

1           Whereupon,

2   T. DANIEL NEVEAU

3       was called as a witness and, having solemnly declared, was  
4       examined and testified as follows:

5   CROSS-EXAMINATION

6                   BY MR. THOMAS:

7           Q       Mr. Neveau, you filed two witness statements in this  
8       proceeding?

9           A       Yes.

10          Q       And the first was filed with the Reply; is that  
11       correct?

12          A       I believe so.

13          Q       The second was filed on July the 30th, 1999?

14          A       To the best of my recollection, yes.

15          Q       When were you informed that you could be called for  
16       cross-examination?

17          A       Originally, two or three weeks ago.

18          Q       I take it that you took care when you prepared your  
19       statements.

20          A       I did, yes.

21          Q       They're accurate and truthful?

22          A       To the best of my recollection.

1 Q Are they fully responsive to the matters that were  
2 raised in the Counter-Memorial by the Respondent?

3 A I believe so.

4 Q Did you read all of the Counter-Memorial?

5 A No.

6 Q Is there anything in your written statements that you'd  
7 like to correct before we proceed?

8 A Not that I recall.

9 Q You realize that you were, as a witness as to fact,  
10 that you were excluded from this hearing before you arrived here  
11 today?

12 A I understood that fact.

13 Q And did you understand that that meant that you were  
14 not to discuss any previous testimony?

15 A I did.

16 Q And I take it you did not discuss any previous  
17 testimony with anybody?

18 A No.

19 Q You joined Metalclad's Board on July 31st, 1991?

20 A I think that was the approximate date, yes.

21 Q You did not become an officer of the company until  
22 November of 1992; is that correct?

1           A     I don't recall the exact dates, but that sounds  
2 reasonable.

3           Q     After Mr. Robertson left the company, you became  
4 Chairman of the Board?

5           A     That's correct.

6           Q     You were also a Senior Vice President?

7           A     I was.

8           Q     Mr. Lee Deets was the individual, the officer of the  
9 company, who had technical experience in the area of hazardous  
10 waste disposal; is that correct?

11          A     That is correct.

12          Q     And his tenure at the company was from June of 1992  
13 until March of 1994?

14          A     I don't remember exactly when Mr. Deets left the  
15 company, but that may be correct.

16          Q     He actually acted as a consultant to the company after  
17 he left it, did he not?

18          A     He did.

19          Q     Is it correct that, at that time when he left the  
20 company, that you became responsible for the landfill project?

21          A     Well, "responsible" is an interesting word. I became  
22 responsible for in permitting the landfill and ensuring it got

1 constructed.

2 Q Were you responsible for CATSA?

3 A The operation of CATSA as to the permitting process,  
4 yes--permitting and construction process.

5 Q Who was responsible in Metalclad for overseeing CATSA?

6 A I believe the operative responsibility was Ariel  
7 Miranda at that time.

8 Q What about at headquarters?

9 A Its headquarters was in San Luis.

10 Q Yes. What about in Metalclad's headquarters, who was  
11 responsible for what CATSA was doing in Mexico?

12 A Generally, what CATSA was doing was me, since they were  
13 basically permitting and constructing the site.

14 Q And were you involved in the Quimica Omega acquisition  
15 in May of 1994?

16 A I was.

17 Q Were you involved in the incinerator project at Santa  
18 Maria del Rio?

19 A Only peripherally.

20 Q And I take it that's because your active involvement in  
21 the company arose towards the end of 1992; is that correct?

22 A That's correct.

1 Q Right.

2 A Well, '93, actually.

3 Q '93, all right. And I take it that if you weren't  
4 active with respect to Santa Maria del Rio, you weren't active  
5 with respect to Veracruz and Tamaulipas.

6 A I was not.

7 Q I've reviewed your description of your prior business  
8 experience in the Metalclad annual reports filed with the SEC,  
9 and I've also taken a look at your descriptions with respect to  
10 the filings by California Properties Fund, Inc. I don't see any  
11 experience, any prior experience, in the hazardous waste disposal  
12 business before you joined Metalclad; is that correct?

13 A That's generally correct.

14 Q In fact, your prior experience was in the area of  
15 commercial real estate development?

16 A That is correct.

17 Q How's your Spanish?

18 A It used to be reasonably good.

19 Q When was "used to be"?

20 A While I was spending every day of my life down there  
21 during this period. Since then, I haven't spoken it very much--  
22 at all, for that matter.

1 Q So when Mr.--do you know who Antonio Azuela is?

2 A I do.

3 Q Yes. So when he testifies that you don't speak  
4 Spanish, that's like Mr. Perezcano telling me that I don't speak  
5 Spanish; is that correct?

6 A Well, I have no direct understanding of your  
7 capabilities in Spanish. But if yours is mine, that's probably  
8 true.

9 Q I understand, Mr. Neveau, that you were the first  
10 person from Metalclad Corporation to have contact with the United  
11 States embassy in the summer of 1994. Does that accord with your  
12 recollection?

13 A I don't recall if I was the first one, but I certainly  
14 did have the contact with the embassy at that time.

15 Q All right. Would you take a look at Exhibit 9 in the  
16 large volume that I put before you.

17 Do you see the paragraph under June 1994? It says that  
18 you, as Chairman of the Board, were introduced by the former EPA  
19 Attache, Ann Alonzo [ph.], to the Acting Ministry Counsel for  
20 Commercial Affairs, Carlos Poza. It goes on to say that you  
21 presented Metalclad's project for the La Pedrera facility in San  
22 Luis Potosi.

1 A That would be a fact.

2 Q Yeah. You recall doing so.

3 A I do.

4 Q Yes.

5 A I don't remember the exact date, but I do remember Ann  
6 Alonzo introducing me to several members of the Consulate.

7 Q Right. I take it that Mr. Kesler was, in fact, the  
8 main contact between Metalclad Corporation and the United States  
9 embassy; is that correct?

10 A Mr. Kesler was the President of the company and the  
11 Chief Operating Officer. He certainly had that authority.

12 Q But is it correct that he was the main contact between  
13 the company and the United States embassy?

14 A Yes, as a spokesman for the company.

15 Q Mr. Neveau, just to confirm that at the time in 1994,  
16 Metalclad had two sets of legal counsel in Mexico, did it not?

17 A It did.

18 Q It had Bufete Garcia Barragan in Mexico City, correct?

19 A Yes, it did.

20 Q And it had Bufete de la Garza in the city of San Luis  
21 Potosi?

22 A It did.

1 Q Just to confirm, Mr. Neveau, I'm not going to belabor  
2 this point, but you were a Director and officer of California  
3 Properties Fund at the same time as being a Director of Metalclad  
4 Corporation, correct?

5 A Yes.

6 Q And to confirm, your Metalclad SEC disclosures did not  
7 disclose the fact of your relationship with California Properties  
8 Fund?

9 A I believe that was true.

10 Q And also to confirm, Mr. Neveau, when is it that you  
11 acquired a beneficial interest in the shares that Mr. Kesler  
12 purchased on March 1, 1991?

13 A I believe it was a year or so--the beneficial interest  
14 I got at the time that Mr. Kesler got his interest in--

15 Q So as of March 1, 1991, you had a beneficial interest  
16 in the one million shares that he purchased?

17 A I did.

18 Q This was not an arrangement that was arrived at and  
19 retroactively set back to March 1, 1991?

20 A No.

21 Q I'd like to take you to the January 28, 1994, meeting  
22 with the Governor. And you attended that meeting, together with



1 Mr. Kesler, correct?

2 A That is correct.

3 Q And you were assisted by Humberto Rodarte?

4 A We were.

5 Q And there were two lawyers from Bufete de la Garza, Mr.  
6 Garcia Leos and Mr. de la Garza?

7 A I remember Mr. de la Garza. I don't remember Mr.--but  
8 he could have been there.

9 Q Mr. Garcia Leos testifies that he was there as well.

10 A I accept his testimony.

11 Q You have no reason to disagree.

12 A No.

13 Q And on the state government's behalf, there was the  
14 Governor and Dr. Pedro Medellin?

15 A That is correct.

16 Q And then there was Mr. Manuel Abella?

17 A There was.

18 Q And it was Mr. Abella who organized the meeting for the  
19 parties?

20 A He did, yes.

21 Q You're aware, Mr. Neveau, that prior to that meeting,  
22 Dr. Medellin had expressed some technical concerns about the

1 studies which had been done to achieve the federal permits?

