WITNESS STATEMENT OF JORGE ADOLFO HERMOSILLO SÍLVA

1. My name is Jorge Adolfo Hermosillo Sílva. I am a Mexican citizen residing and originally from the City of Cerro Azul, Veracruz. I am an electrical engineer by training. At the present time I carry on business as a financial broker. I have been asked by legal counsel representing the United Mexican States to answer certain questions in connection with a claim under the NAFTA by Metalclad Corporation ("Metalclad") concerning its attempt to establish a hazardous waste landfill in the Municipality of Guadalcazar, San Luis Potosi.

2. I have been asked by counsel to describe the corporate structure and identify the shareholders in three companies that I caused to be incorporated for the purpose of establishing hazardous waste disposal facilities in Mexico. The following companies were incorporated:

a) Eco-Administración, S.A. de C.V. ("Eco");

b) Descontaminadora Industrial de Veracruz, S.A. de C.V. ("Descontaminadora")

and

c) Eliminación de Contaminantes Industriales, S.A. de C.V. ("Eliminacion").

3. With respect to the first company, in May 1991, I applied for and received approval to incorporate a company with minority ownership by foreign investors. Of the several proposed names I submitted, Eco was approved. Eco was incorporated following the execution of a Joint Venture Agreement on July 25-26, 1991 (Exhibit 1) that would enable Eco to finance and develop its intended project, a industrial hazardous waste incinerator in the Municipality of Santa Maria del Rio, San Luis Potosi.

4. The joint venture was between two groups: (1) the "Mexican Group", consisting of myself, Jaime de la Fuente Mora, Jose Rodriguez Rodriguez, and Luis Javier Campos Hermosillo which held 100% of the Series "A" shares of common stock, 51% of the total shares; and (2) the "American Group", consisting of Terry Douglas, Reed Warnick, Grant S. Kesler and Ronald Robertson. The American Group held 100% of the Series B shares of common stock which amounted to 49% of the shares in Eco. The American Group owned their shares through a company called Environ Technologies, Inc. ("ETI") which they had incorporated in the State of Utah. Two percent of the shares were put in a trust so that the Mexican Group and the American Group would have equal voting strength.

5. The American group later sold their shares in ETI to Metalclad and ETI's name was changed to Eco-Metalclad. Soon after the ETI shareholders sold their shares to Metalclad, Terry Douglas and Reed Warnick had a disagreement with Grant S. Kesler and left the company.

6. The Joint Venture Agreement set out the different responsibilities of the two Groups. The American Group was to provide the financial contribution. For example, under the Fourth Clause

b) 1) of the agreement they agreed to pay $ 65,000 USD to Grupo CIMA as "fees for the environmental impact study..

7. I had met with a number of other potential joint venture partners before entering into the joint venture agreement with the American Group. They included Peyton McKnight (an investor from Texas), Tyler Environmental Inc., and the engineering firm of Ford, Bacon & Davis. Terry Douglas and Reed Warnick were employees of Ford, Bacon & Davis. They introduced me to Grant S. Kesler. They told me that Mr. Kesler was interested in the project and had the capital that we required.

8. Sometime after Eco was incorporated, I suggested to Grant S. Kesler that two new companies should be incorporated, one in Veracruz and one in Tamaulipas, for the purpose of constructing hazardous waste incinerators in those states. My reason was that I wanted to reach a broader market. Each incinerator would have a capacity of about 65,000 tons per year. The facility in SLP was expected to receive hazardous waste from the center of Mexico. I wanted to establish a facility in Veracruz to receive waste from the south and a facility in Tamaulipas to receive waste from northern Mexico. When I explained my plan to Mr. Kesler, he approved of the idea. He told me that he thought it was important to show future investors that we had additional projects under development. However, development of a hazardous waste incinerator at San Maria del Rio remained our primary objective during the time that I was affiliated with the three companies. In fact, we did very little in the way of work on the other two companies, and did not apply for the necessary permits.

