

**Notice of Intent to Submit a Claim to Arbitration
Under Chapter Eleven of the North American Free Trade Agreement**

TO: Mr. Jaime Zabudovsky Kuper
Assistant Secretary
Secretaría de Comercio y Fomento Industrial
Alfonso Reyes No. 30
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Mexico, D.F. 06140

Ambassador Jesús F. Reyes-Heróles
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Washington, D.C. 20006

USAWASTE SERVICES, INC., AN INVESTOR OF THE UNITED STATES OF AMERICA, HEREBY NOTIFIES THE GOVERNMENT OF THE UNITED MEXICAN STATES OF ITS INTENT TO SUBMIT A CLAIM TO ARBITRATION UNDER CHAPTER ELEVEN OF THE NORTH AMERICAN FREE TRADE AGREEMENT ("NAFTA"). That submission will be made no less than ninety days from the date of this notice, as required by NAFTA Article 1119. USAWaste Services, Inc. intends to submit this claim on its own behalf and also on behalf of Acaverde, S.A. de C.V., an enterprise of the United Mexican States ("Mexico").

This notice of intent is delivered in two languages, Spanish and English. In the event of conflicting interpretations between the two versions, the English version shall govern.

I. Name and Address of U.S. Investor and Its Wholly Owned Enterprise

USA Waste Services, Inc. ("USA Waste") is a company incorporated under the laws of the State of Delaware of the United States of America. USA Waste owns and controls Acaverde, S.A. de C.V. ("Acaverde"), an enterprise of Mexico. The addresses of USA Waste and Acaverde (hereinafter collectively referred to as "Claimants") are:

USA Waste Services, Inc.
First City Tower
1001 Fannin, 40th Floor
Houston, Texas 77002
U.S.A.

Acaverde, S.A. de C.V.
Avenida Ejercito Nacional s/n
Fraccionamiento Joyas De Brisamar
Acapulco, Guerrero
Mexico

II. NAFTA Provisions Breached

A. Mexican Public Authorities Accountable Under NAFTA

Claimants seek recovery from Mexico for measures taken by its Government, by Banco Nacional de Obras y Servicios Públicos, S.N.C. ("Banobras"), by the State of Guerrero ("Guerrero"), and by the Municipality of Acapulco of Juarez, Guerrero ("Acapulco") (collectively, the "Mexican Public Authorities"). Mexico is obligated under Article 105 of NAFTA to ensure that all necessary measures are taken in order to give effect to the provisions of that treaty, including observance by its political subdivisions. Accordingly, Mexico is accountable for the actions of Banobras,¹ Guerrero and Acapulco.²

B. Claimants' Investments Protected by NAFTA

Guerrero and Acapulco granted a fifteen-year concession to Acaverde in early 1995. Under the concession, Acaverde was to design, build and operate a solid waste landfill, have the exclusive right to collect and dispose of all solid waste in a specified area, and provide street cleaning services to Acapulco. Acapulco's payment of fees due to Acaverde under the concession was guaranteed by Banobras and counter-guaranteed by Guerrero.

¹ Banobras is a bank, created by the federal law of Mexico, that finances public water, wastewater treatment, and solid waste management projects. Banobras is also the cashier bank for Secretaria de Hacienda y Credito Publico, a federal agency that serves as the Mexican treasury and the distributor of Mexican federal tax revenues.

² Guerrero and Acapulco are political subdivisions of Mexico. Guerrero is a constituent state of Mexico, and Acapulco is a municipality of the State of Guerrero. Pursuant to Article 115 of the Constitution of Mexico, a municipality is a territorial division of a state created for administrative purposes.

The NAFTA chapter on investment expressly protects Claimants' rights and interests arising under Acaverde's concession. Specifically, NAFTA defines protected investments to include:

1. Entitlement to income owed to an enterprise;³
2. Property owned by, and resources committed to, an enterprise;⁴ and
3. The value of an enterprise itself.⁵

Claimants' protected investments therefore include income owed for services rendered under the concession, capital committed to operations under the concession, and the value of Acaverde as an enterprise operating a concession.

C. NAFTA Provisions Breached: Articles 1105(1) and 1110

The Mexican Public Authorities did not accord the investments of Claimants "treatment in accordance with international law, including fair and equitable treatment and full protection and security" as required by Article 1105(1) of NAFTA. On the contrary, the Mexican Public Authorities, after playing a critical role in inducing these investments, failed to comply with the obligations they had assumed. As will be detailed below, Acapulco failed to make payments on approved invoices for services rendered, and Banobras violated its unconditional guarantee backing Acapulco's obligations. Acapulco also failed to comply with other material obligations under the concession, and ultimately Acaverde's concession rights were unlawfully but effectively transferred by Guerrero and Acapulco to a third party.

These acts were tantamount to an expropriation of Claimants' investments under Article 1110 of NAFTA:

1. Acaverde was deprived of the income to which it was entitled as a direct result of the Mexican Public Authorities' failure to pay.

³ NAFTA Article 1139(e) provides that "investment means . . . an interest in an enterprise that entitles the owner to share in income or profits of the enterprise."

