

BEFORE THE HONORABLE TRIBUNAL OF THE
INTERNATIONAL CENTRE FOR SETTLEMENT OF
INVESTMENT DISPUTES

PURSUANT TO THE NORTH AMERICAN FREE TRADE AGREEMENT

ROBERT AZINIAN, KENNETH DAVITIAN,)
ELLEN BACA.)

Case No. ARB (AF)/97/2

Claimants,)

vs.)

UNITED MEXICAN STATES)

Respondent,)
_____)

CLAIMANTS MEMORIAL

January 27, 1998

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TABLE OF CONTENTS

Volume I:

Section 1:

Jurisdiction..... 1

Questions Presented 3

Issues Raised by Motions for Directions..... 5

 Notice of Standing and Basis of Claim.... 5

 Nature of Desona..... 8

 Abandonment of Desona 1..... 10

Section 2:

Statement of Facts and Summary of Evidence 1

 Summary of Events..... 1

Section 3:

The Integral Solution 1

 The Project..... 1

 The Companies 3

The Concession Contract (Overview)..... 7

 Outline of Clauses..... 9

 Translation of the Concession Contract... 13

 Translation of Operations Program..... 31

 Performance Under the Concession Contract. 52

 - Desona Exceeds Contractual Obligations... 62

Breaches by Municipal Government 63

 A. Clauses Breached..... 63

 B. Violation of International Law..... 66

 C. Termination without Prior Notice..... 69

 D. Fundamental Breach as Grounds for
 Termination..... 70

 E. Damages for Breach under 1105..... 72

Volume II:

Section 4:

The Nullification Process	1
Resolution Mechanisms	1
Motives.....	5
Underlying Charges	7
The Alleged Irregularities (overview).....	10
List of Alleged Irregularities.....	15
Mexican Legal Proceedings.....	52
Acts of Intimidation.....	54

Section 5:

Legal Principles and Argument	1
A. Claimant's Standing Under Art. 1116 and 1117.	1
1. Article 1116.....	1
2. Article 1117.....	5
B. Violation of Art. 1110 and 1105.....	8
1. Claimants May Proceed under 1110 and 1105... ..	8
2. Expropriation in Violation of Art. 1110.....	9
a. Expropriation of Interest	9
b. Expropriation of Investments.....	13
c. Expropriation of Desona Itself.....	15
3. Breach in Violation of Art. 1105	16
C. Standard of Compensation	17
1. Compensation Under Art. 1110	18
2. Compensation Under Art. 1105	18

Section 6:

Damages	1
A. Pre-Nullification Investment	1
B. Valuations	3

Conclusion 1

Affidavit Section:

Affidavit of Robert Azinian.....
Affidavit of Kenneth Davitian
Affidavit of Ariel Goldenstein

Note to Table of Contents:

1. The Text of the Memorial includes both English and Spanish Versions for ease of cross reference. They are divided by a blue Tab
2. Pursuant to stipulation and order, only the material Spanish text of the exhibits is translated into English and vice versa
3. Some Exhibits support multiple sections of the text. Those exhibits are reproduced in each section for ease of reference
4. The translation from English to Spanish cannot be certified to be precise. Therefore, the English text governs.

TABLE OF AUTHORITIES

<u>CASES:</u>	<u>SECTION</u>	<u>PAGES</u>
American Int'l Group v. Islamic Republic of Iran 4 Iran-U.S. Cl. Trib. Rep. 96 (1983)	5	20
Amoco Int'l Finance Corp. v. Islamic Republic of Iran 15 Iran-U.S. Cl. Trib. Rep. 189 (1987)	5	8
Case Concerning the Factory at Chorzow (Ger. v. Pol.) 1928 P.C.I.J. (ser. A) No. 17 (Sept. 13)	5	21
Certain German Interests in Polish Upper Silesia (Ger. v. Pol.) 1926 P.C.I.J. (ser. A) No. 7 (May 25)	5	11
Jurisprudencia: Revocation of Administrative Resolutions of the Nations (Supreme Court of Mexico) Printed in Appendix to the Judicial Weekly (Reporter) 1917-1985 3rd Part, Second Chambers, pp 716-717	3	69
Kuwait v. Aminoil (1982) 21 I.L.M. 976 (1982)	5	20
Libyan American Oil Co. v. Libyan Arab Republic (1977) 20 I.L.M. 1 (1982)	5	8,11,20
Mobil Oil Iran Inc. v. Islamic Republic of Iran 16 Iran-U.S. Cl. Trib. Rep. 3 (1987)	5	8
Norwegian Shipowners' Claims (Nor. v. U.S.) 1 U.N. Rep. Int'l Arb. Awards 307 (1922)	5	11
Phillips Petroleum Co. Iran v. Islamic Republic of Iran 21 Iran-U.S. Cl. Trib. Rep. 79 (1989)	5	11,12
Rudloff Case (U.S. v. Ven.) 9 U.N. Rep. Int'l Arb. Awards 244 (1903-05) (American-Venezuelan Comm.)	5	11,12
SEDCO, Inc. v. Islamic Republic of Iran 10 Iran-U.S. Cl. Trib. Rep. 180	5	20

CASES:

	<u>SECTION</u>	<u>PAGES</u>
Shufeldt Claim (U.S. v. Guat.) 2 U.N. Rep. Int'l Arb. Awards 1079 (1929)	5	8,11,12,13
Starrett Housing Corp. v. Islamic Republic of Iran 16 Iran-U.S. Cl. Trib. Rep. 112 (1987) (final award)	5	11
Tippetts, Abbett, McCarthy, Stratton v. TAMS-AFFA Consulting Engineers of Iran 6 Iran-U.S. Cl. Trib. Rep. 219 (1984)	5	20
Vienna Convention on the Law of Treaties May 23, 1969, art. 31, 1155 U.N.T.S. 331	5	11

CONSTITUTIONAL PROVISIONS:

Constitution of the United States of Mexico Article 133	3	68
--	---	----

STATUTES:

Mexican Federal Civil Code Section 2104	3	68
NAFTA Article 201	5	15
NAFTA Article 1105	3 5	66,72 8,16,20,22
NAFTA Article 1105(1)	3 5	72 8,18
NAFTA Article 1110	3 5	72 8,10,18,20,22
NAFTA Article 1110(1)	5	7,9
NAFTA Article 1110(1)(d)	5	9
NAFTA Article 1110(2)-(6)	5	13
NAFTA Article 1116	1	16
NAFTA Article 1116(1)	5	1
NAFTA Article 1116(2)	5	1
NAFTA Article 1117	5	1,5,7
NAFTA Article 1117(2)	5	1

STATUTES:

	<u>SECTION</u>	<u>PAGES</u>
NAFTA Article 1117(3)	5	1
NAFTA Article 1118	2	8
NAFTA Article 1119	1	1
NAFTA Article 1120	1	5
NAFTA Article 1121	1	5,6,7
NAFTA Article 1121 1 & 2	1	6
NAFTA Article 1121 2 & 4	1	7
NAFTA Article 1122	1	6
NAFTA Article 1125	1	1
NAFTA Article 1139	5	1,2,7,9,14,15
International Institute for the Unification of Private Law (UNIDROIT): Principles of International Commercial Contracts 34 I.L.M. 1067, (1995)		
UNIDROIT Principles Article 1.7	3	72
UNIDROIT Principles Article 7.3.1	3	70
UNIDROIT Principles Article 7.4.2(1)	5	19
UNIDROIT Principles Article 7.4.10	5	19

SECONDARY SOURCES:

Restatement (Third) of Foreign Relations Law Section 712(2)	3	67
Restatement (Third) of Foreign Relations Law Section 712(2)	5	1,17,18
Draft Convention on the International Responsibility of States for Injuries to Aliens Art. 34(1) reprinted in Louis B. Sohn & R.R. Baxter, <i>Responsibility of States for Injuries to the Economic Interests of Aliens</i> , 55 Am. J. Int'l L. 545, (1961)	5	17,19

SECONDARY SOURCES:

	<u>SECTION</u>	<u>PAGES</u>
Restatement (Second) Contracts 1981 [American Law Institute] Section 241	3	70
Restatement (Second) Contracts 1981 [American Law Institute] Section 243	3	68
United Nations Constitution on Contracts For International Sale of Goods Article 49(1)(a)	3	70
ICSID Additional Facilities Rules Article 4	1	1
ICSID Additional Facilities Rules Article 14	1	2

JURISDICTION

On December 5, 1996, Claimants, by personal service, delivered to the Government of Mexico a Notice of Intent to Submit a Claim to Arbitration and Consent of Investors in accordance with Article 1119 and Article 1121 of NAFTA.

On December 16, 1996, said Claimants further served an amended Notice of Claim on the Government of Mexico by personal service also in accordance with Articles 1119 and 1121.

On March 10, 1997, Claimants filed their Notice of Claim with the International Centre for the Settlement of Investment Disputes (ICSID), under the Additional Facility Rules of ICSID, and under the authority of Article 1120.

On March 24, 1997, acting ICSID as Secretary General Antonio R. Parra, noting fulfillment of the requirements of Articles 4 and 5 of the Additional Facilities Rules confirmed in writing his approval of Claimants' application for access to the Additional Facility as well as his registration of the Notice of Claim assigning the number ICSID Case No. ARB(AF)/97/2.

Article 1122 of the NAFTA prescribes Respondents' Consent to Arbitration which satisfies the requirement of Chapter 2 of the ICSID Convention and the Additional Facilities Rules for written consent of the parties.

The above Notice of Claim contained among other things, the corporate consent of Desechos Solidos de Naucalpan, S.A. de C.V. as well as the individual consent of its investors.

On July 7, 1997, Claimants, in conformity with Article 1125 of the NAFTA, wrote to the Secretary General

their consent to the appointment of each individual member of the Tribunal.

In accordance with the applicable Articles of the NAFTA, Claimants' Notice of Claim sets forth factual assertions establishing an investment dispute involving Claimants' claim that Respondent has breached obligations under Section A of Chapter 11 of the NAFTA.

The Secretary General notified the parties that all arbitrators nominated herein have accepted their appointment.

Under Article 14 of the Additional Facility Arbitration Rules, the Tribunal was thus deemed to be constituted and the proceeding begun as of July 9, 1997.

The First Session of the Tribunal was held in Washington, DC, on September 26, 1997, and the official minutes of said session reflect that the parties were provided with copies of the declarations signed by the three arbitrators pursuant to Article 14 of the Additional Facility Arbitration Rules.

With the submission of a dispute by investors alleging breaches of obligations by the Government of Mexico of the provisions of Section A, Chapter 11 of the NAFTA and, thus being legally constituted, this Tribunal is competent to arbitrate this case before it.

QUESTIONS PRESENTED

The question before the Tribunal is whether the Government of Mexico by and through the City of Naucalpan ("Respondent") has breached its obligation under the North American Free Trade Agreement to Desechos Solidos de Naucalpan S.A. de C.V., a Mexican corporation, and to its US investors in that enterprise in Mexico by breaching its obligations under Chapter Eleven: by depriving Claimants of their investment through Respondent's actions that directly resulted in expropriation of that concession investment without due process and full compensation: its failure in providing minimum treatment, fair and equitable treatment, and full protection and security in accordance with international law; and,

Where Claimants accepted a invitation to bid on a concession and to develop an integrated waste management program for Respondent; and, where Claimants expended about three million US dollars in assembling, engineering, and design to develop that concession and where the concession to Claimants was approved by Legislative Decree of the State of origin, that is the State of Mexico in which the Municipality of Naucalpan is located and where the concession was approved for a 15-year period of time and where on November 15, 1993, the Municipal Government of Naucalpan approved, agreed and executed the Concession Contract and, where, after execution and performance by Claimants and Claimants' expenditure of about three million US dollars into the Mexican economy for the labor, equipment and materials to improve the waste collection system, and remediate the landfill, that new Municipal Government claimed that the Concession Contract was filled with error and Claimants had

failed to be adequately capitalized to the extent that Claimants were unable to perform the terms of the Concession Contract, revoked said Concession Contract, all of which deprived Claimants of their investment causing damages herein alleged.

ISSUES RAISED BY MOTIONS FOR DIRECTIONS

The Government of Mexico has repeatedly addressed issues that are fully answered in the Centre's file as well as in this Memorial.

For purposes of clarity, Claimants tender the following in hopes of disposing of these issues:

1. Notice of Standing and Basis of Claim
2. Nature of Desona as Duly Incorporated under Applicable Mexican law
3. Abandonment of Desona 1.

1) Notice of Standing and Basis of Claim

The Claimants, individually, and on behalf of the enterprise, have consented to submission of this claim to ICSID under Article 1120 and 1121 by the following steps:

a) Filed a corporate consent as shareholders and directors to submit a claim against the Government of United Mexican States. That document is dated October 28, 1996, and said consent was served on Mexico on November 24, 1996.

b) Simultaneously filed and served on the Government of Mexico a preliminary notice to file a claim which contained the following consent:

"The US Investors hereby agree to arbitrate their claim in accordance with Article 1121(b) [the Additional Facility Rules of NAFTA] and hereby formally waive their rights to further court or administrative proceedings regarding this claim pursuant to Article 1121.1 and [disputing investors

under Section 1116] and Article 1121.2 [disputing investors and the enterprise under section 1117]."

On March 10, 1997, the Notice of Claim was filed with ICSID. Paragraph 24 of said Claim provides as follows:

"As a result of said repudiation and expropriation, the enterprise Desona, whose single asset was the concession, has been rendered useless. The United States investors who owned and controlled Desona, have suffered damage as individual investors within the meaning of Chapter 11 of the NAFTA, Article 1116, or in the alternative, suffered damages as investors of a party making a claim on behalf of the enterprise, as contemplated by Article 1117. In either event Desona is a defunct legal entity. As such, the consent on behalf of the enterprise as contemplated by Article 1121 is rendered useless as the Claimants have been deprived by the Respondent of the control of the enterprise.

In order to comply with the intent of this Article, said investors, as owners and directors of said enterprise have filed the additional consents appended hereto as Exhibit "C" and hereby submit this dispute to the International Centre for Settlement of Investment Disputes (ICSID) for arbitration under the Additional Facility Rules of ICSID, whose address is 1818 H Street, NW, Washington, DC 20433."

Exhibit "C" to said document in paragraph 24 provides in part:

"WHEREAS consent is necessary under said NAFTA for the US investors to consent to arbitrate their claims and to further formally waive their right to further court or administrative proceedings under Article 1121.1 and 1121.2.

WHEREAS, consent of the Company is necessary under said NAFTA to arbitrate if necessary, the Company's claim and to further formally waive the right to further court or administrative proceedings under Article 1121.2, recognizing the exception of 1121.4.

RESOLVED, that each of the directors individually consent to arbitrate proceedings under Section 1121.1 and formally waive the right to further court or administrative proceedings; and

RESOLVED FURTHER, that the Company consent to arbitrate proceedings under Section 1121.2 and formally waive the right to further court or administrative proceedings."

It is Claimants' position that as between the three notices cited herein that every claim of every nature has been stated both under Articles 1116 and 1117, and Claimants have complied with the appropriate sections of the NAFTA in bringing this claim to fruition.

Next, the Government of Mexico contends that the 10% stock issued to the City, when returned, did not return to Azinian and therefore is not to be counted for purposes of standing or damages on Azinian's behalf.

In the allegations of March 10, 1994, to nullify the concession contract, it was the new Municipal Government's position this stock transfer did not comply with Mexican General Law, and was void.

"On the basis of the above, it appears that the offer to be a partner with 10% of the capital in not being

legally possible in terms of the above reasoning, was made only to mislead."¹

The new Municipal Government returned the stock to Desona on March 23, 1994 wherein they stated the following:

..." I hereby, with fundament on articles 52 and 53 of the Organic Municipal Law, in this act, return those (Stock Certificates) to you. ²

If the stock came from Azinian³ it would be returned to Azinian.

2) Nature of Desona as Duly Incorporated under Applicable Mexican Law.

Claimants must assume that Respondent has been fully advised by the Municipal Government of Naucalpan of the facts and events surrounding this matter and furnished with the Municipal records.

Those records that are dispositive of Respondent's concern over the nature of Desona are the following:

a) The Concession Contract itself which was drafted and prepared by the Municipal Government's legal staff refers to the Desona that is registered with the Public Registry of Property and Commerce.

The stockholders of Desona were, at the time of the execution of the Concession Contract, Davitian, Goldenstein, and Azinian. Paragraph II.1 of the Declarations Section of the Concession Contract recognizes the concessionaire as the following:

¹ See Section 4 - Page 20
² See Exhibit 1
³ See Exhibit 2

"The Concessionaire is a corporation constituted according to the Mexican Laws as per Public Document Number 6477, Volume 167, notarized in front of Public Notary Number 7, from the Judicial District of Cuautitlan, by license granted to its principal acting in the ordinary protocol C. Lic. Benjamin De La Pena Y Mora, and registered in the Public Registry of Commerce of Tlanepantla, State of Mexico under Section Number 307, Volume Number 31, Book First of Commerce of Naucalpan."⁴

Please note that claimants, on information and belief, allege that the Notary Company is owned by the Former Mayor of Naucalpan and the signatory to the Concession Contract, Lic. Mario Ruiz de Chavez.

Please further note that the former Mayor and the former Director of Economic Development, Arq. Abel Duarte, only dealt with the principals of Desona, and even attended 1993 stockholder meetings, which were general assemblies of Desona. All of Desona's assemblies, including those in which City Authorities participated, were "declared legally installed and all the agreements reached were regarded as valid" because 100% of the shares of the company were presented by the stockholders.⁵

This affirms the fact that the Former Municipal Government officials were fully aware of the identity of Desona's shareholders.

That during the contract period all of Desona's performance under the contract was by Goldenstein, Azinian and Davitian, except for Bryan A. Stirrat and Associates, who was one of Desona's sub-contractors.

⁴ See Section 3 - Page 16 (Text of concession Contract)

3) Abandonment of Desona 1

Finally, Desona 1 was abandoned by the parties after the State Legislature approved granting the concession to Desona.

Their own Council Minutes indicate the following proceedings adopted on November 16, 1993:

"Paragraph 3

As a special pronouncement, by instructions of the Presidency, we submit to your consideration the proposal made by Desona S.A. de C.V. to leave without effect the authorization given to Desona 1 regarding the Concession for the collection, transportation and recycling by the City Council on May 3rd, 1993, in light of the fact that, as per the official Gazette of the State Government on the resolution, the State Legislature has given to Desona S.A. de C.V. like it was originally given on November 4th 1991 (sic) by the City Council. This proposal is approved unanimously.."

Therefore, Desona 1 was never a party or privy to this contract.

Conclusion:

As this Memorial further sets forth:

1. Robert Azinian, a US investor in Mexico, owned 54% of the outstanding stock in Desona assuming the return of the 10% granted to the Municipality of Naucalpan

⁵ See Exhibit 3 - Minutes of Shareholders' meeting dated April 19, 1993

2. Robert Azinian is the assignee of 26% of the stock owned by Ariel Goldenstein. The questions as to whether that assigned interest is *ultra petita* is in dispute
3. Ellen Baca, A US investor in Mexico owns 20% of the stock in Desona
4. Kenneth Davitian, a US national, maybe an investor under the NAFTA, but this issue is in dispute.



STATEMENT OF FACTS AND SUMMARY OF EVIDENCE

SUMMARY OF EVENTS

The Municipality of Naucalpan de Juarez, State of Mexico was undergoing severe waste management problems in 1991. As a result, the Municipal Government invited a number of companies having waste management expertise to seek solutions for the problem with the intention of granting a Concession for the management of the Municipality's solid waste program.¹

Some of the Claimants were owners and operators of Global Waste Industries, a California Disposal Company, one of the candidates for the concession.

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 invited to participate in the process in order to observe directly the experience and competence that these companies brought to their waste management services. These site visits included the Los Angeles area by an 11 member team from Naucalpan at the expense of Claimants.²

Claimants, after introduction of the principals of Global Waste Industries to Bryan A. Stirrat and Associates and Sunlaw Energy Corp. by the Municipal authorities, responded by assembling a well experienced waste management consortium.

All members of the Consortium were United States based companies. They jointly undertook a comprehensive study of the solid waste management program in Naucalpan and made extensive topographical and geographical studies of both the

¹ See Section 3, Declarations, page "5"

existing landfill located 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 the City of Naucalpan.³

Global Waste Industries en Naucalpan Para Tratar Desechos Sólidos

("Global Waste Industries in Naucalpan to
treat Solid Waste",)

Se Dará Solución Integral al Control de Desechos en Naucalpan

"El Financiero", Feb. 17, 1992

(An Integral Solution to Waste Control
will be given in Naucalpan,)

Following five months of deliberations and several trips to California, the Municipal authorities concluded that the most qualified group to undertake the project was the Consortium, as the solution it presented was the most appropriate for Naucalpan.⁴

At that time the members of the Consortium were strongly encouraged by Municipal officials to form a Mexican corporation and to be prepared to submit the project to the City Council. However, the Mayor, Mario Ruiz de Chavez, requested that said enterprise be incorporated by individuals

³ See Exhibit " 1"

³ See Section 3 - Exhibit "7"

⁴ See Exhibit "2"

as opposed to companies in order to guarantee "transparency" of the company's operations.⁵

After such instruction, Desechos Solidos de Naucalpan S.A. de C.V. (hereafter "Desona") was incorporated under the laws of Mexico by Mr. Azinian, Mr. Davitian, US nationals and Ariel Goldenstein, a non-US national, as evidence 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 active incorporation was recorded in the Public Registry of Commerce as Section 307 Volume 31st of Book 1 of Commerce.⁶

Mr. Azinian, Mr. Davitian and Mr. Goldenstein were, at all times, the owners and operators of Desona.

The understanding of the parties provided that Desona would work in Naucalpan with the technical and economic support of the Consortium through a Memorandum of Understanding dated Nov. 3, 1992, signed by the parties and furnished to the City.⁷

The project was presented by the Municipal Authorities to Naucalpan's City Council and approved unanimously on Nov. 4, 1992⁸ and officially published in the Government Gazette on Nov. 23, 1992⁹.

