

NOTICE OF INTENT TO SUBMIT A CLAIM TO ARBITRATION

Mr. Carlos Garcia Fernandez
Dirección General de Inversión Extranjera
Alfonso Reyes No. 30
Col. Condesa
Mexico, D.F. 06179

His Excellency Jesus Silva Herzog
Mexican Ambassador to the United States
1911 Pennsylvania Avenue
Washington, D.C. 20006

Attn: His Excellency Jesus Silva Herzog

David J. St. Louis, Attorney at Law, as legal representative of Messrs. Robert Azinian, Kenneth Davitian, and Ellen Baca ("U.S. Investors"), who own and control 74% of Desechos Solidos de Naucalpan, S.A. de C.V., respectfully hereby states that:

In accordance with the provisions of Chapter XI of the North American Free Trade Agreement ("NAFTA"), the U.S. Investors hereby give notification of their intent to submit a claim of arbitration against the Federal Government of the United States of Mexico for the reasons explained hereunder. Therefore, in fulfillment of Articles 1117 and 1119 of NAFTA, the following information is set forth:

A. Disputing Party Information

U. S. Investors:

Robert Azinian
2934 1/2 Beverly Glen Circle
Suite 405
Los Angeles, CA 90077

Kenneth Davitian
164 E. Palm Avenue, #103
Burbank, CA 91502

Ellen Baca
13222 Addison Street
Sherman Oaks, CA 91423

Enterprise:

Desechos Solidos de Naucalpan, S.A.
de C.V. ("DESONA")
Estacas No. 29, Colonia Centro
Naucalpan de Juarez
Estado de Mexico, 53000

Notification Address:

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Attorney at Law
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B. Issues and Facts Basis for the Claim

1. During 1991, due to severe waste management problems in the Municipality of Naucalpan de Juarez, State of Mexico ("Municipality" or "Naucalpan"), the municipality invited a number of domestic and foreign companies having expertise in the area to elaborate proposals for a solution, with the intention of granting a concession for a solid waste management project.
2. The Naucalpan Municipal authorities had determined that the company to which the concession would be granted had to be incorporated under the laws of the United States of Mexico and at the specific request of the then Mayor Mario Ruiz de Chavez, incorporated by individuals, instead of companies, in order to guarantee "transparency" of the company's operations.
3. In January and February of 1992 officials of the Municipality made trips to several cities in the US where they visited the facilities of the companies that were participating in the process in order to observe directly the experience and competence that these companies brought to their waste management services.
4. Among the 16 companies that presented proposals there was a highly qualified and well experienced waste management consortium, Bryan A. Sturat & Associates, Global Waste Industries, and Sunlaw Energy Corporation, all California-based companies (the "Consortium"), which jointly undertook a comprehensive study of the solid waste management program in Naucalpan and made extensive topographical and geographical studies of the existing landfill at "Rincon Verde" and of the site for a future landfill at "Corral del Indio", with the aim of designing an integrated solid waste disposal system for Naucalpan.

5. Following ten months of deliberations and several trips to California, the Municipal authorities concluded that the most qualified group to undertake the project was the "Consortium," for the solution it had presented was the most appropriate for Naucalpan. At that time the members of the Consortium were strongly encouraged by Municipal officials to form a Mexican corporation and to be prepared to present the project to the City Council.

6. After such instruction, Desechos Solidos de Naucalpan S.A. de C.V. ("Desona") was incorporated under the laws of Mexico, as evidenced in public deed number 6,477 dated November 4, 1992, granted before Notary Public number 7 for the District of Cuautitlan Izcalli, State of Mexico, Mr. Benjamin de la Peña Mora.

The Consortium clearly provided that DESONA would work in Naucalpan with the technical and economic support of such Consortium through a Memorandum of Understanding.

The project was presented to the Naucalpan's City Council and approved unanimously.

