

COURTESY TRANSLATION OF THE WITNESS STATEMENT OF
DR. PEDRO MEDELLÍN MILAN

I. BACKGROUND

1. My name is Pedro Medellín Milán. I am currently a professor in the Department of Chemistry at the Autonomous University of San Luis Potosí. Between August 13, 1993 and September 26, 1997, I was the *Coordinador General de Ecología y Gestión Ambiental* (Head of the Environment Office) for the State of San Luis Potosí (SLP).

2. I received a Bachelor's degree in Chemistry from the UASLP in 1968. I later attended the University of Houston and received a Masters Degree in Chemical Engineering in 1971. Thereafter, I undertook doctoral studies at Washington University in St. Louis receiving a Doctorate in Chemical Engineering in 1976. My doctoral thesis was on the design of a reactor to eliminate pollutants from fuel gases.

3. Upon returning to San Luis Potosí in 1977, I became a part-time professor of chemistry at the UASLP. I started a company that designed and manufactured special equipment for the chemical industry. The company operated for about six years. It was successful in all respects except profitability.

4. In 1981, I became a full time professor in the Department of Chemical Engineering of the UASLP and I started working on environmental engineering. I helped found the Center for Research and Graduate Studies in 1983 where I started researching and teaching in the field of environmental engineering. I later established a laboratory for environmental engineering. In addition, I undertook pioneer environmental work along with a couple of other faculty members at the UASLP, in particular, with Dr. Fernando Díaz Barriga. Through all this, I somehow became the public conscience in environmental affairs in San Luis Potosí.

5. Towards the end of 1986, I was appointed Secretary for Academic Affairs of the UASLP, a position that I held for over six years. In August, 1993, the administration of Governor Sánchez Unzueta established a new office, the *Coordinación General de Ecología y Gestión Ambiental* (State Environmental Office), to which I was formally appointed on August 13, 1993. Moreover, I had been actively involved in advising Governor Sánchez Unzueta from the time that he took office in May, 1993. Previous administrations had a very small environmental office with very limited administrative powers.

II. DENIAL OF CLAIMANT'S KEY ALLEGATIONS

6. I have reviewed Volume I of the Claimant's Memorial and I find that the Claimant makes a number of allegations that call to question my integrity. Although I will respond to all of the allegations relating to my involvement in this matter, I wish to respond immediately to several allegations that I was corrupt or was guided by improper motives.

RIMSA

7. At page 18 of Grant S. Kesler's witness statement and at page 1 of David Robinson's witness statement, they allege that a RIMSA subsidiary made monthly payments of N\$30,000 to "the wife of Dr. Pedro Medellín" for a period of at least six months. Mr. Robinson does not disclose the name of the person who he says told him this and does not identify who allegedly received these payments, nor the dates the payments were allegedly made.

8. I have never had any relationship whatsoever with RIMSA or, to my knowledge, with any person or entity connected with RIMSA, nor have I received any sort of direct or indirect benefit from RIMSA or anyone connected with RIMSA. Indeed, to my knowledge I have never met, spoken with or seen any person connected with RIMSA other than a speaker at a conference in Monterrey that I attended from August 15-17, 1994, together with the environmental officials of most other states.

9. As to my wife, I wish to advise the Tribunal that I was a widower between January 28, 1992 and October 21, 1995 when I remarried. My first wife, Dr. Martha Sayavedra López, passed away on January 28, 1992 after a lengthy illness. She was a full-time professor at the faculty of Medicine at UASLP. To my knowledge, she had no connection with RIMSA or any person or entity connected with RIMSA and never received a direct or indirect financial benefit from RIMSA.

10. On October 21, 1995 I married Luz María Nieto Caraveo. She has informed me, and I believe her statement to be true, that she has had no connection with RIMSA or any person or entity connected with RIMSA and has never received a direct or indirect financial benefit from RIMSA or any person or entity connected to RIMSA. She is a full-time professor and researcher at the Faculty of Engineering at the UASLP and, in fact, has never received any payments unrelated to academic institutions of higher learning. I have attached a copy of both my wife's and my own tax returns filed with the Secretariat of Finance during the corresponding years. As well, I have attached a joint declaration of assets, which is required by the state due to my position as a state official. These documents are attached to this statement as Annex 1.

Pro-San Luis Ecologico

11. On page 5 of the Memorial, it is alleged that I founded an environmental group known as Pro-San Luis Ecológico in February 1994 for the purpose of encouraging public opposition to the La Pedrera landfill. This allegation is also false. Dr. Angelina Nuñez and a group of Potosinian people formed Pro-San Luis Ecologico in 1993. Moreover, I know they had a collective leadership. I was not a founder or organizer of Pro-San Luis Ecologico nor have I ever been a member or affiliate of that organization.

12. The suggestion that Pro-San Luis Ecológico exists solely to oppose the Metalclad landfill is also wrong. To my knowledge, the group has been involved in several environmental campaigns in San Luis Potosi. Its successes include: (i) a campaign to force the Department of Public Works of San Luis Potosi to remediate a sewage problem that existed for several years in

the Municipality of San Luis Potosí and (ii) a campaign to force Mexinox, a steel-based manufacturer, to stop discharging toxic chemicals that were contaminating the ground water of the Delegación de Pozos in the Municipality of San Luis Potosí, and to pay compensation to farmers whose livestock and crops were harmed as a result of groundwater contamination.

13. Pro-San Luis Ecológico provided organizational and logistical support to concerned citizens in the Municipality of Guadalcázar (in much the same way that it did for residents of the Municipality of San Luis Potosí who were troubled by the waste water problem and for residents of the Delegación Pozos who were affected by the ground water contamination), but my office did not support the local community in their opposition to the project.

Demonstration at Metalclad's Opening Ceremony

14. At page 58 of the Memorial, Metalclad claims that I orchestrated the demonstration that occurred outside the gates of the landfill site on March 10, 1995 when Metalclad was conducting its so-called "Facilities Tour" for invited guests. This allegation is also false.