9. As indicated in Article Five of the deed of incorporation of Eco (Exhibit 2), its authorized capital was 100 million old pesos, represented by 10,000 common shares. The shares were divided into two series, A and B, and the deed contained restriction on the sale of the shares. The shareholders listed in the Transitory Article One were:

Series "A"		
Jorge Hermosillo Silva	1,900 shares	
Jaime de la Fuente	1,700 shares	
Luis Javier Campos Hermosillo	600 shares	
Juan Antonio Rodríguez Rodriguez	500 shares	
Lucía Rátner	400 shares	
Total		5,100 shares
Series "B"		

ETI	4,900 shares	
Total		4,900 shares
Total of shares issued		10,000 shares

10. I have been asked to identify Lucía Rátner, a Series A shareholder in Eco who was not a member of the Mexican Group, and to advise whether Grant S. Kesler knew her identity when Eco was incorporated. Lucía Rátner is the wife of Humberto Rodarte Ramon. Mr. Rodarte Ramon was the sub-delegate of SEDUE in San Luis Potois at the time that Eco was incorporated. Grant S. Kesler knew Lucía Rátner was his wife and approved of the issuance of 400 Series A shares to her.

11. As indicated in the section for Distribution of Profits and Losses of the deed of incorporation of Descontaminadora (Exhibit 3), its authorized capital was 100 million old pesos representing 10,000 shares. The shareholders were as follows:

Series "A"		
Jorge Hermosillo Silva	2,150 shares	
Jaime de la Fuente	2,150 shares	
Arturo de la Llave Uriarte	200 shares	
Juan Manuel Muñiz Navarrete	200 shares	
José Raul Antonio Rodríguez	400 shares	
Total		5,100 shares
Series "B"		
Eco-Metalclad Inc.	4,900 shares	
Total		4,900 shares
Total of shares issued		10,000 shares

12. I have been asked to identify Arturo de la Llave Uriarte and Juan Manuel Muñiz, the other shareholders in Descontaminadora, and explain why they were asked to join the company. Mr. Arturo de la Llave is the brother-in-law of Mr. Jaime de la Fuente Mora. He is a lawyer from Veracruz and is well known in the business community of that state. Mr. Juan Manuel

Muñiz is the right hand of Mr. de la Llave in his law firm and is also well regarded in the business community. I know both Messrs. De la Llave and Muñíz personally. Mr. de la Llave knew of a parcel of land that would be suitable for a hazardous waste disposal facility. So it was agreed that he and Mr. Manuel Muñiz would become shareholders in Descontaminadora. It was also agreed that Mr. de la Llave's office address would be used as the company's address for the time being.

13. Regarding Eliminacion, I do not have a copy of the deed of incorporation but, to the best of my recollection, the shareholders were the same as Descontaminadora and their shareholdings were similar, if not identical, to their shareholdings in Descontaminadora.

14. I have been asked whether I know the identity of José de Jesús de la Torre y Ortega who, as indicated in a share purchase agreement dated February 23, 1993 that counsel has shown to me (Exhibit 4), purported to sell to Metalclad 800 Series A shares in Descontaminadora – consisting of 400 shares he claimed to hold on my behalf and 400 shares he claimed to hold on behalf of Mr. Jaime de la Fuente – and 800 Series A shares in Eliminación that he claimed to own in his own right.

15. I state that I do not know who Mr. José de Jesús de la Torre y Ortega is. During the time that I was associated with the companies, there was no shareholder by that name in Eco-Administración, Descontaminadora, or Eliminación, nor did any person with that name have any connection, that I am aware of, with any of the three companies.

16. The deeds of incorporation of all three companies contained restrictions against the sale of shares without first offering such shares to the other shareholders holding the same series of shares. Moreover, the bylaws of each company also required the approval Board of Directors prior to the transfer of shares.

17. I was never asked, as a director or as a holder of Series A shares, to approve the sale or transfer of existing shares, or the issuance of new shares, to Mr. José de Jesús de la Torre y Ortega or to any other person. In fact, in December 1992, just two months before the Eco-Metalclad–De la Torre share purchase agreement, in response to Metalclad's attempt to purchase the shares of the other members of the Mexican Group, I commenced a lawsuit against ETI (Eco-Metalclad) to prevent changes to the deed of incorporation, and I filed a criminal complaint against Jaime de la Fuente (a Series A shareholder of Eco-Administracion) on the grounds that the purported sale of his shares to Eco-Metalclad had not been approved by the Board of Directors.