⁵ See Affidavit of Ariel Goldenstein - Affidavit Section

⁶ See Desona papers of incorporation - Exhibit "3"

⁷ See Memorandum of Understanding - Exhibit "4"

⁸ See Minutes of City Council dated Nov. 4, 1992 - Exhibit "5"

⁹ See Government Gazette dated Nov. 23, 1992, Exhibit "6"

Acuerdan Concesionar Servicio de Recolección de Basura en Naucalpan

("La Prensa", Nov. 6, 1992)

("In Naucalpan there is agreement to give a Concession for waste collection")

Concesionará Naucalpan por 15 años la recolección y reciclaje de la basura

("Novedades", Nov. 6, 1992)

(Naucalpan to award a Concession of waste collection and recycling for 15 years")

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 award of the Concession by the Legislature of the State of Mexico was needed ¹⁰.

Desona worked closely with the Municipal Government, the Governor of the State, Lic. Pichardo Pagaza and the Legislature in preparation for a full week of hearings on the issue. A detailed report was presented and reviewed by the 28-Member Ecology Commission of the State Congress in August, 1993.

After extensive study and review of that Legislative body, on August 16, 1993, through the enactment of Legislative Decree number 213, the Legislature of the State of Mexico ratified the Municipality of Naucalpan's award of the Concession to Desona, for a period of 15 years, granting

¹⁰ See Section 3 - I.3 Page "15"

the Municipality the authority to establish all necessary terms of the Concession Contract ¹¹.

Desona's principals had been contacted by several other Municipalities that were also interested in awarding similar solid waste concessions; among those, the Municipalities of Puebla, Cuernavaca, Pachuca, and Cuatitlan Izcalli.¹²

In connection with the waste collection project, Desona's principals, with the full knowledge of the former Municipal Government¹³, had been negotiating a joint venture agreement with Browning Ferris Industries ¹⁴.

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 ¹⁵.

After three months of extensive and detailed contractual negotiations, on Nov. 15, 1993, the Municipal Government and Desona executed the Concession Contract for the public services of collection and transport of all residential, commercial and industrial non-toxic solid waste generated in the Municipality; the recycling and processing of all non toxic solid waste; the operation of the existing landfill at "Rincon Verde" including the design, construction and operation of future landfills; and the construction and operation of a bio-gas based electrical power plant.

Desona began immediate performance under the Concession Contract by providing service in the industrial sector of

¹¹ See State Gazette, Exhibit "7"

¹² See Affidavit of Ariel Goldenstein - Affidavit Section

¹³ See Affidavit of Robert Azinian - Affidavit Section

¹⁴ See Affidavit of David Page - Exhibit "8"

¹⁵ See Affidavit of Basil Carter - Exhibit "9"

Naucalpan. Customers were very satisfied with the service provided by Desona. A number of letters which reflect this satisfaction were written and are included herein under the Performance Section of this Memorial.

Naucalpan, a la Vanguardia en Concesionar Servicio de Basura

("El Diario", Nov. 18, 1993)

("Naucalpan at the forefront in waste concession")

Desona took management and control of the existing landfill on Dec. 11, 1993 at Rincon Verde and initiated residential collection services on Dec. 1, 1993 all as provided in the Concession Contract ¹⁶.

On January 1, 1994, a new Municipal Government assumed control of the Municipal administration. For reasons not attributable to Desona, when the new Municipal Government took office, it started to face waste accumulation problems in those sectors in which Desona had not yet assumed responsibility. Desona voluntarily supported the new Municipal Government in its efforts to cope with the waste crisis¹⁷.

On March 7, 1994, the new Municipal Government initiated an administrative procedure to nullify the Concession Contract that had been executed between the former Municipal Government and Desona, claiming, among other things, errors of law in the drafting of the Concession Contract and fraud in the inducement on the part of Desona. The Municipal

¹⁶ See Section 3 - Page 20, 22

¹⁷ See Section 3 - Page 62

Government drew up a list of 27 groundless "irregularities" and gave Desona four days to respond to them¹⁸.

On March 21, 1994, the Naucalpan City Council unilaterally repudiated and nullified the Concession granted to Desona.

Decide el cabildo de Naucalpan retirar la concesión de recolección de basura

("Novedades", March 8, 1994)

(The Naucalpan City Council decides to revoke the concession for waste collection)

Desona's principals believe the motivations for the nullification were twofold: 1) an attempt to discredit the former administration and 2) the prelude to awarding the Concession to Grupo Tribasa, a Mexican construction company with no experience in the waste business¹⁹.

Following the nullification, the new Municipal Government engaged in various acts of intimidation and harassment in an attempt to force Desona to leave Naucalpan²⁰.

The most valuable asset of Desona was the concession. As a result of the repudiation and expropriation of the concession, Desona has been rendered useless. The United States investors who own and control Desona suffered substantial damages, including all pre-nullification investment, post nullification expenses and the value of the Concession. Those damages are computed in the "Valuation and Damages Sections" of this Memorial.

¹⁸ See Section 4 - Page 4

¹⁹ See Section 4 - Page 6

²⁰ See Section 4 - Page 54

Desona made numerous attempts to amicably resolve this dispute with the new Municipal Government, including making direct requests for reconsideration to the new Mayor and to the Governor of the State. Those requests were unanswered.²¹

Pursuant to the spirit of the NAFTA and Article 1118 therein, Desona met with many State of Mexico authorities, US Embassy authorities, US Congress representatives, US Senators, the US Trade Representative's office, the US Treasury Dept., the US State Dept., the US Commerce Dept., and the Mexican Embassy authorities in Washington. Desona's counsel made many attempts to conciliate with the new Municipal Government's legal council. However all efforts of consultation and negotiation failed.

On or around June 1996, Desona's counsel advised its principals that all efforts to find an amicable solution to the problem had failed. On November 24, 1996, Desona's counsel filed the preliminary notice of intention to file a claim under NAFTA.

²¹ See Affidavit of Robert Azinian - Affidavit Section

THE INTEGRAL SOLUTION

THE PROJECT

"The Integral Solution for the Handling of Solid Waste in the Municipality of Naucalpan de Juarez, State of Mexico" was designed to achieve the following objectives:

1. To improve Naucalpan's residential waste collection system by re-designing the waste collection routes, replacing equipment, training personnel and shifting the residential collection times from daytime to nighttime.
2. To provide waste collection services to the industrial sectors of Naucalpan. Waste collection services in those sectors were being provided by unlicensed independent haulers who would charge very high rates. Those industries which believed the charge to be excessive would haul their own waste.
3. To provide waste collection services to the commercial sector of Naucalpan.
4. To implement the closure of the landfill known as Rincon Verde, which was believed to have limited life left, in an environmentally safe way.
5. To determine a site for, design, build and operate a new sanitary Landfill.
6. To implement a program for the "pepenadores" or scavengers who lived in the landfill and made a living by selling the recyclable material found in the garbage ¹.

The former Municipal Government was aware of the cost involved in implementing such a program and were conscientious that the Municipal budget did not allow for such needed expenditure.

¹ Government Plan - Exhibit "1"

The former Mayor was aware that no company either local or foreign would be willing to work on the project unless funds were available.

At that time, after having researched the option of utilizing the bio-gas generated by the natural de-composition of organic waste at the landfill to generate electricity, they concluded that they could offer a company payment for waste collection and landfill services out of the re-sale of that electricity. (All these projected goals were provided for in the Concession Contract below).

Moreover, if the rate of re-sale of electricity was competitive enough, such approach could represent relief to the budget of the Municipal Government when it came to residential waste collection and even more, it could represent income for the Municipal Government if they had a participation in the company that would be willing to undertake the project.

This was not an easy task to achieve. Not only the Municipal Government had to find a group of companies willing to undertake such project but they had to obtain permits to generate electricity. Such permits had never been granted by Mexico's Federal Commission of Electricity, Mexico's Federal entity in charge of generating and distributing electricity.

The project was unique and former Mayor Lic. Mario Ruiz de Chavez believed he could persuade the Governor of the State, Lic. Pichardo Pagaza and the Director of CFE to support his initiative.

Parallel to the former Mayor's efforts, the former director of Economic Development, Arq. Abel Duarte Ortega was instructed to find expert waste companies interested in participating in the project.

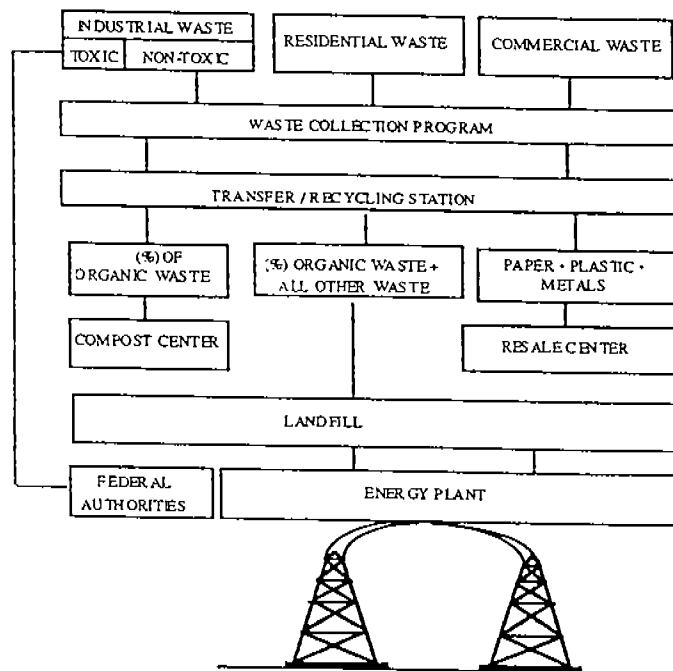
THE COMPANIES:

There were a number of companies that showed interest, among them was Global Waste Industries, an independent solid waste management company based in Los Angeles with extensive experience in solid waste management and recycling.

Other companies that showed interest were Sunlaw Energy Corporation, an energy expert² and later Bryan A. Stirrat and Associates, a landfill engineering expert company³.

These three companies joined forces and, following many months of studies and research, submitted and integrated a proposal that contained the elements the former Municipal Government was looking for.

The following chart illustrates the different aspects of the proposed Integral Solution.



² Sunlaw corporate profile - Exhibit "2"

³ BAS corporate profile - Exhibit "3"

The Integrated Proposal presented by the 3 companies included the following terms:

That Sunlaw Energy Corporation, upon obtaining permits from CFE to generate electricity, negotiating a rate for re-sale of electricity with CFE and negotiating a rate to buy Natural Gas from PEMEX would,

1. Provide the financing and build a 210 megawatt electricity generating plant that would utilize bio-gas from the landfill and combine it with natural gas
2. Provide the financing to BAS for the closure of the existing landfill at Rincon Verde and the design and construction of a new landfill
3. Provide the financing to Global Waste Industries to purchase new waste collection equipment and for Global to operate a waste collection and recycling program in Naucalpan

All three companies agreed that a Mexican corporation would be formed (Desona); that the concession would be awarded to Desona by the Municipality of Naucalpan; and that all three companies would execute agreements with Desona should the concession be awarded.⁴

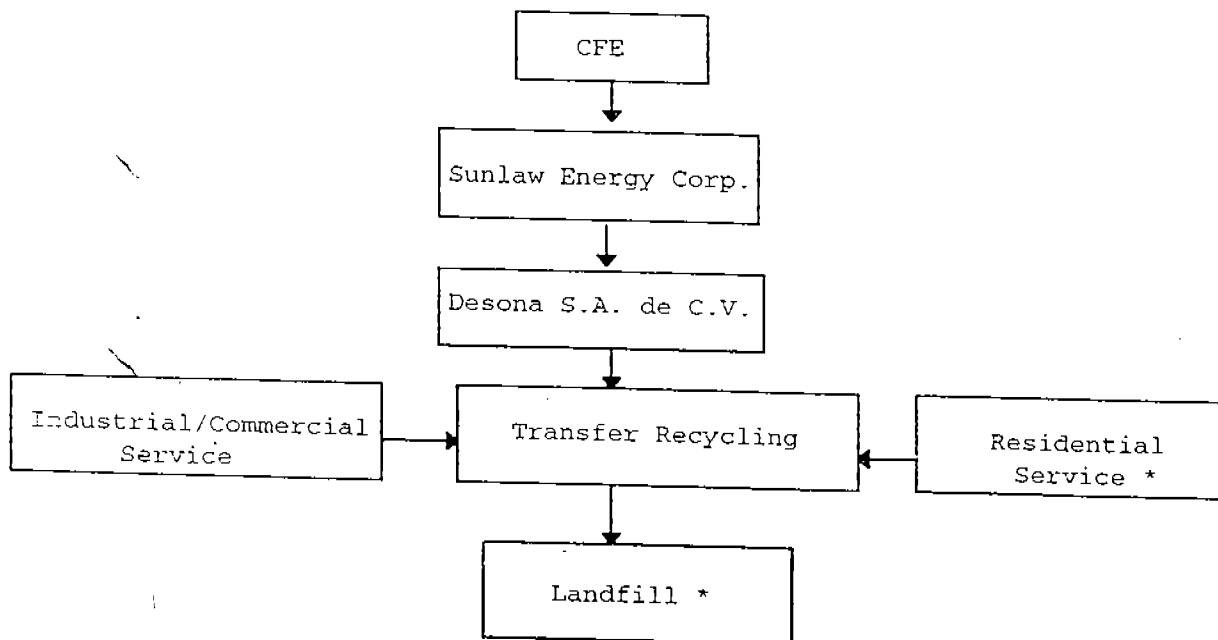
Desona made the proposal to the Municipal Government of Naucalpan on behalf of the consortium under the understanding that Desona would receive from Sunlaw Energy Corporation:

$$\begin{array}{rcc} \$0.0071 \text{ per Kw/Hr} & + & \$0.0035 \text{ per Kw/Hr} & = & \$0.0106 \text{ per Kw/Hr} & ^5 \\ \text{(Residential)} & & \text{(Landfill)} & & \text{Total} & \end{array}$$

⁴ See Memo of Understanding - Exhibit "4"
⁵ See Sunlaw budget - Exhibit "5"

In addition,

1. Desona would be exclusive provider of waste collection services to the industrial sectors of Naucalpan. Desona would charge customers directly for this service following the execution of individual service contracts
2. Desona would be the exclusive provider of waste collection services to the commercial sectors of Naucalpan. Desona would generate its revenue by selling trash bags to customers that would be picked up according to a schedule
3. Desona would build and operate a recycling facility and have the right to sell recyclable goods to pay for the construction and operation of the plant⁶
4. Desona would, if studies showed to be possible, expand the life of the landfill as well as design and build a new landfill⁷. Desona would be able to collect dumping fees at the landfill.



* Subsidized by the sale of Electricity

⁶ Recycling Plant - Exhibit "6"

⁷ Old and New Landfills - Exhibit "7"

Following the awarding of the concession to Desona by the Municipal Government and the approval of the concession by the State Legislature came the drafting of the Concession Contract by the former Municipal Government.

At the time of the drafting of the Concession Contract the permits to generate electricity had not yet been obtained. However, Desona and the Municipal Government agreed that Desona would provide residential and public waste collection and that the Municipality would adjudicate to Desona the Municipal budget from the waste collection department. This budget was not sufficient to cover Desona's cost of residential operation and the renewal of the vehicular fleet, however Desona agreed to this term hoping that permits for the generation of electricity would be granted and Phase 4 fully be realized.

On November 15, 1993, the Municipal Government of Naucalpan and Desona executed the Concession Contract.

THE CONCESSION CONTRACT

The Concession Contract, which was drafted in its entirety by the former Municipal Government's Legal Department, became the legal binding agreement between the Municipal Government and Desona. It outlined the rights and obligations of the Parties and superseded all prior agreements either oral or written between the Municipal Government and Desona. Desona was not represented by counsel during these negotiations.

The Cover Page of the Contract defines the services that are the object of the concession;

..." Concession Contract for the public services of collection, transportation, recycling, use and final disposition of residential, commercial & industrial solid waste, as well as the design, construction & operation of the final disposition sites (landfill & others) of such solid waste, and the use and exploitation by any legal means of such waste and its sub products, that is made in the phases of collection, transportation, recycling, landfill & processing of solid waste & other services that may need to be implemented in order to provide an efficient public service....",

as well as the Parties that are the subjects to the agreement;

... "on the one side by the Honorable Municipal Government of Naucalpan de Juarez, State of Mexico, represented in this act by the Lic. Mario Ruiz de Chávez, constitutional Municipal President, and by Lic. Xavier Chávez Tello, secretary of the Honorable Municipal Government of Naucalpan, hereafter referred to as "the Municipal Government"

and on the other side by Desechos Solidos de Naucalpan S.A. de C.V., represented in this act by Roberto Azinian and Ariel Dario Goldenstein, legal representatives of the Concessionaire, hereafter referred to as "the Concessionaire".....

The History and Declarations sections of the body of the Contract define the Parties, their legal standing and functions as legal entities. It outlines the events that lead to the awarding of the Concession by the Municipal Government to the Concessionaire and the legal justifications and procedures that were followed. In this section;

"The Parties declare that they both agree to celebrate this Contract and that they both comply with all of the legal attributions and needed faculties of the existing Law".

The Clauses of the body of the Concession Contract define all the responsibilities and obligations of the Parties under the Contract. Such obligations and responsibilities had been discussed extensively between the Parties and had been revised often from the time the Concession was originally awarded by the Former Municipal Government to the Concessionaire on Nov. 4, 1992, and the time of execution of the Concession Contract on Nov.15, 1993.

The Concession Contract has been indexed herein for purposes of Clarity. (Please note the index is drafted by the undersigned)

THE CONCESSION CONTRACT

THE PARTIES

I. THE MUNICIPAL GOVERNMENT

II. THE CONCESSIONAIRE

RECITALS

(DECLARATIONS)

I. THE GOVERNMENT PLAN IS TO MODERNIZE THE MUNICIPAL SERVICES

II. THE GOVERNMENT PLAN ACKNOWLEDGES THE GOVERNMENT LACK THE FUNDS TO DEVELOP PUBLIC WORKS

III. MUNICIPAL GOVERNMENT AGREES TO ALLOW THE PARTICIPATION OF PRIVATE INVESTORS

IV. THE CONCESSIONAIRE DECLARES THAT IT WILL PROVIDE THE SERVICES

V. THE GOVERNMENT AWARDS THE CONTRACT

VI. THE CONCESSIONAIRE DECLARES THAT IT IS QUALIFIED TO PERFORM THE CONTRACT

VII. THE PARTIES BOTH AGREE TO HONOR THE CONTRACT AND COMPLY WITH THE LAW

AGREEMENT

(CLAUSES)

- FIRST THE AWARD OF THE CONCESSION
- SECOND OBLIGATION OF CONCESSIONAIRE TO OBTAIN PERMITS
- THIRD OBLIGATION OF CONCESSIONAIRE TO COMPLY WITH THE OPERATION PROGRAM
- FOURTH OBLIGATION OF CONCESSIONAIRE TO INITIATE FIRST PHASE BY NOVEMBER 17, 1993
- FIFTH OBLIGATION OF CONCESSIONAIRE TO INITIATE SECOND PHASE BY DECEMBER 1, 1993
- SIXTH OBLIGATION OF GOVERNMENT TO GIVE POSSESSION OF THE LANDFILL ON DECEMBER 1, 1993
- SEVENTH OBLIGATION OF CONCESSIONAIRE TO HONOR THE LAND LEASE BETWEEN THE GOVERNMENT AND THE COMMON OF SAN MATEO NOPALA
- EIGHTH RELEASE OF CONCESSIONAIRE OF LIABILITIES FOR LANDFILL PRIOR TO DECEMBER 1, 1993
- NINTH OBLIGATION OF CONCESSIONAIRE NOT TO ACCEPT TOXIC WASTE
- TENTH OBLIGATION OF CONCESSIONAIRE TO INITIATE THIRD PHASE BY DECEMBER 13, 1993
- ELEVENTH OBLIGATION OF CONCESSIONAIRE TO INSTALL ELECTRICITY GENERATING PLANT
- TWELFTH OBLIGATION OF CONCESSIONAIRE TO GIVE STOCK TO GOVERNMENT

THIRTEENTH	OBLIGATION OF GOVERNMENT TO PROVIDE CONCESSIONAIRE WITH TRUCKS AND EQUIPMENT
FOURTEENTH	OBLIGATION OF CONCESSIONAIRE TO SUBSTITUTE COLLECTION TRUCKS
FIFTEENTH	OBLIGATION OF GOVERNMENT TO TRANSFER UNION LABOR
SIXTEENTH	OBLIGATION OF CONCESSIONAIRE TO RECOGNIZE COLLECTIVE LABOR CONTRACT
SEVENTEEN	TERM OF CONTRACT
EIGHTEENTH	OBLIGATION OF CONCESSIONAIRE TO POST PERFORMANCE BOND
NINETEENTH	OBLIGATION OF CONCESSIONAIRE TO MAINTAIN LIABILITY INSURANCE
TWENTIETH	OBLIGATION OF CONCESSIONAIRE TO ESTABLISH AN EDUCATIONAL PROGRAM
TWENTY FIRST	OBLIGATION OF CONCESSIONAIRE TO PARTICIPATE IN A PUBLIC EDUCATION AND ORIENTATION PROGRAM
TWENTY SECOND	AGREEMENT TO BE BOUND BY ADDITIONAL CONDITIONS ESTABLISHED BY THE GOVERNMENT
TWENTY THIRD	OBLIGATION OF GOVERNMENT TO PAY FOR RESIDENTIAL AND PUBLIC SOLID WASTE COLLECTION
TWENTY FORTH	RIGHT OF CONCESSIONAIRE TO SUSPEND CERTAIN SERVICES IN THE EVENT FOURTH PHASE (B) DOES NOT GET REALIZED
TWENTY FIFTH	RIGHT OF CONCESSIONAIRE TO SUSPEND SERVICES FOR NONPAYMENT OF INVOICES

TWENTY SIXTH	RIGHT TO REVISE COSTS BASED ON INCREASED NUMBER OF SECTORS
TWENTY SEVENTH	CONCESSIONAIRE TO HONOR AGREEMENT WITH ECOLOGY
TWENTY EIGHT	OBLIGATION OF GOVERNMENT NOT TO AWARD SIMILAR CONTRACT
TWENTY NINTH	CANCELLATION FOR NON-COMPLIANCE/FORCE MAJEURE
THIRTIETH	RIGHT OF GOVERNMENT TO SUPERVISE
THIRTY FIRST	OBLIGATION OF GOVERNMENT TO NOTIFY CONCESSIONAIRE OF IRREGULARITY
THIRTY SECOND	JURISDICTION/DISPUTE RESOLUTION
THIRTY THIRD	ADDRESSES
THIRTY FORTH	VALIDITY OF AGREEMENT

Translation of
CONCESSION CONTRACT

Concession Contract for the public services of collection, transportation, recycling, use and final disposition of residential, commercial & industrial solid waste, as well as the design, construction & operation of the final disposition sites (landfill & others) of such solid waste, and the use and exploitation by any legal means of such waste and its sub products, that is made in the phases of collection, transportation, recycling, landfill & processing of solid waste & other services that may need to be implemented in order to provide an efficient public service, that is celebrated on the one side by the Honorable Municipal Government of Naucalpan de Juarez, State of Mexico, represented in this act by the Lic. Mario Ruiz de Chávez, constitutional Municipal President, and by Lic. Xavier Chávez Tello, Secretary of the Honorable Municipal Government of Naucalpan, hereafter referred to as "the Municipal Government" and on the other side by Desechos Solidos de Naucalpan S.A. de C.V., represented in this act by Roberto Aziniaz and Ariel Dario Goldenstein, legal representatives of the Concessionaire, hereafter referred to as "the Concessionaire", pursuant to the following history, declarations & clauses:

H I S T O R Y

I. of "the Municipal Government"

I.1 It is a body of direct popular election, in charge of the administration of the Municipality of Naucalpan de Juárez, State of Mexico, according to what it is set forth in articles 115, items I & III, section "C" of the political constitution of the united States of Mexico, 133, 135, 136, 142, 143, 155 y 156 items II & III of the political constitution of the free and sovereign State of Mexico, article 31, items II, VII, XXII & XXVII, 48, items II, IV VIII, 49, 125, 126, items II, 127, item II, 128, 129, items I & II, 131, 132, 133, 135 y 136 of the Organic Municipal Law; 137 of the General Law of Ecological Equilibrium and Environmental Protection; 5, 56 & 59 of the Environmental Protection Law of the State of Mexico; 34 section "C", 35 & 38 of the Municipal Band for the Municipality of Naucalpan and what it is stipulates in the Regulation for the Handling of Solid Waste in the Municipality of Naucalpan, State of Mexico, published in the Municipal Gazette on December 15, 1992.