15. Approximately, two weeks before March 10, 1995, I found out about Metalclad's "Opening Ceremony" from a third party. I believe it was Dr. Fernando Díaz Barriga who received an invitation to that event and called to let me know. I was surprised and concerned to hear that the company was planning an opening ceremony, when the federal environmental audit had not even been concluded, and the company still did not have a municipal construction permit. Moreover, PROFEPA had issued an order prohibiting the introduction of hazardous waste into the facility, that is against the operation of the facility, until the remediation of the site had been completed. I informed the Governor who expressed his dissatisfaction with Metalclad's conduct. Around a week prior to March 10th, Mr. Neveau, Mr. Rodarte Ramón and Mr. Ariel Miranda visited me in my office to invite me to the event. They told me that many people had been invited, including the United States Ambassador to Mexico. I was not happy with the idea, and I asked Metalclad representatives why they were planning an opening if they could not operate legally. I told them that the Governor did not approve of the event and that he had suggested that the company not carry it out. I made it clear that the Governor and I would not be present, that we disapproved of this event, and that, in my opinion, the United States Ambassador should not attend this illegitimate ceremony. Mr. Neveau then asked me whether they could have a facilities tour instead of an opening ceremony. I said I would discuss the issue with the Governor and get back to them.

16. After informing the Governor of our discussion, he instructed me that if they wanted to organize a facilities tour, that was their own choice, but that an opening ceremony could not be conducted, as the site was not legally entitled to operate. I met with the Metalclad representatives again and they agreed not to hold an opening ceremony, not to invite the United States Ambassador to Mexico, to stop delivering the opening ceremony invitations, and to take the necessary steps to clarify that it was not an opening ceremony. Unfortunately, we learned that Metalclad continued to send the invitations. I felt obligated to call Mr. Neveau and Mr. Rodarte Ramón to tell them that, as they had not lived up to their agreement, the State Government disapproved of their activities and I asked that the company suspend any type of

event. Nevertheless, Metalclad went ahead with the ceremony, although the United States Ambassador was not present.

17. I understand that Metalclad sent invitations to members of the local news media who, on the morning of the event, contacted members of Pro-San Luis Ecologico in San Luis Potosi to ask for their comments. They then contacted members of their organization in Guadalcázar who, in turn, informed municipal officials as well as residents of the town and the *ejidos*.

18. I did not learn of the demonstration until the same day when I was informed by a state government employee. I can confirm that the state government played no part in organizing the demonstration and did not provide transportation for the protesters, pay them, nor provide them with free food and beer as Metalclad alleges. I can also say that Dr. Angelina Nuñez was as surprised as I was about the demonstration. That very day, she went to my office to express her concern because she had been informed that the people of Guadalcázar were very angry.

Promotion of a Potosinian-owned Hazardous Waste Facility

19. At pages 86 to 88 of the Memorial and at page 15 of Grant S. Kesler's witness statement, it is alleged that I organized a group of Potosinian businessmen who formed a company called Promoción y Desarrollo de Infraestructura, S.A. de C.V. (PRODIN) to establish a hazardous waste landfill in place of Metalclad. It is further alleged that I provided them with Metalclad's technical data, architectural drawings and other confidential information that comprised virtually everything they needed to establish and operate a hazardous waste landfill. This allegation is also false. Metalclad did not provide us with any official or technical documents of any sort.

20. Ever since Governor Sánchez Unzueta took office, the State government has been committed to establishing a hazardous waste facility in San Luis Potosi. In 1995, particularly after March 10, 1995, it became increasingly clear that Metalclad was unwilling to fulfill their commitment and to conduct itself professionally with respect to this matter. Thus, in a speech to San Luis Potosinian businessmen, Governor Sánchez Unzueta said that the State government would welcome proposals to establish and manage a hazardous waste facility within the state to handle the waste produced mainly by San Luis Posotsi's industry. The invitation was not restricted to Potosinians, but I believe that the Governor felt, after have observing Metalclad's negative experience in dealing with the local community, that a local group would be better able to deal with the fears and concerns of the local people. That is if it was also committed to provide the service to the local industry and install the facilities in some other place, as the State Government had always proposed. In this regard, it is my experience in this case that Metalclad committed a fundamental error in believing that the right approach to its relationship with the community was to come and "educate" them. I believe that they should have come with an open attitude to learn from the local community about how to work with them.

21. The local group, PRODIN, that came forward did so without any involvement on my part whatsoever. I was later informed that the objective with which it was created did not contemplate the management and final disposition of hazardous wastes. I am acquainted with some of the members of the group, which is not surprising given the small community in which

we reside. However, I played no part in organizing them or encouraging them to come forward, nor did I provide them with *any* information concerning Metalclad's project at La Pedrera. In fact, I do not believe that I have seen or had access to any technical information that was specific to the La Pedrera site, or the architectural drawings for "El Confin" which, in any event, would be based on technology that has been in use for many years and I would expect is widely available. The Claimant alleges that one of these individuals, who is not named, is or was an employee of RIMSA. To the best of my knowledge, none of the individuals involved is connected with RIMSA.

22. This group was not successful in establishing a hazardous waste landfill. I am only aware of the fact that they rushed into buying a property before securing local approval. Later on, they faced opposition in the community and they abandoned the project.

23. I note that Metalclad claims (at paragraph 99 of its Memorial) that the Governor and his Ecology Coordinator "had gained proprietary information on trips to the United States in touring facilities..." I would respond by noting that the facility that I toured was first, a municipal waste landfill and second, was in no way affiliated with Metalclad. They were simply using the 1-ply liner technology that landfills of this sort usually use. This technology which I viewed during my visit could not be considered confidential information. Moreover, Metalclad had proposed to use a 2-ply polyethylene high density liner for hazardous waste landfills in San Luis Potosi. Further, it was perfectly clear to me when I visited the Orange County facility that the operators had little idea of who Metalclad was.