18. Moreover, to the best of my knowledge, neither Arturo de la Llave Uriarte or Juan Manuel Muñíz Navarrete (shareholders in Descontaminadora and Eliminación) sold or transferred their shares to Mr. José de Jesús de la Torre y Ortega or anyone else. I therefore believe that Exhibit 4 is a sham.

19. I have been asked to explain the circumstances surrounding the execution of a licensing agreement with Molten Metal Technology, Inc. ("MMT") that counsel has shown to me (Exhibit 5). In the latter part of 1991, Mr. Kesler proposed that Eco use a new process under development by MMT that, if it worked, would enable us to recover and recycle various waste products and reduce or eliminate emissions that would otherwise be produced by an incinerator. Mr. Kesler repeatedly told me that he thought this technology was very promising and could be extremely valuable once it had been successfully used in a commercial hazardous waste facility.

20. Terry Douglas and Reed Warnick opposed using the MMT process because it was still under development. They preferred to use rotary slagging kiln technology because it had been used for years in the U.S. and Europe and its capabilities and costs were well known. As indicated in the minutes of a meeting we held with them in late November 1991, in the absence of Mr. Kesler (Exhibit 6), I initially agreed with them.

21. Mr. Kesler later persuaded me that the MMT process had enough potential value that we should enter into an agreement to try it at Santa Maria del Rio to see if it was commercially viable. However, as indicated in his letter to me dated December 6, 1991 (Exhibit 7), he also wanted me to sign a licensing agreement whereby he and I would become the licensees of the technology for projects other than Santa Maria del Rio.

22. I had some concerns about this and requested that he consult with Ron Robertson about the idea. I later received a letter dated January 3, 1992 which stated that Mr. Kesler had cleared the matter with Ron Robertson and addressed my concerns (Exhibit 8). However, I do not know whether Ron Robertson actually reviewed the agreements as Kesler claimed at the end to the letter. As I recall, Terry Douglas and Reed Warnick had by then severed their relationship with ETI.

23. In early January, I participated in a press conference in Washington D.C. where we announced the formation of Eco-Administración. At the time that this event was held, we had not seen MMT's technology actually operate. Shortly after the press conference in Washington, D.C. in January 1992, we went to Houston, Texas to see a pilot test of MMT's technology on a small scale. The demonstration was a complete failure. THIS IS WHAT JAMES THINKS WAS SAID

24. I have been asked to describe the events leading to my removal as Director General of Eco and the surrender of my shares in Eco, Descontaminadora and Eliminacion. I started to have disagreements with Mr. Kesler in around June of 1992. In May 1992, Mr. Kesler sent a "Letter of Understanding" to the Mexican investors describing the terms upon which Metalclad proposed to purchase the shares of the Mexican group in Eco and the other two companies (Exhibit 9) if it succeeded in a private placement of Metalclad stock that was then underway. Then in June 1992, he circulated a second "Letter of Understanding" that set out the terms upon which Metalclad would purchase the shares of the Mexican Group upon entering into a joint venture with a major U.S. corporation (Exhibit 10).

25. I never approved of either of these proposed agreements. Although I thought it was important to enter into a joint venture with a major company that could provide capital and technical expertise, I did not want to sell my shares in a company that I had worked hard to establish.

26. I have been asked to review a press release that Metalclad issued on May 19, 1992 (Exhibit 11) in which it claims that an agreement in principle had been reached for the wholly owned subsidiary of Metalclad, Eco-Metalclad, (the renamed ETI) to purchase the remaining shares owned by the Mexican investors. This was not true. Metalclad had made a proposal but it had not been accepted by the Mexican Group.

27. I was not interested in selling my shares because, first, I had concluded that Grant S. Kesler was more interested in selling stock than building and operating hazardous waste disposal facilities in Mexico. I had worked very hard on the Santa Maria del Rio project and wanted to remain actively involved in Eco, both as an owner and an officer, in the years to come. Second, I doubted whether I would ever receive any meaningful payment under the agreement. Third, I did not accept the idea of selling shares to the public when we were far from even commencing construction at Santa Maria del Rio.

