduled for his visit.

#### JULY 1996

The Governor and his staff indeed traveled to Houston as the guests of BFI. They toured several facilities operated by BFI, but during that trip, the Governor told our attorney, Gustavo Carvajal, in private that it would not be possible to open the La Pedrera facility.

#### AUGUST 1996

The second U.S.-Mexico Border Conference on the NAFTA was held in San Antonio, Texas on August 4-6. During that conference, two significant events occurred.

1. Ambassador James Jones announced to Julia Carabias that it was his intention to blacklist the State of San Luis Potosi from further foreign investment of any kind and to advertise that blacklist to businesses in the United States and in Europe unless and until Governor Horacio Sanchez Unzueta stopped blocking the opening of our landfill and treatment facility.
2. In an open, public meeting with about 500 people in attendance, I publicly challenged Mexico's head of SECOFI, Herminio Blanco, to keep the prior promises made by the Mexican federal government to the United States and to us and to take whatever action was necessary to see that our project was successful. He responded very positively and said that he knew about the case and would do everything in his power to help. Other people spoke following him and indicated that action would be taken. In retrospect, it was probably a mistake to challenge Dr. Blanco publicly because he immediately withdrew his support, assumed a completely defensive posture and never made any response that we are aware of to his promise at the Conference in San Antonio, Texas. Indeed, we have had no direct communication with him or his office since.

AUGUST 15, 1996

We had a meeting with Secretary Julia Carabias as a follow up to the Border Conference. She expressed her frustration about the project, encouraged us not to file a NAFTA complaint, described all her Agency's efforts to help change the mind of the Governor, and agreed to continue her efforts. She made one comment I will always remember. She said, "I believe there is a commercial interest working against you." We take this to mean a direct reference to RIMSA having a financial stake in the defeat of our project. All of us at the meeting wondered why she couldn't do something about her belief since her office was the agency regulating RIMSA.

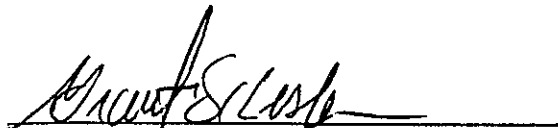
FALL 1996

The fall of 1996 consisted of a series of initiatives prompted by U.S. Ambassador James Jones, who encouraged us to allow him to take additional steps in negotiating with the Governor directly to see if he couldn't break the impasse by the use of his threatened blacklist. There were meetings and discussions back and forth. There were meetings with community leaders, supposedly sponsored by the Governor, all of which we now believe, in retrospect, was a sham. We actually came to an agreement at one point in time with the community leaders, but they indicated that without the approval of the Governor, there was nothing they could do further to move forward, and they never did.

We made a final attempt to meet with everyone that had tried to help us in the past to see if there was anything further we could do. It included the U.S. Department of Commerce, the White House, the Justice Department, the State Department, the Office of the Ambassador of both countries, PROFEPA, INE, SEMARNAP and

several other non-governmental organizations. After it appeared there was absolutely nothing further to do and after waiting three months from the filing from the Notice of Intent to File Claim, without hearing any response from anyone in the Mexican federal government as a result of it, we filed our claim under the provisions of the NAFTA in January, 1997.

I declare under penalty of perjury under the Laws of the State of California that the foregoing is true and correct. Executed at Newport Beach, California this 30th day of September, 1997.

  
Grant S. Kesler