7. As required by the Mexican Municipal Organic Law, since the term for which the concession was granted exceeded the term of the administration that granted it, a ratification of the awarding of the concession by the Legislature of the State of Mexico was needed. For that purpose a full week of hearings in front of the Ecology Commission of the State Congress, a 28 member panel, was scheduled for early August 1993. In the meantime, pursuant to erroneous instructions given by officials of Naucalpan, the shareholders of DESONA incorporated a new company named "Desechos Solidos 1 de Naucalpan S.A. de C.V. ("DESONA I"), in Naucalpan, believing that this would facilitate approval of the concession by the State Legislature. (DESONA had been incorporated in Cuautitlan, Izcalli).

8. On August 16, 1993, through the enactment of Legislative Decree number 213, the Legislature of the State of Mexico authorized the Municipality of Naucalpan to award the Concession to DESONA for a period of 15 years, granting the Municipality the authority to establish all necessary terms of that contract.

9. After three months of extensive and detailed contractual negotiations, on November 15, 1993, the Municipality and DESONA executed the concession agreement for the public services of collection and transport of all residential, commercial and industrial non-toxic solid waste generated in the Municipality (Phase 1), the recycling and processing of all non toxic solid waste (Phase 2), the operation of the existing landfill at "Rincon Verde" and the design, construction and operation of future landfills (Phase 3), and the construction and operation of a bio-gas based electrical power plant (Phase 4)¹ ("Concession Agreement").

¹ Implementation of this phase subject to permits to be issued by CFE.

10. DESONA began performance under the Concession Agreement only two days after the execution date, it began distributing steel containers to the industries of the area and collecting their waste with brand new front loader trucks that had been imported from the US, it assumed rights and responsibilities of the Municipality's lease contract for the Rincon Verde landfill and began topographical and geographical studies with US landfill engineers for expanding the life of the landfill. Promptly, DESONA began sanitation of the landfill and exercised control over access to it, controlling, among other factors, the deposit of toxic waste.

11. Moreover, DESONA engaged in many activities beneficial to the operation of the landfill, relocating scavengers to a safer work location, extending and rehabilitating all bio-gas pipes, purchasing vehicles for landfill use, renting special equipment to fix access roads and for dust control, implementing weekly cleanup programs, hiring security guards to patrol the landfill, providing uniforms to personnel and training workers and mechanics.

12. In addition to the waste collection project, DESONA was in the process of negotiating a joint venture agreement with Northside Steel Fabricators of British Columbia, Canada, under which the two companies would co-own and operate a front load truck and container manufacturing facility in the State of Mexico.

13. On December 1, 1993, DESONA began residential waste collection services. According to the service schedule set out in the Operations Program of the Concession Agreement, DESONA was to gradually assume waste collection responsibilities for each of the Municipality's nine sectors. Service for the first sector, Satelite, was scheduled to begin on December 1, 1993, and service for the second sector Echegaray was scheduled to begin on March 1, 1994.

14. On January 1, 1994, a new administration went into control of the city government. For reasons not attributable to DESONA, when the new administration took office, the Municipality started to face new waste accumulation problems in those sectors in which DESONA had not yet assumed responsibility. In order to cooperate and support such additional collection efforts, DESONA needed permission from the competent Mexican authorities to allow entrance of 17 used trucks sitting on the US Mexican Border.

15. The Ministry of Commerce and Industrial Development ("SECOFI") denied the importation of the 17 trucks. Thus, DESONA was not able to accelerate its services. Nonetheless, DESONA did respond to an immediate waste crisis in another sector called "El Molinito," although DESONA was not obligated to begin service in El Molinito" until October, 1994. The Municipality never paid DESONA for these services or any other service it provided while operating the concession.

16. On February 25, 1994, DESONA's shareholders, the new Municipality officials and the authorities of the Ecology Commission of the State of Mexico attended a meeting in order to review and clarify the obligations of DESONA, of the Municipality and of the Ecology Commission. In this meeting, at no time did the Municipality officials voice any

complaints about DESONA's performance, under the Concession Agreement.

17. In early March 1994, DESONA learned through a newspaper reporter that the Municipality's Council was beginning an administrative proceeding to invalidate the Concession Agreement and nullify the concession. This council drew up a list of 27 groundless "irregularities" and gave DESONA only four days to respond to these arguments. This demand specifically infringed the Concession Agreement's provision that established a 30-day period to restore or conciliate any misunderstanding between the parties.