I.2 That in compliance to what it is stipulated in the Organic Municipal Law, the request for a Concession from Desechos Solidos de Naucalpan S.A. De C.V for the Municipal service of collection was submitted to the Naucalpan City Council, in conformity to was it is established in articles 127 items II, 128, 129 & 131, of the Organic Municipal Law. After this request for a by Desechos Solidos de Naucalpan S.A de c.v. was extensively discussed by the Honorable members of the City Council, they voted unanimously for the awarding of the Concession of the services of collection to Desechos Solidos de Naucalpan S.A de c.v. during the City Council session on the 4th of November 1992.

I.3 That in compliance with article 129 of the Organic Municipal Law, and due to the fact that this Concession exceeds the term of the present administration, such Concession awarded by the City Council was submitted to the Honorable LI State Legislature in order to obtain the authorization from it, to award the public service to Desechos Solidos de Naucalpan S.A. de c.v. for a 15 year term.

The Honorable LI legislature of the State of Mexico, after having conducted all the legal work, approves and authorizes the Concession awarded by the Municipal Government of Naucalpan for a 15 year term to Desechos Solidos de Naucalpan S.A. de c.v. according to decree number 213 of the Honorable LI Legislature of the State of Mexico dated August 12 1993, number 33, and published in the Gazette of the State of Mexico the 16th of August 1993, and allows the Municipality to establish all other conditions and modalities of the Concession Contract, so that by way of their legal representatives they subscribe the documents that will derive from the Contract.

I.4 That according to the legal framework and history presented above the Municipal Government has the faculties to award a concession, Contract, and supervise de performance of Desechos Solidos de Naucalpan S.A. de c.v., in everything related to the public service of collection, transportation, recycling, use and final disposition of residential, commercial and industrial solid waste, as well as the design, construction and operation of the final disposition sites (sanitary landfills and others) of such waste, and the use and exploitation by any legal means of such waste and its sub products.

II. Of the Concessionaire

II.1 The Concessionaire is a corporation constituted according to the Mexican Laws as per public document number 6477, volume 167, notarized in front of Public Notary Number 7, from the Judicial District of Cuautitlan, by license granted to its principal acting in the ordinary protocol C. Lic. Benjamin de la Peña y Mora, and registered in the Public Registry of Commerce of Tlanepantla, State of Mexico under section number 307, volume number 31, book first of Commerce of Naucalpan.

II.2 That its social object is:

- a) Collection of solid waste
- b) Transportation and transfer of solid waste
- c) Processing, separation and recycling of solid waste
- d) Design, construction and operation of sanitary landfills
- e) Design, installation, construction and handling of machinery for the use and exploitation by any legal means of the bio-gas that is generated by the solid waste.
- f) Design, construction and operation of incinerators of solid waste
- g) Studies, projects and administration
- h) Representation and subscription of stock in other companies that have a similar social object.
- i) Commercialize, manufacture, maquila, build, industrialize, import, export, process, transport and lease anything related to its social object.

DECLARATIONS

- I. The Municipal Government declares that the Municipal Development Plan 91-93 developed by the present administration has determined the importance of modernizing the Municipal public services of sanitation, which include solid waste collection, recycling, exploitation and disposal and other phases that may be deemed necessary.
- II. The Municipal Government declares that the Municipal Development Plan 91-93 developed by the present administration clearly expresses that the lack of Federal, State and Municipal funds must not be an excuse to refrain from developing works of public interest required by the Naucalpan community. In view of the lack of advanced technology and the necessary funds, this Municipal Government has made public the impossibility that it may provide the public sanitation service in an efficient manner and with the advance technology necessary in order to handle Municipal solid waste.
- III. The Municipal Government declares that within a frame of freedom that strengthens economic growth, this Municipal Government has agreed to allow the participation by private investors, who have the capacity and experience in handling and disposing of solid waste, in order to satisfy the needs of the inhabitants of the Municipality.
- IV. The Concessionaire declares that due to the fact that the Municipal Government made public the impossibility of providing by itself the services using the latest technology and because of the convenience that a third party that qualifies for the job would provide the service, aside from contributing to the ecological clean-up and technically handling solid waste, it would

provide collection services with equipment that belongs to the Concessionaire and that for being enclosed it will not allow the waste to come out on the streets, and it would handle the service with hygiene as per the Health Laws which affect this kind of service; Desechos Solidos de Naucalpan S.A. de c.v. has requested in writing to the Municipal Government the Concession to exploit the Municipal public services of collection, transportation, disposition and recycling of Municipal solid waste; design, construction and operation of sanitary landfills as well as the use and exploitation of the sub products of such solid waste and especially of the bio-gas (methane gas) that is generated in such sanitary landfills; this last, so long as the proper company to do the work of exploitation of biogas (methane gas) and the feasibility to generate with it electricity; this specialized company will be invited by the Concessionaire to participate in order to comply with the fourth phase of the concession.

V. The Municipal Government declares that awards, celebrates & signs this Concession Contract, in the exercising of the attributions and faculties that are given to it as per the legal framework that is stipulated in I.1 of this Contract and in its declarations.

VI. The Concessionaire declares that its personality is properly credited according to what is Stated in II.1 of this Contract and in its declarations.

VII. Of the Parties.

The Parties declare that they both agree to celebrate this Contract and that they both comply with all of the legal attributions and needed faculties of the existing Law.

Therefore, the Parties agree as per the dispositions contain in the following,

C L A U S E S

FIRST.- The Municipal Government awards this Concession and is obligated to give to the Concessionaire all the facilities needed so that it can perform the object of this Concession that consists of the public services of collection, transportation, recycling, use and final disposition of residential, commercial and industrial solid waste, as well as the design, construction and operation of the final disposition sites (landfill and others) of such waste and other services that may need to be implemented in order to provide an efficient public service, and the use and exploitation by any legal means of such waste and its sub products.

SECOND.- The Concessionaire is obligated to obtain all the permits and licenses, Federal, State and Municipal that may be required to comply with the object of this concession.

The Municipal Government is obligated to contrive in obtaining the permits and licenses require from a State and Federal and to issue the Municipal permits and licenses needed for the compliance of the object of this concession.

THIRD.- The Concessionaire is obligated to comply with the four Phases as stipulated in the Operation Program which becomes a part of this Concession Contract, as exhibit "1"

FOURTH.- The Concessionaire is obligated to initiate the first phase of the program on November 17, 1993, this first phase consisting of: distribution of containers, collection, transportation, handling and final

disposition of solid waste collected in commercial and industrial areas on the Municipality of Naucalpan.

The Parties agree that the different actions of this first phase will be performed as per the schedule stipulated in the operation program.

FIFTH.- The Concessionaire is obligated to initiate the second phase of the program on December 1st 1993, this second phase consisting of: the operation of the sanitary landfill of Rincon Verde, including in it a recycling plant according to what it is stipulated in the operation program, phase 2 (a) and (c), and at the same time it is obligated to initiate the technical studies necessary to determine whether the life of the site can be extended, and once the life of the site terminates, the Concessionaire is obligated to perform the final closure of such landfill which shall remain properly sealed, reforested, and susceptible for the construction of sporting areas.

The Concessionaire is obligated to begin on the 1st of December 1993 the studies, designs and projects of a new landfill in Corral del Indio or other, and it is obligated to initiate, as a priority, the environmental impact report.

SIXTH.- The Municipal Government is obligated to give possession of the sanitary landfill of Rincon Verde to the Concessionaire on the 1st of December 1993 so that the Concessionaire is able to comply with the fourth clause of the present Concession Contract and authorizes the Concessionaire to establish the necessary methods for its operation, maintenance and conservation and allows the Concessionaire to determine the rates to charge and waste inflow controls. This authorization is

applicable also to future landfills like Corral del Indio or other.

The Parties agree that the rates of the landfills will be determined by the Concessionaire based on the operating costs.

SEVENTH.- The Parties agree that the Concessionaire will honor all the rights and obligations that are contained in the land lease that was celebrated between the Municipal Government and the Common of San Mateo Nopala who are the owners of the site where the landfill is located.

The Municipal Government is obligated to contrive, if need be, with common's authorities of San Mateo Nopala the celebration of a new Contract between the Common's Authorities and the Concessionaire for the term that the technical studies show to be the life of the sanitary landfill of Rincon Verde. The conditions will be discussed between the Municipal Government, the Concessionaire and the Common's Authorities. At the same time the Municipal Government is obligated to contrive with the Common's Authorities of San Mateo Nopala the location of another sanitary landfill, either in the site known as Corral del Indio or in another site that the pertinent studies may determine as suitable for its construction, so that the Concessionaire is able to comply with the second phase of the operation program in its totality.

EIGHTH.- The Municipal Government releases the Concessionaire of all responsibilities on the sanitary landfill of Rincon Verde prior to the December 1. 1993. As a result, the Concessionaire is not responsible of damages or perjuries partial or permanent that the solid waste may cause to third Parties, nor for ecological

unbalances, or contamination, or other events related to that solid waste for it would not be imputable to the Concessionaire.

NINTH.- The Concessionaire is obligated not accept toxic waste at the sanitary landfill of Rincon Verde, Corral del Indio or others.

TENTH.- The Concessionaire is obligated to initiate the third phase of the program on December 13, 1993, consisting this third phase of the program in: residential collection (Satelite) phase 3 (a) and public collection phase 3 (b)

The Concessionaire is obligated to implement the third phase of the program according to what it is stipulated in the residential service schedule. Such schedule describes the nine sectors in which the Municipality is currently divided for waste collection purposes.

ELEVENTH.- The Concessionaire is obligated to install an electricity generating plant which will utilize biogas out of Rincon Verde, Corral del Indio, or other, according to what it is stipulated in the operation program phase 4(A), understanding that this electricity generation will exclusively be out of biogas, and that the amount of megawatts that are to be generated will be determined by the studies that are to be conducted.

The Concessionaire is authorized to invite a power generation specialized company so that they may generate more megawatts using another type of fuel, understanding that the company that may be invited to implement phase 4 (b) of the operation program must have all the permits and authorizations issued by the proper authorities to do the project.

The Municipal Government gives its consent so that the Concessionaire associates itself with a specialized company in order to generate more megawatts and so comply with all the phases of the operation program and to make the program self-financed as shown in exhibit "1"

TWELFTH.- The Concessionaire is obligated to give to the Municipal Government 10% of the total stock of the Concessionaire, and by doing so, it complies to the condition established when the Concession was awarded to the Concessionaire on November 4th 1992.

The Concessionaire is obligated to give the 10% of the stock within 30 days from the date this Concession Contract is signed and it is obligated to keep this 10% of stock throughout the term of this Contract.

In case the Concessionaire increases its social capital it is obligated to maintain the same proportion of 10% of the stock to the Municipal Government.

THIRTEENTH.- The Municipal Government will provide the Concessionaire with all their trucks and equipment that is in good condition as well as the yards, so that the Concessionaire complies with the residential service schedule stipulated in the operation program.

FOURTEENTH.- The Concessionaire is obligated, at the rate that is stipulated in the service schedule in the operation program, to begin substituting the collection trucks by up to 70 advance technology units or more if the service so requires, according to what it is stipulated in the operation program.

FIFTEENTH.- The Municipal Government is obligated to transfer all union labor that works in the waste

collection division of public works and that wishes to be transferred.

The Municipality is obligated to make each and every payment on pensions or voluntary retirement by concept of liquidation and by seniority for the first five years of the duration of this Concession of all those workers that have been transferred from the Municipal Government to the Concessionaire.

All those workers that have been providing services for over 15 years will have the right to retire, if they so desire, and the Municipal Government is obligated to provide for that retirement. Once the Concessionaire rehires the personnel it will be responsible for their benefits and rights as per the Contract that they mutually celebrate.

SIXTEENTH.- The Concessionaire is obligated to recognize as the holder of the collective labor Contract "The Union of Workers for the State and Municipalities" "SUTEYM" due to the fact that the Municipal Government is partners with the Concessionaire according to what is stipulated in the Twelfth Clause of the present Contract and according to what it is stipulated in the statute of the State of Mexico, so that during the Concession term, no other labor union other than the "SUTEYM" may dispute or request the titularity of such collective labor Contract.

SEVENTEENTH.- This Concession shall be in effect for a 15 year period starting from the 17th of August, 1993, and may be extended only once so long as the services have been provided according to the Law and that the Concessionaire complies with the terms set forth in the Concession Contract. The Concessionaire will request

this extension one year prior to the expiration of the term of this Contract.

EIGHTEENTH.- The Concessionaire is obligated to place a N\$1,000,000 (one million new pesos) performance bond in order to guarantee the compliance with the obligations that it acquires in this Concession Contract. This bond shall remain in place during the term of the Contract. The Concessionaire is obligated to provide such performance bond within 90 days from the time this Concession Contract is signed.

NINETEENTH.- The Concessionaire is obligated to maintain in place during the term of this Concession Contract with an authorized insurance company a liability insurance policy in the amount of N\$500,000 (five hundred thousand new pesos) for damages, including death, that the Concessionaire or its employees may cause to others.

TWENTIETH.- The Concessionaire is obligated to establish an educational program with the purpose of making the population of Naucalpan aware of the problem that the solid waste represents and its handling and its final disposition.

TWENTY FIRST.- The Concessionaire is obligated to participate, in conjunction with the Municipal Government, in a public education and orientation campaign in the schools of the Municipality and for the population in general, in subjects related to ecology, environmental protection, handling of solid waste, hygiene and health.

TWENTY SECOND.- The Parties agree that according to decree number 213 of the Honorable LI Legislature of the State of Mexico dated August 12 1993, number 33, and published in the Gazette of the State of Mexico the 16th of August 1993, which entitles the Municipal Government to

establish all other conditions and modalities of the Concession Contract, so that by way of their legal representatives they subscribe the documents that will derive from the Contract.

As a result the Parties agree that it is necessary aside from the conditions and modalities contained in the present Concession Contract, to justify the payment that will be issued by the Municipal Government to the Concessionaire for the residential and public solid waste collection service in the Municipality, because the fourth phase (b) described in the Operation Program as per exhibit "1" is not yet realized, reason for which the residential and public solid waste collection is not self financed, and that it will not be until the electricity is generated at a sufficient rate to pay for phases 2,3 and 4 of the operation program.

As a result, the Municipal Government manifests that its has assigned for 1994 the amount of N\$1,480,000 (one million four hundred and eighty new pesos) monthly to absorb the cost of residential and public solid waste collection in the nine sectors in which the Municipality is divided for residential collection purposes.

TWENTY THIRD.- The Municipal Government is obligated to pay and the Concessionaire accepts the amount N\$1,480,000 (one million four hundred and eighty new pesos) monthly for the services of residential and public solid waste collection.

This payment in the amount of N\$1,480,000 (one million four hundred and eighty new pesos) monthly will be in effect for the years 1994 and 1995, with the condition that at the end of 1995, if the fourth phase (b) of the operation program which consists in the generation of electricity is not yet realized, the Municipal

Government and the Concessionaire will re-negotiate the payment for the residential and public waste collection service for the nine sectors in which the Municipality is divided for collection purposes.

The Municipal Government is obligated to pay to the Concessionaire the proportional amount of its budget destined for the service described above as the Concessionaire takes over the different sectors for residential and public waste collection service, according to the amounts and the schedule stipulated in the operation program.

The Municipal Government is obligated to transfer their equipment and facilities that are in good conditions to the Concessionaire to provide the residential and public service.

The Municipal Government is obligated to pay to the Concessionaire starting on the 13 of December 1993, the quantity of N\$195,000 (one hundred ninety five thousand new pesos) for the first of the nine sectors (Satelite) that the Concessionaire is taking control over.

The Parties agree that the proportional quantities of payment for the sectors that the Concessionaire will be servicing will be paid by the Municipal Government to the Concessionaire in advance within the first five days of every month.

TWENTY FOURTH.- The Municipal Government and the Concessionaire agree that if the fourth phase(b) does not get realized (enough electricity generation as per the operation program), and that the Parties do not come to an understanding in the re-negotiation of the monthly payment for the residential and public service by the end of 1995, the Concessionaire will have the option to stop servicing the residential and public sectors and

only provide service to the commercial and industrial sectors and continue with the other phases contemplated in the operation program.

TWENTY FIFTH.- The Parties agree that if the Municipal Government does not make a payment for the residential and public waste collection services within 90 days after an invoice has been presented by the Concessionaire, the Concessionaire will have the right to suspend the service, and this suspension will not be considered a default to this Concession Contract because this will not be imputable to the Concessionaire.

TWENTY SIX.- The Parties agree that if, in the future, the amount of sectors as per exhibit "2" varies, for these increase, the Municipal Government and the Concessionaire will revise the costs of the services that are being provided by the Concessionaire in order to increase (payment) in proportion to the increased number of sectors that need to be serviced.

TWENTY SEVENTH.- The Parties agree that the Concessionaire will honor all the rights and obligations that are contained in the Coordination Agreement for the operation and sanitation of the solid waste landfill of Rincon Verde celebrated between the Secretary of Ecology of the Government of the State of Mexico and the Municipal Government, dated June 9, 1993.

TWENTY EIGHT.- The Municipal Government is obligated not award any similar Concession to any other company during the term of this Concession Contract and gives authorization to the Concessionaire to transfer any of its rights and obligations under this concession, previous written authorization by the Municipal Government, as well as subcontract with any of the four phases, mainly the fourth phase (b), due to the fact

that the Concessionaire will need a specialized company in this area in order to implement the operation program in its totality.

The sub-Contracting of third Parties by the Concessionaire of any of the phases or of the fourth phase (b) of this Concession Contract, according to what is stipulated in the Operation Program, does not release the Concessionaire of its responsibility and obligations to comply with the totality of this Concession Contract.

TWENTY-NINTH.- The Parties agree that this Concession Contract may not be terminated, revoked or municipalized for causes of force majeure. The non-compliance by the Concessionaire of any of its obligations or any of the clauses of this Contract for reasons imputable to the Concessionaire will be reason for the Municipal Government to proceed according to the attributions and faculties of the existing Law to terminate, revoke or municipalize the Concession Contract, subjecting itself to what it is established in the Organic Municipal Law.

The Parties agree that before the Municipal Government proceeds to the cancellation, revocation or municipalization of this Contract, the Parties will attempt to conciliate their differences.

THIRTIETH.- The Municipal Government will have the right to supervise at any time that it deems to be necessary that the Concessionaire is complying with all its obligations under the Concession Contract as well as under the Operation Program.

THIRTY FIRST.- The Municipal Government must notify in writing to the Concessionaire if it finds any irregularities in the implementation of the four phases that comprises this Concession Contract and the

Concessionaire will have 30 days to correct such irregularity and justify the reason why it existed.

THIRTY SECOND.- The Parties agree that for the interpretation, compliance and execution of the obligations contained in the clauses of the present Concession Contract, they resign to their legal addresses present or future and agree to submit themselves to the courts of the State of Mexico. At the same time, the Parties agree that prior to going to court they would attempt to resolve their differences.

THIRTY THIRD.- For all related to the present Concession Contract the Parties agree that their addresses are:

- a) The Municipal Government, El Palacio Municipal de Naucalpan de Juárez, State of Mexico.
- b) The Concessionaire, Via Gustavo Baz # 85, Bosques de Echegaray, Naucalpan de Juárez, State of Mexico, 53310

THIRTY FOURTH.- The Parties agree that in the celebration of the present Concession Contract there are no voluntary errors nor any other nullity causes that may invalidate it.

