

ARTICLE

WARREN COUNTY'S LEGACY FOR MEXICO'S BORDER MAQUILADORAS

AMELIA SIMPSON*

I. INTRODUCTION

“Mexico is nobody’s trash dump!” declared María de Lourdes Luján Aguirre to cheering community activists from both sides of the U.S.-Mexico border, who had gathered in Tijuana on a bright, windy day in June 2004 to celebrate a historic event.¹ Luján and Martha Cervantes Soberanez were there to sign a landmark agreement with the Mexican government for cleanup of a notorious toxic site in their Tijuana neighborhood. The abandoned, U.S.-owned Metales y Derivados battery recycling facility is about a mile from the U.S.-Mexico border, and only 150 yards from homes in Colonia Chilpancingo, a workers’ community of about 10,000 residents next to Tijuana’s largest industrial park.

The Minister of SEMARNAT,² Mexico’s environmental agency,

* Amelia Simpson is the Director of the Border Environmental Justice Campaign at Environmental Health Coalition, a 27-year-old private, non-profit social and environmental justice organization with offices in San Diego and Tijuana. Environmental Health Coalition took the lead over a decade ago in the campaign to compel cleanup of the Metales y Derivados toxic site, including co-authoring a citizen-submission complaint with the Commission for Environmental Cooperation of North America.

¹ María de Lourdes Luján Aguirre, community activist promotora with Environmental Health Coalition’s community action team in Tijuana, the Colectivo Chilpancingo Pro Justicia Ambiental, addressing attendees at the signing of the agreement to clean up the Metales y Derivados toxic waste site in Tijuana, Mexico (June 24, 2004) (witnessed by author).

² SEMARNAT is the acronym for the Secretaría de Medio Ambiente y Recursos Naturales, or Ministry of the Environment and Natural Resources. SEMARNAT and the federal law-enforcement arm for environmental matters, the Procuraduría Federal para la Protección del Ambiente (Profepa), are charged with overseeing Mexico’s 1988 environmental law, the Ley General del Equilibrio Ecológico y la Protección al Ambiente, the General Law of Ecological

flew in from Mexico City for the signing ceremony, which was held under a large tent set up next to Metales y Derivados. The governor of the state of Baja California, Tijuana's mayor, and representatives of other Mexican government agencies as well as from the U.S. Environmental Protection Agency joined crossborder activists to witness the event. By signing the document, the Mexican government was making a formal commitment to clean up the site, ten years after shutting down the facility for violations of environmental law. For the community, the signing represented the culmination of many years of struggle, beginning while the factory was still operating and continuing after the owner of Metales y Derivados (José Kahn) fled across the border when a warrant was issued for his arrest in 1995.³ Kahn left behind over 23,000 tons of mixed hazardous waste, much of it exposed to the elements.⁴ Because of the windy conditions on the day of the signing ceremony, everyone left dusted with lead, the main contaminant at the site.

Colonia Chilpancingo's long struggle to defend families' and workers' health and the environment poisoned by Metales y Derivados is a story about discrimination at the U.S.-Mexico border. It is a story about how so-called "free" trade agreements, such as the 1994 North American Free Trade Agreement ("NAFTA"), exploit vulnerable communities and perpetuate racist practices. At the same time, it is a story of building crossborder solidarity to overcome racism and social injustice—of how "another world is possible," to use the slogan of the globalization for justice movement.

Applying the concept of environmental justice to Mexico and the

Equilibrium and Protection of the Environment (LGEEPA). Other laws and agreements related to the protection of health and the environment in Mexico include Mexico's Constitution (1917), Federal Labor Law (1931), Ley Federal para Prevenir y Controlar la Contaminación (Federal Law to Prevent and Control Pollution, Mexico's first environmental law) dating from 1971, and the 1983 treaty between Mexico and the U.S. signed in La Paz, Baja California, concerning the border region (Convenio entre los Estados Unidos Mexicanos y los Estados Unidos de América sobre Cooperación para la Protección y Mejoramiento del Medio Ambiente en la Zona Fronteriza, Agreement between the United States of Mexico and the United States of America concerning Cooperation for the Protection and Improvement of the Environment in the Border Zone; available at <http://www.cemda.org.mx/infoarnap/legislacion/251g.html>).

³ Commission for Environmental Cooperation of North America [CECNA], *Metales y Derivados Final Factual Record*, Edition Yvon Blais, 2002, pp. 43, 58, available at <http://www.cec.org/files/pdf/sem/98-7-FFR-e.pdf> (in English, Spanish, and French) ("Factual Record").

⁴ See Hilario Ochoa Movis, *Confinarán 35 mil toneladas de tierra contaminada con plomo*, EL MEXICANO, Jan. 26, 2007 (quoting Enrique Villegas Ibarra, Minister of Environmental Protection of the State of Baja California); see also Kevin Sullivan, *A Toxic Legacy on the Mexican Border: Abandoned U.S.-Owned Smelter in Tijuana Blamed for Birth Defects, Health Ailments*, THE WASH. POST, Feb. 16, 2003, at A17; MAQUILAPOLIS (film produced by Vicky Funari & Sergio De La Torre, 2006), available at <http://www.maquilapolis.com>.

Metales y Derivados case raises a number of issues. The 1982 Warren County protests that launched the environmental justice movement on a national scale in the U.S. can be connected to the trajectory of the civil rights movement there. Since the Metales y Derivados case straddles the border, it belongs in part to Mexico's distinct history and culture. Differences between the U.S. and Mexico in how racism is viewed carry implications for how environmental justice is documented and addressed.

This Article explores the legacy of the U.S. environmental justice movement for the U.S.-Mexico border region. Part I introduces the case of Metales y Derivados, an abandoned, U.S.-owned maquiladora factory in Tijuana, Mexico, and the community's struggle to compel cleanup of toxic waste at the site. In the context of environmental justice, Metales y Derivados illustrates a complex intersection of histories and cultures, international trade policy, and movement building. Part II discusses how racism, a defining element of the environmental justice movement, is often minimized and even denied in Latin America, despite studies documenting its persistence. Part III examines obstacles to building environmental justice cases in Mexico comparable to ones in the U.S., including differences in assigning racial identity, the dissimilarity of land use patterns, and fewer resources for documentation. Yet the concept of environmental justice can be developed clearly in the context of the free-trade regime, exemplified by NAFTA, that perpetuates a long history of racism toward Mexico in policies that permit the exploitation of Mexican border communities for profit.