The Water Tanks

24. At page 5 of Mr. Kesler's witness statement he claims that they provided water to the community in water tanks "with the compliments of Dr. Medellín." This is false. It is true that we discussed the idea at some point, and that my officials and I thought it would be a good idea to help the region where water is a precious commodity. In retrospect, I regret that we initially agreed that it would be with our compliments, as Metalclad had offered, however we later decided that it was wrong, and that the company should be the one to provide the water directly. In fact, the water truck had the company's logo "COTERIN."

III. THE STATE'S DEALINGS WITH METALCLAD FROM 1993 UNTIL 1997

25. I first became aware of the hazardous waste landfill issue in 1990, when the Aldretts were closing down the facility in Mexquitic. It is my understanding that they encountered public opposition to it.

26. When Salvador Aldrett began to receive hazardous waste at La Pedrera, it did not take long for it to become a public controversy. The State Congress got involved led by Congressman Torres Corzo. Dr. Fernando Diaz Barriga of the UASLP was called upon by Congressman Torres Corzo to advise them on the problem.

27. One of the first manifestations of local opposition to the project occurred when the local people stopped further deliveries to the site by blocking the road with their own bodies. A second important event was an incident in which the residents demanded that the state officials of SEDUE issue a temporary stay order to the company to prevent them from receiving anymore wastes given that they were storing unprotected hazardous wastes on the site. A SEDUE inspector went to the site to carry out an inspection and he discovered a number of violations. When he left the site, he was detained by the local protesters. The inspector was taken to a telephone booth so that he could contact his superiors and inform them that the people demanded the closure of the site. They detained him for several hours until they let him go home. A few days later, the landfill was shut down and the closure seals were placed some days later. The inspector detained, Enrique Hernández, is now the Director of Supervising and Auditing at the State Ecology Secretariat. The deputy-delegate of SEDUE, who later issued the order to temporarily close the facility, was Dr. Humberto Rodarte Ramón. The same Dr. Rodarte Ramón later became Metalclad's representative. I must inform the Tribunal that he was not well liked by the local people.

28. There are about 50 *ejidos* in Guadalcázar. In terms of territorial coverage, it is one of the largest municipalities in the state. There has always been very widespread opposition to the hazardous waste landfill. Many of the *comisarios* of the *ejidos* wrote to express their opposition to the landfill and their desire to see it closed. Over time, the opposition became more organized. Pro-San Luis Ecológico got involved and established a chapter in Guadalcázar. This definitely helped mobilize the opposition. In 1995, a group of citizens demanded that the Government declare Guadalcázar an environmentally protected zone. Attached to this statement, as Exhibit 2, is a document that many people from the surrounding communities signed asking that the area to be declared a protected zone.

29. Pro-San Luis Ecologico was established in March 1993, some time before Metalclad acquired COTERIN and before I was appointed to the State's Ecology Coordination. It was not established for the purpose of dealing with the La Pedrera problem, but you could say that this issue brought it to the public's attention.

30. We had many problems with Metalclad. A number of times, the company announced that everything was set for them to begin construction shortly. We repeatedly told the Metalclad representatives that they had to comply with all the legal requirements of each of the three levels of government and obtain the community's approval. This was our constant and unwavering requirement which we had made known to the Municipal government and the public. People would get very angry with us when Metalclad would announce that they would be commencing construction or starting operations in a week or two. The same thing happened when people found out that Metalclad was advertising in foreign journals as if its landfill facility in San Luis Potosí was operating. Every time they made such announcements, there would be an upsurge of opposition and I would have to go to the people and say "no such deal has been made behind your backs and nothing will happen until you are properly informed and your support is obtained."

31. I warned Metalclad not to turn this into a public discussion in the press. I was concerned

that with all the controversial press coverage, the issue would become more emotionally charged. I worried that the public controversy would distress the people and would generate an even greater opposition against Metalclad operating at La Pedrera or anywhere else in the state. It was Metalclad that made the people "hypersensitive" to the problem and turned it into an alarming issue, more so than needed to be the case. The problem was not so much the issue itself, but instead the alarm generated against the hazardous waste landfills, which are needed.

32. I met a Metalclad representative, for the first time, in March of 1993, when I was still at the UASLP. Antonio Soto, an engineer, representing Metalclad, asked to speak to Roberto Leyva, Fernando Díaz Barriga and myself as professors of the university who had certain standing and were considered to be knowledgeable of the state's environmental issues. He wanted our opinion on the Santa Maria del Rio project and we told him that we thought that it had been handled very poorly by Metalclad's Mexican partners, Mr. Hermosillo and Mr. de la Fuente. We told him that they should forget about the Santa Maria del Rio project. They had chosen a site for an incinerator in one of the few areas in the State's high plains with cultivable land. Moreover, it was also a densely populated area (relative to the Potosinian high plains). Accordingly, there was public opposition to the project.

33. Metalclad representatives met with Governor Sánchez Unzueta in June, 1993, but I was not present. I understand that they had a general discussion about Metalclad's interest in establishing a hazardous waste facility in San Luis Potosi and participating in the state's hazardous waste management program. I understand that there were no detailed discussion about specific sites. My understanding was that the discussion focused mainly on Metalclad's desire to participate in the State's comprehensive hazardous waste management plan that Governor Sanchez Unzueta was promoting.

34. The letter that Governor sent to Metalclad was carefully written and appropriate for the particular circumstances. It expressed the Governor's support for Metalclad's wish to participate in the state's hazardous waste management program, but it did not endorse any particular project or any particular site. The letter also stated that the Governor's support for a project would be conditional upon two requirements - that Metalclad comply with the applicable law at the different levels of government and that Metalclad respect the genuine interests of the community.