This Concession Contract was read by the Parties who are aware of its legal content, they sign at the bottom and at the edge in five originals in Naucalpan de Juárez this 15 of November 1993.

The Municipal Government Municipality of Naucalpan de Juarez	
(Signature) Lic. Mario Ruiz De Chavez Municipal President	(Signature) Lic. Xavier Chavez Tello Secretary Of The Municipality

The Concessionaire Desechos Solidos de Naucalpan S.A. de C.V.	
(Signature) Roberto Azinian President of The Board of Adm.	(Signature) Ariel Dario Goldenstein General Director

(Translation)

(Letterhead of Desona, S.A. de C.V., Desechos Solidos de Naucalpan)

EXHIBIT "1"

OPERATIONS PROGRAM

The Concessionaire's program will be divided into four phases:

- PHASE 1: NON-TOXIC SOLID WASTE PICK UP PROGRAM.
 - A) INDUSTRIAL AND BUSINESS WASTE.
- PHASE 2: NON-TOXIC SOLID WASTE PROCESSING AND FINAL DISPOSAL PROGRAM.
 - A) EXTENSION OF USEFUL LIFE, OPERATION AND CLOSURE OF THE RINCON VERDE LANDFILL.
WASTE PROCESSING.
 - B) DESIGN, CONSTRUCTION AND OPERATION OF A NEW SANITARY LANDFILL.
- PHASE 3: NON-TOXIC SOLID WASTE PICK UP PROGRAM.
 - A) RESIDENTIAL WASTE.
 - B) PUBLIC WASTE
- PHASE 4: ELECTRIC POWER GENERATION PROGRAM.
 - A) CONSTRUCTION OF A BIOGAS-BASED ELECTRIC POWER GENERATING PLANT.
 - B) CONSTRUCTION OF A BIOGAS-BASED AND NATURAL GAS-BASED ELECTRIC POWER GENERATING PLANT.

PHASE 1 (A)

Industrial/Commercial Solid Waste Pick Up Program

The Concessionaire is obligated to start Phase 1 of the Program on November 17, 1993. Phase I includes the placing of containers, collection, transportation, handling and final disposal of the solid waste collected in the commercial and industrial sectors of the Municipality of Naucalpan.

Phase 1 activities will be carried out pursuant to the schedule of this Operations Program.

Procedure

- Customer visits
- Signing of service contract
- Container distribution
- Rendering of the services.

Definition of Type of Services:

Commercial service is defined as the service provided to customers for waste generated out of commercial activities

Industrial service is defined as the service provided to customers for generation of waste out of manufacturing, production, construction, assembly or transformation of any type of products

Industrial And Commercial Services

The following are the services offered by the Concessionaire to industries and commerce:

- A) Container Service of 0.8, 1.5 and 2.3 cubic meters containers which will be picked up from 1 to 6 times per week, depending on the requirements of the industry/commercial. Each industry/commercial may need one or more containers, depending on the available space and the amount of waste generated. These containers must preferentially remain inside the customer's premises. If the industry or commercial does not have the necessary and operative space, it may have its container outside its premises, provided that the street container location does not obstruct pedestrian or car traffic. If the container is located inside the premises, the customers must, after 8 o'clock p.m. on the eve of the pick-up date, take the container out of the premises and put it where the garbage truck can easily reach it. The pick-up site will be jointly determined by the customer and the Concessionaire.

The Concessionaire will require the industrial and commercial customers to put up a cash deposit for the use of the container, which the customers must take care of and return upon the expiration of the contract, as the container is the Concessionaire's property and is only lent to the customers.

Deposit for a 0.8 cubic meter container: N\$680.00

Deposit for a 1.5 cubic meter container: N\$730.00

Deposit for a 2.3 cubic meter container: N\$790.00

The amount of the deposit per container will increase in proportion to the increase in the cost of the same.

The deposit will be refunded to the customer in the following case:

- If either the customer or the Concessionaire cancel the service by mutual agreement.

General Container Deposits

Description	Deposit Required	Deposit not Required
1st Container	X	
2nd Container	X	
3rd Container		X
4th Container	X	
5th Container		X
6th Container	X	

Container Maintenance:

- The customer must keep the container clean and odor-free.
- Based on the needs, the Concessionaire must thoroughly clean, re-paint and repair any container, including the wheels, due to their use.
- If, due to customer misuse, it is necessary to make any repairs, the Concessionaire will repair the container at the customer's expense

The Concessionaire may use other container sizes depending on the customers, needs.

The Following Vehicles Will Be Used To Pick Up This Type Of Containers

Description: Front Load Type Truck

Capacity: Between 8-10 Tons

Power: 230-300 HP

B) 15, 23 and 30 cubic meter roll-off type containers will be used when the solid waste generation by a customer calls for such type of containers. These containers will also be used for all construction industry customers. These containers will be picked up from 1 to 6 times each week, depending on the industry/commerce needs. Each industry/commerce may need 1 or more containers, depending on the available space and the amount of waste generated. These containers must preferentially remain inside the customer's premises. If the industry or commerce does not have the necessary and operative space, it may keep the container outside its premises, provided that the site where the container is located in the street does not obstruct pedestrian or car traffic. The customer and the Concessionaire will jointly determine the container pick-up site.

The Concessionaire shall not require its industrial or commercial customers to deposit any amount for the use of this type of container, but the customers will undertake in the service contract to be responsible for the container. The container will always remain the Concessionaire's property.

Container Maintenance:

- The Concessionaire must keep these containers in the best working conditions.

The Following Vehicles Will Be Used To Pick Up This Type Of Containers

Description: Roll-Off Type Truck
Capacity: 8-10 tons
Power: 230-300 HP

C) The Concessionaire will provide to commercial and industrial customers whose size does not permit or whose waste generation does not justify the use of a container, the pick up service of 12-litter garbage bags, on which the Concessionaire's logo must be printed. The company will supply these garbage bags to commercial and industrial customers for N\$10.00 each.

An industrial and commercial customer, upon acquiring these garbage bags from the Concessionaire, is entitled that the Concessionaire provides the solid waste pick up service at no additional cost. Said garbage bags will be sold in 6 piece packages and in boxes with a maximum of 100 garbage bags. The Concessionaire will pick up these garbage bags every day in any commercial zones which generate high quantities of solid waste. The commercial and industrial customers may deposit their solid waste garbage bags any day from Monday to Friday, at night.

Commercial and/or industrial customers located in zones which generate less solid waste must deposit their solid waste garbage bags only on the days that the garbage trucks service said zone. The pick up days will be set by the Concessionaire and will be reported to all customers.

The Concessionaire will not pick up commercial or industrial waste in garbage bags on which the Concessionaire's logo is not printed, as the pick up service contract will be signed only with industrial or commercial customers that use the Concessionaire's

container or garbage bags on which the Concessionaire's logo is printed.

RATE SHEET

Size	Times per week	Monthly Rate
0.8 m3	1 Time A Week	N\$150.00
0.8 m3	2 Times Per Week	N\$195.00
0.8 m3	3 Times Per Week	N\$240.00
0.8 m3	4 Times Per Week	N\$285.00
0.8 m3	5 Times Per Week	N\$330.00
0.8 m3	6 Times Per Week	N\$375.00
1.5 m3	1 Time Per Week	N\$195.00
1.5 m3	2 Times Per Week	N\$285.00
1.5 m3	3 Times Per Week	N\$375.00
1.5 m3	4 Times Per Week	N\$465.00
1.5 m3	5 Times Per Week	N\$555.00
1.5 m3	6 Times Per Week	N\$645.00
2.3 m3	1 Time Per Week	N\$240.00
1.5 m3	2 Times Per Week	N\$375.00
1.5 m3	3 Times Per Week	N\$510.00
1.5 m3	4 Times Per Week	N\$645.00
1.5 m3	5 Times Per Week	N\$780.00
1.5 m3	6 Times Per Week	N\$915.00

The 15/23/30 cubic meter container pick up service contract to be executed by the Concessionaire With industry and commercial customers will be governed by the following rate:

Description	Frequency	Price
15/23/30 cubic meters	Per trip	N\$.525.00*

*This rate applies only to 15, 23 and 30 cubic meter containers for picking up said containers, per trip. The solid waste content of said containers will be finally disposed of for an extra charge to customers using this type of container. Said charge will depend on the weight of the solid waste in the sanitary landfill, and the customers will be given an official receipt by the sanitary landfill for this charge, which the industrial or business customers undertake to pay in addition to the per trip rate mentioned above.

SERVICE SCHEDULE

Industry/Commerce

According to the information provided by the Municipality to the Concessionaire, Naucalpan has 2,500 industries and 18,000 commercial establishments.

The Concessionaire shall be able to provide solid waste pick up services to all industrial and commercial customers of the Municipality within a maximum term of 24 months and a minimum term of 12 months following the start up date of PHASE I (A) of this operations Program.

PHASE 2 (A)

Possession of Rincon Verde

The Concessionaire shall start Phase 2 (A) of the Program on December 1st, 1993. This second phase consists of the following:

- The Concessionaire assumes responsibility for Rincon Verde, the management, operation, control, maintenance, collection and everything pertaining to an efficient and proper operation of a sanitary landfill.

The Rincon Verde possession program will be as follows:

- Each unit that comes in for the third time will be assigned a control number.
- Start up of the customer information program.
- Start up of the incoming waste control program

2/12/93

- Meetings with all parties related to the Rincon Verde sanitary landfill-

3/12/93

- Start up of adaptation of the entrance booth zone to install the scale.

3/12/93

- Putting up signs with the Rincon Verde control, operation and management provisions.

After January 1st, 1994, studies will be made in the Rincon Verde landfill to:

- Determine the site useful life.
- Determine the possibility of extending the site useful life.
- Determine the area to put a new scale booth.
- Determine the cost to carry out the expansion, construction and clearance work.
- Determine the monthly site operating cost.
- Determine the capacity Potential-
- Apply the closure and post closure costs.
- Determine the rate system.

Once the studies have been completed, and if the same are satisfactory:

- The construction of a scale booth will be started-
- The landfill clearance process will be started.

RECYCLING PLANT

Once the Concessionaire picks up 500 tons of residential waste each day, it will start the construction of a recycling plant. Said plant will receive the waste directly from the pick up trucks and from the transfer area to make a methodological separation of the waste. The separation will consist in the classification of waste by material, in accordance with the following estimated percentages:

Description	Percentage
Glass	7%
Paper	3%
Cardboard	5%
Hard Plastic	1%
Soft Plastic	3%
Cloth	1%
Metals	2%

Once separated, the waste will be transported to packing and storage sites until they are ready to be sold.

PHASE 2 (B)

CONSTRUCTION OF A NEW SANITARY LANDFILL

The Concessionaire shall, after December 1st, 1993, start the studies, design and project of the new sanitary landfill at Corral del Indio or elsewhere, and to start up, as a priority, the environmental impact study.

The commencement of the construction of a new "sanitary landfill in Corral del Indio or elsewhere will be subject to the result of the studies mentioned in PHASE 2 (A), as well as to the feasibility and life of the Rincon Verde landfill.

If PHASE 4 (B) of this Operation Program is not carried out, by means of which the design, construction and operation of a new sanitary landfill at Corral del Indio or elsewhere will be directly financed, the Concessionaire will draw up an economic feasibility study for the construction of the site. If the result of the feasibility study is satisfactory, the Concessionaire will schedule the design and construction of the same.

PHASE 3 (A)

RESIDENTIAL PICK UP SERVICE

Residential waste pick up services to the nine sectors into which the Municipality of Naucalpan is divided

The Concessionaire will provide the pick up service to generators of solid waste located in residential property.

Service Schedule

The Concessionaire shall, as of the date on which it assumes the responsibility for each of the nine sectors into which the Municipality is divided, keep the same Solid waste [pick up] system implemented by the Municipality. After the second month of providing this service, the Concessionaire will advise the generators of residential solid waste of the schedule they must abide by and of the operative conditions of the Concessionaire, in order to cover all of the nine sectors. The pick up service will be provided from one to up to three times per week, depending on the amount of solid waste generated by residential units.

In all instances, and without exceptions, the generators must place their waste on the sidewalk or in proper containers, plastic bags, cardboard boxes or any other recipient or container approved by the Concessionaire, at 8 o'clock p.m. at the latest on the pick up day, so that the Concessionaire's employees pick up said items.

In hard to reach zones, the Concessionaire will provide the pick up service by putting especially designed containers for residential waste, to be located in strategic places. The pick up frequency of these containers will depend on the population of the coverage area of each specific site.

The Concessionaire will advise the population of the residential waste pick up services schedule, per zone, and of any eventual changes.

The Following Vehicles Will Be Used To Provide The Waste Pick Up Services In The Nine Sectors Of The Residential Program:

Description: Side or back load Type Truck and
Roll-Off Type truck
Capacity: 8-12 tons
Power: 230-300 HP

Service Schedule

The residential waste pick up service program will be implemented on the following dates:

1. Satelite December 13, 1993
2. Echegaray March 1, 1994
3. Lomas Verdes April 1, 1994
4. Tecamachalco May 1, 1994
5. Downtown June 1, 1994
6. San Mateo July 1, 1994
7. San Agustin August 1, 1994
8. Izcalli September 1, 1994
9. Molinito A and B October 1, 1994
November 1, 1994

Monthly payment schedule per sector an the basis of the present Municipal budget, which is subject to re-negotiation pursuant to clause Twenty Third of the concession contract

Description	Payment Starts On	Amount
Satelite	12/1/93	N\$195,000.00
Echegaray	3/1/94	N\$150,000.00
Lomas Verdes	4/1/94	N\$105,000.00
Tecamachalco	5/1/94	N\$120,000.00
Centro	6/1/94	N\$180,000.00
San MateoO	7/1/94	N\$150,000.00
San Agustín	8/1/94	N\$150,000.00
Izcalli	9/1/94	N\$210,000.00
Molinito	10/1/94	N\$220,000.00

Program To Be Applied In Residential Sectors

- Work meeting with the sector staff, including drivers, clearance workers, street cleaners and supervisors, two weeks before the date set to start work on the sector.
- Inspection of the vehicle fleet and equipment used by the Municipal Government for garbage pick up and sweeping purposes, 10 days prior to the date set to start work in the sector
- Work meeting with the sector staff, including drivers, clearance workers., street cleaners and supervisors, two weeks before the date set to take possession, at the premises of DESONA, S.A. DE C.V. The uniforms and gloves will be distributed at that meeting.

PHASE 3 (B)

PUBLIC WASTE PICK UP SERVICE

Service Definition

Public waste pick up service is the service provided in public thoroughfares (streets, avenues, parks and public gardens), Public Cemeteries, Federal, State or Municipal Government Offices and Public Schools.

The Concessionaire will sweep and pick up the garbage front the street and avenues and the garbage collected by the sanitation workers in parks and gardens, which will be deposited on the containers placed for that purpose.

The public market will be regarded as commercial accounts, as the markets sell for profit.

Any garbage on the street will be picked up with front, back or side load trucks, depending on the location of that pick up site and the traffic in the Concessionaire's routes.

If there is any garbage on empty land lots, the Concessionaire will so report to the pertinent authorities so that they advise the owners of such empty land lots. The Concessionaire shall not be under the obligation of cleaning up said land lots,

Trucks Required For Garbage Pick Up

Description	Quantity
Front Load Trucks	25
Side or Back Load Trucks	35
Roll-Off Trucks	10

This quantity of solid waste pick up units will start providing services depending on the needs of each phase of the Operations Program. It is understood that said quantity of 70 solid waste pick up units may be increased or adjusted depending on the needs of the service.

Truck Maintenance:

All units to be used by the Concessionaire for waste pick up will be subject to a periodical preventive maintenance program.

Operation Schedule:

The company will pick up industrial, commercial, residential and public waste preferentially at nights from a 8 o'clock p.m. to 7 o'clock a.m.. However, the Concessionaire will be authorized to provide such pick up services during the day.

SCHEDULE TO INCORPORATE SOLID WASTE PICK UP UNITS TO

THE WASTE PICK UP SERVICES

Quantity	Description	Date of Incorporation
2	Front Load	11/17/93
5	Back Load	12/13/93
5	Front Load	3/1/94
2	Roll Offs	
3	Front Load	4/1/94
3	Back Load	
3	Back Load	5/1/94
7	Back Load	6/1/94
2	Roll Offs	
3	Back Load	7/1/94
5	Front Load	
3	Back Load	8/1/94
3	Roll Offs	
5	Back Load	9/1//94
6	Back Load	10/1/94
5	Side Load	11/1/94
3	Roll Offs	
5	Front Load	12/1/94

PHASE 4 (A)

INSTALLATION OF AN ELECTRIC POWER GENERATING PLANT

Phase 4 (A) of the program is the installation of a biogas-based electric power generating plant, from the biogas generated at the sanitary landfills.

In order to determine the quantity of biogas that can be used to generate electric power and the electric power generating plant size, it is necessary to make studies to determine:

- 1) The gas presently generated.
- 2) The gas generation for the next 20 years.
- 3) The type of plant best suited for the site.
- 4) The sale potential of electric power.
- 5) The time and funds necessary for the construction.
- 6) The impact on the environment

Once the feasibility study has been completed and is satisfactory, the Concessionaire will begin the design and construction of the electric power generation plant.

As provided in Clause Eleven of the Concession Contract, the electric power to be generated in Phase 4 (A) will be generated exclusively with the biogas generated at the sanitary landfills and the quantity of megawatts to be generated shall be consistent with the studies made.

PHASE 4 (B)

Phase 4 (B) of the program is an electric power generating plant on the basis of biogas generated at the sanitary landfills and another fuel (such as natural gas), as the electric power generation with the use of biogas is limited.

If a specialized company wishes to participate in Phase 4 (B) to increase the generation of megawatts with another type of fuel, it must first secure the corresponding permits and authorizations from the competent authorities. Once said specialized company meets such requirement, the Concessionaire will form a partnership with said company to carry out this Phase.

The following is the model of electric power generating plant on which the second Paragraph of Clause Eleven is based:

Minimum generating Capacity: 210 megawatts

Portion of sale rate applicable

to residential and public

pick up services: US\$0.0071 per kilowatt/hour

Portion of sale rate applicable

to design, construction and operation

of a new sanitary landfill: US\$0.0035 per kilowatt/hour

If this Phase 4 (B) is not carried out, the City Government may authorize or implement some other means to raise additional funds to make up for the difference between the present budget and the cost of providing the residential and public garbage pick up services.

SAFETY STANDARDS OF THE CONCESSIONAIRE

BESIDES THOSE OF THE SAFETY MANUAL

- The company will provide its staff with uniforms, footwear and gloves. The staff shall be responsible for keeping such items in good conditions.
- The company will provide masks to its staff in direct contact, especially the recycling plant staff.
- The use of alcohol, drugs, narcotics, hallucinogenic etc., during working hours is strictly forbidden and will be cause of dismissal.
- The use of any company vehicles for private uses is strictly forbidden and will be a cause of immediate dismissal
- Accepting or soliciting any payment from the customers for the services rendered is strictly forbidden and will be a cause of immediate dismissal.

Personnel Training Courses

All of the personnel hired by the Concessionaire will undergo a technical training course specific for each area, in environmental hygiene, industrial safety and company standards

Public Education

The Concessionaire will organize an education program in order to make the population of Naucalpan aware of the problem of solid waste and everything concerning its management and final disposal and shall participate with the City Government in organizing an ecology, environmental

protection, solid waste management, hygiene and health education and awareness campaign among Municipal school children and the population of Naucalpan in general.

SINCE THE UNIVERSE OF THE POPULATION FOR SOLID WASTE PICK UP SERVICES VARIES, ANY PHASE OF THIS OPERATIONS PROGRAM MAY BE CHANGED PROVIDED THAT SAID CHANGE IS SUPPORTED WITH THE RESPECTIVE STUDIES.

THE CONCESSIONAIRE AND THE CITY GOVERNMENT AGREE TO CHANGE THE OPERATIONS PROGRAM DUE TO ACTS OF GOD OR FORCE MAJEURE.

"THE CITY GOVERNMENT"

MUNICIPALITY OF NAUCALPAN DE JUAREZ

(An illegible Signature)

Mario Ruiz de Chavez

Municipal President

(An illegible Signature)

Xavier Chavez Tello

Municipal Secretary

"THE CONCESSIONAIRE"

DESECHOS SOLIDS DE NAUCALPAN, S.A. DE C.V.

(An illegible signature)

Roberto Azinian
Chairman of the Board of
Board of Directors

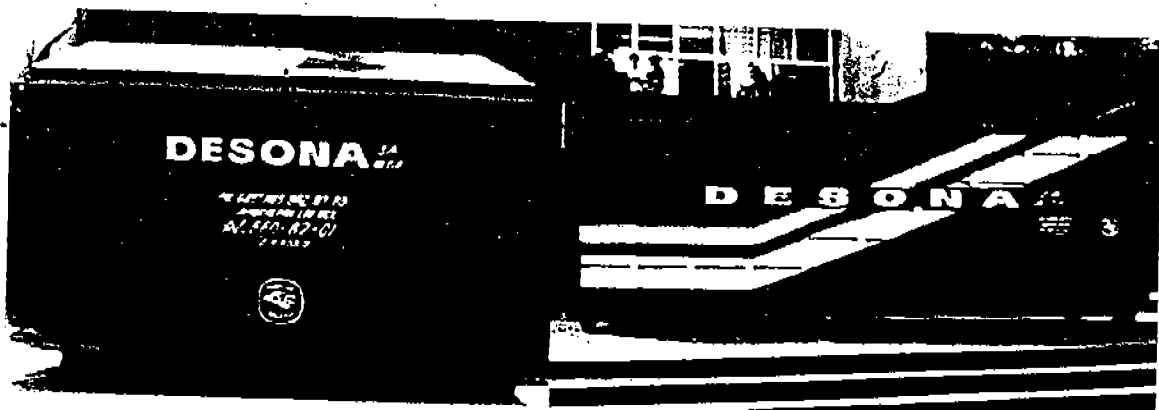
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Ariel Dario Goldenstein
General Manager

PERFORMANCE UNDER THE CONCESSION CONTRACT

Desona began immediate performance of each and every one of its obligations under the Concession Contract and, in some instances, exceeded performance of its obligations.