Part IV (A) presents the background of the Metales y Derivados case and its links to NAFTA. Part IV (B) details the community's struggle to clean up the Metales y Derivados toxic site, including the 1998 filing of a Citizen Submission with the Commission for Environmental Cooperation, an institution formed to fulfill the environmental provisions of NAFTA. The Citizen Submission culminated in the publication in 2002 of a report documenting the risk to human health that toxics at the Metales y Derivados site represented. However, the Commission for Environmental Cooperation had no enforcement mechanism to compel remediation. The Environmental Health Coalition and its community action team in Tijuana persisted in its crossborder organizing and advocacy campaign and achieved a historic victory when the Mexican government signed a landmark agreement in 2004 with community residents for cleanup within five years. Part V describes the importance of the Metales y Derivados case for policy and community activism across borders, as well as its status as the poster child for the failure of NAFTA as a model for protecting public health and the environment. The environmental justice movement

will be strengthened as it meets the challenge of expanding to address international issues and global concerns.

II. THE DENIAL OF RACISM IN LATIN AMERICA

The phenomenon of disputing, minimizing or even denying that racism exists is widespread in Latin America.⁵ As recently as 1995, Mexico's representative to the United Nations Committee on the Elimination of Racial Discrimination asserted that "the phenomenon of racial discrimination did not exist in Mexico."⁶ The region does not have a history of segregationist laws and practices similar to those in the U.S., and there has never been a lengthy national discussion of racism in Mexico. Typically, race is defined in Latin America on a spectrum, from white on one end to black or indigenous on the other, rather than using the categories white/nonwhite. The term "people of color" is not commonly used in the region.⁷

Although their authority is diminishing, myths of racial harmony persist throughout Latin America, along with the assertion that this is what distinguishes the region from the U.S. in the sphere of race relations.⁸ Such myths allow racialized social disparities to be explained as the consequence of socioeconomic differences, not racial discrimination. But the reality is that throughout the Americas, the whiter end of the spectrum is privileged by the dominant society. In Mexico, where the majority of the population is of mixed European and indigenous descent, lighter skin color and more-European features frequently translate into social advantages. Official celebrations

⁵ See generally THE IDEA OF RACE IN LATIN AMERICA (Richard Graham ed., University of Texas Press 1990) ("IDEA OF RACE"); FEDERICO NAVARRETE, LAS RELACIONES INTER-ÉTNICAS EN MÉXICO (Universidad Nacional Autónoma de México (2004); Nancy Leys Stepan, THE HOUR OF EUGENICS: RACE, GENDER AND NATION IN LATIN AMERICA (Cornell University Press 2001); Nancy P. Appelbaum, *Post-Revisionist Scholarship on Race*, LATIN AM. RES. REV. Vol. 40, No. 3, Oct. 2005 (overview of recent scholarship on race in Latin America); see also *NACLA Report on the Americas*, Vol. xxxiv, No. 6, May/June 2001 (part of series dedicated to examining race in Latin America).

⁶ Committee on the Elimination of Racial Discrimination, *Conclusions and Recommendations of the Committee on the Elimination of Racial Discrimination*, ¶ 354 U.N. Doc. A/50/18 1995, available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/A.50.18.para.353-398.Sp?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/A.50.18.para.353-398.Sp?Opendocument).

⁷ It is notable that the *People of Color Environmental Groups* directory from the year 2000 includes Mexico, although there are 129 pages listing U.S. groups, compared to only four pages of Mexican groups, some of which pursue conservation or human-rights missions that would not be considered representative of the environmental justice movement. *People of Color Environmental Groups*, compiled by Robert D. Bullard, 2000, printed by Charles Stewart Mott Foundation, <http://www.mott.org>.

⁸ See *supra* note 5.

glorifying Mexico's indigenous heritage remain for the most part symbolic. As Alan Knight put it, "a whole range of prejudices and discriminations exists, but exists in defiance of official ideology" exalting Indianness.⁹

A recent United Nations report asserts that in Mexico, "most of the indigenous population lives in conditions of exclusion and inequality."¹⁰ The report documents high levels of marginalization for Mexico's indigenous population, as measured by quality-of-life indicators. Life expectancy of all Mexicans in 1998 was seventy-four years, while for indigenous people it was sixty-nine.¹¹ Infant mortality rates show significant differences. For example, child mortality in Mexican cities of more than 15,000 inhabitants in 1992 was 30 per 1,000 live births.¹² In municipalities with indigenous populations of 30% or more, mortality rates were 55 per 1,000 live births nationally but increased to 89, 95 and 100 in the Cora, Tarahumara and Huichol indigenous regions respectively.¹³ Housing conditions also reflect these inequalities. In 1995, 85% of Mexican dwellings had piped water, but only 62% of indigenous dwellings did.¹⁴ Seventy-four percent had drainage systems nationwide, while only 33.7% of indigenous dwellings did.¹⁵ In the sphere of education, Mexico's 2000 census shows that the illiteracy rate for indigenous people was more than three times the national average.¹⁶ It is to Mexico's credit that the 2005 report by the United Nations Committee on the Elimination of Racial Discrimination concludes that "Mexico has acknowledged that racism, racial discrimination, xenophobia and related intolerance continue to exist at all levels of Mexican society."¹⁷

⁹ Alan Knight, *Racism, Revolution, and Indigenismo*, in *THE IDEA OF RACE IN LATIN AMERICA 1870-1940* at 100 (Richard Graham ed., University of Texas Press 1990).

¹⁰ Committee on Elimination of Racial Discrimination, *Fifteenth Periodic Report of State Parties due in 2004*, ¶ 108, *Submitted by State Parties Under Article 9 of the International Convention on the Elimination of all Forms of Racial Discrimination*, Advance Edited Version, Mexico, CERD/C/473/Add.1 (May 19, 2005), available at <http://www.ohchr.org/english/bodies/cerd/docs/CERD.C.473.Add.1.pdf>. ("CERD 2004").

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Committee on Elimination of Racial Discrimination, *supra* note 10, at ¶ 108.

¹⁷ *Id.* at 40.