35. I met with several of Metalclad representatives in July 1993, to review a draft study being prepared by Professors Joel Milán Navarro and David Atisha Castillo, as well as some others professors at the UASLP Faculty of Engineering. The 130 page study, entitled *Selección de Sitios Probables para la Ubicación de Confinamientos Controlados para Residuos Industriales Peligrosos*, defined more than thirty potential sites in the State (but notably excluded La Pedrera). From herein, I will refer to this study as the "UASLP study." Metalclad was made privy to information that had not yet been made available to other waste management companies or to the public. I believed at the time that Metalclad was an experienced hazardous waste management company that had established and operated similar facilities in the United States and Canada. I also believed we were embarking on a process that would last several years, namely, choosing a site that had appropriate technical qualities for a project that would enjoy local support, followed by technical studies required by the permitting process and any additional research that might be required as well as obtaining the support of the community. In other

words, I always thought we were having preliminary talks with a potential investor about a long-term project. We must remember that Metalclad had not yet submitted any specific proposal to the State Government.

36. In that meeting, Metalclad's representatives asked Joel Milán about La Pedrera site. Mr. Milán explained to them that the site is located in a geological zone, known as the San Luis-Valles platform. This area is known for the large amount of underground limestone of marine origin which, due to geological processes endured during the formation of the mountain range, has acquired secondary characteristics (faults, fractures, etc.) which rendered it permeable within the regional context. In addition, there is evidence of groundwater in that grouping of rocks. This leads one to conclude that the site has no geological or geohydrological advantage in selecting it. Moreover, within the state there are more suitable sites with better geological characteristics.

37. On July 15, 1993, I was invited by Metalclad to a conference in San Antonio, Texas. At that time, I was working with the Governor but, contrary to what Mr. Kesler claims at page 3 of his witness statement, the *Coordinación de Ecología*, had not yet been formally established and I had not yet been formally appointed as its Coordinator. Metalclad offered to pay my expenses and I agreed. This was an opportunity to attend a NAFTA conference where environmental matters would be discussed, and Metalclad officials had told me they were going to participate in the conference. Therefore, I thought it would be advisable to attend.

38. At that time, I still did not know of Metalclad's intention of establishing themselves in La Pedrera. I did not find out about this until the end of August or early September. Thus, Mr. Kesler's allegation that I went to the San Antonio conference to help them obtain the pending federal operation permit is false.

39. Metalclad issued a press release at that conference and I believe they gave me a copy. However, it is false to assert that I approved that press release. I was a state official and I was not in a position to either approve or disapprove it. As a private company, Metalclad was responsible for its own publications. This was always the case in my official relationship with Metalclad and all other companies. My job did not include reviewing their press communications before being released.

40. Upon my return, I informed the Governor and gave him a copy of the press release, which we thought was inaccurate. First, the Governor had not entered into a partnership with Kesler or Metalclad. Second, the State Development Plan did not contemplate in such detail the facilities Metalclad alleged that the plan would promote. Third, the State Government had never contemplated that Metalclad would build all those facilities. And fourth, we did not know of the existence of a permitted and operational facility in the State that Metalclad was about to purchase. However, at the time we considered these statements were simply too optimistic, at worst. Daily obligations then distracted our attention from Metalclad for a few weeks.

41. Metalclad representatives Daniel Neveau and Humberto Rodarte Ramón met with me about two or three weeks after INE issued the August 10, 1993 permit at which time they told me that they had until September 10th to decide whether to purchase COTERIN. This was the first

time they had told me that they were planning to attempt to open La Pedrera. I told them it was a bad idea because the site did not appear to be suitable according to the UASLP study we had shown them earlier, and because there was strong public opposition.

42. On October 7, 1993, Mr. Sergio Reyes Luján and Mr. René Altamirano visited San Luis Potosí. That day, together with Metalclad officials, we visited La Pedrera.

43. After visiting the landfill, Mr. Sergio Reyes Luján met with Governor Sánchez Unzueta to inform him that INE had issued the federal authorization to Metalclad and to invite him to support the project. At the meeting, Mr. Sánchez Unzueta, Mr. Reyes Luján, Mr. Altamirano and I were present. Mr. Sánchez Unzueta told Mr. Reyes Luján that La Pedrera was a delicate issue because the people opposed the reopening of the landfill. He also told Mr. Reyes Luján that the State Government had not seen any study on the site. Mr. Reyes Luján said he would send the studies upon which La Pedrera had been approved by INE and suggested that their officials meet to discuss the technical issues. He also assured the Governor that nothing would be done in La Pedrera until everything was resolved to the satisfaction of the State Government.

44. A few days later, after Mr. Reyes Luján's visit, an advertisement that we thought Metalclad had published in the United States was brought to my attention. The advertisement announced the operation of an incinerator in Santa Maria del Rio, San Luis Potosí. The notice includes a photograph (or it may be a drawing) of a facility which did not exist. A copy of this advertisement is attached as Exhibit 3 to this statement. I brought this to the attention of Governor Sánchez Unzueta.

45. I was informed by Mr. Sánchez Unzueta that he called Mr. Reyes Luján and demanded an explanation. Mr. Reyes Luján told the Governor that nothing would be done in La Pedrera without the State Government's authorization.

46. This was the first of several occasions where my office and the Governor had to respond to or answer inquiries and objections from concerned citizens who were surprised to read announcements by Metalclad that the company would soon commence operations, or that agreements had been reached that would enable it to commence operations. Other occasions when this occurred include the following:

- an advertisement in a Mexican journal by the company clearly stating that Metalclad had established an integrated hazardous waste treatment facility in San Luis Potosí announcing present and future hazardous waste management services. A copy of this notice is attached as Exhibit 4.
- a press release by the company on September 1, 1994, after a meeting in PROFEPA Attorney General Miguel Limon's office, stating that the federal government had expressed its support to the State-Metalclad agreement whereby Metalclad would remediate and operate La Pedrera, and would develop additional sites.
- in March 1995, when Metalclad issued invitations to a "grand opening ceremony".