2 A That's correct.

3 Q And you're aware that some of the local professors from  
4 the local university had agreed that the studies were not  
5 adequate?

6 A I don't know that they agreed that the studies were not  
7 adequate. But they questioned some of the results.

8 Q Were you aware that at a meeting held with the  
9 university professors--we have the meeting on videotape, and  
10 we've transcribed the videotape--were you aware that Dr. Rodarte  
11 agreed that the information used in the studies was not very  
12 reliable and that the results of the studies provided were not  
13 very reliable?

14 A I wasn't aware that that occurred.

15 Q Were you aware that at the same meeting Mr. Deets  
16 informed the university professors that the studies were just  
17 adequate to start construction?

18 A I was not aware of that either.

19 Q Mr. Neveau, were you involved in the due diligence  
20 exercise for the acquisition of COTERIN?

21 A Not initially, no.

22 Q I take it, though, that prior to the Board meeting in

1 September of 1993, when Metalclad ratified the acquisition of  
2 COTERIN, you're aware that the site had been previously  
3 contaminated?

4 A I was aware that the site contained material that had  
5 been stored there.

6 Q And you were aware that the volume of the material was  
7 estimated to be 20,000 tons?

8 A Actually, I thought it was a little more, but yes.

9 Q Actually, you published a newspaper ad in January of  
10 1994, where the estimate was 30,000 tons for the Metalclad site.

11 A I would be more familiar with that number.

12 Q Right. And you understood at the time that you met the  
13 Governor that there was social opposition to the project?

14 A No.

15 Q You didn't understand that?

16 A I did not.

17 Q At the meeting, was there a discussion of trying to  
18 find an alternative site?

19 A Yes.

20 Q The Governor suggested that?

21 A I don't recall who suggested it, but it was a subject  
22 for discussion.

1 Q Well, was it the state that suggested it or Metalclad  
2 that suggested going to an alternative site?

3 A I don't recall.

4 Q Do you recall Mr. Kesler stating that he would rather  
5 take a chance on convincing the people of the site's safety?

6 A I don't think it was ever a question of taking a chance  
7 on anything. We were convinced that site was safe and could be  
8 operated.

9 Q Do you remember--do you recall Mr. Kesler saying that  
10 it would take two or three years to get another federal permit?

11 A I don't recall that exactly, no.

12 Q Now, just to place this in proper context, Mr. Neveau,  
13 I understand that your active involvement in the file does not go  
14 back to the time when you joined the Board of Metalclad in 1991.

15 But at the time that this meeting was held with the state, as I  
16 understand it, Metalclad had announced four projects in Mexico;  
17 is that correct?

18 A I think that was correct.

19 Q The first would be Eco Administracion?

20 A That's correct.

21 Q The second would be Descontaminadora that was in  
22 Veracruz?

1 A That's correct.

2 Q The third one would be Eliminacion in Tamaulipas?

3 A I think that's correct.

4 Q And the fourth was COTERIN, correct?

5 A Yes, I think.

6 Q Actually, we could add, by January 1994, we could have  
7 a fifth, CATSA; is that correct?

8 A Well, CATSA was the operating arm for that.

9 Q CATSA was a separate company, was it not?

10 A It was.

11 Q Right. And of the four hazardous waste disposal  
12 facility projects that had been announced, as of January 1994,  
13 none of those four projects had been constructed, correct?

14 A That's correct.

15 Q After the meeting with the Governor on January 28th,  
16 there was a dinner. Did you attend that dinner?

17 A Directly after or a subsequent--

18 Q Yes, after the meeting.

19 A Oh, I suspect I was there, yes.

20 Q Can you think a little harder? Do you recall attending  
21 that dinner?

22 A I do not, actually. I attended a lot of dinners in

1 Mexico and a whole bunch of them in San Luis, so--

2 Q You have no rec--well, let me rephrase this question.

3 Do you have a recollection of Humberto Rodarte  
4 criticizing Dr. Medellin or confronting Dr. Medellin at a dinner?

5 A Oh, I do.

6 Q That was the dinner after the meeting.

7 A You're absolutely correct.

8 Q Okay. And so I don't have to take you to the witness  
9 statements of three of the witnesses who testified that Dr.  
10 Rodarte was quite aggressive towards Dr. Medellin. Do you recall  
11 that confrontation?

12 A I do.

13 Q In fact, do you recall receiving a letter the following  
14 week from Bufete de la Garza recommending that Metalclad put Mr.  
15 Rodarte aside and not have him be the contact with the state  
16 government?

17 A I don't recall that, but that's a possibility.

18 Q Would you like to turn to Exhibit 18. This is a  
19 letter, dated January 31, 1994, on the letterhead of Bufete de la  
20 Garza, SC, and it's addressed to Grant S. Kesler and Daniel T.  
21 Neveau, signed by Jose Mario de la Garza and Hector Garcia Leos.  
22 Do you see that?

1 A I do.

2 PRESIDENT LAUTERPACHT: Where is that?

3 MR. THOMAS: It's at Tab 18, Mr. President.

4 BY MR. THOMAS:

5 Q Take a minute just to take a look at this, if you  
6 would, Mr. Neveau. See if it refreshes your recollection, having  
7 read it.

8 A [Witness perused document.]

9 Q Do you recall the letter?

10 A Not specifically, no.

11 Q No. All right. But you see on page 2, at paragraph 3,  
12 it says, "The confrontation of Rodarte and Medellin has to be  
13 stopped by the time being, since it is evident for ourselves that  
14 for one or another reason, probably due to past activities, they  
15 are absolutely antagonistic"--or "antagonic," misspelling.

16 Do you see that?

17 A I do, yes.

18 Q Mr. Neveau, was Mr. Rodarte under some pressure to have  
19 this project commence construction?

20 A No more than the rest of us who desired to have it  
21 constructed.

22 Q Mr. Neveau, would you go to the last paragraph of the

1 letter that we just looked at. Do you see it says, "Please let  
2 us have, via DHL or fastest way, the curriculum of Eco  
3 Metalclad." That was Metalclad's subsidiary, correct?

4 A That's correct.

5 Q "...and Harding Loss & Associates and, if possible,  
6 stating sites constructed and at present operating. This  
7 information will be handed directly to Mr. Abella, to the  
8 Governor."

9 At the time, Metalclad did not have any sites  
10 constructed and operating, did it?

11 A No, not hazardous waste sites.

12 Q No. It had no hazardous waste disposal facilities in  
13 the United States or elsewhere.

14 A No.

15 Q Sorry. Just go back to that letter just for another  
16 moment.

17 The evidence of Metalclad in this proceeding is that,  
18 at the January 28th meeting, the Governor said that if the  
19 technical studies that were being done and being reviewed by the  
20 university professors showed that the site was technically  
21 feasible, that he would publicly support the project. Do you  
22 recall him saying that?



1           A     I do.

2           Q     In this letter from counsel, dated January 31, 1994, is  
3 there any reference to such a commitment?

4           A     Not directly, no.

5           Q     And Mr. Kesler testified in his first witness statement  
6 that the Governor requested that there be no publicity and that  
7 all dealings with him be in secret. Is there a reference in this  
8 letter to such a statement by the Governor?

9           A     No, but that was the communicative method that Pedro  
10 wanted to use.

11          Q     Now, I want to just explore Mr. Rodarte's situation.  
12 At the time that he was, in January of 1994, he was being paid  
13 \$10,000 U.S. a month; is that correct?

14          A     What period are you talking?

15          Q     January 1994.

16          A     That may be true. I don't exactly recall.

17          Q     Let's take a look at Exhibit 21.

18               MR. THOMAS: Exhibit 21, Mr. President.

19               MR. PEARCE: Mr. Thomas, are you also going to provide  
20 a list of these documents, as to where they are in the records?

21               MR. THOMAS: I certainly will, Mr. Pearce.

22               MR. PEARCE: Thank you.

1 MR. THOMAS: You can rest assured they're all in the  
2 record.

3 BY MR. THOMAS:

4 Q This is a letter, dated October 21, 1993. It's  
5 addressed to you. It's from Mr. Garcia Barragan. He was your  
6 Mexico City counsel, was he not?