III. OBSTACLES TO ENVIRONMENTAL JUSTICE

The Warren County struggle and other environmental injustices led to a series of landmark studies in the U.S. starting in the 1970s, documenting race as the most important factor in elevated health risks from environmental impacts, and mostly focusing on the siting of hazardous-waste facilities. One reason that comparable studies are not available in Mexico is the difficulty of assigning—and, for many, the reluctance of assuming—fixed racial identities there. Mexico adopted different methodologies for its 1990 and 2000 censuses in an effort to measure more accurately indigenous populations, but it is still a challenge to capture a social reality where gradations of lighter skin register social advantages in sometimes subtle and often unacknowledged ways.¹⁸ Environmental racism cases can be documented for the population of those who self-identify as indigenous or were counted in the 2000 census, for example, as indigenous (defined as “all persons forming part of a socio-economic unit where the head of household or the spouse spoke an indigenous language”; using this methodology, 13% of Mexico’s population is indigenous).¹⁹ But that would leave out the majority of Mexicans, who nevertheless live in a society where racialized logic influences social status.

It is unclear how successful the strategy would be in Mexico of correlating race to the same markers used in the U.S. for establishing environmental racism and environmental injustice. Robert D. Bullard, discussing public-health risks related to environmental issues in the U.S., referred to a series of studies showing that “race has been found to be independent of class in the distribution of air pollution, contaminated fish consumption, location of municipal landfills and incinerators, toxic-waste dumps, cleanup of Superfund sites, and lead poisoning in children.”²⁰ Using domestic siting of hazardous-waste landfills as a key

¹⁸ *Id.* at 19. As the United Nations report points out, methodologies for gathering census information on race and ethnicity in Mexico may minimize statistics about groups subjected to discrimination. Moreover, the report observes, the “statistical invisibility is exacerbated by the fact that stigmatized minorities internalize their rejection by society to such an extent that they deny their ethnicity, nationality or membership of some other sector rejected by the majority population.” *Id.*

¹⁹ *Id.* at 20. There are clear examples of environmental racism, although the expression is not used in Mexican literature about the cases. Examples include the cases of two Mexican activists who won the Goldman Environmental Prize—and faced grave danger because of their activities, including death threats, assassination attempts and unjust imprisonment—for their work protecting Tarahumara and Tepehuan indigenous communities’ land in the Western Sierra Madre from illegal logging activities, and indigenous communities and their supporters in Guerrero state who organized a protest movement opposing the La Parota dam project that would displace 25,000 people. *Id.*

²⁰ Robert D. Bullard, *Environmental Justice in the 21st Century*, in PEOPLE OF COLOR ENVIRONMENTAL GROUPS at 14 (Robert D. Bullard ed., Environmental Justice Resource Center

marker would be less relevant in Mexico, where there is only one (as compared to thirty in the U.S.).²¹ Mexico's communities with the highest indigenous populations are located in remote regions that are more likely to be neglected than exploited for siting purposes.²² Mexico has no equivalent of the Superfund.

If low income alone was considered as a measure of environmental injustice in siting decisions, the results still would expose differences between the U.S. and Mexico, as Mexican communities tend to be less segregated by social class. Housing is often self-built on property that families purchase or claim. Home construction may continue for years, with families adding rooms if money becomes available. This ad hoc system results in communities of mixed income levels, where costly house construction by families that grow prosperous develops next door to middle-class and very modest dwellings. Colonia Chilpancingo, the Tijuana neighborhood adjacent to the Metales y Derivados toxic site, reflects this system. At the same time, Colonia Chilpancingo has always been a mostly low-income community, and that status is a key factor in the environmental degradation that the community has experienced from Metales y Derivados and other sources.

Other obstacles to building environmental justice cases in Mexico are less access to information; limited data collection; a less-developed regulatory, planning and enforcement framework; and fewer resources in general for the Mexican government to distribute that would demonstrate whose health and environment matter more. As an example related to access to information, activists working in the Metales y Derivados struggle learned in 2006 that the Mexican government has a list of 200 toxic sites being considered for cleanup, but the government has declined to release information about their locations.²³

Limited data collection in Mexico to support documentation of environmental justice cases can be illustrated by a 2006 report on children's health and the environment, published by NAFTA's

2000).

²¹ Programa Sectorial de Medio Ambiente y Recursos Naturales 2004-2009, *Estado de Nuevo León*, Draft at 29, Sept. 9, 2005; http://www.nl.gob.mx/pics/pages/p_medioambiente_recursosnat.base/medioambiente.pdf and "The Generation and Management of Hazardous Wastes and Transboundary Hazardous Waste Shipments between Mexico, Canada and the United States Since NAFTA: a 2004 Update," Marisa Jacott, Cyrus Reed and Mark Winfield, July 2004, p. 54, published by the Texas Center for Policy Studies; see <http://www.texascenter.org/publications/hazwaste04.pdf>.

²² CERD 2004, *supra* note 10, at 21.

²³ E-mail from Emily Pimentel, U.S. EPA, to Amelia Simpson, Environmental Health Coalition (Oct. 9, 2006, 5:57 PM PST) (on file with author).

Commission for Environmental Cooperation.²⁴ The section on blood-lead levels in children, an indicator correlated to race in the U.S., found there are no national or regional surveys in Mexico.²⁵ The only data available from Mexico was in a compilation of seven independent research projects involving a total sample of 576 children, and a report on a joint private-public program to reduce lead in the blood of a group of children living near the contaminated Peñoles mine in Torreón, Coahuila.²⁶ The U.S. portion of the study, by comparison, uses data from a national biomonitoring program for children ages one through five and includes data on race/ethnicity.²⁷ The relative abundance of information gathered in the U.S. represents an advantage for the environmental justice movement there. At the same time, the categories of race/ethnicity used in the study of lead levels in blood—Hispanic, Black Non-Hispanic, and White Non-Hispanic—no doubt confounded many respondents and are a reminder of the questions raised by the complexities of racial identity, both within the U.S. and, for an increasingly globalized environmental justice movement, between the U.S. and Mexico or other countries.