⁴ NAFTA Article 1139(g) and (h) provide that "investment means . . . real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes; and . . . interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory, such as under . . . contracts involving the presence of an investor's property in the territory of the Party, including . . . concessions . . ."

⁵ NAFTA Article 1139(a) and (b) provide that "investment means . . . an enterprise; [or] . . . an equity security of an enterprise."

2. Acapulco's non-compliance with its other obligations rendered worthless Claimants' property and other resources committed to economic activities under the concession.
3. The Mexican Public Authorities' disregard for Acaverde's concession rights, and their refusal to cooperate within the concession framework, effectively extinguished Acaverde's viability as an enterprise.

This expropriation of Claimants' investments was unlawful because it was discriminatory, was not in accordance with due process of law and standards of international law, and was undertaken without payment of compensation. Moreover, even if the investments had been lawfully expropriated, Claimants are entitled to compensation under NAFTA.

III. Issues and Factual Basis For The Claim

A. Government Acts Granting the Concession

The Mexican Public Authorities took positive acts that gave Acaverde rights to be paid for services rendered in Mexico. The rights acquired induced Claimants to commit capital to Acaverde's economic activity in Mexico, creating a further interest protected as an investment under NAFTA.

On 15 December 1994, the Congress of Guerrero delegated to Acapulco the authority to grant a concession for the management of solid waste. On 9 February 1995, Acapulco, by administrative act, granted a Title of Concession ("Concession") in favor of Acaverde for a term of fifteen years. In May 1995, a modified Concession was executed after Banobras requested changes to the original Concession.

Satisfied with the modifications, Banobras and Guerrero executed an irrevocable, revolving line of credit agreement ("Line of Credit"). The Line of Credit provided an alternate source of payment for Acaverde in the event Acapulco failed to make the payments required under the Concession. The Line of Credit was registered in Mexico City on 9 June 1995 as a Federal Public Debt pursuant to Article 9 of the Regulations of the Tax Coordination Law.

B. Rights and Obligations of the Parties

1. Acaverde's Rights and Obligations

The Concession imposed three obligations on Acaverde. First, Acaverde was to provide manual and mechanical street sweeping services in specified zones of Acapulco ("the Concession Area"). Acaverde was also to provide waste collection and disposal services for public and, under separate contracts, private users in the Concession Area. Finally, Acaverde was to design, build, and operate a new solid waste landfill, which was to

serve as the exclusive site for the disposal of all solid waste collected within the municipality of Acapulco.

2. Acapulco's Obligations

Acapulco agreed to pay Acaverde a flat fee per month from the commencement of operations through 31 December 1995, after which time the monthly fee would be increased and adjusted to reflect inflation. Payment would be due on any invoices delivered by Acaverde that were not rejected by Acapulco within twenty (20) days. Further, Acapulco agreed to notify Acaverde of any breaches by Acaverde of its obligations under the Concession, after which Acaverde would have thirty (30) days to remedy the breach.

With respect to waste collection and disposal services, Acapulco agreed not to grant any rights inconsistent with Acaverde's exclusive right to collect waste in the Concession Area. Acapulco also agreed to enforce the exclusivity of Acaverde's collection rights and to enforce Acaverde's right to payments arising under the private contracts.

With respect to the new landfill, Acapulco committed to provide Acaverde, at no cost, a piece of land as a suitable landfill site. Acapulco also agreed to provide a site for Acaverde's service facility (where equipment would be serviced and parked when not in use). Finally, Acapulco committed to grant to Acaverde or help Acaverde obtain all permits and licenses necessary to carry out Acaverde's obligations under the Concession.

3. Banobras' and Guerrero's Obligations Under the Line of Credit

Under the Line of Credit, Banobras guaranteed payment to Acaverde for services provided under the Concession. Either Acapulco or Acaverde could draw upon the credit. If Acaverde sought payment directly, Banobras was required to pay upon presentation of approved, unpaid invoices. The Line of Credit was counter-guaranteed by Guerrero, which was required to repay Banobras if Acapulco did not.

C. Actions of the Parties

1. Acaverde Met All of its Obligations

On 15 August 1995, Acaverde began collecting solid waste in the Concession Area and continued to do so until 12 November 1997. After a three-month phase-in period during which it established full operations, Acaverde began street sweeping operations on 15 November 1995, which likewise continued until 12 November 1997.

To dispose of collected waste, Acaverde leased a piece of land on which it operated a temporary landfill. Because Acapulco never provided the land for construction of the new permanent landfill, Acaverde continued to lease and use the temporary site for waste disposal throughout its performance under the Concession.

2. Acapulco Failed to Make Payments on Approved Invoices

Acaverde invoiced Acapulco for services performed in every month from August 1995 through October 1997, a total of twenty-seven months. Acapulco has paid in full only one month's invoice and has made partial payment on only two other invoices. The single full payment was made in January 1996, when Acapulco paid Acaverde's December 1995 invoice. Partial payments were made later in 1996, when Acapulco delivered to Acaverde several checks in partial payment of the invoices for January and February 1996. Several of these instruments were dishonored when Acaverde attempted to draw on them. Acapulco has not offered any further payments, partial or full, to Acaverde.