7 A He was.

8 Q And it refers to correspondence with George Bockum.  
9 George Bockum was a financial manager for Metalclad?

10 A He was the accountant, chief accountant.

11 Q He was not Chief Financial Officer, he was an  
12 accountant?

13 A Yes.

14 Q Yes. And it says that, "In connection with Mr.  
15 Rodarte's salary, kindly advise us if the amount of \$10,000 he  
16 will receive monthly includes all of the benefits and other  
17 compensation agreed within."

18 Do you recall receiving this letter?

19 A I don't recall this one, specifically, no.

20 Q But you agree that it states that he was being  
21 compensated \$10,000 a month?

22 A I agree that that's what this letter says, yes.

1 Q Right. Do you have any idea what Mr. Rodarte's monthly  
2 salary would have been when he was a federal employee?

3 A I was under the impression it was about this amount of  
4 money or a little less.

5 Q He's a good negotiator. I'm instructed it's seven  
6 times what he was making as a federal employee.

7 A He was a good negotiator.

8 Q Were you aware in January of 1994 that Mr. Rodarte had  
9 an arrangement with the Aldrett's to be paid a commission in the  
10 event that he found a buyer for the site?

11 A When?

12 Q In January of 1994.

13 A No.

14 Q To your knowledge, was anyone in Metalclad aware of  
15 that in January of 1994?

16 A I don't know. Sorry.

17 Q Would you go to the--we're still in Exhibit 21. If you  
18 go to the last page, there's a memorandum, dated August the 4th,  
19 1994. Do you have it?

20 A The one dated August 4th?

21 Q Yes.

22 A I have that, yes.

1 Q And it's addressed to Humberto Rodarte, and it's from  
2 Daniel Neveau. I take it that's you.

3 A It is.

4 Q And this deals with the question of his compensation  
5 from August 1994 to 1995, and it states that he has a salary of  
6 \$120,000 a year, correct?

7 A It does.

8 Q And the last, if you look at those bullets, the last  
9 one says, "La Pedrera/COTERIN con." It doesn't commission, it  
10 says "con." And it says, "By agreement and protection of Aldrett  
11 arrangement, \$25,000 or equivalent stock at H.R.--" I assume  
12 that's a reference to Humberto Rodarte?

13 A I would believe so.

14 Q "--choice in 60 days from date."

15 Do you recall having that written in this memorandum?

16 A I do.

17 Q There was some discussion in 1996 that, in fact, the  
18 commission, according to Mr. Rodarte, was to be \$100,000 rather  
19 than \$25,000, correct?

20 A I recall some discussion, but I don't recall the  
21 specifics.

22 Q I'll take you to that later on.

1 A Fine.

2 Q Would you go back to the second letter in that exhibit.  
3 It's a letter dated May 18, 1994. This is addressed to you  
4 again. It's on the letterhead of Garcia Barragan. That's your  
5 Mexico City counsel, correct?

6 A It is.

7 Q And this is an opinion that was provided by Mr. Garcia  
8 Barragan with respect to the enforceability of two agreements  
9 that had been signed by Mr. Grant Kesler in February of 1993.  
10 Are you familiar with those agreements?

11 A I'm aware of the agreements. I don't know the  
12 specifics.

13 Q Were you aware of the agreements at the time that they  
14 were entered into?

15 A Probably.

16 Q Was there discussion at Metalclad's Board as to those  
17 agreements?

18 A I don't recall specifically, but I imagine there would  
19 be.

20 Q And Lucia Ratner, one of the signatories to the  
21 agreements, was the wife of Humberto Rodarte, correct?

22 A She was.

1 Q And Lucia Ratner was one of the original shareholders  
2 in Eco Administracion starting in August of 1991?

3 A I believe so.

4 Q Yes. And you are aware that in February of 1993 she  
5 exchanged her shares in that company for shares in Metalclad  
6 stock and cash payments?

7 A Along with everybody else, but, yes.

8 Q Right. And you are aware that those cash payments were  
9 triggered by, for example, the issuance of federal permits?

10 A Well, I think they were triggered by the exchange of  
11 stock. What other things triggered them, I don't recall.

12 Q Do you recall seeing the schedule which set out that if  
13 a federal permit was issued for a particular facility, stock  
14 and/or cash would be paid to her?

15 A I remember some agreement, in that regard, but I don't  
16 recall seeing it.

17 Q Do you recall that two days after she signed the  
18 agreement in February of 1993, a federal permit was issued for  
19 Santa Maria del Rio?

20 A I do not.

21 Q Were you aware that that agreement entitled her to a  
22 payment of 30,000 shares?

1           A     I don't recall that.

2           Q     Were you aware that Mr. Kesler authorized by letter to  
3 Mr. Garcia Barragan in April of 1993 a cash payment to Ms. Ratner  
4 of \$10,000?

5           A     I don't recall that either.

6           Q     Do you recall discussing any of these matters with Mr.  
7 Kesler in 1993?

8           A     In 1993, not specifically.

9           Q     I take it that the arrangement to pay the commission to  
10 Mr. Rodarte was dependent upon Metalclad actually paying the  
11 Aldrett's the full \$2 million purchase price for COTERIN; is that  
12 correct?

13          A     I don't exactly recall.

14          Q     Well, you do recall, Mr. Neveau, that in September of  
15 1993, Metalclad amended the purchase agreement when it decided to  
16 buy COTERIN?

17          A     I apologize, but I don't recall that.

18          Q     Let me see if I can refresh your memory. Metalclad was  
19 to pay \$450,000 on the date of closing. Does that sound  
20 familiar?

21          A     I would have to accept your representation.

22          Q     And Metalclad would then pay the balance of the \$1.5

1 million if, one, the Governor's authorization to commence  
2 construction at La Pedrera was given and, two, the municipal  
3 permit was issued or a court decision was obtained resolving the  
4 municipal permit issue in favor of COTERIN. Do you recall those  
5 conditions?

6 A I do not.

7 Q Do you recall discussing those conditions at the Board  
8 meeting that ratified the approval of the COTERIN deal?

9 A I am certain that the Board discussed the conditions  
10 upon which they would issue money to any third party outside--or  
11 anybody, for that matter--but I don't recall those discussions  
12 specifically, and I suspect they would be a matter of record.

13 Q Well, I can instruct you that we've examined the Board  
14 minutes in the hearing this week, and there's no discussion of  
15 either the Governor's support or the resolution of the municipal  
16 permit issue recorded on the face of the Board minutes.

17 A I would--okay, I accept.

18 Q You don't recall any other discussion of that issue?

19 A No.

20 Q When did Metalclad first consider appointing Mr.  
21 Rodarte as the General Director of CATSA?

22 A I don't recall the exact moment that that was



1 determined. I know that we needed a representative on the ground  
2 in Mexico that could represent CATSA, and Dr. Rodarte was a very  
3 able candidate.

4 Q Now, Ms. Ratner became a shareholder in Eco in August  
5 of 1991. Did you meet Mr. Rodarte in 1991?

6 A I don't recall that.

7 Q Did you meet him in 1992?

8 A Probably not.

9 Q When did you meet him?

10 A Well, I don't recall specifically, but I suspect it was  
11 in '93.

12 Q Do you know if Mr. Kesler met him in 1991?

13 A I have no idea.

14 Q If you take a look at Exhibit 23, this is a press  
15 release which was issued on a P.R. news wire. And it announces,  
16 this is dated June 16, 1993. Do you recall this announcement  
17 being made?

18 A Yes, I believe I remember this one.

19 Q And this was the announcement of the recent opening. I  
20 assume that that is a reference to something having happened  
21 before June 16th. Would you agree with me that's a reasonable  
22 interpretation of those words?

1           A     Well, I don't know what reasonable interpretation  
2 means.

3           Q     Well, "recent opening" sounds like it occurred in the  
4 past; would you agree?

5           A     Well, that's your interpretation. I don't know what  
6 "recent opening" was supposed to mean, but we had developed a  
7 consulting group down there.

8           Q     And that was CATSA. And "Dr. Humberto C. Rodarte has  
9 been appointed the Director General of CATSA." You saw that?

10          A     I do.

11          Q     And it mentioned that most recently he was a senior  
12 advisor to top management at the Instituto Nacional de Ecologia,  
13 the national environmental agency in Mexico. Do you see that?

14          A     I do.

15          Q     It's my accent you are laughing at, aren't you?

16          A     Well, you've validated your previous statement anyway.

17                   [Laughter.]