While the Metales y Derivados case unfolds, on the one hand, in the framework of Mexican society, it is also representative of environmental justice struggles along the U.S.-Mexico border. Metales y Derivados is a product of the free-trade regime that was initiated along the border in the 1960s. The 1994 implementation of NAFTA cemented and expanded free trade there and created a boom in the maquiladoras (assembly factories) at the border.²⁸ Mexico's foreign-owned maquiladoras import materials to make products for export.²⁹ The maquiladora regime encourages companies to relocate to Mexico, where reduced tariffs, lower wages, and fewer or less-stringent environmental regulations and inspections give companies a cost advantage.³⁰

The exploitation of Mexican border communities for profit must be

²⁴ Secretariat of the Commission for Environmental Cooperation, *Children's Health and the Environment in North America: A First Report on Available Indicators and Measures* (Jan. 2006), available at http://www.cec.org/files/PDF/POLLUTANTS/CountryReport-Canada-CHE_en.pdf ["CEC"].

²⁵ Bullard, *supra* note 20, at 14; CEC, *supra* note 24, at 42-47.

²⁶ CEC, *supra* note 24, at 42-47.

²⁷ CEC, *supra* note 24, at 48-51.

²⁸ See Environmental Health Coalition, GLOBALIZATION AT THE CROSSROADS, at 6, 16, 27, 28, 39-41 (2004), available at <http://www.environmentalhealth.org/globalizationFINALRELEASED.10.18.04.pdf>. ["EHC 2004"].

²⁹ On November 13, 2006, foreign-owned and domestic factories were united under the same import/export regime. See Baker & McKenzie, *The New Framework of the Maquiladora Industry*, MAQUILAPORTAL WEEKLY BULLETIN, # 319, Nov. 24, 2006, available at <http://www.maquilaportal.com/bulletin/bulletin319.htm>.

³⁰ *Id.*

viewed in the context of the long history of racism toward Mexico. Today, a vicious strain of racism toward Mexicans finds expression throughout the U.S. in the emergence of the Minuteman Project³¹ and other anti-immigrant vigilante groups; in the passing of laws that seek to restrict housing, employment and other rights for immigrants;³² and in the adoption of extreme measures such as Operation Gatekeeper³³ and the construction of a triple fence in San Diego to control border migration.³⁴ María de Lourdes Luján Aguirre's statement that "Mexico is nobody's trash dump" is informed by the struggle against discrimination that border communities experience acutely.

IV. CASE STUDY OF METALES Y DERIVADOS

A. BACKGROUND AND NAFTA CONTEXT

Metales y Derivados was incorporated in 1972 under the maquiladora regime and began operations in Tijuana, importing

³¹ Founded in 2005 to patrol the U.S.-Mexico border, the Minuteman Project is a national anti-immigrant organization with state chapters. The emergence of the Minuteman Project coincides with increased activity by other anti-immigrant, hate and white-supremacist groups, including the Council of Conservative Citizens, which claims that non-white immigration is transforming the U.S. into "a slimy brown mass of glop." See Alexander Zaitchik, *Electing Extremism*, in INTELLIGENCE REPORT (Southern Poverty Law Center), Fall 2006, at 61.

³² The City of Escondido, California, provides an example of a legal measure adopted by a City Council that encourages discrimination against immigrants. On October 5, 2006, the Escondido City Council approved a ban prohibiting landlords from renting to those they suspected to be undocumented migrant workers. David Fried, *Rights Groups File Lawsuit Against Escondido Housing Ordinance*, NORTH COUNTY TIMES, Nov. 3, 2006.

³³ Operation Gatekeeper is the 1994 policy that increased border enforcement along the urban San Diego part of the westernmost section of the U.S.-Mexico border and resulted in shifting migrants' crossing routes into dangerous territory in the mountains and deserts, causing thousands of deaths. See <http://www.stopgatekeeper.org/English/facts.htm> (background on the policy); see also Press Release, California Rural Legal Assistance Foundation and Coalición Pro Defensa del Migrante A.C., Boletín de Prensa: Grupos de apoyo al migrante revelan que han ocurrido al menos 4,235 muertes a lo largo de la frontera entera en los doce años desde que se puso en marcha el Operativo Guardián, Apr. 23, 2007 (noting that 4,235 migrants have died trying to cross the U.S.-Mexico border since Operation Gatekeeper went into effect) (on file with author); Leslie Berestein, *Rugged Routes, Deadly Risks: Migrants Push East to Avoid Fortified Border, With Tragic Results*, SAN DIEGO UNION TRIBUNE, Sept. 29, 2004.

³⁴ In 1996, under the Illegal Immigration Reform and Immigrant Responsibility Act, the U.S. Congress directed the Immigration and Naturalization Service to construct a triple fence barrier along the fourteen westernmost miles of the U.S.-Mexico border. See Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104-208, Div. C., § 102, 110 Stat. 3009-554-55 (1996). The project was opposed by groups defending human rights, immigrant rights, the environment, cultural integrity and cross-border relations. See No TRIPLE FENCE COALITION, *The Border Triple Fence*, fact sheet, 2003 (on file with author).

discarded batteries, soil containing lead, phone cable sheathing, lead oxide and other types of lead scrap, to produce refined lead and phosphorized copper granulates for export.³⁵ The parent company was a U.S. wholesale metals business based San Diego, California, owned by José Kahn.³⁶ The factory moved in 1986 to the Ciudad Industrial Nueva Tijuana industrial park on the Mesa de Otay, adjacent to Colonia Chilpancingo.³⁷ Residents of the Tijuana neighborhood of La Gloria, where Metales y Derivados operated until the move, registered a series of concerns about the factory. Complaints included the allegation that two children living near the site suffering from acute lead poisoning, and twelve other children with extremely elevated levels of lead in their blood, had been exposed to lead by Metales y Derivados operations.³⁸

Concerns about Metales y Derivados did not go away with the move to the Mesa de Otay. In response to community complaints about unsafe practices, a series of inspections starting in 1989 was conducted by Profepa,³⁹ the law-enforcement arm of SEMARNAT, Mexico's environmental agency.⁴⁰ Profepa documented numerous violations of hazardous-waste-management obligations, including in 1991, no registration as a hazardous-waste generator.⁴¹ At various times, inspectors documented that Metales y Derivados had no air-emission control systems, no acid-spill prevention facility, no storage facility, no treatment or control of wastewater, no emissions inventory, no operating license, no log of hazardous-waste generation or movement, and no trained and certified person responsible for hazardous waste.⁴²

Other concerns that Profepa recorded were air pollutant emissions from three furnaces and two crucibles; fugitive dust emissions; inadequate storage and disposal of hazardous waste and bulk waste; runoff of acids containing lead salts; failure to report hazardous-waste spills, discharges and infiltration; and violation of cadmium and lead

³⁵ Factual Record, *supra* note 3, at 20. Complete records of the case and supporting documents are archived at Environmental Health Coalition, 401 Mile of Cars Way, Suite 310, National City, CA 91950.