3. Banobras Failed to Make Payments Required Under the Line of Credit

Acaverde has submitted approved invoices to Banobras for all the outstanding payments owed under the Concession. In June 1996, Banobras honored Acaverde's demand for payment of amounts not paid by Acapulco for services during the period from January to April 1996. Banobras has made no further payments. According to Banobras, its refusal to pay is based on Acapulco's allegation that Acaverde is in breach under the Concession.

Even assuming that Banobras relied on Acapulco's claims of breach, Banobras' refusal to pay is contrary to established legal principles and the express terms of the Line of Credit. Acapulco accepted all of Acaverde's invoices and has never notified Acaverde of any breach, as required under the Concession. Thus, Acapulco has never had any legal basis on which to deny payment.

Further, Banobras does not have the right to withhold payments based on Acapulco's allegations. The Line of Credit unequivocally requires that invoices accepted by Acapulco can be presented to Banobras by Acaverde for immediate payment. Because Acapulco had accepted all of Acaverde's invoices, Banobras was required to make payment immediately upon presentation by Acaverde.

4. Acapulco Failed to Provide a Permanent Landfill Site and a Service Facility Site

The new permanent landfill anticipated by the Concession was never built because Acapulco breached its obligation to provide a landfill site. After the two parties had agreed on the location of the site, Acaverde paid to lease the site on Acapulco's behalf. Acaverde then cleared the designated land, built an access road and designed the new landfill. However, Acapulco never formally conveyed the property to Acaverde as required by the Concession. Although Acaverde prepared the documents necessary for the conveyance and provided them to Acapulco for execution, Acapulco refused to execute these documents. As a result, Acaverde was denied use of the site.

Acapulco also failed to provide a service facility site. As a result, Acaverde was required to rent its own service facility.

5. Acapulco Failed to Enforce the Exclusivity of Acaverde's Concession

Although the Concession granted Acaverde the exclusive right to collect and dispose of all solid waste in the Concession Area, Acapulco allowed other companies and individuals to collect solid waste in the Concession Area throughout the period from August 1995 to November 1997. These other collectors often dumped their waste in prohibited sites on the streets and public lots of Acapulco, leaving Acaverde to collect and properly dispose of it.

6. Acapulco Repudiated Acaverde's Concession Without Notice or Cause

Notwithstanding Acapulco's breaches of the Concession enumerated above, Acapulco continued to accept the benefits of Acaverde's services and never gave Acaverde notice, as required under the Concession, of any cause for termination. Acaverde, although suffering significant monthly operating losses, was nevertheless reluctant to abandon its operations and risk incurring liability for forfeiture under the Concession.

Finally, on 10 October 1997, in an attempt to salvage its investment and continue operating under the Concession, Acaverde proposed a plan to scale back operations and fees and to reschedule payments so that Acapulco would immediately pay part of the money it owed Acaverde and would pay the remaining amounts in four installments. Because Acapulco did not formally respond to Acaverde's proposal for more than two weeks, Acaverde on 27 October filed a fifteen-day notice of intent to withdraw from the Concession. Only then did Acapulco respond with a "counter-offer," on 4 November, that was in fact a repudiation of the key terms of the Concession.

Specifically, this "counter-offer" proposed to cancel 90% of Acapulco's existing debt, in part by means of a new concession fee to be paid by Acaverde. In addition, Acaverde would effectively lose the Concession granted in 1995. Acaverde would continue to have significant fixed obligations requiring further investment, but with no predictable means to recover its investment. The terms under which Acaverde would be paid, the amounts it would be paid, and the scope of its operation would be undefined and would, in any event, be perpetually subject to unilateral amendment by Acapulco. In short, Acapulco did not propose a modification of the terms of the existing fifteen-year Concession. Instead, Acapulco proposed an entirely new arrangement consisting of a series of short-term service contracts, without a set fee structure, which might not be renewed from year to year.

USAWaste, recognizing that its Concession had been effectively terminated, ceased operations on 12 November 1997. Before ceasing operations, USAWaste learned

that a Mexican entity, SETASA⁶ had begun regular collection of solid waste in Acapulco, with the approval of Guerrero officials. Given this context, it appears that USAWaste's departure was the very result Acapulco intended the 4 November "counter-offer" to achieve.

IV. Relief Sought and Approximate Damages

Claimants seek damages in the amount of the fair market value of their investments, in conformity with Chapter Eleven of NAFTA, plus the costs of bringing the intended arbitration and legal fees associated therewith. The approximate amount of damages plus costs is US\$60,000,000. Claimants request that compensation be made in United States dollars and include interest pursuant to Article 1110(4) of NAFTA.

⁶ SETASA is a subsidiary of Grupo ICA, S.A. de C.V., a large, diversified Mexican industrial conglomerate active in the construction and public service industries.

The law firm of Baker & Botts, L.L.P. represents the Claimants named herein and is authorized to receive correspondence related to this matter on their behalf. All correspondence should therefore be delivered to the undersigned.

Respectfully submitted,



BAKER & BOTTS, L.L.P.

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