18                   BY MR. THOMAS:

19          Q     I knew it wouldn't take long.

20                   Mr. Neveau, this news release was issued--this press  
21 release was issued five days after Mr. Rodarte attended the  
22 meeting with Governor Sanchez Unzueta; is that correct?

1           A       This is the meeting in which the Governor issued his  
2 famous letter inviting Metalclad to build the facility?

3           Q       Correct. I should put a footnote here, Mr. Neveau.  
4 Correct up until inviting Metalclad to build the facility, but,  
5 yes, the letter.

6           A       I thought it was pretty inviting. But having said  
7 that, I believe this is when this announcement was made.

8           Q       The meeting was held on June the 11th, 1993?

9           A       Your recollection is better than mine.

10          Q       --with the Governor. Yeah, you didn't attend that  
11 meeting, did you?

12          A       I did not.

13          Q       No. Would you turn to Exhibit 17. Do you have it?

14          A       If 17 is this--

15          Q       It's an excerpt from the first witness statement of Mr.  
16 Rodarte Ramon. Would you look at the second paragraph. I'm  
17 sorry. It's not the second paragraph. I'm on the wrong page  
18 here. I'm sorry. Keep on going. It's towards the back of this  
19 witness statement. It doesn't have page numbers.

20                    If you go to the second-to-the-last page, it's the  
21 first full paragraph beginning, "In June of 1993." Do you see  
22 that?

1 A I do.

2 Q Would you read out the first two sentences.

3 A "In June of 1993, Colosio and Governor Sanchez Unzueta  
4 met with Metalclad officials to discuss developing an integrated  
5 hazardous waste facility in San Luis Potosi. SEDESOL sent me to  
6 the meeting with Metalclad and Governor Sanchez Unzueta, at which  
7 time Sanchez Unzueta expressed his support and issued to  
8 Metalclad an intention letter."

9 Q Right. So Mr. Rodarte's evidence in his first witness  
10 statement was that he was sent by the federal authorities; is  
11 that correct?

12 A Well, I suspect he was sent by the federal authorities,  
13 but he was not a representative of the federal authorities at  
14 that time.

15 Q Let's take a look at Exhibit 7. Do you have that in  
16 front of you?

17 A I do.

18 Q This is an excerpt from the videotape that I mentioned  
19 to you earlier, Mr. Neveau. This was a videotape meeting that  
20 took place in January of 1994 between university professors and  
21 Metalclad representatives.

22 Would you turn the page to paragraph 13, and that is an

1 intervention by Humberto Rodarte. And it says, "Humberto  
2 Rodarte, a..." this is himself introducing himself "...a  
3 physicist by profession. Before that I worked at the Department  
4 of Environmental Regulation at SEDUE and prior to that at  
5 SEDESOL. Some time ago, I decided to pursue a career on my own  
6 as an environmental consultant in the private sector. And  
7 approximately six months ago, I was invited by Metalclad to  
8 advise them on the Guadalcazar landfill."

9           Wasn't it the case that the press release that we just  
10 referred to announced that Mr. Rodarte was, in fact the general  
11 director of Metalclad's consulting company, CATSA?

12           A     Yes.

13           Q     Mr. Neveau, did your involvement with the Mexican  
14 project extend to matters of corporate organization, such as the  
15 reorganization of Eco Administracion into ECOPSA?

16           A     I think I participated in that discussion.

17           Q     Would you look at Exhibit 25, please. Do you have it?

18           A     This starts out with an English translation, that one?

19           Q     Yes. That's right.

20                     This is a shareholders' resolution, and it's the  
21 shareholders' resolution which was made on May the 7th, 1994.  
22 Actually, if you flip--I'm sorry. This was a notarized copy. If

1 you go five pages into that exhibit, you will see "English  
2 translation. Relevant parts only." It's probably easier for you  
3 to follow that.

4 A With a "28" up in the right-hand corner?

5 Q That's right. Do you have it?

6 A I do.

7 Q There was a, if you look at the third paragraph, says  
8 that there was an act celebrated in the city of Santa Maria del  
9 Rio, San Luis Potosi, on May 7th of the current year, 1994. Do  
10 you see that?

11 A I do.

12 Q And this was the shareholders' resolution in which the  
13 name Eco Administracion was changed to Ecosistemas del Potosi,  
14 correct?

15 A I believe that's the case.

16 Q And if you look down to the second clause, there's some  
17 new members of the Board of Directors appointed. Do you see  
18 that?

19 A I do.

20 Q And it says, "Grant S. Kesler, Daniel Neveau, Luis  
21 Manuel Abella, Roberto Leyva." Do you see the name Roberto  
22 Leyva?

1 A I do.

2 Q Now, Roberto Leyva was one of the university professors  
3 who was supposed to be examining the site, was he not?

4 A That's correct.

5 Q Would you turn to Exhibit 26. This is an excerpt from  
6 Metalclad's memorial in this proceeding. Do you have it?

7 A Page 72, that one?

8 Q Yeah, page 72-73. Would you go down to the bottom of  
9 the page. There's a discussion of the university commission, and  
10 the last sentence it says, "One member, Dr. Roberto Leyva,  
11 resigned in protest of the commission's failure to make its  
12 findings public."

13 If you turn the page, it says, "Declaration of Grant S.  
14 Kesler and Ariel Miranda Nieto." Do you see that?

15 A I do.

16 Q This was Roberto Leyva, ECOPSA Board member; is that  
17 correct?

18 A That's correct.

19 Q Mr. Neveau, there's been some discussion in this  
20 hearing about the May 27th press conference that was held on San  
21 Luis Potosi. You attended that press conference, didn't you?

22 A Ninety?

1 Q May 27, 1994.

2 A Yes.

3 Q And that was a press conference where Dr. Medellin made  
4 an announcement about an agreement between the company and the  
5 state?

6 A That's correct.

7 Q That's correct. You testify in your witness statement  
8 that you were unaware of a letter dated May 26, 1994, addressed  
9 by Dr. Medellin to Metalclad's local counsel; is that correct?

10 A That's correct.

11 Q And your recollection, you testified that, to your  
12 knowledge, no one at Metalclad knew of the existence of that  
13 letter; is that correct?

14 A Absolutely not.

15 Q I'm sorry?

16 A Absolutely--

17 Q No one knew of that letter.

18 A No one at Metalclad even had a clue that that was going  
19 to be Dr. Medellin's position.

20 Q Could you turn to Exhibit 29. This is a, at Exhibit  
21 29, we have an excerpt from Metalclad's NAFTA complaint  
22 chronology. Do you see 1994 at the top of the page?



1 A I do.

2 Q Would you read the final bullet on the bottom of the  
3 page.

4 A The May 26th bullet?

5 Q Yes.

6 A "Letter from Medellin to de la Garza, attorney for  
7 Metalclad, memorializing official authorization from the state  
8 ecology coordinator for Metalclad to construct and operate the  
9 landfill facility at La Pedrera."

10 Q All right. Would you turn to Exhibit 30. Do you  
11 recognize that?

12 A Not specifically.

13 Q This is a draft NAFTA complaint. It has the Law  
14 Offices of Clyde C. Pearce, Esquire, at the top, draft, September  
15 13, 1995, 9:40 a.m. And it's a draft NAFTA complaint.

16 Do you recall a draft NAFTA complaint being prepared  
17 for the company?

18 A I recall the act of preparing documents that would  
19 initiate a complaint. I don't specifically recall this.

20 Q All right. Would you turn to the second page of the  
21 exhibit. It's page 20 of the exhibit. I will read it out, at  
22 paragraph 48, it says, "One week later, on May 23, 1994, Medellin

1 and T. Daniel Neveau, Chairman of Metalclad, made a joint  
2 announcement of the construction commencement at La Pedrera.  
3 This announcement was followed by Medellin's letter to  
4 Metalclad's Mexican legal counsel, containing an official  
5 declaration of support for Medellin as a state ecology  
6 coordination on behalf of San Luis Potosi and the local community  
7 for Metalclad to construct and operate the landfill facility at  
8 La Pedrera.

9 "The next day, May 27, 1994, in a ceremony at the state  
10 palace, with the press in attendance, the agreement between  
11 Metalclad and the state of San Luis Potosi was publicly  
12 announced." Do you see that?