³⁶ Factual Record, *supra* note 3, at 20.

³⁷ *Id.* at 20.

³⁸ Lynne Carrier, *Protest Planned Against La Gloria Plant Pollution*, SAN DIEGO TRIBUNE, June 17, 1983.

³⁹ Profepa (the Procuraduria Federal para la Proteccion del Ambiente) is the federal law enforcement arm for environmental matters in Mexico. Along with SEMARNAT (the Secretaría de Medio Ambiente y Recursos Naturales, or Ministry of the Environment and Natural Resources), these two agencies oversee Mexico's environmental law at the federal level. See <http://www.semarnat.gob.mx/Pages/inicio.aspx> and <http://www.profepa.gob.mx/profepa>.

⁴⁰ Factual Record, *supra* note 3, at 129-34.

⁴¹ Factual Record, *supra* note 3, at 129.

⁴² Factual Record, *supra* note 3, at 129-30.

limits considered hazardous under Mexican law.⁴³

Metales y Derivados also was not in compliance with the maquiladora regime obligation created by the 1983 treaty between the U.S. and Mexico, signed in La Paz, Baja California, requiring that hazardous waste generated by the maquiladora industry be returned to the country of origin.⁴⁴ The majority of the batteries shipped to the factory were from the U.S., yet repeated demands by Profepa to return the waste generated by the smelting process at Metales y Derivados were ignored.⁴⁵ Instead, the toxic waste was simply dumped at the site, buried under the ground, strewn about in piles, or stuffed in barrels.⁴⁶

While the community continued to voice its concerns, Profepa imposed a number of sanctions and took other actions.⁴⁷ In November 1993, Profepa discovered ongoing violations due to the company's failure to comply with 12 of 14 measures ordered in April of that year.⁴⁸ Finally, on March 28, 1994, a total permanent shutdown of the maquiladora was ordered.⁴⁹ After an arrest warrant was issued against the owner, José Kahn, for alleged environmental crimes described as "causing severe harm to public health," he fled across the border to avoid prosecution, leaving behind 24,000 tons of mixed contaminated waste, including over 7,000 tons of lead slag.⁵⁰

Metales y Derivados is located on a route that workers regularly use to go to and from their jobs in the maquiladoras on the Mesa de Otay.⁵¹

⁴³ *Id.*

⁴⁴ Convenio entre los Estados Unidos Mexicanos y los Estados Unidos de America sobre Cooperacion para la Proteccion y Mejoramiento del Medio Ambiente en la Zona Fronteriza, Agreement between the United States of Mexico and the United States of America concerning Cooperation for the Protection and Improvement of the Environment in the Border Zone; available at <http://www.cemda.org.mx/infoarnap/legislacion/251g.html>.

⁴⁵ Factual Record, *supra* note 3, at 58; Kevin Sullivan, *A Toxic Legacy on the Mexican Border*, WASH. POST, Feb. 16, 2003 [R16.5]; Kristi Curtis, *Metales y Derivados*, KOTORI, 2006, Issue #7, at 54-55.

⁴⁶ Factual Record, *supra* note 3, at 22-23; Anna Gorman, *Closed U.S. Factory Leaves a Toxic Smell*, L.A. TIMES, July 28, 2003.

⁴⁷ Factual Record, *supra* note 3, at 129-34.

⁴⁸ Factual Record, *supra* note 3, at 132.

⁴⁹ *Id.*

⁵⁰ Factual Record, *supra* note 3, at 13, 45, 46, 58, 131; *Chilpancingo residents present community-based solution to the toxic Metales y Derivados problem*, TOXINFORMER (Environmental Health Coalition, San Diego, CA), Vol. 22, Issue 3, July 2003, at 3, available at <http://www.environmentalhealth.org/Jul03Tox.pdf>.

⁵¹ Since footpaths near the site were considered a health risk, soil samples were taken from paths to the south and west of the site during sampling done by the U.S. Environmental Protection Agency and SEMARNAT in September 2005 and subsequently documented. See KATHERINE J. BAYLOR, U.S. ENVIRONMENTAL PROTECTION AGENCY REGION IX, *Soil Sampling and Analysis Field Report for Metales y Derivados Site, Tijuana, Baja California, Mexico*, (Apr. 2006), Executive Summary (copies on file with author, EPA, and Profepa).

Workers passing through or alongside the abandoned and unsecured site were routinely exposed to the toxics there, carrying them home as well as on their clothing and skin. Homeless individuals and families were regularly seen living at the site (a situation that continues as of this writing).⁵² Families in Colonia Chilpancingo, home to approximately 10,000 people, were at special risk because the neighborhood is directly downwind and downstream from Metales y Derivados.⁵³ One major concern was the kindergarten, located on a partially paved road that channels rainwater and other discharges from the industrial park above. During rains, the road would turn into a river, rising enough sometimes to overflow and flood the kindergarten.⁵⁴ The main contaminant at Metales y Derivados, lead, is especially dangerous for children.⁵⁵ With alarm and anger, the community and San Diego's Environmental Health Coalition (EHC) began to organize in an effort to compel cleanup of the site.

Founded in 1980, EHC is a private, nonprofit social and environmental justice organization that integrates community organizing with advocacy to defend public health and the environment in the San Diego/Tijuana region.⁵⁶ EHC works on both sides of the border with communities of color and low-income communities that are disproportionately impacted by air and water pollution; aging, poorly maintained, or inadequate housing; discriminatory land-use practices; inadequate infrastructure and lack of regulatory enforcement. One of

⁵² Eyewitness monitoring and documentation by the EHC and the Colectivo Chilpancingo Pro Justicia Ambiental, many times over recent years, have confirmed the continued use of the site for residences and other human activity. EHC has photos of people at the site along with sleeping and cooking equipment, clothes, toys, and even a bicycle repair shop.: *See also* Rob Davis, *Taming Tijuana's Toxic Legacy*, VOICE OF SAN DIEGO, June 12 2006, <http://www.voiceofsandiego.org/site/pp.asp?c=euLTJbMUKvH&b=278122>.