In compliance with the FOURTH CLAUSE of the Concession Contract, "Obligation of Concessionaire to initiate first phase by November 17, 1993", Desona began the first phase of the Concession Contract by servicing the commercial and industrial sectors of Naucalpan on Nov. 18, 1993. This service included distributing steel containers to the industries of the area and collecting their waste with new front loader trucks that had been imported from the US specifically for this purpose.



The service also included conducting meetings with industry owners to familiarize them with the service, signing individual Contracts with each industry, delivering containers and picking up waste efficiently and consistently. As for the commercial sector, Desona conducted surveys to determine the service needs. Desona's sales force visited customers, in each area, to design the most efficient collection routes.

Desona's industrial/commercial collection service was scheduled to be in full operation within 24 months of the start up date of the service³.

A document issued by the Former Municipal Government to Desona States:

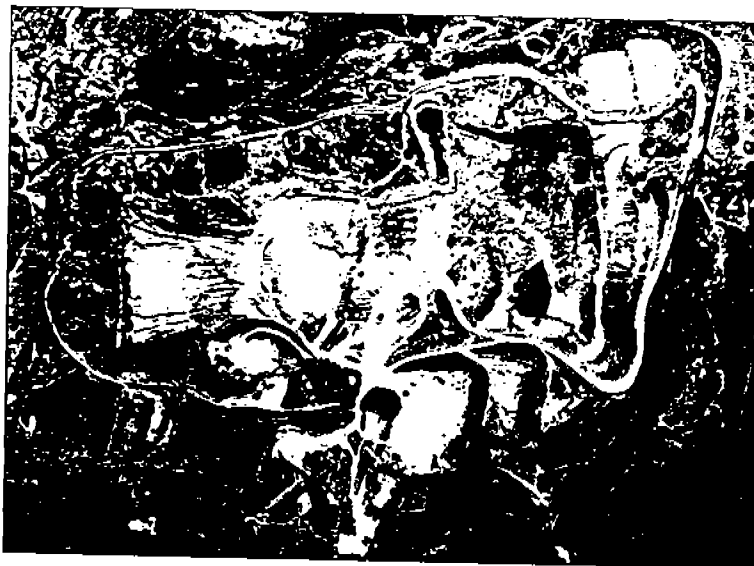
... "It is hereby Stated for any effects, that Desona began its operations on time the 17 of November, 1993, starting Public cleaning service on the first phase of their Operation Program, serving the commercial and industrial sectors" ...⁹

In compliance with the FIFTH CLAUSE: "Obligation of Concessionaire to initiate second phase by December 1, 1993; SEVENTH CLAUSE: "Obligation of Concessionaire to honor the land lease between the Government and the Common of San Mateo Nopala; and NINTH CLAUSE: "Obligation of Concessionaire not to accept toxic waste" of the Concession Contract, Desona began topographical and geographical studies with US landfill engineers. for expanding the life of the landfill, assumed rights and responsibilities of the Municipality's lease Contract for the Rincon Verde Landfill, and implemented a Toxic Waste Screening Program in order to avoid the introduction of Toxic Waste to the Sanitary Landfill of Rincon Verde.

³ See Contract's Operations Program, Page "39"
⁹ See Exhibit "8"

Desona immediately engaged in many activities beneficial to the operation of the landfill, relocating scavengers to safer work areas, 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 and providing uniforms to personnel and training workers and mechanics. 19. See Mr. Stirrat's affidavit;

BAS, through Desona, hired a Mexican mapping company to prepare up-to-date topographic contour maps for the Rincon Verde Landfill to determine how much additional capacity could be developed at the existing facility.



2. Utilizing these new topographic maps, BAS was able to develop a plan for four additional years of disposal within the existing landfill footprint.

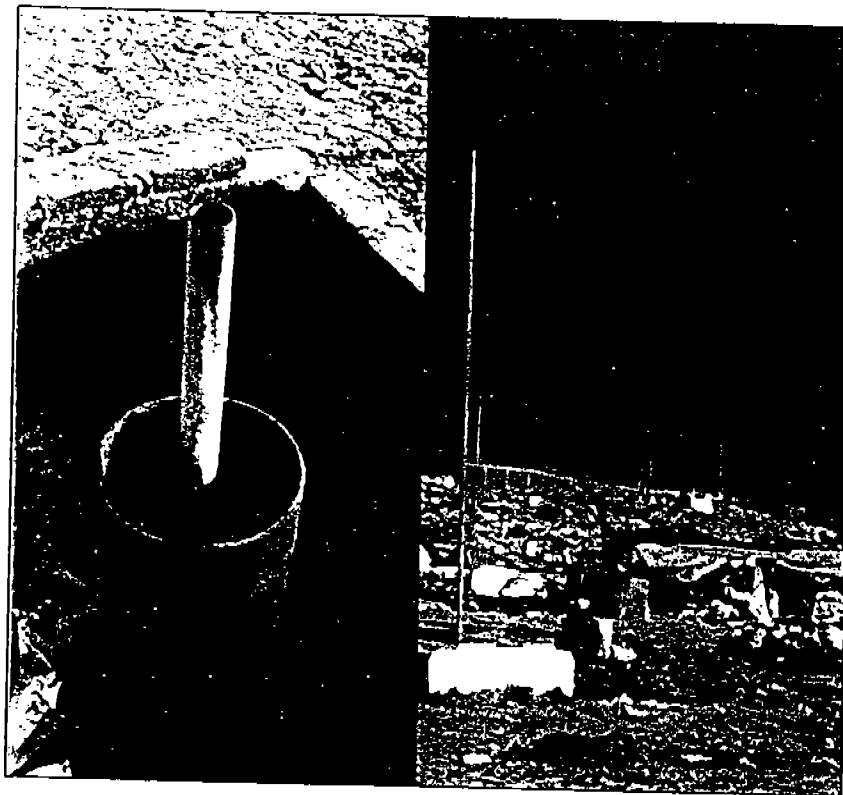
3. In addition, these maps were used to design an expansion of the existing landfill to the west which would provide up to 15 years of additional capacity.

¹⁰ See Affidavit of Bryan A. Stirrat, Exhibit "9"

4. A health and safety plan was developed for the workers and engineers at the existing landfill.

5. A full-time engineer from BAS (Mr. David Harrich) was placed at the landfill to train operations personnel in various procedures (i.e., how to cover refuse with dirt, how to compact the waste to reduce settlement, how to separate the pickers from the heavy equipment).

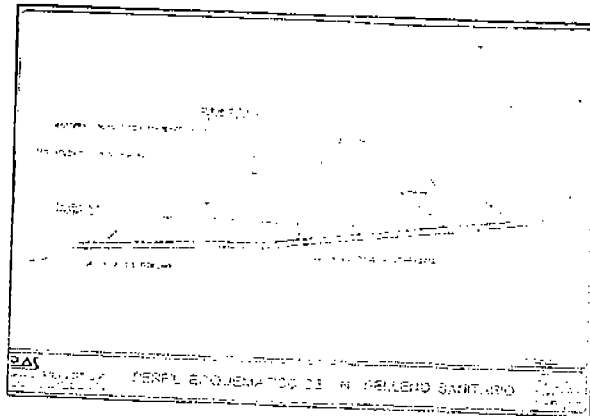
6. A landfill gas technician from BAS (Mr. Ken Ramirez) was assigned to the landfill to take samples of the gas emitting from the wells and to extend all wells 20 feet into the air so that they would be out of the breathing zone of site workers and "peppenadores".



Old Pipes

New Pipes

7. All existing slopes were compacted with a bulldozer and additional dirt was placed on the slopes.



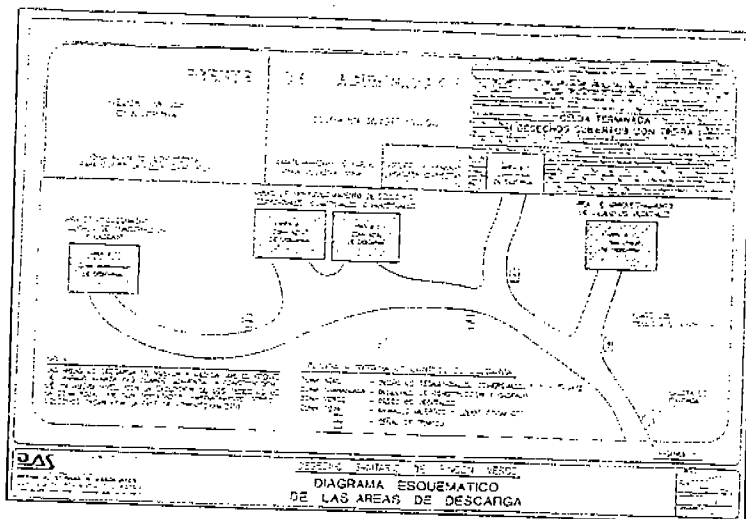
8. Every Thursday, a crew of pickers was sent out across the landfill and adjacent streets to pick up blow litter from the trucks and disposal operations.



9. All trucks entering the landfill were told that for them to dump in the future, they were required to cover their loads with a tarpaulin (tarp) to reduce litter on the streets of the city.



10. Separate colored zones were established at the landfill by the use of painted barrels to show truck drivers where to dump: 1) green waste, 2) demolition waste, 3) dead animals and sewage sludge, 4) municipal trash.



11. Alternating dumping areas were established so that the peppenadores were not in the same area as the dumping trucks.

12. A toxic waste screening system was established so that each load was inspected prior to dumping at the landfill. A training program was established so that the workers at the landfill knew how to identify hazardous wastes,

13. Plans were developed to establish a toxic waste storage area for those items found at the landfill

which are not able to be given back to the disposer. This area was fenced to prevent unauthorized entry.

14. A security system was established at the landfill to provide coverage 24 hours per day.

15. A separate storage area for the materials recovered by the peppenadores was established at the landfill to reduce the amount of materials spread over the site.

16. Landfill engineering plans were developed to enable the exiting landfill to be expanded to accommodate additional capacity for the next 15 years. These engineering plans, including provisions that all new areas of disposal be lined to meet the performance standards of U.S. EPA Subtitle "D". A bottom excavation plan was also developed to enable additional dirt to be removed for use in covering the daily trash.

17. An operations plan and overall landfill master plan was developed to provide the designs necessary to operate the landfill for the life of the concession. Phased development plans were also designed to provide for yearly operations of the landfill.

Furthermore, a document issued by the former Municipal Government to Desona on Dec. 11, 1993 Desona reads:

...."This document is written to leave proof that, with this act, the second phase of the Concession Contract between Desona and the Municipal Government begins".... 11

11 See Exhibit "10"

In compliance with the TENTH CLAUSE of the Concession Contract: "Obligation of Concessionaire to initiate third phase by December 13, 1993", Desona began the third phase of the Concession Contract on Dec. 13 1993. This phase consisted of the implementation of residential collection service. Service for the first sector, Satelite, was scheduled to begin on Dec. 13, 1993, and service for the second sector, Echegaray, was scheduled to begin on March 1, 1994. Performance under this clause included the repair of all Municipal waste collection vehicles destined for these areas, classification of personnel, re-organization of routes and providing all personnel with uniforms.

All efforts made by Desona were for the purpose of improving the health and safety of the citizens of Naucalpan and fulfilling its Contractual obligations.

In compliance with the ELEVENTH CLAUSE of the Concession Contract, "Obligation of Concessionaire to install electricity generating plant", Desona began the studies necessary to determine the amount of Bio-Gas generated by the landfill in order to determine the size of the Power Plant ¹².

In compliance with the TWELFTH CLAUSE of the Concession Contract, "Obligation of Concessionaire to give stock to Government" Desona transferred 10% of its stock to the Municipal Government in a General Assembly dated December 15, 1993 ¹³.

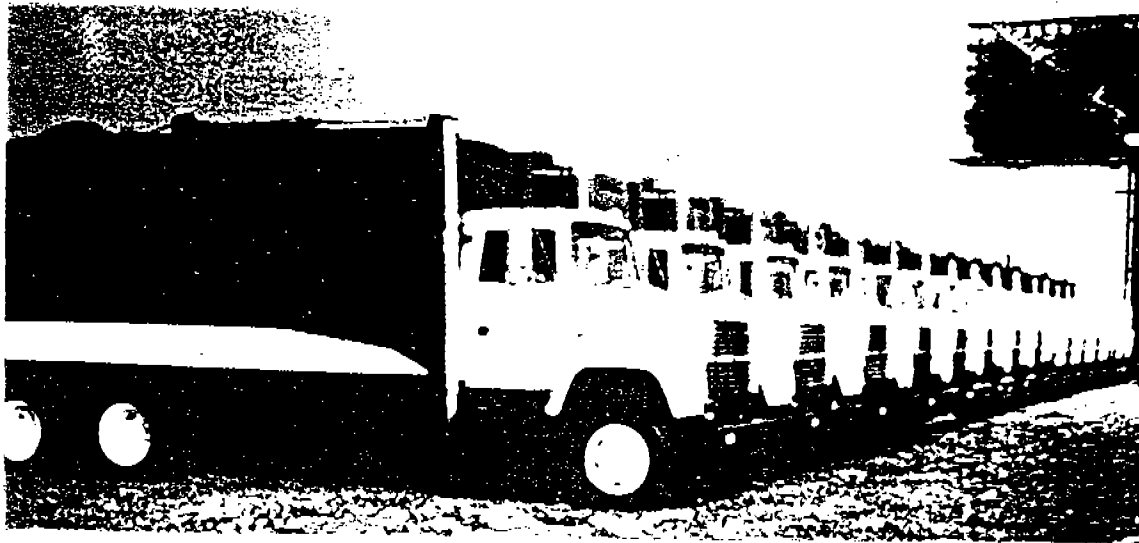
These shares were delivered of Feb. 9, 1994, in hand, by Mr. Azinian and Mr. Goldenstein to Lic. Francesco Piazzesi, Director of Economic Development of the new Municipal Government ¹⁴

¹² Ibid - Exhibit "9"

¹³ See Desona General Assembly - Exhibit "11"

¹⁴ See Affidavit of Robert Azinian -Affidavit Section

In compliance with the FOURTEENTH CLAUSE of the Concession Contract; "Obligation of Concessionaire to substitute collection trucks", Desona began to substitute the Municipal Collection Trucks with advance technology units depicted herein.



(Municipal Trucks)

In compliance with the SIXTEENTH CLAUSE of the Concession Contract, "Obligation of Concessionaire to recognize collective labor contract", Desona recognized as the holder of the Collective Labor Contract " The Union of

Workers for the State and Municipalities" and began to negotiate a new collective labor Contract with such Union.¹⁵

In compliance with the EIGHTEENTH CLAUSE of the Concession Contract, "Obligation of Concessionaire to post performance bond", Desona placed a \$1,000,000 (One Million New Pesos) performance bond in favor of the Municipality and provided such performance bond within 90 days from the time the Concession Contract was executed.¹⁶

In compliance with the NINETEENTH CLAUSE of the Concession Contract, "Obligation of Concessionaire to maintain liability insurance", Desona maintained a liability insurance policy in the amount of N\$500,000 (Five Hundred Thousand New Pesos).

In compliance with the TWENTIETH CLAUSE, of the Concession Contract, "Obligation of Concessionaire to establish an educational program", Desona, began to design an educational program with the purpose of raising awareness amongst Naucalpan's people regarding solid waste issues.¹⁷

In compliance with the TWENTY SEVENTH CLAUSE of the Concession Contract, "Concessionaire to honor agreement with Ecology", Desona honored all the rights and obligations that were contained in the coordination agreement for the operation and sanitation of the solid waste landfill of Rincon Verde.

15 See Exhibit "12"

16 See Exhibit "13"

17 See Affidavit of Ariel Goldenstein, Affidavit Section

Desona Exceeded Its Responsibilities Under The
Concession Contract.

In addition of donating to the municipality all the tarps that Desona insisted had to be used to cover the trash of all Municipal Trucks traveling towards the landfill; when the new Municipal Administration was faced with a waste crisis in those sectors in which Desona was not responsible for waste pick-up, and in order to cooperate and support the new Municipal Government in its efforts, Desona voluntarily, placed steel containers in the main municipal markets which were picked-up, at no charge, twice a day every day. Each one of Desona's trucks had the capacity to carry 5 or 7 tons one load's municipal truck thereby reducing the accumulation of waste.



CLAUSES OF THE CONCESSION CONTRACT BREACHED BY THE MUNICIPAL GOVERNMENT AND INTERNATIONAL STANDARDS OF REMEDY FOR BREACH

A. Clauses Breached

The SECOND CLAUSE of the Concession Contract provides;

... The Municipal Government is obligated to contrive in obtaining the permits and licenses require from a State and Federal and to issue the Municipal permits and licenses needed for the compliance of the object of this concession.".....

The Municipal Government failed in its obligation to contrive in obtaining the permits so that Phase 4 of the Operations Program could be implemented. It was the new Municipal Government's responsibility to affirmatively seek approval from the Federal Commission of Electricity.¹⁸

The SEVENTH CLAUSE of the Concession Contract provides;

..."The Municipal Government is obligated to contrive, if need be, with common's authorities of San Mateo Nopala the celebration of a new Contract between the Common's Authorities and the Concessionaire for the term that the technical studies show to be the life of the sanitary landfill of Rincon Verde. The conditions will be discussed between the Municipal Government, the Concessionaire and the Common's Authorities. At the same time the Municipal Government is obligated to contrive with the Common's Authorities of San Mateo Nopala the location of another sanitary landfill, either in the site known as Corral del Indio or in another site that the pertinent studies may determine as suitable for its construction, so that

¹⁸

See Affidavit of Ariel Goldenstein, Affidavit Section.

the Concessionaire is able to comply with the second phase of the operation program in its totality.

The new Municipal Government made no attempt to comply with Clause in that they failed to facilitate any negotiation between Desona and the Common of San Mateo Nopala¹⁹

The TWENTY THIRD CLAUSE of the Concession Contract provides;

... "The Municipal Government is obligated to pay to the Concessionaire starting on the 13 of December 1993, the quantity of N\$195,000 (one hundred ninety five thousand new pesos) for the first of the nine sectors (Satelite) that the Concessionaire is taking control over"....

The Municipal Government failed to make any payment to the Concessionaire for services provided even though they have been invoiced for payment on services rendered in Dec. 1993, Jan 1994, Feb. 1994 for a total of N\$643,500²⁰

The TWENTY NINTH CLAUSE of the Concession Contract provides;

... "The Parties agree that before the Municipal Government proceeds to the cancellation, revocation or Municipalization of this Contract, the Parties will attempt to conciliate their differences"....

However, no attempt was made on the part of the new Municipal Government for any conciliation either before or after service of the notice of irregularities on Desona on March 10, 1994.

¹⁹ See Affidavit of Robert Azinian, Affidavit Section
²⁰ See Exhibit "14"

The THIRTY FIRST CLAUSE of the Concession Contract provide;

... "The Municipal Government must notify in writing to the Concessionaire if finds any irregularities in the implementation of the four phases that comprises this Concession Contract and the Concessionaire will have 30 days to correct such irregularity and justify the reason why it existed".....

However, the Municipal Government notified Desona of irregularities and gave Desona only 4 days to respond violating Desona's rights under the Contract. Further, the new Municipal Government stated that should Desona not answer within the specified time it would loose all its rights to bring forth any response.²¹

The THIRTY SECOND CLAUSE of the Concession Contract provide;

... "The Parties agree that for the interpretation, compliance and execution of the obligations contained in the clauses of the present Concession Contract, they resign to their legal addresses present or future and agree to submit themselves to the courts of the State of Mexico. at the same time, the Parties agree that prior to going to court they would attempt to resolve their differences.".....

The new Municipal Government violated Desona's rights under this clause when it failed to make any attempt to resolve any differences and, unilaterally, nullified the Concession Contract which the Municipal Government drafted as a party thereto.

²¹ See Nullification Section -

Desona, in attempting to comply with the Clause requested to meet and confer with the new Municipal Mayor²². The Mayor failed to respond. Further, Desona requested to meet and confer with the Governor of the State, Lic. Emilio Chayffet Chemor, who also failed to grant Desona an audience²³.

In addition, Robert Azinian met with the First Sindico of the new Municipal Government Lic. Vargas Yanez, on March 12, 1994, only 2 days after the alleged irregularities were served upon Desona. Mr. Azinian inquired as to what steps Desona could take to remedy the misunderstanding. He was told unequivocally that there was nothing Desona could do but go home²⁴.

The above breaches of the Concession Contract constitute violations of international law discussed below.

B. The Municipality of Naucalpan Committed an Unexcused Breach of Desona's Concession Contract in Violation of International Law and Article 1105 of the NAFTA.

- I. Principles of international law govern the contract dispute between the claimants and the Municipality of Naucalpan.

Article 1105 of the NAFTA Provides:

"Minimum standard of treatment:

- I. Each Party shall accord to investments of investors of another party treatment in accordance with international law, including fair and equitable treatment and full protection and security.

²² See Affidavit of Robert Azinian - Affidavit Section
²³ See Exhibit "15"
²⁴ See Affidavit of Robert Azinian - Affidavit Section

Under international law, claimants are entitled to compensation for breach of contract, according to the Restatement (Third) of Foreign Relations.

712. State Responsibility for Economic Injury to Nationals of Other States.

A state is responsible under international law for injury resulting from:

- (1) a taking by the state of the property of a national of another state that
 - (a) is not for a public purpose, or
 - (b) is discriminatory, or
 - (c) is not accompanied by provision for just compensation;

For compensation to be just under this subsection, it must, in the absence of exceptional circumstances, be in an amount equivalent to the value of the property taken and 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 national:

- (2) a repudiation or breach by the state of a contract with a national of another state
 - (a) where the repudiation or breach is (i) discriminatory; or (ii) motivated by noncommercial considerations, and compensatory damages are not paid; or
 - (b) where the foreign national is not given an adequate forum to determine his claim of repudiation or breach, or is not compensated

for any repudiation or breach determined to have occurred; or

(3) other arbitrary or discriminatory acts or omissions by the state that impair property or other economic interests of a national of another state.