13 A I do.

14 Q And do you see that there's a footnote reference at the  
15 bottom, which says, "A copy of Medellin's letter to Lescent  
16 Sierro [ph.] del la Garza is attached as Exhibit blank." Do you  
17 see that?

18 A I do.

19 Q I take it, Mr. Neveau, you would not disagree with me  
20 that Mr. Pearce at least was aware of the existence of a May 26th  
21 letter from Dr. Medellin to Mr. del la Garza.

22 A In 1995, he was, I suspect.

1 Q Mr. Neveau, at the press conference on May 27, 1994,  
2 Dr. Medellin announced the terms of the agreement. And I take  
3 it, from your evidence, that his announcement was not your  
4 understanding of the agreement; is that correct?

5 A That's correct--not totally, in any case.

6 Q Now, Dr. Medellin's announcement, as it was reported in  
7 the press, appears to be consistent with the May 26th letter.  
8 Have you ever read the May 26th letter?

9 A I don't recall that specifically, no.

10 Q But you were present at the press conference, were you  
11 not?

12 A I was present at the press conference, I was present at  
13 all of the meetings that led up to the press conference, and I  
14 was present at the meeting that occurred with the university  
15 professors, and the Metalclad officials, and Harding and Lawson,  
16 and--

17 Q Mr. Neveau. Mr. Neveau, Mr. Pearce, with almost  
18 complete certainty I can say that Mr. Pearce will ask you  
19 questions about that. Would you just answer my question, yes or  
20 no.

21 A That was not what I understood to be the agreement.

22 Q Right. Would you go so far as to say that no

1 agreement, in fact, had been reached, Mr. Neveau?

2 A Absolutely not.

3 Q So there was an agreement, but you differed as to its  
4 terms.

5 A No.

6 Q After the May 27th announcement, on June the 6th, 1994,  
7 Mr. Soloman Leyva met with representatives of the local  
8 ayuntamiento; is that correct?

9 A Met with the representatives of who?

10 Q The ayuntamiento. Do you know what the ayuntamiento  
11 is?

12 A Your pronunciation is worse than I thought or I don't  
13 know what that is.

14 Q Okay. I thought that was a relatively commonly known  
15 term for municipal council.

16 A Okay. All right. I hadn't heard it expressed like  
17 that. It shows you my lack of understanding.

18 Q I take it you did not accompany Mr. Leyva to the  
19 meeting with the representatives of the ayuntamiento.

20 A I did not.

21 Q No. Were you aware that at that meeting, if you take a  
22 look at Exhibit 65, this is a transcription of a handwritten

1 note, actually, an order, dated June 6, 1994, whereby the  
2 municipality objects to works that were going on at the site.  
3 Were you aware of that order?

4 2B [Tape ends.]

5 A I remember some discussions, but I don't remember the  
6 order.

7 Q All right. On June the 13th, 1994, you wrote a letter  
8 to the municipality, did you not?

9 A I did.

10 Q Let's look at that. It's Exhibit 33. And it's on the  
11 letterhead of Metalclad Corporation, and it's addressed to Mr.  
12 Juan Carrera. He's the municipal President of Guadalcazar. Do  
13 you see that addressee?

14 A I do.

15 Q And it was signed on your behalf. Do you recall having  
16 this letter drafted?

17 A I think so, yes.

18 Q Do you recall reviewing the letter before it was signed  
19 on your behalf?

20 A I remember doing it in English. The Mexican  
21 translation, Spanish translation, was probably done by either  
22 Ariel or Humberto Rodarte.

1 Q All right. Was there a meeting held with the local  
2 ayuntamiento after this letter was sent, to your knowledge?

3 A I think there were several meetings in which Metalclad  
4 employees or ECOPSA or CATSA employees attended meeting at the  
5 Guadalcazar municipal council.

6 Q Which representatives of the company met the local  
7 municipal council, do you know?

8 A Ariel Miranda and Soloman Leyva.

9 Q Not Mr. Rodarte?

10 A I don't believe that Dr. Rodarte met directly with the  
11 council.

12 Q Would you turn to the next tab, which is Tab 34. This  
13 is a translation of the letter that was sent, again, to the  
14 municipal President by Mr. Javier Guerra. Mr. Javier Guerra was  
15 a, at that point, by that point, a member of the Board of  
16 Directors of Metalclad Corporation?

17 A I believe so.

18 Q And he refers in the first paragraph to, "Our  
19 correspondence, dated June 13, 1994." I take it that's a  
20 reference to your letter.

21 A I would suspect so, yes.

22 Q "And we confirm the offer made to the municipality and

1 the meeting held with you, the Cabildo, and some advisors of the  
2 ayuntamiento providing..." and then he sets out a number of  
3 different proposals. Do you recall this letter?

4 A I do.

5 Q This proposal was not accepted by the local council,  
6 was it?

7 A I don't recall exactly what they did do with this  
8 proposal.

9 Q Well, Mr. Neveau, the United States government prepared  
10 a chronology of events recording what it did to advocate on  
11 behalf of Metalclad Corporation. And it informs us that in July  
12 of 1994, the embassy was asked to advocate on behalf of Metalclad  
13 Corporation.

14 Are we to take from that, Mr. Neveau, that there were  
15 no problems that the United States embassy had to get involved  
16 with?

17 A No.

18 Q There were problems with local opposition at that time.

19 A There were some local groups, some environmental  
20 groups, that were not interested in having the site built, for  
21 whatever reasons they had. But the general community was in  
22 favor of the construction and the site operation.

1 Q Would you turn to Exhibit 20, please.

2 These are excerpts from the first witness statement of  
3 Mr. Grant Kesler. And if you turn to page 8, you will see a  
4 heading "June to August 1994." Do you see that?

5 A I do.

6 Q And his first sentence is, "Construction continued  
7 without interruption." Do you see that?

8 A I do.

9 Q I take it that Metalclad did not consider the document  
10 that was given to it on June the 6th from the municipality to be  
11 an interruption.

12 A What document was that?

13 Q The document we just looked at, where Mr. Leyva was  
14 given a handwritten document saying that the municipality  
15 objected to the works at the site.

16 A Well, no, we didn't consider that a work stoppage.

17 Q Now, you mentioned the name Ariel Miranda just a few  
18 minutes ago. Was he the main--was he the fellow that had the  
19 responsibility for moving the COTERIN project along in San Luis  
20 Potosi?

21 A He was the San Luis Potosi representative for CATSA or  
22 for the operation in San Luis Potosi, in any case, and he was the



1 direct supervisor of the labor force that worked out at the  
2 facility.

3 Q Would you turn to Exhibit 15. This is an excerpt from  
4 the Counter-Memorial. That's the written pleading that the  
5 government of Mexico has filed in this proceeding. And I would  
6 like to direct you to paragraph 424. Do you have that there?

7 A I do.

8 Q And it refers to a letter, dated July 18, 1994. "Ariel  
9 Miranda of COTERIN advised PROFEPA..." that's the federal  
10 authorities, correct?

11 A That's correct.

12 Q "That since Metalclad acquired COTERIN on September the  
13 9th, 1993, the only work that has been performed is..." and then  
14 we set out "installation of a water tank, remediation of a septic  
15 well, strengthening of the boardaisse [ph.] protecting the  
16 containment cells, remediation of Avato [ph.]." And he goes on  
17 to say that "All such activities are part of a landfill's regular  
18 maintenance program." Do you see that?

19 A I do.

20 Q And if you'll just turn the page, this is what's known  
21 as an excerpt from the admissions and denials. These are what  
22 Metalclad's counsel prepared in response to the various

1 allegations of fact that we made in our Counter-Memorial. And  
2 you will see that the admission for paragraph 424, it just says,  
3 "Admitted." Do you see that?

4 A I do.

5 Q Now, at paragraph 39 of your first witness statement,  
6 and you can turn to it, if you want to refresh your recollection,  
7 but I can tell you what it says.

8 A Where is it here?

9 Q It's paragraph 39.

10 A In which exhibit?

11 Q In your first witness statement.

12 A Which exhibit is that?

13 Q It'll be at the very beginning of the materials that I  
14 gave you. You don't have your own copy. Okay. Look at the very  
15 first exhibit here.

16 A All right.

17 Q And at paragraph 39, I will read it out, it says that  
18 "The Board instructed Mr. Miranda that only construction  
19 necessary to maintain the cells in the transfer station and  
20 prepare for actual construction in the fall should be done during  
21 the summer." Do you see that?