⁵³ EHC 2004, *supra* note 28, at 30.

⁵⁴ During the 1990s, community residents carried out eyewitness monitoring and reported these facts to EHC; the residents' reports supported a street paving project in 2001 to protect the school against flooding.

⁵⁵ Factual Record, *supra* note 3, at 58, 59, 124 (Site maps inside back cover, and elsewhere); Physicians for Social Responsibility, *Lead: What Health Care Providers Should Know*, Drinking Water Fact Sheet #8; Richard L. Canfield, Charles R. Henderson Jr., Deborah A. Cory-Slechta, Christopher Cox, Todd A. Jusko, & Bruce P. Lanphear, *Intellectual Impairment in Children with Blood Lead Concentrations below 10 mg per Deciliter*, 348 (16) NEW ENG. J. MED. Apr. 17, 2003, at 1517-26; Bruce P. Lanphear, Richard Hornung, Jane Khoury, Kimberly Yolton, Peter Baghurst, David C. Bellinger, Richard L. Canfield, Kim N. Dietrich, Robert Bornschein, Tom Greene, Stephen J. Rothenberg, Herbert L. Needleman, Lourdes Schnaas, Gail Wasserman, Joseph Graziano, & Russell Roberts, *Low-Level Environmental Lead Exposure and Children's Intellectual Function: An International Pooled Analysis*, 113(7) ENVTL. HEALTH PERSP., July 2005, at 894-99; *see generally* National Library of Medicine at <http://www.nlm.nih.gov/hinfo.html>, and http://www.environmentalhealth.org/lead_poisoning.html.

⁵⁶ *See* Environmental Health Coalition webpage at <http://www.environmentalhealth.org>.

EHC's campaigns, the Border Environmental Justice Campaign (BEJC), is dedicated to supporting communities in their efforts to reduce toxic pollution caused by maquiladora industries in Tijuana, and to promoting fair trade and globalization for justice. The BEJC took the lead at EHC in the Metales y Derivados case, supporting community residents who formed an EHC community action team in Tijuana called the Colectivo Chilpancingo Pro Justicia Ambiental.

The majority of the members of the Colectivo are women, including long-time residents of Colonia Chilpancingo. Some, like Luján, have lived there all their lives and are witnesses to the neighborhood's transformation with the arrival of the maquiladoras. Luján remembers as a child fishing and splashing in the clear water of the Río Alamar, which runs through the community. Colonia Chilpancingo was a poor but pretty neighborhood, a place where families from other parts of Tijuana would head on the weekend to picnic and relax. Now, the river is a fetid stew of industrial and biological waste.⁵⁷

Lining the river today is a squatters' settlement where full-time maquiladora workers making products for the U.S. consumer market live in dwellings made of scraps of wood and plastic, without piped water, sewage service, garbage collection, or electricity.⁵⁸ NAFTA triggered the largest migration in Mexico since the 1960s, as job seekers headed to the border to work in the maquiladoras.⁵⁹ Tijuana's population increased more than sevenfold from 1960 to 2000.⁶⁰ But maquiladora jobs pay poverty wages: the income earned by two adults employed full-time in the maquiladoras cover only two thirds of the basic needs of a family of four.⁶¹

The transnational corporations that draw workers to their factories do not invest in the neighborhoods where the workers and their families live, and NAFTA contains no provisions requiring such investment.⁶² Mexico, in turn, lacks resources to provide urban infrastructure for the neighborhoods that grow up around the maquiladoras.⁶³ This is in part because Mexico, in effect, subsidizes the maquiladora industry.

⁵⁷ EHC 2004, *supra* note 28, at 16.

⁵⁸ EHC 2004, *supra* note 28, at 16.

⁵⁹ Chris Kraul, *Flood of Workers flows north to booming Tijuana*, L.A. TIMES, Sept. 24, 1996, at A1.

⁶⁰ EHC 2004, *supra* note 28, at 16.

⁶¹ Ruth Rosenbaum, *Making the Invisible Visible: A Study of the Purchasing Power of Maquila Workers in Mexico*, CREA: Center for Reflection, Education and Action, 2000.

⁶² Louis Uchitelle, *Nafta Should Have Stopped Illegal Immigration, Right?*, N.Y. TIMES, Feb. 18, 2007, Section 4 at 4.

⁶³ *Id.*

Maquiladora taxes are about a fifth of what corporate taxes are in Mexico.⁶⁴

NAFTA did create jobs in Mexico and did increase trade between Mexico and the U.S. But NAFTA failed to bring prosperity to Mexico and failed to reduce inequality at the border. Income disparity between the U.S. and Mexico grew during the NAFTA years. Today, there is greater income disparity at the U.S.-Mexico border than at any other major commercial border in the world.⁶⁵ The minimum wage in Tijuana today buys one fifth what it did in the early 1980s.⁶⁶ Fifty-four million of Mexico's 106 million citizens cannot meet their basic needs and twenty-five million live in extreme poverty.⁶⁷ In Tijuana, 67% of homes have dirt floors, 66% of homes do not have piped water, and 52% of streets are unpaved.⁶⁸ Half of the families in the state of Baja California have no health-care coverage.⁶⁹

NAFTA was a unique trade agreement because it was the first one that included labor and environmental side agreements, but neither are enforceable or have brought adequate protections for workers or the environment.⁷⁰ Since 1994, over thirty petitions were filed under NAFTA's labor side agreement. The results were that two workers were

⁶⁴ Amy Guthrie, *Mexican President to Bolster Incentives for Maquiladoras*, Associated Press, Oct. 9, 2003.

⁶⁵ Joseph E. Stiglitz, *The Broken Promises of Nafta*, N.Y. TIMES, Jan. 6, 2004, at A23.

⁶⁶ James Gerber, *Minimum Wages in San Diego and Tijuana*, CROSS BORDER ECONOMIC BULLETIN, Jan. 2000. The Cross-Border Economic Bulletin is prepared monthly by Dr. Jim Gerber, professor of economics at San Diego State University. It is underwritten by Concert, a global venture of AT&T and BT (copy on file with author).