47. We received from Mr. Reyes Luján a geohydrological study that COTERIN had submitted to INE as technical support in their request for the authorization to operate the La Pedrera landfill. I requested that Joel Milán, the Director of Earth Sciences at the UASLP, and Guillermo Labarthe, Director of the Geology Institute of UASLP, to review the study. They found it lacking both in form and substance. It was not a proper geological study. We thought that it was of marginal quality, limited and contained serious geological contradictions. On November 23, 1993, Mr. Milán, Mr. Labarthe and I met with Mr. Sergio Riva Palacio and Jesús Barragán of INE. We expressed our concerns to them about the professionalism and methodology used in preparing the study. They, however, never acknowledged or technically responded to our comments, but kept assuring us that the site complied with the technical regulations.

48. On the basis of our own doubts about the geology of the site, and taking into account that the UASLP study found that the area where La Pedrera is located was unsuitable for the establishment of a hazardous waste landfill, I wrote to Mr. Reyes Luján on November 30, 1993. In that correspondence, I also enclosed the comments made by my advisers on the geohydrological study received from INE. I stated that I did not find a single reason to approve the site, but rather saw many risks given the emphasis on technological safety and adequate management in the short, medium and long term. A copy of the letter to Mr. Reyes Luján and the comments enclosed are attached as Exhibit 5 to this statement.

49. I wish to note that included in the documents that had been provided by INE was an opinion by Gilberto Humara. I never knew of a "Humara Study" as such. I believe Humara's family owned or had owned the La Pedrera property. Not surprisingly, the Humara opinion was very critical of a previous study that had been prepared by Mr. Sergio Alemán in 1991. My advisers thought that the arguments put forward by Humara were inconclusive.

50. The "Alemán Study" was prepared at the request of the Guadalcázar Municipal President who was apparently seeking scientific support for his belief that the site was not suitable. Mr. Alemán identified a number of reasons why he thought the site was unsuitable for a hazardous waste landfill. Sergio Alemán was known to be a reputable geological engineer at the UASLP. Immediately prior to conducting his study of La Pedrera he had completed a geological survey of mineral deposits for the entire state. Accordingly, it could be reasonably assumed that he possessed the skill and knowledge to conduct the geology study of the La Pedrera area. However, I did not base my position on the Alemán report. I had my own concerns as to the suitability of the site based on my advisers' strong disapproval of the studies submitted in support of the environmental impact statement, and the UASLP study of potential sites for the establishment of hazardous waste facilities that is mentioned above.

51. On December 16 and 17, 1993, I visited La Pedrera with PROFEPA officials, in response to a complaint by the municipality to PROFEPA, that, among other things, hazardous waste had been buried without any protection. A group of people from the community and Mr. Alemán were also present. We visited several places around the site and tried to verify whether any additional waste had been improperly placed in the landfill. We found no waste. However, I was able to confirm that the people in the community were very worried and opposed the reopening of the site. The people shared their concerns with me, and it is true that I said that the state government would seriously consider revoking the land use license.

52. In the same way that I had told Metalclad officials since the end of August 1993 as in my letter to Mr. Reyes Luján, my position was that La Pedrera was not a suitable site. I could not understand why Metalclad wanted to reopen La Pedrera, a site with previous environmental liabilities, a history of public opposition, and located in a zone that the UASLP study had rejected because the underground could be contaminated easily. I could not understand Metalclad's insistence in reopening La Pedrera and creating a problem, when, as showed by the UASLP study, there were so many areas in the State better suited to establish a hazardous waste landfill. That is why I told the people that I would consider their request that the land use permit be revoked, and that is why I asked that Mr. Reyes Luján re-consider the authorization granted to COTERIN.

53. I always held the opinion that there were other sites that were more suitable than La Pedrera, although I could not totally discount the possibility that La Pedrera could work. I want to explain my reasoning on this point to the Tribunal. As a scientist, I am well aware of the limitations of science. For example, in the nineteen-seventies, landfills were constructed in several parts of the developed world. It was not until the nineteen-eighties that it was realized that virtually all of them leaked. I recognize that the technology has been improved since then, but I do not believe we should put great emphasis on technology when we are talking of an undertaking that would contain hazardous waste for hundreds of years. In my opinion, when you look at a hazardous waste landfill, you must think not only in terms of 5, 20, or 30 years, but in terms of generations to come. This is an undertaking in which we are not certain if we will be able to remediate the site or, instead, whether it will simply sit there forever. The establishment of a secure landfill includes three main aspects: (i) technology; (ii) administration; and (iii) geology. Technology and administration will most probably fail in the long term because there is no possible way we can guarantee that in fifty, one hundred, or more years, the technology will be properly maintained or that the appropriate administration will be in place. Thus, the geology of the site becomes a very important factor when considering the long-term implications of a hazardous waste landfill. My position was that if we had the option of a better site, geologically, then we would be acting more responsibly thinking of generations to come. That was one of the main motivations for the UASLP study defining more than thirty suitable sites, and our insistence that these sites were preferred. This made perfect sense when, in addition, in a case like La Pedrera, we had a site with a bad history, strong social opposition, and serious technical questions.

54. In January 1994, after finding out of a further publication by Metalclad announcing present and future hazardous waste management services, both Governor Sánchez Unzueta and I were forced to publicly declare that La Pedrera was not reopening. The company responded with two paid advertisements in the local papers, and in response the State Government published paid advertisement explaining its position. Finally, the company published another paid advertisement apologizing to the State Government and acknowledging that it had to comply with State law and secure the support of the local people.

55. On January 28, 1994 I attended a meeting at the governor's house with the Governor and representatives of Metalclad. I recall that Mr. Kesler and Mr. Neveau, and Mr. Rodarte Ramón, were present, together with Metalclad's local lawyers, Lic. José Mario de la Garza and Lic.