22 A Yes.

1 Q Now, Mr. Neveau, when you went to see the United  
2 States--

3 MR. PEARCE: Excuse me, Mr. Thomas. You indicated you  
4 were going to read paragraph 39. You didn't read the whole  
5 paragraph. Was that your intention?

6 MR. THOMAS: Well, I'll finish it off for you, Mr.  
7 Pearce.

8 MR. PEARCE: Thank you.

9 BY MR. THOMAS:

10 Q "That was in keeping with our promise to the federal  
11 government to build slowly." How's that?

12 I'd like to go back, Mr. Neveau, to the U.S. government  
13 and the United States embassy. When you met with the United  
14 States embassy in June of 1994, was it before or after June the  
15 6th, to the best of your recollection?

16 A Ask the question again, please.

17 Q To the best of your recollection, did you meet with the  
18 United States embassy before or after June the 6th, 1994?

19 A I don't recall.

20 Q Do you recall whether it was before or after your  
21 letter, dated June 13th?

22 A Well, I met with the embassy on more than one occasion.

1 So to specifically say it was before or after, I wouldn't be  
2 able to tell you that.

3 Q That's fair enough.

4 Did you tell the embassy, specifically Mr. Kevin  
5 Brennan, that it was Metalclad's intention to first clean up the  
6 site and then operate it?

7 A I did not ever say that, specifically.

8 Q So if Mr. Brennan says that he was told that--well, he  
9 says Mr. Kesler told him. I just wonder whether you had told  
10 him, too.

11 A My discussion regarding that subject was, if we were  
12 going to remediate, we would operate concurrently.

13 Q So Mr. Brennan, his recollection is that Mr. Kesler  
14 informed him that Metalclad's intentions was first to completely  
15 remediate the site before accepting new waste, and he believed  
16 that this was further repeated to the ambassador in several  
17 meetings. Are you able to shed any light on Mr. Brennan's  
18 recollection of that?

19 A Absolutely. I don't believe that Metalclad ever made a  
20 commitment to either the ambassador or any official, at least in  
21 my presence, that we would remediate before we operated. We  
22 always agreed to remediate that site, but we only agreed to

1 remediate that site on the basis of operations.

2 Q So Mr. Brennan is mistaken.

3 A I believe he's misstating the fact.

4 PRESIDENT LAUTERPACHT: Mr. Thomas, it would help the  
5 Tribunal if you could tell us where this is going.

6 MR. THOMAS: All right. Well, let me just take you a  
7 little closer to that, Mr. President. I think I'd like to have  
8 it just unfold, but we are getting there.

9 PRESIDENT LAUTERPACHT: I don't want to cut you short,  
10 if what you are saying really bears on the issue.

11 MR. THOMAS: Yes. Well, if I may, Mr. President.

12 BY MR. THOMAS:

13 Q During the summer of 1994, Metalclad was discussing the  
14 possibility of an audit with PROFEPA, correct?

15 A We were discussing the possibility of audit. I don't  
16 recall the exact time.

17 Q And the audit was to be conducted by a company called  
18 Radian; is that correct?

19 A Well, the audit was to be conducted by PROFEPA, but the  
20 company that was going to do it was Radian.

21 Q And the General Director of Radian was a gentleman by  
22 the name of Dr. Jose Antonio Ortega Rivera?

1 A It was.

2 Q Would you turn to Exhibit 38. This is Metalclad's Form  
3 10-K annual report that was for the year ending May 31st, 1994;  
4 is that correct?

5 A It is.

6 Q It was filed on September the 14th, 1994? Do you see  
7 the stamp?

8 A I do, yes.

9 Q Would you turn to page 16. It's the typed number at  
10 the bottom of the page, page 16.

11 A Yes.

12 Q And that states that Jose Antonio Ortega Rivera has  
13 been a Director of the company since August 1994. He has been a  
14 consultant with Corporacion Radian. Do you see that?

15 A I do.

16 Q And this was the same individual that Metalclad had  
17 contracted with to actually perform the audit?

18 A That's correct.

19 Q Would you turn to Exhibit 39. Do you recall receiving  
20 this letter, Exhibit 39?

21 A I do.

22 Q And this was a response by Dr. Ortega, wherein he

1 informs you that he would like to thank you for offering him a  
2 membership on the Board of Directors of Metalclad Corporation.  
3 But, "Due to the work that I am currently conducting, it is  
4 impossible for me to accept such position. Therefore, I have to  
5 decline the offer." Do you see that?

6 A I do.

7 Q And that's your signature acknowledging receipt of that  
8 letter?

9 A It is.

10 Q Please turn to Exhibit 32. Sorry, Mr. Neveau, just  
11 before I leave the Dr. Ortega appointment, I take it that that  
12 was a Board decision to offer the appointment to Dr. Ortega.

13 A Yes, as I recall.

14 Q And it was made certainly with your knowledge. Of  
15 course it was. You made the offer. Was it made with Mr.  
16 Kesler's knowledge?

17 A Yes.

18 Q Would you look at this exhibit. It's Exhibit 42. This  
19 is a letter, dated August 17, 1994, on the letterhead of Bufete  
20 de la Garza. It's addressed to Mr. Javier Guerra, who was a  
21 fellow Board member of Metalclad Corporation, correct?

22 A I believe he was at this time.

1 Q And it was sent by local counsel, Dr. Lescent Sierro  
2 Hector Raol Garcia Leos. Do you see it?

3 A It was.

4 Q And copied to you?

5 A It was.

6 Q And if you look at page 1, he refers to a meeting that  
7 he held with Ariel Miranda that morning, and at paragraph 2 he  
8 says, "He mentioned to me the already discussed and decided  
9 matter to apply for a building license in La Pedrera Guadalcazar.

10 If it is denied, to proceed before a federal judge, filing a  
11 petition to obtain from an him order constraining the city  
12 council to grant the building license." Do you see that?

13 A I do.

14 Q Mr. Guerra did not respond to this letter, did he? You  
15 responded in his place, did you not?

16 A I don't recall, but I'm sure I would have.

17 Q In fact, you sent a letter to him on September the 9th,  
18 1994, did you not?

19 A Exhibit?

20 Q It's Exhibit 44. Do you have it?

21 A I do.

22 Q So it's addressed to Mr. Garcia Leos, and it's from



1 you?

2 A It is.

3 Q And it says, "Your letter, dated 8/17/94..." His  
4 letter, the letter I just read out to you, is dated 8/17/94. Do  
5 you see it?

6 A It is.

7 Q You were Chairman of the Board at the time, were you  
8 not?

9 A I believe so.

10 Q And paragraph 2 says, "Regarding the application for  
11 the building license in La Pedrera, I am of the opinion that we  
12 should probably not apply for the permit. We have the authority  
13 for PROFEPA to construct and maintain the project. I would like  
14 your opinion whether or not this authority supersedes the license  
15 to construct. I don't know that it does us any good to go before  
16 a body, such as a city council, and know that we are going to  
17 obtain a negative result. I think I would rather ignore the  
18 problem, rather than raise it to a level of awareness. I think  
19 we need to discuss this further."

20 Do you see that?

21 A I do.

22 Q And the date of this document is September the 9th,

1 1994.

2 A It is.

3 Q Mr. Neveau, wasn't this response by you to local  
4 counsel inconsistent with the company's policy?

5 A Of?

6 Q Of applying for local permits.

7 A We didn't believe that the city had any authority or  
8 the municipality had any authority over the construction of the  
9 site at all. As a matter of fact, we had discussed it at length  
10 with both Garcia Leos and Senor del la Garza, and the permit was  
11 not an issue.

12 Q I want to confirm this, Mr. Neveau, it is your  
13 testimony today that the company did not have a policy of  
14 applying for local authorizations.

15 A No, that's not true. The company had a policy of  
16 complying with all local regulations. This was not considered  
17 one of them.

18 Q Let's take a look at Exhibit 38. Would you turn to  
19 page 4. This is taken from the company's annual report, which  
20 was filed five days after you wrote the letter to Mr. Garcia  
21 Leos. Do you see two-thirds of the way down the page a paragraph  
22 which is entitled "Mexican Governmental Regulations and Permits"?