⁶⁷ Mary Jordan and Kevin Sullivan, *Trade Brings Riches, but not to Mexico's Poor*, THE WASH. POST, Mar. 22, 2003, at A10.

⁶⁸ INEGI, XII Censo general de poblacion y vivienda, 2000, <http://www.ini.gob.mx/indica2000/mpo/bc4.htm>; Encuesta Nacional sobre Desarrollo Institucional Municipal 2000, INEGI and INDESOL and North American Development Bank.

⁶⁹ Omar Millan Gonzalez, *Sin Seguro Popular 246 mil familias en BC*, LA FRONTERA, Nov. 10, 2003.

⁷⁰ See generally EHC 2004, *supra* note 28; North American Agreement on Labor Cooperation, <http://www.naalc.org/>; Maquiladora Health and Safety Support Network, <http://mhssn.igc.org/>; Public Citizen Global Trade Watch, <http://www.citizen.org/trade/nafta/>; DAVID BACON, *THE CHILDREN OF NAFTA: LABOR WARS ON THE U.S./MEXICO BORDER* (University of California Press 2004); Connie Garcia & Amelia Simpson *Community-Based Organizing for Labor Rights, Health, and the Environment: Television Manufacturing on the Mexico-U.S. Border*, Chapter 13 in CHALLENGING THE CHIP: LABOR RIGHTS AND ENVIRONMENTAL JUSTICE IN THE GLOBAL ELECTRONICS INDUSTRY, Ted Smith, David A. Sonnenfeld & David Naguib Pellow eds. (Temple University Press 2006); Kari Lydersen, *Trashing the Border, Taking Human Lives: The Residue of Free Trade and Industry in Tijuana*, Chapter 7 in OUT OF THE SEA AND INTO THE FIRE: LATIN AMERICAN-U.S. IMMIGRATION IN THE GLOBAL AGE (Common Courage Press 2005); Martha A. Ojeda & Rosemary Hennessy eds., *Nafta from Below: Maquiladora Workers, Farmers, and Indigenous Communities Speak Out on the Impact of Free Trade in Mexico*, Coalition for Justice in the Maquiladoras, San Antonio, Texas (2006).

temporarily reinstated to their jobs. Not one independent union was recognized nor was a single occupational health or safety issue resolved through NAFTA's labor-protection mechanism.⁷¹ There are no independent unions in any maquiladoras in Tijuana.⁷² Negative pregnancy tests are required for employment in most maquiladoras, a practice that the U.S. Labor Department has condemned as violating Mexican and international law.⁷³ Labor organizers are harassed, blacklisted and fired.⁷⁴ Workers are routinely exposed to toxics and face unsafe working conditions.⁷⁵ Sixty percent of electronics workers in Mexico's maquiladoras, for example, report inadequate or no safety training on handling chemicals.⁷⁶ In the industrial park next to Colonia Chilpancingo, there are over a hundred maquiladoras.⁷⁷ Most belong in the most toxic sectors—electronics, wood, plastics and metals.⁷⁸

B. THE CEC CITIZEN SUBMISSION

On October 23, 1998, EHC and Colonia Chilpancingo activists filed a petition with the Commission for Environmental Cooperation of North America (CEC), pursuant to the NAFTA procedure for addressing environmental violations by one of the state parties to the trade agreement.⁷⁹ The CEC was formed by Canada, Mexico and the U.S. under the North American Agreement on Environmental Cooperation

⁷¹ See *NAFTA'S 10 Years: Portrait of a Failure*, in MAQUILADORA HEALTH & SAFETY SUPPORT NETWORK Newsletter, Garrett Brown ed., Vol. VIII, No. 1, Apr. 12, 2004, at 1.

⁷² See generally The Worker's Information Center, http://www.cittac.org/index_2.html; David Bacon, *The Children of NAFTA: Labor Wars on the U.S./Mexico Border* (University of California Press 2004) (providing background on labor rights in Tijuana).

⁷³ LaShawn R. Jefferson, *No Guarantees: Sex Discrimination in Mexico's Maquiladora Sector* in HUMAN RIGHTS WATCH publications, Vol. 8, No. 6 (B), Aug. 1996, available at <http://www.hrw.org/reports/1996/Mexi0896.htm>, updated in LaShawn R. Jefferson, *A Job or Your Rights: Continued Sex Discrimination in Mexico's Maquiladora Sector*, in HUMAN RIGHTS WATCH publications, 2001.

⁷⁴ Centro de Información para Trabajadoras y Trabadores A.C., Tijuana, Baja California, Mexico, http://www.cittac.org/index_2.html; BACON, *THE CHILDREN OF NAFTA: LABOR WARS ON THE U.S./MEXICO BORDER* 19 (University of California Press 2004).

⁷⁵ EHC 2004, *supra* note 28, at 19-25; see also Centro de Información para Trabajadoras y Trabadores A.C., Tijuana, Baja California, Mexico, http://www.cittac.org/index_2.html.

⁷⁶ Leonor A. Cedillo Becerril, Siobán D. Harlow, Roberto A. Sánchez, David Sánchez Monroy, *Establishing Priorities for Occupational Health Research Among Women Working in the Maquiladora Industry*, INTERNATIONAL JOURNAL OF OCCUPATIONAL AND ENVIRONMENTAL HEALTH, Vol. 3, No. 3, July-Sept. 1997.

⁷⁷ Guía de la Industria Maquiladora de Baja California, Edición 6, Año 5, No. 6, at 185-221.

⁷⁸ *Id.*; see also EHC 2004, *supra* note 28, at 30.

⁷⁹ The submission record is available at <http://www.cec.org/citizen/submissions/details/index.cfm?varlan=english&ID=67>.

(NAAEC) to fulfill NAFTA's environmental provisions. The NAAEC is intended "to address regional environmental concerns, help prevent potential trade and environmental conflicts, and promote the effective enforcement of environmental law."⁸⁰ NAAEC Articles 14 and 15 establish the citizen-submission process, which is administered by the Secretariat of the CEC.