Héctor Raúl García-Leos, and a businessman named Mr. Luis Manuel Abella. Metalclad now alleges (at paragraph 63 of the Claimant's Memorial and in Mr. Kesler's witness statement) that at the meeting it was agreed that Metalclad would concentrate on obtaining the UASLP's support with regard to the technical aspects of the project, and that the Governor and I would look after securing public support for the project. That is not true. After hearing the presentation by the Metalclad representatives and counsel on the company's experience in the hazardous waste landfill area, the Governor simply repeated his position, as stated in the original June 11, 1993 letter. The Governor mentioned the social problem in Guadalcázar and suggested that an alternate site be found, which would receive the State support in speeding up the permitting process.

56. The Governor never said that the company should stay away from the community because the social problem would be taken care of by the State Government. He just mentioned that any activity with the community, because of the existing social opposition, should be carefully conducted and in consultation with the State Ecology Office. The Governor made it clear that further announcements concerning Metalclad's plans to open the landfill should be avoided.

57. At paragraph 64 of the Memorial, Metalclad alleges that soon thereafter, the Governor appointed three UASLP professors as a "University Commission" to study the project. In fact, the State Governor never designated a Commission, nor did he have the authority to do so, in accordance with the UASLP's constituting documents, only the Dean and the University's Directing Counsel are authorized to establish a commission representing the UASLP. Therefore, there was no State government appointed Commission. Rather, this was an informal group comprising Dr. Roberto Leyva, professor of the Faculty of Chemistry, Ing. David Atisha, professor and Director of the Faculty of Engineering and Dr. Joel Milán, professor and Director of Earth Sciences at the UASLP. They were not paid and had no formal authority or mandate, given that, in accordance with the UASLP's constituting documents, only the Dean can represent the university. In some of the group meetings that I was invited to attend, the studies and activities that the group recommended that Metalclad undertake were often met with the company proposing that the scope of the proposed studies be reduced. Although certain tests and studies that this group recommended were carried out by Metalclad, the group did not make any findings and did not issue a report to the company or to the State government. The allegation repeated at pages 5, 8, 47, 71, and 72 of the Memorial, and pages 6, 7, 9, and 11 of of Grant S. Kesler's witness statement that the Governor forbid them to make their findings public, causing Dr. Leyva to resign in protest, is false. Dr. Leyva did not resign in protest, but instead declined to participate any further, noting that it was taken up too much of his time and the company was pressuring him to make a statement in favor of the project which the group was not prepared to do. The UASLP professors were only informally helping Metalclad at the company's request and in the same way that many other professors responded to such requests from the public. In fact, the company did not undertake an extensive study as originally suggested by the UASLP professors. I have been told by members of this group that Metalclad's relationship with the "Commission" was never formally terminated. Mr. Luis Abella was not part of this Commission and, as far as I understand, the UASLP group never submitted a final report. It is for this reason that this group could never have concluded that the site was safe for the construction of a hazardous waste facility.

58. In April 1994, I was invited by Metalclad to visit an operating landfill in Orange County California, that was apparently designed by the same firm and utilized the same technology that Metalclad proposed to use for the design of the La Pedrera project. Several other guests from San Luis Potosi, notably from the UASLP, including Dr. Roberto Leyva and Dr. Joel Milán, also attended.

59. I could tell by the type of waste that was being delivered and the manner in which it was being deposited that it was not a hazardous waste facility. As I stated earlier, it was also evident that Metalclad had nothing to do with the facility.

60. After the landfill tour, we attended a reception at Metalclad's corporate offices in Newport Beach. I spoke mainly with Javier Guerra of Química Omega, a Mexican company that, at that same meeting, was discussing a possible partnership with Metalclad. It seemed that he had been given the assignment of getting to know me and winning my trust. I believe that Metalclad thought Javier Guerra was closer to me, because we had been discussing Química Omega's plans to collect and reuse used oils in the State for some time. When asked what I thought of the Orange County landfill, I said I was impressed with the fact that it seemed to operate successfully. When asked whether I agreed that it would be suitable for La Pedrera, I told him that I could accept the possibility of Metalclad establishing a facility at La Pedrera provided that they met all legal requirements at the Federal, State and Municipal level and obtained the consent of the people of Guadalcázar. This was a position I was obliged to take as a State official. Soon after a meeting with Guerra and Neveau, Mr. Neveau announced to a group of Metalclad employees, in my presence, that I had agreed that Metalclad could install themselves at La Pedrera. I had not said that to Mr. Guerra or to Mr. Neveau but I did not find it appropriate to contradict Mr. Neveau or argue with him then and there. He was speaking to his own employees and I did not consider it my place or responsibility to correct him.

61. On April 25, 1994, I received a letter from Mr. Grant Kesler, President of Metalclad. Attached was a draft letter that I was supposed to sign in response to Mr. Kesler's letter. As the Tribunal can observe from the copies of the letters attached to this statement, as Exhibit 6, both are stamped "received" by my office on April 25, 1994. The attached letter for my signature has no official letterhead and is not signed. However, it is printed with the same type of printer as Mr. Kesler's letters sent to me. By then, Metalclad had begun to talk about an alternate site, but still insisted in operating La Pedrera for the time it would take them to open a new site.

62. I did not respond to Mr. Kesler as his intention apparently was that I respond in the terms of the letter he attached. Instead, and still troubled by Mr. Neveau's comments in Newport Beach, I sent a letter on May 26, 1994 to Metalclad's lawyer, Mr. José Mario de la Garza, in which I clearly set out the terms agreed by the State government for the remediation and possible operation of La Pedrera, and my support in the company's efforts to find an alternate site. A copy of this letter is attached as Exhibit 7 to this statement. The letter clearly stated that the reopening of La Pedrera would be subject to the company meeting all the legal requirements and to obtaining the approval of the Community as was decided by the mutual agreement of Metalclad, the State Government and the Municipal Government.

63. Simultaneously, a press conference was organized by the office of Mr. Carlos Robles

Oyarzun, the State Government's Director of Economic Development to report on the terms under which the remediation would take place, regarding the conditions needed to consider re-opening La Pedrera and the company's commitment to seek an alternate site. The press conference had been organized upon Metalclad's request.