1 A Are we on page 3 or 4?

2 Q Page 4.

3 A I'm sorry.

4 Q This is Tab 38. It's the handwritten five. The actual  
5 type is page 4. Do you see it?

6 A I do.

7 Q Would you read that out to the Tribunal, please.

8 A "Mexican Government Regulations and Permits. The  
9 company's proposed business in Mexico is highly regulated and is  
10 subject to Mexican environmental law. Development of each  
11 proposed hazardous waste treatment facility cannot be commenced  
12 until the company receives a separate unconditional permit to  
13 construct from the applicable--a construction permit--from the  
14 applicable local, state and federal agencies of the Mexican  
15 government. A completed facility cannot be operated until a  
16 company has received a permit to operate, an operating permit,  
17 the facility from such agencies. Although the federal  
18 construction and operating permits take precedence over state and  
19 local authorizations, under Mexican law, the company's policy is  
20 to obtain state and local authorizations before commencing  
21 construction and operation of a facility."

22 Did you want me to read further?

1           A     No. Your letter of September the 9th, asks Mr. Garcia  
2 Leos for his opinion as to the primacy of federal permits,  
3 correct?

4           A     It did.

5           Q     This states as a fact that federal construction and  
6 operating permits take precedence over state and local  
7 authorizations. Do you see that?

8           A     It does.

9           Q     Are you aware that Mr. Garcia Leos testified that he  
10 subsequently informed the company that the statement that federal  
11 permits take precedence over local permits was not correct and  
12 that it was necessary to obtain a municipal permit?

13          A     I was not aware he ever testified to that, nor do I  
14 think it's a fact.

15          Q     This 10-K was finalized in mid-September because it was  
16 a document which formed part of a package that was put to  
17 investors in the United Kingdom in a private offering that was  
18 made in September of 1994, correct?

19          A     Probably. All public offerings would require the  
20 latest 10-K.

21          Q     Right. And this was it.

22          A     To the best of my knowledge, yes.

1 Q Would you turn to Exhibit 46. This is the offering  
2 memorandum which was issued by the company, and I'd like you to  
3 turn to page 5, which has a paragraph at the bottom of the page  
4 entitled, "Risks Associated with Mexican Business."

5 Did you approve this offering memorandum before it was  
6 issued to the investors?

7 A As a member of the Board, I would have approved the  
8 offering memorandum, sure.

9 Q Did you read it carefully before it was given to  
10 investors?

11 A I read it, yes.

12 Q Did you read it carefully?

13 A I would suspect I would have read it carefully. We had  
14 a legal advice on doing it, but I would have read it, in that  
15 regard.

16 Q Would you look about five lines down into the  
17 paragraph, it talks about, "There can be no assurance that the  
18 company will be successful in its landfill operations."

19 The next sentence is what I'd like to direct you to.  
20 "The company believes that it has obtained the support of state  
21 and local governmental agencies to operate the facility." Do you  
22 see that?

1 A I do.

2 Q You had just written to Mr. Garcia Leos five days  
3 before the conclusion of the annual report, instructing him not  
4 to apply for the municipal permit, correct?

5 A I don't think I instructed him not to apply for it.  
6 I'm asking for his advice.

7 Q You did, however, tell investors, just below that,  
8 "There can be no assurance that public opposition to the  
9 operation of El Confin [ph.] will not have a material adverse  
10 impact on its proposed operations and governmental support,"  
11 correct?

12 A That's correct.

13 Q Are you aware, Mr. Neveau, that Mr. Kevin Brennan has  
14 provided a witness statement to this Tribunal in which he states  
15 that, in 1994, he was unaware of any local opposition to the  
16 project?

17 A That would probably not surprise me.

18 Q Mr. Deets told us yesterday that when he was involved  
19 with the company he had an open-door, open-book policy. Does  
20 that ring a bell with you?

21 A That's generally true.

22 Q On October the 26th, the municipality sent a delegation

1 to the site. Do you recall that?

2 A '94?

3 Q No. Yes, October 26, 1994. Do you recall that?

4 A Well, the municipality sent a delegation often to the  
5 site. So I'm not sure which occasion you are talking.

6 Q Are you aware that they were refused entry to the site?

7 A Nobody without an authorized entry permit was ever  
8 authorized on the site. This is a hazardous waste site under  
9 construction.

10 Q So the open-door, open-book policy did not apply to a  
11 municipal governmental delegation.

12 A Absolutely it did. But we asked in writing, I believe,  
13 on more than one occasion, said, "You are welcome to visit the  
14 site, but we'd like you to schedule it."

15 Q Are you aware that on that date the municipality issued  
16 a shutdown order?

17 A I'm not aware of that, no. I don't deny that they may  
18 have, but I don't--I'm not aware of it.

19 Q And the company had already commenced construction,  
20 hadn't it?

21 A They had. We had, excuse me.

22 Q And it was not until this shutdown order that the

1 company decided to apply for the municipal permit, correct?

2 A I don't recall the exact events that either did or  
3 didn't require it.

4 Q Were you in consultation with Mr. Miranda?

5 A Yes.

6 Q Did Mr. Miranda inform you that he received a letter  
7 from a federal official, dated November the 14th, 1994?

8 A He may have.

9 Q It's at Exhibit 48. Would you like to look at it?

10 A Sure.

11 Q Do you have it?

12 A I do.

13 Q Do you see the bottom paragraph before "Respectfully,"  
14 do you see the last sentence there? Would you read it out to the  
15 Tribunal.

16 A "I do not admit to mention that your represented  
17 company shall obtain the corresponding permits and authorizations  
18 from the competent state and municipal authorities."

19 Q I take it, Mr. Neveau, in terms of reviewing the record  
20 or reviewing the pleadings in this case, were you unaware that  
21 the PROFEPA delegate, this particular individual who signed the  
22 letter, a gentleman by the name of Mr. Zaragoza, were you aware



1 that he gave a witness statement in this proceeding?

2 A I didn't know that.

3 Q So you were not aware that he testified that he, in  
4 fact, sent two letters to the company informing it that it must  
5 obtain the permits and authorizations from the state and the  
6 municipality?

7 A I was not aware specifically that that's what he had  
8 asked for, no.

9 Q Were you aware that at the end of 1994, there would be  
10 a change in the municipal administration?

11 A I apologize.

12 Q Were you aware that at the end of 1994, January 1st,  
13 1995, there would be a new municipal administration, a new  
14 council?

15 A In Guadalcazar.

16 Q Yes.

17 A Yes.

18 Q Who became the new municipal President?

19 A I don't recall.

20 Q Do you recall meeting him or her?

21 A I don't recall. I don't think I ever did. I may have,  
22 but i don't recall.

1 Q So the name "Mr. Ramos Torres," does that--

2 A That rings--yeah, I remember that.

3 Q That rings a bell.

4 A Yes.

5 Q Would you turn to Exhibit 16. Mr. Ramos Torres became  
6 the municipal President, I am instructing you, on January the  
7 1st, 1995. This is a resolution of the ayuntamiento, the  
8 municipal council, whereby, respecting the landfill problem, the  
9 municipal President states that he could not decide the issue  
10 regarding the landfill independently, and the municipal council  
11 affirmed their support for the denial of the landfill's opening.

12 And you will see below that, "With respect to general  
13 matters, the proposal to create an Environmental Committee is  
14 approved."

15 Did Mr. Miranda bring this development to your  
16 attention?

17 A I seem to remember the discussion regarding an  
18 Environmental Committee.

19 Q Now, at this time, this is dated February 13th, 1995,  
20 Metalclad was in the final throes of completing construction, was  
21 it not?

22 A Yes, it was.

1 Q And I see from your first witness statement that it  
2 takes approximately 16 weeks to construct the landfill.

3 A Well, it took longer than that, frankly.

4 Q Actual construction time, 16 weeks.

5 A Actual construction time took longer than that and  
6 would take a lot longer that. But we had, I think, put in 16  
7 weeks in the construction up to this point.

8 Q Right. If I look at paragraph 31, it states, "Our  
9 construction contract called for completion in 16 weeks."

10 A It did.

11 Q Would you turn to Exhibit 49. Do you recognize this  
12 document?

13 A I recall this document, yes.

14 Q And at the beginning of the second paragraph it says,  
15 "Without a doubt, the most significant event to occur this past  
16 year for Metalclad is the completion of the first state-of-the-  
17 art hazardous waste treatment facility and confinement ever built  
18 in Mexico." Do you see that?