Both in Mexico and in the United States, monetary relief is accorded for wrongful termination of contract.

Under Mexican law, where a liable party will not materially perform a contract, the option is to rescind the contract and indemnify the affected party with compensatory damages. [daños compensatorios y perjuicios]. These damages include the loss of investment and expected profits that results from the absolute nonperformance of the contract. [article 2104 of the Federal Civil Code].

A statement of the law in the United States is found in the Restatement of Contracts [Second]. [American Law Institute 1981] § 243 Provides as follows;

§243. Effect of a Breach by Non-Performance as Giving Rise to a Claim for Damages for Total Breach

(1) With respect to performances to be exchanged under an exchange of promises, a breach by non-performance gives rise to a claim for damages for total breach only if it discharges the injured party's remaining duties to render such performance, other than a duty to render an agreed equivalent under §240.

(2) Except as stated in Subsection (3), a breach by non-performance accompanied or followed by a repudiation gives rise to a claim for damages for total breach.

(4) In any case other than those stated in the preceding subsections, a breach by non-performance gives rise to a claim for total breach only if it so substantially impairs the value of the contract to the injured party at the time of the breach that it is just in the circumstances to allow him to recover damages based on all his remaining rights to performance.

C. The Municipality of Naucalpan Breached the Expressed Terms of the Concession Contract by Terminating It without Prior Notice of Alleged Deficiencies in Desona's Performance and without Offering an opportunity to Cure in violation of CLAUSES TWENTY NINE (relating to conciliation) THIRTY FIRST (relating to a 30 day window to cure alleged breaches) and CLAUSE THIRTY SECOND (relating to meet and confer)

The Municipality, when it agreed to enter into this written obligation, agreed not to terminate the contract without complying with the contract itself, even under Mexican Jurisprudence.

The Mexican Supreme Court, Second Chamber, held as to "Administrative Resolutions, their Annulment";

The attribution of administrative authorities to reconsider their own resolution, annulling them, does not exist when reconsidering controversial applications of the law by which they are governed. When the original application has created rights for third parties or other interested parties, these rights may not be disavowed by a later resolution on the same matter²⁵

²⁵ Appendix to the Judicial Weekly (Reporter) 1917-1985, 3rd part, Second Chamber, Pages 716-717

In other words, the new Municipal Government could not obtain justice for itself by nullifying the Contract without prior court authority by determining, unilaterally that there was error and hence, failing to allow Desona to legally defend those charges.

D. Under international law, the Municipality of Naucalpan is required to show a fundamental breach of the concession contract as grounds for termination.

A contracting party may not terminate a contract for immaterial breaches. The UNIDROIT principles of international commercial contracts state the controlling principle in article 7.3.1

"a party may terminate the contract where the failure of the other party to perform an obligation under the contract amounts to a fundamental non-performance"

A similar statement of the principle is found in the United Nations Convention on Contracts For the International Sale of Goods which has been ratified both by the United States and Mexico (article 49(1)(a)) provides that "the buyer may declare the contract avoided:(a) if the failure by the Seller to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract

United States law is in accord. Under US law, in contracts not involving the sale of goods, the principle is that only a material breach will justify the other party's failure to perform the contract. The Restatement (Second) of Contracts, § 241, provides; Circumstances Significant in Determining Whether a Failure Is Material:

In determining whether a failure to render or to offer performance is material, the following circumstances are significant:

(a) the extent to which the injured party will be deprived of the benefit which he reasonably expected;

(b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived;

(c) the extent to which the Party failing to perform or to offer to perform will suffer forfeiture;

(d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances;

(e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.

The Concession Contract itself furnishes compelling evidence that even serious breaches of the Contract were not considered grounds for termination by the parties. Consider again, the 30-day cure provision of CLAUSE THIRTY FIRST. Further note, that CLAUSE EIGHTEEN which requires a performance bond of N\$1,000,000, was never claimed against by the new Municipality.

Contrary to international law and the terms of the Concession Contract, the new Municipal Government terminated the contract for unsubstantiated minor grievances discussed above in section 4 of this Memorial entitled "Irregularities"

Consideration must be given to the concept well recognized in international law, that of good faith and fair dealing as recognized in the UNIDROIT principles which provides as follows;

Article 1.7,
(Good Faith and Fair Dealing);

- (1) Each party must act in accordance with good faith and fair dealing in international trade.
- (2) The parties may not exclude or limit this duty

Compelling evidence is found in the course of conduct of the new Municipal Government that it was acting contrary to settled principles of international law by nullifying the Contract unilaterally and by failing to interpret and execute the Contract in good faith.

E. The Investors are Entitled to Damages for Breach of Contract Under 1105 and International Law

Article 1105 of the NAFTA does not spell out standards of compensation for breach and refers to customary international law for guidance.

Article 1110, however, spells out the standards of compensation in great detail as discussed below in Section 5, C.1. Standard of Compensation under Article 1110. Claimants believe those principles to be controlling.

THE NULLIFICATION PROCESS

This section of the memorial describes the process that was implemented by the new Municipal Government to nullify Desona's Concession. First, it will discuss the dispute resolution mechanisms that were incorporated in the Concession Contract, second, it will discuss the underlying charges made by the new Municipal Government as to Desona's lack of technical and financial ability to perform, third; it will discuss the Municipal Government's probable motives to nullify the Concession, and finally it will discuss the 27 alleged irregularities in detail.

RESOLUTION MECHANISMS

The Concession Contract celebrated between the former Municipal Government and Desona contains a number of mechanisms to resolve any discrepancies or disputes that may arise between the Parties.

The TWENTY NINTH clause of the Concession Contract, reads;

....."The Parties agree that this Concession Contract may not be terminated, revoked or Municipalized for causes of force majeure. The non-compliance by the Concessionaire of any of its obligations or any of the clauses of this Contract for reasons imputable to the Concessionaire will be reason for the Municipal Government to proceed according to the attributions and faculties of the existing law to terminate, revoke or Municipalize the Concession Contract, subjecting itself to what it is established in the organic Municipal Law.

The Parties agree that before the Municipal Government proceeds to the cancellation, revocation or Municipalization of this Contract, the Parties will attempt to conciliate their differences... "

The THIRTY FIRST clause of the Concession Contract, reads;

... "The Municipal Government must notify in writing to the Concessionaire if finds any irregularities in the implementation of the four phases that comprises this Concession Contract and the Concessionaire will have 30 days to correct such irregularity and justify the reason why it existed"....

Finally, the THIRTY SECOND clause of the Concession Contract, reads;

... "The Parties agree that for the interpretation, compliance and execution of the obligations contained in the clauses of the present Concession Contract, they resign to their legal addresses present or future and agree to submit themselves to the courts of the state of Mexico. At the same time, the Parties agree that prior to going to court they would attempt to resolve their differences. (emphasis added)

On March 7, 1994 the new Municipal Government passed a resolution in front of their City Council to give to the First Sindico, as the legal representative of the new Municipal Government, faculties to analyze the irregularities that are present by the Concessionaire and to frame them in one of the hypothesis contained in art, 37, 132, 137 or 167 of the Organic Municipal Law; and to notify the Concessionaire that, in case it does not present appropriate proof, within a certain term, it would loose its right to do so.

Desona's principals found out about the alleged irregularities and about the City Council resolution by way of a newspaper reporter who, himself, found out about the new Municipal Government's intentions to nullify Desona's Concession by way of a press release issued by the new Municipal Government on March 7, 1994 ¹.

On March 10th, 1994, the First Sindico issued a notice to the legal representative of Concessionaire to appear before him:

... "on March 10, 1994 at 10 AM, in order to make him (Desona's Legal Representative) aware of the irregularities found in the act of the awarding of the Concession to the company he represents" ...²

On March 10, 1994, Desona's representatives along with Mr. Gerardo Saavedra, an attorney who attended the meeting at Desona's request, presented themselves at that meeting.

During such meeting, the First Sindico of the new Municipal Government notified Desona's principals that he concluded that:

... "the act of Concession of the public service of collection and transportation of solid waste and the Contract that was effected for this purpose, contain the following irregularities consisting of the existence of error, fortuitous or induced in the willingness of the Municipality to award the Concession" ...³

¹ See Exhibit "1"
² See Exhibit "2"
³ See Exhibit "3"

He further stated that, as a result of those irregularities, the new Municipal Government had initiated an administrative procedure to nullify Desona's Concession.

This action taken by the new Municipal Government is a clear violation of its contractual obligation with the Concessionaire under the TWENTY NINTH clause of the Concession Contract, for the new Municipal Government failed to make any attempt to resolve any differences with the Concessionaire prior to initiating any nullification procedures (See Clause TWENTY NINE above, Second Paragraph).

The First Sindico read aloud a 14 page document which contained the 27 alleged irregularities and gave Desona 4 days to respond.

This action is a clear violation of the THIRTY FIRST clause of the Concession Contract under which the Concessionaire would have 30 days to respond to any alleged irregularity.

Moreover, the City Council resolution entitles the First Sindico to be "he" who hears the proof that the Concessionaire may submit in response to the 27 alleged irregularities and rules (emphasis added) on them as been sufficient proof to stop the administrative nullification process that had been initiated.

This action is a clear violation to the THIRTY SECOND clause of the Concession Contract, whereby any interpretation of the obligations under the Contract had to be raised to a Tribunal in the State of Mexico.

What seems clear from the procedure followed by the new Municipal Government to nullify Desona's Concession and from the 27 alleged irregularities onto which it based such decision, is that the nullification of Desona's Concession was the result of an executive order (emphasis added) issued

by the new Mayor. This order was followed by the misrepresentation of facts and the framing of those alleged irregularities within existing legal mechanisms to justify the procedure.

MOTIVES:

Mayor Enrique Jacob Rocha never met with Desona's principals to discuss the progress of a project. Instead, he issued an instruction, as early as February of 1994, (90 days after the Concessionaire began performance and 45 days after he assumed power) to analyze the legal ways in which the Concession that had been granted by the former Municipal Government to Desona could be nullified. In fact, that analysis was the blue print used by the new Municipal Government to nullify Desona's Concession.

In a document written to the Governor of the State of Mexico, presumably by the new Mayor Enrique Jacob Rocha, the Governor is explained the procedure that will be used to nullify Desona's Concession, as follows:

..."According to your recommendation, we have conducted a legal analysis of the procedure that was followed to award such Concession and concluded that it contains a number of irregularities, and that it could be administratively revoked by following two parallel procedures: an administrative nullification and a nullification of law. This last one, which is the most important, would proceed only if the Legislature itself pronounces on the legality of procedure because it was the Legislature the one that ratified the Concession under Decree 213 without having had all the elements that it required to evaluate the situation"....

and

... "That you allow the Municipality of Naucalpan, to submit next Monday February 28 in front of the State Legislature, the City Council resolution in which it is requested that the State Legislature revokes or modifies decree 213 of August 1993. At the same time that you authorize the Municipality to award a Concession by going to a public bidding the public service of waste collection, handling and final disposition of Solid Waste"....⁴

Furthermore, the administration of Enrique Jacob Rocha had no intention of hearing Desona's responses to the allegation: Their intention was to give this Concession to a Mexican Company, TRIBASA. An internal Memo of Tribasa dated March 10, 1994, reads:

... " 1.- The Municipality already initiated the procedure to revoke the Concession awarded to Desona.

2.- Due to Political reasons, the Municipality will have to submit this project to a public bid, however, the presented us with the possibility to provide service by way of a provisional Contract for a limited time.

3.- They have requested from us a formal proposal as to what we are able to execute which should include, at the same time, the management of Rincon Verde⁵

⁴ See Exhibit "4"

⁵ See Exhibit "5"



UNDERLYING CHARGES:

Before we address these allegations individually, we observe that, underlying this entire procedure, there appears to be a charge by the new Municipal Government that Desona lacked the financial and technical ability to perform its Contractual obligations.

... "It is evident, once again, that the offers made are totally inconsistent with the true capacity of the Concessionaire" ... (See allegation #8, Paragraph 2, Page " ")

and,

... "What is previously stated is reinforced by the fact that the Concessionaire has abstained from hiring the amount of employees necessary to provide the service, which, once again, derives in the lack of technical capacity and lack of human and material resources, conditions of the Concession" (See allegation 9, Paragraph 3, Page " ")

and,

... "It evidently becomes clear that such offerings will not be honored by Desechos Solidos de Naucalpan S.A. de C.V., for having made of public knowledge, by way of its behavior which has been summarized herein, that, without any doubt, it lacks the financial and administrative means for that" ... (See allegation 10, Paragraph 1, Page " ")

In response to this, we have evidence of numerous statements to the contrary, made by officials of the former Municipal Government attesting to Desona's fiscal and technical competence as a Concessionaire, as follows:

In a letter dated June 23, 1992, and directed to Mr. Goldenstein, the former Director of Economic Development, Arq. Abel Duarte Ortega, states:

...."As we undertook the evaluation of the information meetings regarding the solid waste problem that we have been conducting for five months with different business men, we have analyzed the Corporate curricula and the plan of action proposed by the companies that have requested the Concession for the handling of solid waste in Naucalpan, including the collection, recycling, landfills, bio-gas based energy plants, and incinerators of all types of waste, I am pleased to inform you that the plan presented by your company fulfills all the requirements set forth by this office and is susceptible to be submitted to the consideration of the Honorable City Council"....(emphasis added)⁶

Moreover, in the Official Gazette of the State of Mexico, dated Nov. 23, 1992, which publishes the considerations of Naucalpan's City Council meeting of Nov. 4, 1992, reads:

..."These companies have demonstrated to have experience of over 40 years in providing this services and to have the financial capacity to guarantee the implementation of the project that represents better services for Naucalpan"....⁷

⁶ See Exhibit "6"

⁷ See Exhibit "7"

Finally, in a letter dated March 9, 1993, the former Mayor of Naucalpan Mario Ruiz de Chavez wrote to Mr. Azinian, president of Desona that :

..."in virtue that (Desona) demonstrated to have the economic capacity and sufficient technical experience in the handling and disposition of Solid Waste"....⁸

From the above, it is clear that the former Municipal Government not only was satisfied with the proposal that was submitted by Desona but that, after of over 12 months of rigorous investigations from October of 1991 until November of 1992 and then from the time of the awarding of the Concession by the Naucalpan's City Council on Nov. 1992, until the time the Concession Contract was signed, the former Municipal Government had also determined that Desona had both the financial and technical ability to perform its Contractual obligations.

In addition to the above, Dr. Ted Guth of Sunlaw Energy Corporation, company which, at the time the project was conceived, was to provide the financing for the entire project states in his affidavit:

...." That Sunlaw had the ability and could have obtained, as it did on two existing plants in California, all the financing necessary to develop all phases of the proposal"....⁹

⁸ See Exhibit "8"

⁹ See Affidavit of Dr. Ted Guth, Paragraph 11, Exhibit "9"

1. Allegations that the former Municipal Government had been misled by Desona's statements before the City Council to enter into a Concession Contract and that thus the Concession Contract was entered in error; allegations 1-2-4-5-6-7-8-9-12 and
2. Allegations that there are legal deficiencies in the incorporation of Desona, that there are legal deficiencies in the formulation of the Concession Contract or the Concession Contract is in excess of the Municipal Administration's authority; allegations 3-13-14-15-16-17-18-19-20-21-22-23-24-25-26-27 and
3. Allegations that certain hoped-for, non-Contractual benefits did not materialize during the first four months of the Concession Contract; allegations 10-11.

Every circumstance that the new Municipal Government invoked to justify nullification was either known to the former Municipal Government or undertaken by Desona at the former Municipal Government's direction prior to execution of the Concession Contract.

CATEGORY #1:

As to the first category, the new Municipal Government's claims that the former Municipal Government was misled by Desona's statements before the City Council on Nov. 4 1992, and therefore induced to enter into the Concession Contract in error have no foundation in fact.

The Municipal Government and the members of the consortium had been working on a full time bases on the project that was submitted, by the Municipal Government, to its City Council for over 12 months prior to the City Council meeting.

The proposal for the granting the Concession to Desona was presented to the City Council by the former Director of Economic Development of the administration, Arq. Abel Duarte Ortega;

... "The Municipal secretary, by instruction of the presidency, submits for the consideration of the City Council, the proposal of Arq. Abel Duarte Ortega, director of development and economic growth to award the Concession for fifteen years to Desona S.A. de c.v. with all the characteristics expressed in the written proposal which has been provided to each one of the members of the City Council, obtaining a unanimous approval"...

The content of the entire presentation was prepared by the Economic Development Department and submitted, in writing, to all members of the City Council. All representations made by Mr. Ted Guth of Sunlaw Energy Corp., Mr. Ariel Goldenstein of Global Waste Industries and Mr. Raul Romo of Mexico Diesel Electromotive during that City Council Meeting were based on how their individual expertise would relate to the way the project had been conceived by the former Municipal Authorities.

The new Municipal Government, in their allegations, placed great emphasis on the discussions at the November 1992 City Council meeting and seemed to ignore the fact that another twelve months passed before the Concession Contract was signed and during which there were extensive discussions and negotiations. If the former Municipal Government believed any issue required further clarification or investigation, or if any aspect of the project was essential from the former Municipal Government's point of view, it had one year within which to make those issues part of the Concession Contract.

¹² See Exhibit "11", Page 4, Paragraph 2

One could expect that any statement made at the November 1992 City Council meetings that was of critical importance to the former Municipal Government would have been incorporated into the Concession Contract.

Furthermore, all the central elements on which the Concession was granted to Desona including: an improved Collection Service, a Recycling Program, a Sanitary Landfill and, if permits were awarded by the Federal Commission of Electricity, the installation of an electricity Generating Plant were incorporated in the Concession Contract.

CONCLUSION:

For the new Municipal Government to claim that the former Municipal Government, after 24 months of working every day with Desona and performing all methods of due diligence required, was induced in entering into a Concession Contract in error, for they had been misled at a City Council meeting 12 months prior to the signing of the Concession Contract is absurd.

CATEGORY #2:

In the second category of allegations, those relating to legal deficiencies, the new Municipal Government both misrepresents the facts and repeatedly attempts to benefit from its own legal error, if in fact such error exists.

Desona's corporate and organizational structure were determined in consultation with the former Municipal Government. In fact, Desona was incorporated in front of Public Notary Benjamin de la Pena Mora at the Public Notary No. 7 in Cuautitlan Izcalli which belongs to the former Mayor Mario Ruiz de Chavez. Ruiz de Chavez was on leave of absence from his Notary while serving as Mayor. Thus, at all times

prior to the execution of the Concession Contract, the former Municipal Government knew the particularities of Desona's incorporation.

Furthermore, the former Municipal Government had over 12 months from the time of incorporation of Desona to check for any deficiencies in the Incorporation of the company with which they were entering into a Concession Contract.

For the new Municipal Government to claim as deficiencies and irregularities facts which were known at the time of the Concession Contract's execution is unjust. These after-the-fact hypertechnical and formalistic objections have absolutely no basis.

Moreover, had there been any deficiencies in the incorporation of Desona S.A., which there were not, the new Municipal Government cannot use those alleged deficiencies to justify a nullification of the Concession Contract when, as stated in Clause Thirty Four of the Concession Contract:

..." The Parties agree that in the celebration of the present Concession Contract there are no voluntary errors nor any other nullity (emphasis added) causes that may invalidate it"....

Regarding the ..."excess of the Municipal Administration's authority"..., the former Municipal Government's legal authority to enter into all terms and conditions of the Concession Contract with Desona had been expressly granted by the State Legislature.

CONCLUSION:

The new Municipal Government should be precluded from invoking its own legal errors to the detriment of the investors in Desona who relied, in good faith, on the promises made in the Concession Contract.

CATEGORY #3:

The third category of allegations refers to items which were not subsequently incorporated into the Concession Contract. As such, they are of no legal effect.

Please note that many of the statements made before the City Council were associated with phases of the Concession Contract that had not yet been implemented at the time the new Municipal Government nullified the Concession.

LIST OF 27 ALLEGED IRREGULARITIES

The following is the list of alleged irregularities served upon Desona on March 10, 1994. In this section Claimants' have listed the alleged irregularities as well as Claimants' response thereto with support in documentation

ALLEGATION # 1:

... "The applicants for the Concession stated during the town council session of November 4, 1992, according to what is recorded on page 1 of that record, which is put in view of the party hereto, that the companies Bryan A. Stirrat and Associates, Global Waste Industries, Sunlaw Energy Corporation and Mexico Diesel Electromotive S.A. de C.V. would join together to combine their technical, economic and industrial experience about which, as they stated previously, were equivalent to 40 years, in order to form the company DESECHOS SOLIDOS DE NAUCALPAN, S.A. DE C.V.; but upon verifying the legal status of the holder of the Concession with its document of incorporation, number 6,477, of the same November 4, 1992, it was observed on its pages 1 and 12 that it was established exclusively by individuals and that none of its partners proved they were representing any of the

companies that it was stated were partners, which led to said error on the technical capacity of the partner companies and the makeup of the company given the Concession"....

Reply:

The actual shareholders of Desona were individuals, at the specific request of the former Municipal Government, which preferred Desona to be incorporated by natural persons rather than legal persons. The former Municipal Government hoped thereby to guarantee the "transparency" of Desona's operations.¹³

Before to the incorporation of Desona, the members of the consortium had been informed by former Municipal Authorities that, prior to submission of the project to City Council for approval, a Mexican Corporation had to be formed and letters of commitment between the companies that would co-participate in the project had to be executed.

In a letter dated June 23, 1993, Arq. Abel Duarte Ortega wrote to Mr. Goldenstein, as follows;

"...." Regarding the companies that will co-participate with Desona in this project, we know.....At this time it is imperative that you provide us with the curricula of each one them as well as with copies of the letters of commitment with Desona issued by the co-participating companies"....¹⁴

At the time the Concession was awarded, Desona intended to work in conjunction with two other US companies on the project, Bryan A. Stirrat & Associates and Sunlaw Energy

¹³ See Affidavit of Ariel Goldenstein, Affidavit Section

¹⁴ Ibid Exhibit "6"

Corporation. There was a Memorandum of Understanding between Bryan A. Stirrat and Associates, Global Waste Industries, and Sunlaw Energy Corporation that made clear the intention of these companies to undertake work in connection with the Concession.