18. On March 21, 1994, Naucalpan's Council repudiated and nullified the concession granted to DESONA. Immediately following the notification to its shareholders DESONA's personnel was rejected from their operating facilities and from the landfill under armed escort.

19. Following this nullification, the Municipality engaged in various acts of intimidation and harassment in an attempt to force DESONA to leave Naucalpan, such as, among other things, unlawful search of DESONA's offices by Municipality officials and judicial police, campaigns of denunciation and slander and unreasonable harassment through tax audits of DESONA's records.

20. The DESONA corporation sought injunctive relief from the local courts, complaining of violation of its rights to notice and due process and the terms of Article 30 of the contract, and the constitution of Mexico Articles 14 and 17. The violation of those rights went unredressed.

21. The Municipality and DESONA attempted a settlement of the dispute of the breach of the Concession Agreement and a tentative settlement was reached in March, 1995. However, the Municipality has repudiated said settlement.

C. NAFTA Provisions That Have Been Breached

1. **Article 102 (c)** The main principles and rules governing NAFTA for the protection of investors are, among others, National Treatment, Most-Favored-Nation Treatment and Transparency. The proper application of these principles increases substantially the investment opportunities in the territories of the Parties. As indicated above, both the U.S. Investors and DESONA have been deprived of these rights several times.

2. **Article 1102 (3) (4) (National Treatment)** As will be set forth through evidence presented in the requested arbitral proceedings, the U.S. Investors and DESONA have been treated by the State of Mexico less favorably than Mexican enterprises or individuals in like circumstances, regarding the establishment, management and operation of investments. Moreover, an equity requirement was imposed ordering DESONA to admit domestic shareholders in its corporate structure, in violation of this article.

3. **Article 1105 (Standard of Treatment)** According to this provision "each Party shall accord to investors of another Party and to investments of another Party the better of the treatment required by articles 1102 and 1103." As indicated above, both the U.S. Investors and DESONA have been deprived of this right several times.

4. **Article 1110 (Expropriation and Compensation)** Because the State of Mexico nullified DESONA's Concession Agreement on a discriminatory basis, it is required to indemnify the U.S. Investors, including compensation of all expenses incurred by DESONA in performance of its obligations under the Concession Agreement. Moreover, according to principles of international law, a nullification of a concession shall be treated as an expropriation and, therefore, compensation shall be paid without delay and be fully realizable. Compensation must be equivalent to the fair market value of the expropriated investment immediately before the date of expropriation, and shall not reflect any change in value occurring because the intended expropriation had become known earlier.

As a well-established principle of international law, fair compensation is understood as the payment of an amount equivalent to the value of the property taken, and shall be paid at the time of taking, or within a reasonable time thereafter, with interest from the date of taking and in a form economically usable by the foreign investor.

D. Relief Sought

The U.S. Investors demand from the Federal Government of Mexico the immediate compensation for the fair market value of the property taken by the Municipality, the amount of which exceeds \$14 million (U.S. currency) together of interest from March 18, 1994 at a rate of 10%, plus attorney legal fees incurred from the beginning of this dispute until its conclusion, plus all corresponding damages which are estimated in the amount of \$3,000,000.00.

In view of the foregoing and due to obvious bias in the local Mexican administration of justice in the DESONA case, it is the U.S. Investors' intention to resort to a NAFTA Arbitration Tribunal to settle the current dispute. Hence, according to NAFTA's procedural requirements, as of today, November 27, 1996, you are hereby legally notified of the imminent arbitration claim that will be filed by the U.S. Investors against the Mexican Federal Government. The proper forum is believed to be the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes, 1818 H Street, N.W., Washington, D.C. 20433.


In case the Spanish version of the Notice of Intent to Submit a Claim to Arbitration attached hereto contradicts the English version, the English one shall prevail.

It is regrettable that this dispute has been remained unresolved for so long and that the U.S. Investors have been compelled by the refusal of Municipal Authorities to honor the

terms of the Settlement Agreement and the failure of Federal Authorities to insure that a settlement was honored.

Sincerely yours,

LAW OFFICES OF DAVID J. ST. LOUIS, INC.



David J. St. Louis