19 A Which paragraph?

20 Q It's the second paragraph, "Without a doubt--"

21 A "Without a doubt," yes, I see that.

22 Q And this document is dated March 6th. If you look at

1 the second page at the bottom corner, there's a handwritten five,  
2 but I'm instructed that it's March 6, 1995, and that would make  
3 sense, wouldn't it?

4 A I accept your instruction.

5 Q There was a ceremony planned for March the 10th, 1995,  
6 correct?

7 A There was.

8 Q And that ceremony, when it took place, there was a  
9 demonstration outside of the landfill, correct?

10 A There was.

11 Q Who is Anthony Talamantez?

12 A He worked, I think, for us. At that time, he was an  
13 engineer on the site.

14 Q Would you turn to Exhibit 62. This is an excerpt from  
15 the witness statement of Mr. Talamantez, which was filed by the  
16 Claimant with its reply. And it discusses events occurring on  
17 the date of March 10th, 1995.

18 Paragraph 6 you will see some discussion there by the  
19 witness, and about halfway through his paragraph he says, "Dan  
20 Delatore [ph.] and I got out and walked towards the front of the  
21 buses, where the demonstrators had gathered. At the same time,  
22 the demonstrators began yelling for Humberto Rodarte, who was

1 inside one of the buses. They looked extremely unhappy and were  
2 insistent that they speak to him immediately. They were accusing  
3 him of taking kickbacks and selling out to the Americans."

4           Were you aware of that particular part of the March  
5 10th incident?

6           A     I was not aware that they were accusing him of taking  
7 kickbacks. I knew they wanted to speak with them insistentlly.

8           Q     Did you know that Mr. Rodarte was the SEDUE subdelegate  
9 in San Luis Potosi when the site was initially contaminated?

10          A     Well, I think "contamination" is the wrong word. When  
11 the site was first operated?

12          Q     Operated as a transfer station.

13          A     Yes.

14          Q     And that it was under his watch that the 55,000 barrels  
15 of waste accumulated at La Pedrera?

16          A     I'm not sure anybody ever had an accurate count of the  
17 number of barrels, but I think he was there when the transfer  
18 station started to take waste.

19          Q     Were you aware that the local priest attended the March  
20 10th demonstration?

21          A     I don't recall him specifically. He could certainly  
22 have been there. There were a lot of people there.

1 Q He has provided a witness statement in this proceeding.  
2 He testifies, and this is agreed by Mr. Garcia Leos, that  
3 Metalclad's counsel met with him and asked him to stop  
4 criticizing the landfill in his sermons. Were you aware of that?

5 A We actually asked Garcia Leos to do that, yes.

6 Q Did you discuss the opening ceremony with Garcia Leos  
7 before you held it?

8 A Yes.

9 Q Would you turn to Exhibit 56. This was a letter which  
10 was addressed, dated March 13, 1995, it's addressed to Mr. Kesler  
11 from Mr. Garcia Leos and Mr. de la Garza, wherein they made  
12 comments on the approach which you had taken with respect to the  
13 opening event of the landfill.

14 Did Mr. Kesler share this letter with you?

15 A I believe I saw it.

16 Q I take it, Mr. Neveau, that in view of statements that  
17 have been made to the investing public, Metalclad felt some  
18 pressure to get this landfill open.

19 A There was no pressure. We were trying to open it in an  
20 orderly fashion.

21 Q All right. Well, let's look at Exhibit 58. Do you see  
22 this is a press release, which was issued on November the 11th,

1 1993. And it reports on Metalclad's annual shareholders'  
2 meeting. Do you see it?

3 A Yes.

4 Q Do you see the second paragraph?

5 A Yeah, I do.

6 Q "It was also announced the that company expects the  
7 COTERIN landfill to be fully operational in early 1994 and be a  
8 profitable operation by the end of the fiscal year ending May 31,  
9 1994," correct?

10 A It does.

11 Q The landfill had not been constructed, in any way, by  
12 November the 11th, 1993, correct?

13 A It had not, no.

14 Q We had some questions, Mr. Neveau, about the  
15 termination of your local counsel. There was a question about a  
16 letter which was sent by Metalclad on April the 28th, 1995. This  
17 was a letter that terminated the services of Bufete de la Garza.  
18 Do you recall that letter?

19 A I do.

20 Q And you testified in your witness statement that that  
21 letter was drafted by Mr. Kesler in California and then sent down  
22 to Mexico where it was prepared in Spanish in one of the Mexican

1 offices and then hand-delivered to the offices of Bufete de la  
2 Garza, correct?

3 A I believe that was my statement, yes.

4 Q And the company has pointed us to a signature that  
5 shows or appears to show the receipt of the letter took place at  
6 4 o'clock in the afternoon. Are you aware that Mr. Kesler has  
7 repudiated your testimony in this?

8 A Not directly, but my recollection may be incomplete.

9 Q What do you mean "not directly"?

10 A Well, in other words, I understand that there is some  
11 issue that Mr. Kesler may have signed the letter in San Luis, and  
12 that may very well be possible. There were a lot of things going  
13 on there.

14 Q How were you aware of that issue?

15 A I was looking through my testimony or my declaration,  
16 and I recalled that during that period of time Mr. Kesler was  
17 coming in and out of the country, and that--

18 Q Mr. Kesler just told us last week that you were wrong.  
19 There's nothing on the record that says you were wrong. Mr.  
20 Kesler told us that.

21 A No, I agree with that.

22 Q Did somebody tell you that Mr. Kesler testified to that



1 effect?

2 A I think so, yes.

3 Q Who was that?

4 A Mr. Kesler.

5 MR. THOMAS: I think that completes my cross-  
6 examination, Mr. President.

7 PRESIDENT LAUTERPACHT: Thank you, Mr. Thomas.

8 We will now--Mr. Pearce or Mr. Cling, you wish to re-  
9 examine Mr. Neveau, but it's 12:54. So I think this would be a  
10 good time to break.

11 MR. PEARCE: Mr. President, with respect to re-  
12 examination, the Respondent has gone through quite a lot of  
13 documents. Unless we are entitled to take the book so that we  
14 can refer to these documents, we will need to have some reference  
15 to where they are in the record in order to fairly refer to them  
16 and be able to conduct a Redirect.

17 PRESIDENT LAUTERPACHT: Well, you should have a copy of  
18 your own.

19 MR. THOMAS: I have no objection to that, Mr. Pearce,  
20 so long as you don't talk to the witness.

21 PRESIDENT LAUTERPACHT: Yes, indeed. You are free to  
22 use the book that's in front of the witness now. No doubt a copy

1 could be made. I don't understand why a copy wasn't made  
2 available to you.

3 MR. THOMAS: This has been the practice, Mr. President.  
4 The practice has been to have counsel sit beside the witness and  
5 go through it.

6 PRESIDENT LAUTERPACHT: I see. Well, he will take the  
7 witness's book with him over lunch. And will you be able to  
8 start at 3 o'clock?

9 MR. PEARCE: Yes, sir.

10 PRESIDENT LAUTERPACHT: Fine.

11 All right. Well, then let us do that. We will  
12 adjourn now until 3 o'clock.

13 Mr. Neveau, you must appreciate that, as a witness, you  
14 are sequestered until 3 o'clock. You really should not talk  
15 about the case with anybody on the Claimant's side or on either  
16 side. But, in particular, neither with counsel nor with other  
17 people who have given evidence. You just have to have a lonely  
18 lunch and keep yourself to yourself.

19 You testified a few moments ago that Mr. Kesler had  
20 told you something. Can you tell us when Mr. Kesler had told you  
21 that?

22 THE WITNESS: I believe it was several months ago.

1           PRESIDENT LAUTERPACHT: I see. Several months ago.

2           THE WITNESS: Sure.

3           PRESIDENT LAUTERPACHT: The impression, from what you  
4 said, was somewhat different.

5           THE WITNESS: Oh, I'm sorry. I didn't mean to do that.

6           PRESIDENT LAUTERPACHT: All right. Good. Well, we'll  
7 leave it at that for now, and we'll adjourn until 3 o'clock.  
8 Thank you.

9           [Whereupon, at 12:56 p.m., the proceedings were adjourned to  
10 reconvene at 3 p.m., the same day.]

11