64. Thus, on May 27, 1994, in a joint press conference with Metalclad officials at the State Government Palace, I announced the agreement that we had reached. As it is clear from the letter that I wrote to Mr. José Mario de la Garza, then-Metalclad's lawyer, and from the press reports of May 28, 1994, the company had agreed to remediate La Pedrera and to look for another site to install the a potential hazardous waste facility. The Government had agreed to help the company in finding the new site, and obtaining the necessary permits as fast as technically possible. With regard to operating La Pedrera, and consistent with the State Government's position, the decision would depend on the fulfillment of the requirements established, including the support of the people of Guadalcázar, once the remediation had been completed. We agreed that the method to assess whether the community wanted the landfill to operate or not, would be implemented by the municipal and state governments, in coordination with the company. Copies of the press accounts are attached as Exhibit 8 to this statement.

65. Further evidence that the agreement reached was to seek an alternate site is the proposal prepared by Professor Joel Milán to assist Metalclad in this endeavor. However, Metalclad never took steps in the direction of the May 27, 1994 verbal agreement, nor did they ever respond in writing to my May 26th letter. As far as I know, the company never engaged in any study or due diligence to find another site. If it did, the State Government was never informed. Instead, the company chose to push ahead with La Pedrera notwithstanding our previous warnings and the agreement reached in May 1994.

66. I am aware that in the summer of 1994, the company discussed the reopening of the landfill with the Municipal government. However, it is my understanding that it was the Guadalcázar authorities' position that the landfill should not be opened. Notwithstanding several lucrative offers by the company, the talks failed to reach any agreement, as the company was determined to push solely for the reopening of the landfill.

67. At the end of August, 1994, I was invited by Metalclad to a meeting with PROFEPA's newly appointed Attorney General, Miguel Limón, at his office in Mexico City. I was told the purpose of the meeting was to discuss Metalclad's projects. I thought it was important for me to be there and I attended. The meeting was held on September 1, 1994. Also present in the meeting were Mr. James Jones, United States Ambassador to Mexico, and José Luis Calderón, PROFEPA's Deputy-Attorney General. The discussion was very general. My recollection is that the Metalclad officials expressed the company's good intentions to cooperate with the state and federal governments and to develop a project that met the concerns of the state government. They explained that in the last months, the company had been working in trying to reach a formal agreement on the basis of the principles publicly expressed by the State Government. The federal officials and the Ambassador were happy that the company and the State Government were talking and that they maintained communication. If there was any support expressed in that meeting, it was in those terms. I was not able to speak privately with Attorney General Limón so that we could share our respective positions as government authorities.

68. There were no new agreements discussed or reached at the meeting. The only agreement that had been reached between Metalclad and the State Government was the agreement announced on May 27, 1994. Accordingly, I was surprised when PROFEPA issued a press release on September 1, 1994 declaring its support for the "recent agreement celebrated between the Government of the State of San Luis Potosí and Metalclad Corporation of Irvine, California, for the ... construction and operation of a controlled landfill, that will be located at ... La Pedrera." However, I was not surprised when Metalclad issued a press release (on the same date noted on PROFEPA's press release) to inform the United States investment community that PROFEPA had issued a press release to declare its support for Metalclad's project. I can only infer that Metalclad, with the goal of delivering positive news to its shareholders, had asked PROFEPA to issue a press release regarding an agreement reached three months before. Metalclad must have neglected to inform PROFEPA of some relevant details, notably that the agreement for the operation of the facility was conditional upon obtaining the approval of the municipality and the community.

69. After finding out about PROFEPA's and Metalclad's September 1, 1994 releases, I had to make a public statement and assure the community that the State Government had not consented to the landfill's reopening. A copy of the newspaper article with my public statement is attached as Exhibit 9.

70. Metalclad alleges in its Memorial, and Mr. Kesler's witness statement that in October 1994, I called Mr. Kesler to urge him not to give up on the project. This is false. I never called Mr. Kesler for this purpose. I spoke with Mr. Kesler on few occasions, but I rarely called him. He was the one who called me. I believe I called him once or twice, but it was never for the purpose of encouraging him to open La Pedrera.

71. As I have explained before I was never convinced of the advisability of the project. Why would I call Mr. Kesler to encourage him to continue? And why would he decide to continue on my assurance when I had insisted time and time again that it was better to look for another site? Moreover, in October 1994, I thought that the August 30, 1994 decision by PROFEPA ordering the company to conduct an environmental audit and establishing that the federal closure would not be lifted until the company took the necessary measures to remediate the site as provided by the results of the audit was a positive step, from a federal perspective, to help resolve the problem. I thought that the studies could be conducted properly and would show some of the technical problems that we had been raising at the state level.

72. This prompted me to write to PROFEPA Attorney General Miguel Limón on October 4, 1994 expressing the view that the audit was a decision supported by the State Government as necessary for the proper handling of the hazardous waste deposited in La Pedrera. I also took this opportunity to recommend that the audit be extended to the areas mentioned in the municipality's complaint that had been submitted to PROFEPA. I thought that it was a good opportunity for the federal agency to finally respond to the municipal complaint that the land had been contaminated.

73. As the Tribunal knows, the audit was conducted from December 1994 to the end of March

1995. In the meantime, we faced the problem of the "Grand Opening" on March 10, 1995, that I described above.

74. I believe the opening ceremony was a defining moment because it raised the profile of the problem and further made Metalclad appear untrustworthy in the eyes of the public. If Metalclad ever had any opportunity of convincing the local community, I believe it was lost with the March 10th Grand Opening ceremony. Metalclad realized too late that the people of Guadalcázar were not willing to accept the hazardous waste landfill. I believe they never thought that the poor people in Mexico would say no to the jobs or the money. They never understood that frequently the land is all that they have and they are not willing to risk having it contaminated.

75. After March 10, 1995, the Governor was convinced that Metalclad and the La Pedrera project were not proceeding in the right direction. As I explained above, this was when the Governor decided to make an open invitation to other potential investors to try to develop a project at a suitable site to respond to the State's needs in the area of hazardous waste management.