28. Mr. Kesler and I also disagreed over accounting issues, among other things. For example, he wanted me to accept that certain of Metalclad's expenses would be attributed to the Santa Maria del Rio project and booked in Eco-Administracion's accounts, such as salaries for Metalclad's American employees, a draftsman's rendering of what an incinerator might look like, and other U.S. expenditures. These expenditures related to Metalclad's own initiatives and costs and, had I agreed, the Mexican investors would have owed even more money to Metalclad. For that reason, I resisted his attempt. Metalclad began to reduce the funds that it was willing to provide to Eco. Metalclad also reduced my salary from $10,000 per month to $6,000 per month. (Exhibit 12).

29. Attached as Exhibit 13 is a copy of a draft financial statement that Mr. Kesler sent to me. He wanted me to adjust Eco's financial statement to reflect a larger contribution by Eco-Metalclad. I refused.

30. On October 14, 1992, I sent a long letter of resignation to Grant S. Kesler (Exhibit 14). I felt that there had been a lot of wasted time and money and that Metalclad had financial problems. Eco was having difficulty obtaining funds from Metalclad, I was owed a substantial sum for salary and expenses, and Metalclad was still trying to charge the Mexican Group's account under the Joint Venture Agreement. I proposed therefore to remain as a passive shareholder in the company.

31. On November 11, 1992, Metalclad made another offer to purchase my shares (Exhibit 15). Similar offers were made to Jaime de la Fuente and Jose Rodriguez. I wish to point out that although Mr. Kesler was talking about potential joint venture partners, no such joint venture had

been concluded. Moreover, the terms of the proposal were much less attractive than those proposed in May and June.

32. Although Jaime de la Fuente and Jose Rodriguez accepted the offers that Metalclad made to them, I did not find the proposal attractive. Grant S. Kesler urged me to sign the agreement before the annual meeting of shareholders two days later. At that time I was elected to the Board of Directors of Metalclad. I did not attend the annual meeting.

33. Mr. Kesler also responded to my offer to resign on November 17, 1992, stating that the American Group would not accept my resignation and that they expected me to remain as Director General of Eco and work very hard "until the day you die" (Exhibit 16). He wrote to me again on November 20, 1992 to thank me for my assistance and to request further assistance in obtaining information required by ICF Kaiser (Exhibit 17).

34. On or about November 23, 1992, Jaime de la Fuente became the first of the other Mexican shareholders to try to sell his Series A shares to Eco-Metalclad (formerly ETI) without first offering them to the other Series A shareholders. If this was permitted to occur, Eco-Metalclad would become the majority shareholder of Eco-Administracion, Descontaminadora, and Eliminacion.

35. On December 4 and 5 1992, Metalclad's legal representative, Lic. Manuel García Barragán, published a notice of an extraordinary meeting of the shareholders of Eco, to be held on December 21, 1992 (Exhibit 18) for the purpose of (1) modifying the company's bylaws to permit majority ownership by foreign investors and to allow the board of directors and assembly of shareholders to adopt resolutions without the necessity of conducting meetings; and (2) to designate corporate delegates.

36. On December 10, 1992, I commenced a civil lawsuit against ETI wherein I asked the Court to direct the Public Registry to mark Eco's deed of incorporation with a notation stating that no changes to the deed of incorporation would be allowed pending resolution of my claim. I also asked for rescission of the joint venture agreement, dissolution of Eco, damages, and other relief (Exhibit 19).

37. On December 16, 1992, I filed a criminal complaint against Jaime de la Fuente on the grounds that he had purported to sell shares in Eco without the approval of the Board of Directors (Exhibit 20). A day or two later, Lic. Manual García Barragán attended the office and had the locks changed. I was told to leave.

38. On December 21, 1992, I went to Eco's offices at the appointed time for the extraordinary shareholders' meeting, but the only person there was a Notary Public, Froylan Larraga Reyes and at the door was Mr. García Barragán. I informed him that I had commenced a lawsuit and that he should not authorize the initiation of the meeting until the Court ruled on my claim.

39. The Notary Public was my friend and I asked him to support me, but he told me that I had problems with Mr. García Barragán and I should leave. After I left the building, I saw other shareholders enter the offices to hold the shareholders' meeting.