Moreover, the minutes of the Nov. 4th 1992 City Council Meeting reveal that Arq. Abel Duarte Ortega, Director of Economic Development had, in his possession, the copy of the Memorandum of Understanding between GWI-BAS and Sunlaw ENERGY:

" The Municipal Secretary, by instruction of the Presidency, requests from the City Council its authorization to have the Director of Economic Development Arq. Abel Duarte Ortega speak, and who will present a memorandum" ...¹⁵

Such Memorandum states that:

" All Companies understand that in order to achieve our goals the collection, processing and transportation of solid waste as well as the design, development and operation of the Corral del Indio Landfill Concession be given by Naucalpan to a private company (Desona) and ratified by the state of Mexico.

Subsequent to the awarding of the Concession by the Municipal authorities, agreements between the 3 above mentioned companies and Desona are to be drawn and executed..."¹⁶

¹⁵ Ibid

¹⁶ See Memo of Understanding Exhibit "12"

Furthermore, the former Municipal Authorities had a copy of Desona's paper of incorporation which did not reflect companies but individuals. It was they who requested their City Council to award the Concession to Desona. The new Municipal Government cannot claim this was an error if the former Municipal Authorities had these documents in their possession.

Finally, the former Municipal Government was aware of the nature of Desona's corporate formation and share ownership prior to execution of the Concession Contract. The Concession Contract itself makes this clear in its recitation of the specifics of Desona's incorporation documents, in Background Article II.1, which reads:

... "The Concessionaire is a corporation constituted according to the Mexican laws as per public document number 6477, volume 167, notarized in front of Public Notary number 7, from the judicial district of Cuautitlan, by license granted to its principal acting in the ordinary protocol C. Lic. Benjamin de la Peña y Mora, and registered in the Public Registry of Commerce of Tlanepantla,

State of Mexico under section number 307, volume number 31, book first of commerce of Naucalpan"...

The former Municipal Government was aware of all of the circumstances that the new Municipal Government later invoked in an attempt to invalidate the Concession Contract.

ALLEGATION #2:

... "Another decisive cause of the disposition of the Municipal Government was its conviction that, as the same applicants offered it, 45% of the capital of the company would be contributed by the US. companies cited, the other 45% would be by the Mexican Group that would be made up, among others, by the Mexican company cited, and the remaining 10% would be underwritten by the Municipality. But in document number 6,477 of incorporation of DESECHOS SOLIDOS DE NAUCALPAN S.A. DE C.V., it is made evident that none of these offers were carried out, since the partners of the company are all individuals and 80% of the capital was underwritten by foreign individuals; in addition, the Municipality did not appear at the establishment of that company. From that the town council was led to error because it believed that the holder of the Concession would be put together with a different form from the one that it had and has, with respect to the partners and the shares..."

Reply:

Once again, the former Municipal Government was fully aware of Desona's Capital Stock structure at the time of the execution of the Concession Contract. In fact, the authorities had a copy of Desona's documents of incorporation which reflected the capital stock structure. The former

¹⁷ See Concession Contract

Municipal Government did not voice any objection to Desona's corporate composition.

As for the City's 10% share of Desona stock, during the City Council Meeting of Nov. 4, 1992, it was determined that the Municipal Government would own 10% of Desona, at no cost to the Municipal Government, however, the mechanism which would be followed for the Municipal Government to obtain its 10% in Desona was not determined during that City Council Meeting.

The new Municipal Government claims that:

... "in addition, the Municipality did not appear at the establishment of the company"...

Had there been conditions for the former Municipal Government for submitting its proposal to its City Council that the capital structure of Desona be 45% of American Companies, 45% of a Mexican Group and 10% of the City, and that the City appeared at the establishment of the company; then, the request for the awarding of the Concession to Desona by the former Municipal Government Administration to its City Council could not have taken place. Moreover, had those been conditions for the former Municipal Government to enter into the Concession Contract with Desona, the Concession Contract would not have been celebrated.

ALLEGATION #3:

... "Both in the Contracting for the Concession of November 15, 1993 and in the town council minutes of November 4, 1992, the applicants for the Concession offered the Municipality the right to underwrite 10% of the share capital of the holder of the Concession, without investing a single cent, but said documents do not establish whether such a share of stock would be granted by the partners or if it will be underwritten

from the time of incorporation. This 10% was never underwritten by the Municipal Government; to the contrary, in an extemporaneous manner on February 9, 1994, the Concessionaire sent to these offices five certificates for 24,000 new pesos each, but the procedure for contribution of capital did not meet the legal requirements for their formal payment under the terms of the General Law on Companies since this Municipal Government did not participate as a founding stockholder in the company, so that necessarily the shares shown should have been transferred through a Contract of sale or by assignment, which also requires, in addition to tax withholding of 20% of the value regarding dividends, the agreement of disposition of the Contracting parties, which this Municipality has not issued, so that it cannot be considered that this condition has been met, since the Municipal Government cannot ratify, not even to its benefit, acts executed against applicable laws. Therefore the Municipal Government is not in a position to know the scope of its responsibilities regarding the receipt of said package of 10% of the shares of DESECHOS SOLIDOS DE NAUCALPAN, S.A. DE C.V., since it does not know if such a stock portion remains to be paid, if it represents the variable or fixed part of the capital, if the 20% withholding cited was made, if an Assembly was held at which the pertinent resolutions were taken in accordance with the legal framework of the Municipality and fundamentally, why the total capital that this stock package represents, which is 25,000 new pesos, greatly exceeds the capital stock stated by the holder of the Concession. On the basis of the above, it appears that the offer to be a partner with 10% of the capital, in not being legally possible in terms of the above reasoning, was made only to mislead"....

Reply:

Clause 12 of the Concession Contract governs the mechanics of the Municipality's involvement. It provides that Desona assign to the City 10% of its shares of stock within 30 days following the execution date of the Concession Contract and that, in case the Concessionaire increases its social capital, it is obligated to maintain the City's 10%.

Desona complied with its obligation under this Clause of the Concession Contract. During a Stockholder's meeting on Dec. 15, 1993 it voted to transfer 10% of its stock to the Municipality of Naucalpan.¹⁸

The new Municipal Government further claims that:

...."in an extemporaneous manner on February 9, 1994, the Concessionaire sent to these offices five certificates for 24,000 new pesos each"...

Please note that the share certificates of Desona were given, in hand, to the new Municipal Government's Director of Economic Development, Lic. Francesco Piazzesi. The Municipal Government itself acknowledges receipt of the shares and, at no point from the time the certificates were handed until March 10, 1994, the new Municipal Government voiced any complaints as to the way the transfer of stock was effected.¹⁹

Finally, regarding the issue of why the stocks that were handed to the Municipal Government on February 9, 1994 reflect a value of N\$24,000 each; during the General Assembly of Desona's stockholders that took place on December 15, 1993, the stockholders had decided to increase the capital stock of Desona from N\$50,000 to N\$1,200,000 pesos, as a result of an increase in capital assets. Thus, the Municipal

¹⁸ See minutes of Desona meeting on Dec. 15, 1993, Exhibit "13"

¹⁹ See Affidavit of Robert Azinian, Affidavit Section

Government's 10% share of that amount equaled N\$120,000, or five certificates in the amount of N\$24,000 pesos.²⁰

ALLEGATION #4:

... "A decisive cause of the disposition of the Municipality to award the Concession to DESECHOS SOLIDOS DE NAUCALPAN, S.A. DE C.V., was the investment that said company proposed in order to carry out the project, which was more than 200 million dollars; specifically, Mr. Goldenstein, a stockholder of the Concession holder, promised to contribute approximately 60 billion pesos (today 50 million new pesos); but from the analysis of the document of incorporation of DESECHOS SOLIDOS DE NAUCALPAN, S.A. DE C.V., and from the way in which they have carried out the project, it is evident that person [illegible text] personally and not in representation of any foreign company, just 13,000 new pesos and the Concession holder in total, just 50,000 new pesos, where it is concluded that the original offer was made only to mislead the Municipality"....

Reply:

At the Nov. 1992 City Council meeting, Ariel Goldenstein and Raul Romo, who was then the Mexican representative of Sunlaw, estimated that the capital investment for the project (including all four phases under the Operations Program of the Concession Agreement) would total approximately \$200 million. Yet it is preposterous to assume from this that \$200 million would therefore be deposited by Desona in some bank account on the first day of performance under the Concession Contract. Nor did Desona ever pledge to invest that amount of money upon incorporation. It simply cannot be concluded, on the basis of a 4-month capital investment record, that the

²⁰ Ibid Exhibit "13"

totally different sense. The name and background of those companies were used as a factor of persuasion by the partner Goldenstein himself before the town council, as a way of getting its consent to grant the Concession, which led to a decisive error in its awarding. Furthermore, as seen immediately, the partners took the time, before the town council's session, to prepare the incorporation of two different companies, but with the same name, the same number in the legal instrument and the same date"...

Reply:

This allegation is largely a repetition of Allegation #1. Nowhere in the minutes of the City Council meeting of Nov. 4, 1992, Goldenstein stated that Desona would be formed by companies as the new Municipal Government claims. It was Arg. Abel Duarte Ortega who made that claim. The names of BAS and Sunlaw Energy were used during the City Council presentation because those companies were, as reflected in the memo of understanding in the former Government's possession, going to co-participate with Desona in the project. At no point, as the new Municipal Government claims, ... "those companies were used as a factor of persuasion as a way of getting it (the City Council) consent to grant the Concession...."

Further note, that BAS was fully involved in the project, and that Sunlaw had not yet started performance as it was without permits at that time. Further note, that Desona was responsible for all performance under the Concession Contract, including phase 4, as provided for in Clause Twenty Eight of the Concession Contract.

Allegation #6.

..."In fact, leading to error exists by virtue of the fact that in the files of this Municipal Government are

two legal documents of incorporation of DESECHOS SOLIDOS DE NAUCALPAN S.A. DE C.V., of the same date, the same document number, and the same volume, which however differ with respect to their charter members, capital contributed, members of the Board of Directors and Administrative Officer. The incorporation papers submitted by the interested parties to this Municipality in November 1992, No. 6,477, volume 167, on page 12, note that the partners of the company are the following, with the following capital shares and company officials:

Stockholders	Shares	Capital
Roberto Azinian,	2,700	27,000.00
Ariel Dario Goldenstein	1,300	13,000.00
Jose H. Pulido Garcia	500	5,000.00
Epifanio Lopez Martinez	500	5,000.00
Total	5,000	50,000.00

Board of Directors

President	Roberto Azinian
Secretary	Ariel Dario Goldenstein
Treasurer	Jose Humberto Pulido Garcia
Administrator;	Maria del Pilar Villanueva
	Jaso

But in the incorporation papers that this Municipality requested and obtained from the Public Register of Property and Commerce, in February 1994, also with number 6,477, volume 167, on page 12, it is indicated that the partners are the following, with the following capital shares and officials:

Stockholders	Shares	Capital
Roberto Azinian	2,700	27,000
Ariel Dario Goldenstein	1,300	13,000
Kenneth Davitian	1,000	10,000
Total	5,000	50,000

Board of Directors

President	Roberto Azinian
Secretary	Ariel Dario Goldenstein
Treasurer	Kenneth Davitian
Administrator:	Samuel Sritman

The above makes it possible to conclude the clear interest of the applicants in misleading the Municipality to the extreme with the sole goal of obtaining the Concession (which is) the object of this document; at the same time, this anomaly does not allow the Municipal Government the legal security that the Concession requires regarding the legal status of the Contracting party but, fundamentally, regarding the existence of the Concession holder of such an important public service".....

Reply:

This issue was already discussed in the response to the motion for direction presented by Claimants before this Tribunal on Nov. 5, 1997, as well as herein under Section 2.

As said by Mr. Goldenstein in his affidavit dated Oct. 28, 1997;

"The version of Desona that respondent refers to as "Desona A" was simply a draft that was given to Desona's stockholders and to the Municipal Authorities for approval but that was later amended to reflect the final composition of the company.

The names of both Mr. Pullido Garcia and of Lopez Martinez were given to the notary by the Municipal Government Authorities who were supervising the incorporation of Desona. However, Mr. Pullido Garcia and Mr. Lopez Martinez did not attend the signing of the Notary's book nor ever met with Desona's Stockholder. As a result, the draft of the papers of incorporation were amended at the request of Desona's Stockholders and with the approval of the Municipal Government Authorities.

The version of Desona that respondent refers to as "Desona B" is the official corporation that is recorded under public deed 6,477, that is registered with the Property and Commerce Public Registry, that was awarded the Concession by the Municipality and later ratified by the State Legislature and that executed the Concession Contract with the Municipality.

Furthermore, the Concession Contract itself which was drafted and prepared by the Municipal Government's legal staff refers to the Desona that is registered with the Public Registry of Property and Commerce ²¹.

Allegation # 7:

... "After the town council authorized, on November 4, 1992, the Concession for DESECHOS SOLIDOS DE NAUCALPAN, S.A. DE C.V., the latter asked the town council itself for the granting of the rights of said Concession in the name of another company called DESECHOS SOLIDOS 1 DE NAUCALPAN, S.A. DE C.V., something that the town council authorized in its session of May 3, 1993. But subsequently, DESECHOS SOLIDOS DE NAUCALPAN, S.A. DE C.V. itself again asked the town council that the transfer to DESECHOS SOLIDOS 1 DE NAUCALPAN, S.A. DE

²¹ See Section 1, 2. Nature of Desona, page "8"

C.V. be canceled, something that the town council again authorized, but said request was received by the Municipality on December 6, 1993, in other words, after the signing of the Contract, so that on the date of the same (November 15, 1993,) it was not DESECHOS SOLIDOS DE NAUCALPAN, S.A. DE C.V. which could have signed it, because it had withdrawn from that; but it could not have been DESECHOS SOLIDOS 1 DE NAUCALPAN S.A. DE C.V., either, because the Legislature had authorized DESECHOS SOLIDOS DE NAUCALPAN, S.A. DE C.V., with which once more the error in the person receiving the document of Concession is plain"...

Reply:

This issue was previously addressed in Section 1 hereof "Jurisdiction", Page 10.

Allegation #8.

... "Another decisive cause of the disposition of the Municipal Government to award the Concession was that in the town council session of November 4, 1992, Mr. Goldenstein, according to what appears on page 2 of its minutes, offered the replacement of the current transportation units with "new and modern equipment in order to prevent contamination [or pollution]" and [said] that the company would hire some 200 persons. Nevertheless, as appears in official document 0447 from the Secretariat of Commerce and Industrial Development, dated February 10, 1994, DESECHOS SOLIDOS DE NAUCALPAN, S.A. DE C.V. is attempting to import used units, models 1981 and 1988, which in no way can be considered "new and modern" equipment, neither because of their age, ant-pollution [devices], especially since according to tax legislation a freight vehicle is depreciated over five years of use, at the end of which it has a value of

zero. Furthermore, the express condition for granting the Concession, with respect to the vehicle fleet, was the obligation of the Concession holder contained in the Contract of Concession, to replace the existing vehicle fleet with units of "the latest technology" until reaching 70 units or more if that were necessary; initiating its obligation successively beginning on November 17, 1993. But it has not done so, so that to date 14 vehicles exist not provided [sic] with the following characteristics: 2 front loading, 10 rear loading and 2 roll offs. It is evident once more that the offers made are totally inconsistent with the true capacity of the Concession holder and that it made them with the sole interest of obtaining the Concession in prejudice to the consent of the Municipal Government which once more was flawed by error"...

Reply:

Goldenstein's statement at the November 1992 City Council meeting contemplated the company using trucks that, while not new, were modern and in widespread use throughout the industry in the US. Likewise, Clause 14 requires Desona to use "state-of-the-art technology units" in its vehicle fleet. This phrase does not preclude the use of used equipment. The fact that, under Mexican tax laws of depreciation, these used trucks might technically have no value is completely immaterial to what the Concession Contract required of Desona.

As Desona was initiating waste collection service in an area new to these type of trucks and as it was the intention of Desona to built a truck manufacturing facility in the State of Mexico with Northside Steel Fabricators, Desona requested from the former Municipal Authorities to import a number of used trucks that would help Desona test the most appropriate type of equipment for the type of terrain

Naucalpan presented. Performance of those vehicles will help Desona personnel determine the type of trucks that it will import. Those used trucks would be used for training of personnel and later be used as spares.²²

The former Municipal Government accepted Desona's request. In October 1993, Desona sought the former Municipal Government's help in securing import permits for used trucks waiting at the US-Mexico border. At that time, Desona sent the Municipal Government photographs of the trucks, which clearly demonstrated that they were not new. The former Municipal Government was involved in helping Desona gain import permits for these used trucks.²³

In addition to the used trucks, Desona purchased several new trucks. Two of these new trucks were permitted to enter Mexico and were immediately put to use in Desona's waste collection operations. In early March, 1994, permits for additional new trucks were obtained from SECOFI and were to be incorporated to Desona's operations.²⁴

Allegation # 9:

..." Regarding the benefit of the generation of approximately 200 jobs, it turned out one more time to be a statement that misled the Municipality, since the Contract points out in its 5th clause that the Municipal Government would transfer its employees to the Concession holder, so that with this not one job is generated, and, even more, basic staff of the Municipality would be displaced, with the additional budgetary burden that comes from the payment of retirements, resignations and indemnification to which the Municipality was obligated in the second paragraph

²² See Affidavit of Kenneth Davitian, Affidavit Section

²³ See Letter from former Mayor, Exhibit "14"

²⁴ See Secofi Import Permits, Exhibit "15"

of said 5th clause, as noted right away. In spite of its obligation to be responsible for everything inherent to the management, functioning, operation and maintenance of the Rincon Verde sanitary landfill, during the period that it has had possession of the property, the Concession holder has only used the staff of this Municipal Government, whose payments are made by the Municipality, without it having hired personnel, without it having proceeded with the transfer of employees and without it having covered for the Municipal Government the salaries of those employees, acting in its exclusive benefit and to the disadvantage of the public interest, which was the goal of the Municipality. The above is reinforced by the fact that the Concession holder has abstained from hiring the amount of employees necessary in order to provide the services, which again leads one to conclude its lack of technical capacity and lack of material and human resources, conditions of the Concession that flaw with error the consent of the Municipality"...

Reply:

Desona planned to create at least 200 jobs throughout the project. This was planned to take place over the course of the four phases of the Concession Contract. The construction of the recycling facility alone would have generated these much employment. Since the Concession Contract was nullified only four months after performance began, Desona had no opportunity to implement that plan.

There was never any complaint about inefficient service due to inefficient Personnel, either at the Rincon Verde landfill, or elsewhere. This is a factual inaccuracy.

Clause Fifteen permits those City workers at the General Public Service Bureau to be re-assigned to Desona's

operations, if they so request, and it required the Municipal Government to assume pension, retirement and seniority premium payments for such re-assigned workers for the first five years of the Concession Contract. Nothing in Clause 15 requires Desona to hire a specific number of workers to minimize the number of employees that could be re-assigned by the Municipal Government. Again, this Contractual provision was agreed to by the former Municipal Government at the time it signed the Concession Contract.

Moreover, it was the former Mayor who suggested there should be no partial transfer of personnel from the Municipal Government to the Desona. In his view, partial transfers may have caused jealousy on the part of some workers. It was his decision that all personnel should be transferred together once Desona had taken over all nine sectors of the Municipality. Both Desona and the head of the union labor agreed with the Mayor's opinion ²⁵.

As for allegations of Desona's financial and technical incapacity, please refer to "Underlying Charges", Page "7" herein.

ALLEGATION # 10:

... "Other offers made by DESECHOS SOLIDOS DE NAUCALPAN S.A. DE C.V. through the applicants for the Concession, at the town council session of November 4, 1992, which appear on page 2 of its minutes, which once again were put in view of the party hereto, is the construction of residential houses up to a total of 10 million dollars from the US, the construction of a school for the benefit of the community and that the cost of garbage that to that date had been being covered by the Municipal Government could be applied by it to other

²⁵ See Affidavit of Ariel Goldenstein, Affidavit Section

items since the participation of that Concession holder would mean the respective saving. Evidently it is clear that such offers will not be complied with the DESECHOS SOLIDOS DE NAUCALPAN, S.A. DE C.V. since it has been made public knowledge through its conduct that has just been summarized that without a doubt it lacks the financial and administrative means for that, and because such offers were not inserted into the Contract in which the Concession was organized, therefore an induced error having been committed in the awarding of the Concession".....

Reply:

Again, the new Municipal Government is attempting to convert pre-Contractual discussion into Contractual provisions, where none exist. The former Municipal Government itself opted not to include those statements in the Concession Contract that it subsequently negotiated and signed.

At the Nov. 1992 City Council meeting, Raul Romo stated that \$10,000,000 of the investment would be set aside for the construction of homes and schools and general community development. As the "Executive Summary" of the breakdown of costs for Phase IV presented to the Municipal and State Governments by Sunlaw makes clear, this \$10 million investment was planned in conjunction with Phase IV of the Concession Contract, the construction of the bio-gas electric power plant²⁶. Because of the new Municipal Government's nullification, however, this Phase was never implemented. Furthermore, the Municipal Government's savings from reduction in waste collection costs would have been realized once phase IV was implemented and over the 15-year life, not within the four short months that Desona operated.