76. After the environmental audit was concluded in April 1995, it raised serious concerns among the non-governmental organizations, in particular, the local Pro San Luis Ecológico and Greenpeace Mexico. The new Federal Environmental Attorney General, Antonio Azuela, agreed to have meetings with state and municipal governments and their consultants to discuss the audit and the geohydrological studies. We had two meetings. However, the meetings were terminated by the federal authorities without having reached any conclusions.

77. The Federal Government then announced meetings between the Company and "independent experts" organized to review the results of the environmental audit. I complained that I had not been invited to the first meeting and PROFEPA invited me to attend the subsequent meeting. On the second or third meeting, PROFEPA agreed to invite Dr. Adrian Ortega of the Institute of Geology of the UNAM, a leading expert in underground contamination.

78. Unfortunately, nobody in the meetings except Dr. Ortega, maintained that to properly proceed in the technical assessment of the site, it was necessary to conduct an in depth study of the regional underground water flow system. This water system is located deeper than the wells that are currently built in the area. This was the same request that have been made by the geology professors from the UASLP.

79. Thus, Dr. Ortega stated that the studies submitted for their review were inconclusive. In his letter to PROFEPA (Exhibit 10), Dr. Ortega stated:

"It is necessary to prepare a summary of all the studies, including a conclusion for each one of them. In its current state, the information is disconnected and ill organized. It is advisable to show the way each study contributes to our knowledge of the site. It is very important to include all of the geohydrological information available before the GYMSA study was done. Much critical information necessary to assess the site is mentioned in that study but is not enclosed. For example, the 350 meter well excavated by the Secretariat of Water Resources. In this case, the

National Waters Commission shall certify that in fact there is no piezometric level at that depth. With the geological and hydro-geological information available, it is advisable to prepare a regional flow analysis, which will show the position of the different under-water deposits, including the state of La Pedrera in this context. The study will allow us to define the relation between different water systems of the region and to identify the areas of charge and discharge...(Emphasis added).

80. Dr. Ortega went on to point out in his discussion that without taking into account the previous comments, the problems presented by the site's geology could be addressed with the proper engineering technology. However, the other UASLP professors and I thought the problem was precisely placing too much trust in the proper technology and management of the site, when we had other sites in the State that offered natural security against ground contamination. We knew of bad experiences with landfill technology in the United States and we had not had a good experience with the previous management of COTERIN.

81. Like Dr. Ortega we thought that further regional water flow studies were necessary in order to properly design the engineering to work in the site. In our opinion, these studies were never performed and, therefore, the GYMSA study was also inconclusive. The GYMSA study, which was conducted along with the environmental audit, used improper methodology to conclude that the region was impermeable.

82. We had a couple of meetings with Secretary Carabias. No agreement was reached. Then on November 24, 1995, PROFEPA went on to sign the *convenio de concertación* with the company without the consent of the state and municipality.

83. In November 1995, I organized a group of experts, with the participation of Dr. Ortega of UNAM to review the GYMSA study. The group of experts reviewed the geohydrological study prepared by GYMSA and submitted to PROFEPA an annex to the audit. The group concluded that: "the studies submitted to PROFEPA by the company were insufficient and technically obsolete to show that the La Pedrera site could be suitable to establish a hazardous waste facility. The studies were submitted as part of the environmental audit report." The group explained in detail why the study was not useful for the ends sought. This was the last effort from my office to offer technical data about the site. After that, the problem of La Pedrera became more a legal and political battle at the municipal level and my participation in the issue decreased considerably.

84. I could never understand why Metalclad, with all the support we offered them in the beginning, insisted on purchasing a problem. Before September 1993, we worked with them believing that we were helping them find a site in which they could install a facility. Instead of following through with this process, they purchased the biggest problem in the state. I later became aware that Metalclad had made promises to investors that the landfill would be constructed and operating in a short period of time. On one occasion, I believe that it was around the beginning of 1994, the Metalclad representatives and I had a meeting which also included a New York financier whom they had invited. I believe that Mr. Neveau and Mr. Rodarte Ramon were present on Metalclad's behalf. The financier wanted to know why the state government had

not given its full support to the La Pedrera project. I explained that La Pedrera was a problem because of local opposition and that the site was very questionable technically. I also advised him that, from the very beginning, we had recommended that Metalclad consider one of the sites that had been identified in the UASLP study. He stated sharply, "no, it's got to be La Pedrera".

85. Metalclad was not honest with us. For example, from the beginning, they went to the Governor to discuss their intention of establishing themselves in San Luis Potosi, of meeting all the legal requirements and participating with the Government in its waste management program. As a result, the Governor gave them a letter that basically responded to their general interest of establishing in the State. They then tried to use the letter to say that he had agreed with them to establish themselves at La Pedrera, when he had actually warned them against La Pedrera. In retrospect, I can see the way they have twisted the facts and I regret that I never took notes in my meetings and discussions with Metalclad.

86. Now we know that Metalclad had an option to buy COTERIN ever since April 1993. They were very careful not to let us know this until August 1993, and meanwhile leading us to think that they were open to more feasible options. We now know that Metalclad had the intention of purchasing COTERIN since April of 1993. They were very careful to conceal this from us until August of 1993 and to keep us thinking that they were open to more feasible options. We also now know that Metalclad did not have any of the experience that it claimed to have. I make this statement to assist the Tribunal in gaining a better understanding of the facts of this case. I declare that to the best of my recollection and understanding this statement is true. I acknowledge that I can be required to appear before the Tribunal to provide further testimony and to be cross-examined on my statement. I make this declaration with the promise to tell the truth and in those areas where I have testified on matters which I did not witness directly, I declare that the information contained in my witness statement is in my understanding and to the best of my knowledge the most accurate information.

SIGNED IN THE ORIGINAL:

PEDRO MEDELLÍN MILAN