40. On January 6, 1993 the Director of the Public Registry of Property and Commerce endorsed Eco's certificate of registration with a notice stating that the company was involved in a lawsuit and that no changes can be made to the original terms of the company's deed of incorporation until the lawsuit is resolved (Exhibit 21). Unfortunately, the harm was already done. I had been expelled from Eco-Administracion's office, the other shareholders had purported to approve the necessary changes to the company's bylaws, and a new Director General had been appointed in my place.

41. During January 1993, Mr. Kesler called me on several occasions and asked me to go to Newport Beach to discuss our differences. I refused. In early February he called again and threatened to bring legal proceedings against me if I did not cooperate. He said that Metalclad had the resources to fight me for five years and that I would ultimately lose.

42. I then received a letter from Mr. Bruce Haglund, Metalclad's U.S. legal counsel, advising me that the Board of Directors would meet on February 22, 1993 (Exhibit 22) to discuss, among other things, my lawsuit against ETI and my "apparent intention to subvert the business of Eco...to (my) personal benefit". I did not attend the meeting and do not know if it was held.

43. During March and April I was subjected to a variety of threats and acts of intimidation, mainly by Lic. García Barrigan. These included an intrusion into my personal life and other matters, including allegations that I had embezzled money from Eco. I am willing to explain these in greater detail if the Tribunal so requests.

44. On May 11, 1993 I signed mutual release agreements with Lic. García Barragán and agreed to surrender my shares in Eco, Descontaminadora and Eliminacion and to surrender the provisional stock certificates of the other shareholders that I had held until May 11, 1993. (Exhibit 23). Although the agreement provided that I was to be paid par value for my shares, I did not receive any money. I was more interested in obtaining a release from Metalclad so that I could wash my hands of the whole matter and avoid any future liability arising from any potentially fraudulent sale of shares, which I had not approved.

45. Upon signing the agreement, I turned over share certificates for myself, Luis Javier Campos Hermosillo, Lucía Rátner, and Jaime de la Fuente.

46. I have been asked whether Eco obtained authorization from the Municipality of Santa Maria del Rio to construct a hazardous waste incinerator. In fact, I first obtained an authorization from the Municipal President of Matehuala, which was the original site that was proposed for the incinerator, long before I met the American Group. That was issued on April 20, 1990 (Exhibit 24). The location of the project was later changed to Santa Maria del Rio where there was better access to the quantity of water needed to operate an incinerator. The

Ayuntamiento of Santa Maria del Rio issued its authorization on September 19, 1992, following a meeting of the Cabildo held on September 18, 1992 (Exhibit 25).

47. I have been shown copies of some of Eco's financial statements for the period ending December 31, 1992 attached to this statement as Exhibit 26.

48. I have been asked to review a document called "Metalclad Corporation Landfill Development – Costs Incurred" (Exhibit 27). I can confirm that none of the costs alleged to have been incurred in calendar years 1991 and 1992 had anything to do with Metalclad's subsequent purchase of COTERIN in September 1993.

49. I am surprised at the magnitude of the costs that have been claimed. For example, in my experience, it should be possible to develop *three* hazardous waste landfills for the $5.4 million that ECOPSA claims to have spent on "property, plant and equipment" between 1991 and 1996.

50. I have also examined Schedule B (Exhibit 28). I note that Metalclad claims to have incurred expenditures of $2,816,200 for the first five months of 1993. Although I was not involved in the initial stage of acquiring COTERIN, I think it is highly unlikely that costs of that magnitude could have been incurred. In the preceding two years Eco had received and expended approximately $800,000 for development of the Mexican projects, including payments for sites at Santa Maria del Rio ($250,000) and Descontaminadora ($200,000, which was 50% of the total price).

51. I should also note that under my direction, Eco did extensive work on identifying the potential market for our projects, as well as preparation work and subsoil studies.

52. I make this statement at the request of the Government of Mexico with the intention of responding to questions that counsel have put to me. I have answered such questions truthfully and to the best of my recollection. I acknowledge that I can be required to appear before the Tribunal to provide further testimony and to be cross-examined on the evidence. I declare that the information contained in this witness statement is to the best of my knowledge, the most accurate and truthful information.

Signed in Cerro Azul Veracruz, Mexico, on April 16, 1999

[Signature in the original]

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Jorge Adolfo Hermosillo Sílva