²⁶ See Sunlaw Breakdown " Exhibit "16"

Allegation # 11:

..."Another important induced error in the disposition of the Municipality in granting the Contract for the service mentioned so many times, consists of the offer made by DESECHOS SOLIDOS DE NAUCALPAN, S.A. DE C.V. in the town council session of November 4, 1992, which appears on page 2 of its minutes, in view of the party hereto, whose greatest damage was not just against the community and the Municipal Government but rather, specifically, against the residents of the Ejido San Mateo Nopala, owners of the land for waste called Rincon Verde, and which consisted in the fact that, expressly, the applicants for the Concession offered that, if they received the Concession, the residents of the Ejido cited would have the opportunity to join that company, they would receive payment for their lands, they would receive a share for the waste matter dumped in Rincon Verde and that, in any case, the corresponding decisions would be theirs. These statements, far from being carried out, have meant serious losses for said Ejido, preventing the fundamental objective of the administrative act of granting the Concession from being met, which is the well being of the community, and that because of the offers made by the party hereto, this Municipal Government believed they would be able to be carried out on behalf of the Ejido San Mateo Nopala, which once again was an error"....

Reply:

In fact, it was the former Director of Economic Development Abel Duarte who made representations regarding the Ejido's participation at the November 1992 City Council meeting. There are no Contractual provisions to this effect. Instead, Clause 7 places the obligation of negotiating with the Ejido upon the Municipal Government, not Desona. Desona's only

obligation under the Concession Contract was to assume the responsibilities of the Municipal Government's lease Contract with the Ejido. Despite the fact that Desona had no responsibility other than to make lease payments, it was in the process of conducting negotiations with the Ejido (who wanted additional payments), under the supervision of the Secretary of Ecology of the State, when the new Municipal Government began the nullification procedures.²⁷

Allegation # 12:

... "The error in the disposition to grant a Concession on the part of the Municipality becomes clear in the visible inability of DESECHOS SOLIDOS DE NAUCALPAN, S.A. DE C.V. to offer the solid waste cleaning, collection and transportation service that it has shown ever since it began providing [the service], it being that it repeatedly made the offer to the effect that it would provide [service] with efficiency and stability and made statements to back up its offer, which were the condition for the granting of the Concession"....

Reply:

This is factually inaccurate. Not only did Desona comply with each phase of Contractual service, but it had absolutely no complaints from its customers. On the contrary, it received numerous letters of thanks from its industrial customers.²⁸

If the new Municipal Government had a complaint, it should have raised it under the THIRTY FIRST clause of the Concession Contract which requires thirty days notice as to irregularities.

²⁷ See Affidavit of Robert Azinian, Affidavit Section

²⁸ See letters from Customers Exhibit "17"

Allegation # 13:

... "From what was said by those appearing for the act of incorporation which was recorded in document 6,477, it can be seen on its page 13 that the corresponding notary public attested that Roberto Azinian and Ariel Dario Goldenstein (as well as Mr. Kenneth Davitian in the second of the versions of document No. 6,477 in related point 6) are, on the one hand, of foreign nationality and they were passing through the city of the notary and, on the other, that they did not verify their capacity to appear at said act as partners and advisers, in the terms of the General Law on Population, since for that they would need an express permit from the Secretariat of Government. For said reasons, and it being that the founding members did not verify the capacity that is required in order to establish a business partnership or commercial corporation in Mexico, the Municipal Government is placed in a situation of evident legal insecurity, since the constant risk exists that the company with which it contracted, which is DESECHOS SOLIDOS DE NAUCALPAN, S.A. DE C.V., may be invalidated, with all the damages that this would involve for the Municipality and those governed"...

Reply:

Under Mexican Domestic Law, the Notary Public is required to verify the immigration status of individuals who seek to form corporations and subscribe shares of stock. The stockholders submitted to the Notary all the documents that were requested by him at the time Desona was incorporated. Thus, they complied, in good faith, with his authority under the law.

Allegation # 14:

... "An error in law exists in the way in which the Concession was awarded, in virtue of the fact that the corresponding Contract is based on a law repealed by the date on which it was entered into, which is the Municipal Organic Law of the State of Mexico of 1973, which was repealed on April 1, 1993 by the Municipal Organic Law of the State of Mexico and which entered into effect seven months before the signing of the Contract. Such is the case of antecedents I.1, I.2, I.3, in which are cited, as a basis for the Concession, articles of the repealed law, in place of the one in effect on that date"....

Reply:

The law the new Municipal Government refers to was repealed in March 1993, after the Concession was awarded and before the State Legislature ratified the Concession. The fact that the legislature approved the Concession in August 1993 confirmed its validity. Even if, however, there were some legal mistake by the former Municipal Government or State Legislature, surely the new Municipal Government would be precluded from relying on its own legal error to the detriment of the US investors in Desona.

Allegation # 15:

... "At the town council session of this Municipality, on November 4, 1992, DESECHOS SOLIDOS DE NAUCALPAN, S.A. DE C.V., made the offers that appear in the copy of the minutes attached to this document. In accordance with such offers, one of the benefits that the Municipality would obtain with the Concession would be the non investment of capital, but to the contrary, clauses 22 and 23 of the Concession Contract show that the

Municipality was obligated to hand over diverse amounts of money to the Concession holder through the provision of the public service, and at the same time it transfers its vehicle fleet and cleaning equipment in order to give the service the subject of the Concession, thus disposing of property of the public domain of the Municipality, and in prejudice to the latter, which was not a topic of the town council session of November 4, 1992, and which, in violating what is provided by Article 31, sec. XXVI of the Municipal Organic Law of the State of Mexico, which is of public interest according to its own Article 1, involves an error of law which flaws [or invalidates] the act of Concession"...

Reply:

Clauses Twenty Second and Twenty Third of the Concession Contract discuss payment for residential and public waste collection services by the Municipality to Desona due to the fact that phase IV of the program had not yet been implemented. It is clear from the Concession Contract that, once phase IV is implemented, such payment from the Municipality to Desona will no longer be required.

Also, Clause Thirteen of the Concession Contract does not require the Municipality to transfer the vehicle fleet to Desona, but simply to make the fleet available to Desona for its use. Although Clause Twenty Five of the Concession Contract refers to a "transfer" of the Municipality's vehicle fleet; this language must be read in conjunction with Clause Thirteen. The Concession Contract does not contemplate any change in ownership in the vehicle fleet, but rather use of the fleet by Desona in order to provide the waste collection services. The Municipality never did transfer its fleet to Desona, but it made the fleet available to Desona for its use in performing waste collection services.

The new Municipal Government's broader claim here, and in subsequent allegations, that it lacked the authority to establish certain obligations in the Concession Contract can be disregarded for reasons that Clause Twenty Two of the Concession Contract states that Article 3 of Decree No. 213, issued and approved by the 51st State of Mexico Legislature authorizes the Municipal Government to set the other conditions and formalities of the Concession Contract. Article 3 of Decree 213 in turn authorizes the Municipal Government "to establish all other terms and modalities of the Concession Contract." These two provisions, by their unequivocal terms, clearly give the Municipality the legal authority to establish various provisions in the Concession Contract governing the obligations of the parties and the means by which these obligations will be carried out.

The new Municipal Government cannot claim as against Desona that the former Municipal Government did not have the authority to set those provisions. Desona acted in reliance on those representations of authority by the former Municipal Government. The new Municipal Government cannot complain that Desona failed to question the Municipal Authority and should be precluded therefrom.

Allegation # 16:

... "Another of the benefits that the Municipality would obtain with the Concession would be the saving that the Municipal Government would have with the decrease in its payment for energy consumption to the power and light company Luz y Fuerza del Centro, S.A. de C.V., through the utilization of gas from the sanitary landfill through the generation of electric power for self consumption, which the Concession holder would implement; nevertheless, from the characteristics of the Contract for the Concession, such an event might not happen, since, on the one hand, the 23rd clause, second

paragraph, provides for phase 4(b) of the program of operations, [illegible text] which is the generation of electric power, might not happen and the electric energy not become a reality, in both cases without liability for the Concession holder; and on the other hand, from the practical deficiency of the service it is evident that said generation of electricity will never come about, since this Concession holder has neither the experience nor the financial resources, nor the necessary business capacity for it, which involves an error of law in that there was agreement on a circumstance impossible to carry out"....

Reply:

Not only does this reflect mere speculation on the new Municipal Government's part, but there is absolutely no evidence of Desona's inability to comply with the requirements of Phase 4(B). The new Municipal Government's claim was one of "potential nonperformance," not of material nonperformance. The Municipal Government knew, that Desona itself lacked the experience required to implement all of Phase 4(B). It was also contemplated that Desona would Contract with a party competent to perform such services, as it was permitted to do under Clause Eleven of the Concession Contract, which reads:

... "The Concessionaire is authorized to invite a power generation specialized company so that they may generate more megawatts using another type of fuel, understanding that the company that may be invited to implement phase 4 (b) of the operation program must have all the permits and authorizations issued by the proper authorities to do the project".....

At the time of the Concession, the contemplated party was to be Sunlaw Energy Corporation which had appeared and participated in the Concession process.

Allegation # 17:

..."At the same time, from the wording of the Contract it becomes clear that the only way to obtain that benefit would be through the sale of electric energy to the light company, which would mean that said energy would be aimed at a public service, which is expressly prohibited by the fifth paragraph of Art. 27 of the General Constitution of the Republic, as well as by Article 4e) of the Law to Promote Mexican Investment and Regulate Foreign Investment, in effect on the date of the Contracting of the Concession, so that with the possibility alluded to being expressly prohibited, once more a legal error was made"...

Reply:

The object of the Concession was designed by the former Municipal Government. The project contemplated the generation and resale of electric power in its phase IV. The former Municipal Government conducted numerous meetings with the authorities of the Federal Commission of Electricity in order to make the generations of electricity from bio-gas or other fuel possible for the project to work. Sunlaw conducted numerous meetings with CFE, PEMEX and other Mexican Federal authorities to discuss the details of the project. Phase IV of the project would not have been implemented until all permits were obtained.

For the new Municipal Government to claim this is absurd. It is an attempt to discredit the former Municipal Government and should be precluded from claiming it.

Allegation # 18

... "There is also an error of law in the Municipal Government entering into, in exercise of the powers granted to it by the State legislature, the Contract and in agreeing "on the other conditions" of the same, in virtue of the fact that to dispose of assets of public domain of the Municipality, which are the vehicle fleet, the cleaning equipment and the real rights that it has over the location of Rincon Verde, the prior authorization of the State Legislature was necessary, in terms of what is provided by Sec. XXVI of Article 31 of the Municipal Organic Law of the State of Mexico, in effect on the date of the Contract"....

Reply:

See reply to allegation # 15

Allegation # 19:

... "The Contract that organizes the Concession is flawed with legal error since it does not specifically establish the cases of expiration and revocation of the Concession, which it was obligatory to specify with complete precision in the terms of a) IV of Article 131 of the Municipal Organic Law of the State of Mexico, since the generic causes that are pointed out in its clause 29 are not appropriate for such effects"....

Reply:

Clause Twenty Nine of the Concession Contract does set forth the circumstances under which the Contract may and may not be terminated:

... " The Parties agree that this Concession Contract may not be terminated, revoked or Municipalized

for causes of force majeure. The non-compliance by the Concessionaire of any of its obligations or any of the clauses of this Contract for reasons imputable to the Concessionaire will be reason for the Municipal Government to proceed according to the attributions and faculties of the existing law to terminate, revoke or Municipalize the Concession Contract, subjecting itself to what it is established in the organic Municipal law.

The Parties agree that before the Municipal Government proceeds to the cancellation, revocation or Municipalization of this Contract the Parties will attempt to conciliate their differences"....

Regardless of the specificity of these circumstances, the rights of the Municipal Government under Mexican domestic law remain. Thus, even if these terms lack the specificity required by Section 4 of Article 131, the Municipal Government's rights have not been impaired.

Moreover, this argument is repeatedly used to discredit the former Municipal Government and is an attempt to use the Municipal Government's own legal error to Claimants' detriment and the Government should be precluded therefrom.

Allegation # 20:

... "With the same error is the Contract that organizes the Concession, in that it does not specify the way in which the oversight and control of the proper performance in the provision of the service included in the Concession will be exercised, as ordered by a) IV of the same Article 131, since the simple authority for supervision which its clause 30 mentions does not ensure the proper oversight imposed on the town councils through said law, which it is reiterated is of public interest"....

Reply:

Clause Thirty of the Concession Contract gives the Municipal Authority broad authority to "supervise, whenever it deems it necessary, the due fulfillment of this Concession Contract and the Operations Program." Again, the Municipal Government's supervisory rights under Mexican Domestic Law are not altered by this Contractual provision.

Allegation # 21

... "An error of law is again visible in the disposition of the Municipal Government to grant the Concession, because the Contract also fails to establish the procedure for resolving claims over appropriation of rights and obligations that are generated through the granting of the Concession for the provision of the public service, according to what is established by (d) of said Article 131 of the law governing in the matter"...

Reply:

There are several clauses in the Concession Contract which provide for negotiation between the parties in the event of disagreement about rights and obligations. (See Clauses Twenty Nine and Thirty Two). Were there any legal error with respect to these provisions and compliance with Mexican Domestic Law requirements, that error would be the Municipal Government's, which it should be precluded from claiming that error against Desona.

Allegation #22:

"The error of law persists in having [illegible text] in the granting of the Concession, the subrogation of the existing laws between the Municipal Government and the Ejido owners of San Mateo Nopala, owners of the lot where

the Rincon Verde landfill is located, without having the prior authorization of said owners, violating as a result what is provided in Article 2334 of the Civil Code of the State, in prejudice to the Municipality, which in any case must answer together with the Concession holder for the damages that might be caused, the above generating a damage to the Municipality in terms of Article 167 of the Municipal law cited"....

Reply:

Whether or not the transfer of the lease violated Mexican Domestic Law is irrelevant for purposes of the new Municipal Government's nullification of the Concession. The first Clause of the Concession Contract imposes upon the Municipal Government the obligation to take whatever steps are necessary to effectuate the transfer of its lease with the Ejido to Desona. If the Municipal Government failed to comply with all the legal requirements for such a transfer, it cannot invoke its own failure to meet its Contractual obligations to justify nullifying the Concession Contract and should be precluded therefrom.

Allegation #23:

... "In addition, contrary to public law, and therefore an evident legal error, is the subrogation of obligations and rights agreed upon between the Municipality and the Concession holder coming from the Agreement of Coordination for the Operation and Cleanup of the Solid Rincon Verde Waste Dump, entered into between the Secretariat of Ecology of the Government of the State of Mexico and this Municipal Government, without having the agreement and authorization of the Secretariat of Ecology"...

Reply:

The new Municipal Government has cited no law which requires the Secretary's prior approval of such an assignment of rights under a Concession Contract. Moreover, this is another attempt of the Municipal Government to benefit from its own legal error to the detriment of Desona and therefore should be precluded from making this claim.

Allegation #24:

... "The consent of this Municipality granted in the Contract entered into is flawed with error to the extent that it limits the powers which, in accordance with XIV of Art. 31 of the Municipal Organic Law in effect, belong to the Municipal Government through resolution of public order, since it states in its clause 29 that the Municipalization of the public service in the Concession will not be able to occur through fortuitous causes or act of god, Article 138 of the law of public interest cited also being violated"...

Reply:

Once again, the new Municipal Government is attempting to benefit from its own possible legal error to the detriment of Claimants which it should not be permitted to do. Even if the provision in clause Twenty Nine is contrary to Mexican domestic law, the consequences of this error would be, at worst, the unenforceability of the provision in question, not invalidation of the entire Concession Contract.

Allegation # 25:

... "In taking possession of the Rincon Verde landfill, DESECHOS SOLIDOS DE NAUCALPAN, S.A. DE C.V. should have requested the authorization of this Municipal Government on the service fees for deposit in said landfill, but it

has not done so and yet has been collecting them in amounts and rates at its discretion, from the beginning of its participation, in violation of Article 53 of the Regulations on Operations and Disposal of Solid Wastes in this Municipality. In addition to the above, the Concession holder should have paid the Ejido that owns the Rincon Verde land the corresponding fees for the months of December 1993, January and February 1994, but has not done so in spite of the charging of the fees set unilaterally for the deposit of waste made with respect to a land that is its property, and even against the will of the owners; the consent of the Municipal Government is flawed with error in virtue of not having conditioned the authorization of the fees to the prior consideration of the Municipality, as established in Article 53 of the Regulations of Operation and Disposal of Solid Waste of Naucalpan"...

Reply:

Clause Six of the Concession Contract clearly gives Desona the right to set landfill fees without the Municipal Government's authorization:

... "and authorizes the Concessionaire to establish the necessary methods for its operation, maintenance and conservation and allows the Concessionaire to determine the rates to charge and waste inflow controls. This authorization is applicable also to future landfills like corral del Indio or other"....

Furthermore, the Act of Delivery of the Rincon Verde landfill, signed by the former Municipal Government and Desona on December 11, 1993, reiterates Desona's authority to set fees ²⁹.

²⁹ See Act of delivery of Landfill, Exhibit "18"

Allegation # 26:

... "An error of law exists in the consent expressed by the Municipality in the granting of the Concession, with respect to the name, legal status, establishment and even existence of the Concession holder, arising from the fact that at the town council session of November 4, 1992, the granting of the Concession was authorized for DESECHOS SOLIDOS DE NAUCALPAN, S.A. DE C.V.; subsequently, in an agreement published in the Government Gazette on November 23, 1992, this Municipal Government asked for the authorization of the State Legislature in order to grant said Concession to the company Desona, S.A. DE C.V., and finally, in its Decree 213, published in the Government Gazette on August 16, 1993, the State Legislature authorized the granting of said Concession "in the name of the corporate enterprise named DESECHOS SOLIDOS DE NAUCALPAN, S.A. DE C.V. (Desona)". In addition to the above, the paperwork through which the company DESECHOS SOLIDOS DE NAUCALPAN, S.A. DE C.V., has contacted this Municipality, on occasion has the letterhead DESECHOS SOLIDOS NAUCALPAN, S.A. DE C.V., at times DESECHOS SOLIDOS DE NAUCALPAN, S.A. DE C.V., and at times Desona, S.A. DE C.V. All this diversity of names generates a logical confusion with third parties and mainly with this Municipality, which is aggravated by the fact that both the Municipal Government and the State Legislature authorized the granting of the Concession to a company that does not exist, which is DESECHOS SOLIDOS NAUCALPAN, S.A. DE C.V. This perhaps deliberately caused confusion generates a legal error evident in the consent of the Municipal Government which is centered around the legal status and even the lack of existence of the Concession holder, preventing from being present in the business one of the essential elements of the administrative act, which is

that of its receiver, which in turn obstructs the indispensable realization of the act..."

Reply:

While there may be slight differences in the way Desona's name appears, the Municipal Government certainly has known at all times that it was the Concessionaire Desona that was being referenced. The claim that the Municipal Government has been "confused" in some way is completely specious. The fact is that the new Municipal Government itself has used more than one name to refer to Desona, which indicates both how easy it is to make an error in reciting the company's name and that the new Municipal Government's claim of confusion is totally without merit.

Allegation #27:

..."Finally, a legal error exists in the consent manifested by the Municipality in its act of Concession, in not having found DESECHOS SOLIDOS NAUCALPAN, S.A. DE C.V. registered on the list of Suppliers of the State of Mexico, on the date, nor of the authorization of the Concession, nor on the date of the signing of the Contract that formalized it, which is a requirement of full law established by Article 33 of the Law on Purchases, Transfers, Rentals, Maintenance and Storage"...

Reply:

Even if Desona could somehow be required to comply with this requirement, Clause Two of the Concession Contract requires the Municipal Government to assist Desona in obtaining necessary permits and complying with requisite legal formalities. Thus the fact that Desona was not on this list was attributable to the Municipal Government's actions.

The Municipal Government should be precluded from benefiting from its own error to the detriment of Claimants.

On March 21, 1994, Naucalpan's City Council voted to nullify Desona's Concession.

Conclusion:

By virtue of these allegations, the new Municipal Government claimed the Concession Contract to be illegal, null and void.

These allegations put Desona in a position of attempting to prove that the Concession Contract was valid. This was an impossible task given the nature of the allegations. The demand to reply within four days, was itself a violation of the Concession Contract by the new Municipal Government. This was a patent attempt to discredit the former Municipal Government and was an impossible task for Desona to defend and rehabilitate that former Municipal Government.

Mexican Legal Proceedings

Upon receipt of these allegations Desona's Management responded by seeking Domestic legal relief without success.

Those proceedings are mentioned briefly in Respondent's Motion for Directions. Claimants are unsure without seeing Respondents Counter Memorial whether Respondent's position is that Claimants are somehow barred from filing this NAFTA claim by the Domestic court proceedings.

If Respondent posits those proceeding as a bar with respect to Desona, Claimants will respond in their Rebuttal. Since Claimants, as individuals, were not Parties to those domestic proceedings, those proceeding should not constitute a legal bar to this arbitration.

Assuming those domestic proceedings to be the subject of a threshold issue, Claimants would tender the following position to show that in fact, Mexico is barred by the NAFTA from taking that position:

NAFTA specifically addresses the "local courts" issue. Mexico has consented to a waiver of domestic court proceedings and has agreed to International Arbitration, a partial waiver of its Sovereignty in exchange for the economic benefits conferred under the Treaty.

Article 133 of the Mexican Constitution provides as follows:

"This Constitution, the laws which are passed by the Congress and all of the treaties validity subscribed to by the president of the Republic in conformity with the constitution and properly ratified by the Senate, will be the supreme law in all the Union"

Article 1122 of the NAFTA provides:

"1. Each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Agreement"

This Article is designed to ensure that a host country cannot frustrate an arbitration by withholding its consent and constitutes advanced consent by the three Government parties to arbitration under the Treaty.

The Governing law then, for this investment dispute is the NAFTA.

Article 1131: Governing Law

"1. A Tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law."

ACTS OF INTIMIDATION

Immediately following the repudiation Desona's personnel were ejected from their operating facilities and from the landfill via armed guards. The unjustified authorization to use force was specifically granted by the City Council;

... "to take immediate possession of the sanitary landfill known as Rincon Verde. For this purpose, he is given faculties to use all means deemed necessary, including making use of public force in case the Concessionaire resists"³⁰...

These acts included, among other things, unlawful search of Desona's offices by Municipal officials and judicial police, campaigns of public denunciation, libel and intimidating harassment through tax audits of Desona's records³¹.

³⁰ See Exhibit "19"

³¹ See Affidavit of Ariel Goldenstein - Affidavit Section