Under NAAEC Articles 14 and 15, the Secretariat considers submissions from any nongovernmental organization or person asserting that a party to the NAAEC is not effectively enforcing its environmental law. If the Secretariat finds that a submission warrants the development of a factual record, it informs the Council and provides its reasons. The Council may then, by a vote of two thirds of its members, instruct the Secretariat to prepare a factual record in accordance with Article 15.⁸¹

The *Metales y Derivados* Citizen Submission alleged that Mexico had failed to enforce Articles 170 and 134 of Mexico's environmental law, the Ley General del Equilibrio Ecológico y la Protección al Ambiente (General Law of Ecological Equilibrium and Protection of the Environment). Article 170 requires that safety measures be taken in cases of "contamination with dangerous repercussions on ecosystems, their components or public health." Article 134 addresses control of contamination in "soil that is contaminated by the presence of hazardous materials or waste."⁸²

In May 2000, the CEC agreed to develop a factual record on the *Metales y Derivados* Citizen Submission. Finally, four years after the petition was filed, the 2002 *Factual Record on Metales y Derivados* was published, confirming what the community already knew: that toxics at the site can cause "grave harm to human health."⁸³ But the NAFTA agreement does not grant any government agency or institution the authority to compel cleanup, either by governments or by polluting businesses. The Secretariat's report can only present the relevant facts, "without aiming to reach any conclusions of law."⁸⁴

As the *Factual Record on Metales y Derivados* points out, a "critical public policy issue in the border region [is] the use of the border as a shield against enforcement."⁸⁵ The problem remains unresolved,

⁸⁰ Factual Record, *supra* note 3, at vii.

⁸¹ Factual Record, *supra* note 3, at 9. The Secretariat provides administrative, technical and operational support to the Council, which is the governing body of the CEC and consists of the highest-level environmental authorities from Canada, Mexico and the U.S.

⁸² *Id.* at 7.

⁸³ *Id.* at 58.

⁸⁴ Factual Record, *supra* note 3, at vii.

⁸⁵ *Id.* at 44.

despite the “alarming regularity” with which abandoned maquiladoras are reported.⁸⁶ As the CEC report explains, “companies responsible [for abandoning hazardous waste] take advantage of the fact that the border prevents Mexican authorities from taking action to enforce Mexican law in the United States, while U.S. authorities are not empowered to take action to enforce Mexican law.”⁸⁷ By contrast, Chapter 11 of NAFTA gives corporations the right to sue for potential loss of profits caused by environmental regulations in another of the NAFTA countries.⁸⁸ In 2000, Mexico was required to pay the U.S.-owned Metalclad Corporation \$15.6 million for denying a construction permit to build a hazardous-waste landfill in an ecologically sensitive area in the state of San Luis Potosí.⁸⁹

Metales y Derivados is the poster child for the failure of NAFTA’s environmental side agreement. It was only years of community organizing and advocacy that brought the Mexican government to the table in 2004 to sign the cleanup agreement with the community and begin the cleanup (which, as of this writing, is incomplete but promising).⁹⁰ Following the filing of the CEC petition, EHC and the Colectivo continued to call attention to the injustice of Metales y Derivados and the failure of NAFTA to protect public health and the environment, and to build pressure for cleanup. In addition to the actions listed below, EHC and Colectivo carried out a series of other activities, including media outreach that garnered important coverage and helped to raise the profile of the case locally, nationally and internationally.⁹¹

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ See Public Citizen, Global Trade Watch, http://www.citizen.org/trade/nafta/CH_11/; Bill Moyers, *Trading Democracy*, PBS NOW, <http://www.pbs.org/now/politics/tradingdemocracy.html>.

⁸⁹ Fernando Bejarano, “*The Metalclad Toxic Waste Dump in Guadalcázar, San Luis Potosí*,” in Hilda Salazar & Laura Carlsen, *THE SOCIAL AND ENVIRONMENTAL IMPACTS OF NAFTA: GRASSROOTS RESPONSES TO ECONOMIC INTEGRATION* (Red Mexicana de Acción Frente al Libre Comercio 2001), http://www.rmalc.org.mx/tratados/tlcan/libro_impactos.htm.

⁹⁰ *Victory at last! Community celebrates Metales y Derivados cleanup agreement*, in TOXINFORMER (EHC, San Diego, Cal.), Vol. 23, Issue 3, Aug. 2004, at 3-5, available at <http://www.environmentalhealth.org/AUG2004.pdf>.

⁹¹ Among the key media coverage of Metales y Derivados were articles in the *Washington Post* and *La Jornada*, and three nights of reports on Mexico’s national “López Dóriga” TV news magazine program. See Connie García, *NAFTA, fast track and toxic pollution*, SAN DIEGO UNION TRIBUNE, Opinion, July 17, 2001; Peter Fritsch, *Mexican Toxic-Waste Case Shows Nafta’s Limits*, WALL ST. J., Jan. 16, 2002, Section A, p. 12; Luis Adolf San, *Plantón de Ambientalistas*, LA FRONTERA, Apr. 11, 2002, at 5; Joe Cantlupe, *Plan Proposed to Clean Up Toxic Mess*, SAN DIEGO UNION TRIBUNE, Dec. 9, 2002, B1, B3; Kevin Sullivan, *A Toxic Legacy on the Mexican Border*, WASH. POST, Feb. 16, 2003, A17, A33; Anna Gorman, *Closed U.S. Factory Leaves a Toxic Smell*, L.A. TIMES, July 28, 2003, B1, B8; Antonio Heras, *Al Aire Libre, Toneladas de Desechos Peligrosos*, en *BC*, LA JORNADA, Sept. 8, 2005, available at

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METALES Y DERIVADOS TIMELINE

The following timeline shows the progression of some of the actions to mobilize the community to exert pressure for the cleanup of Metales y Derivados, starting in 2000, when the CEC agreed to develop a Factual Record in the case⁹²:

2000

June – A representative of the community presented 500 letters signed by residents of Colonia Chilpancingo to Julia Carabias, the Minister of SEMARNAP, at a meeting of the CEC in Dallas, Texas, while simultaneously a press conference was held in front of the Tijuana office of SEMARNAP.⁹³

July – More than 50 representatives of Colonia Chilpancingo met at the Metales y Derivados site with Tijuana municipal officials responsible for the health and welfare of the population.

2001

July – 800 letters signed by residents of Colonia Chilpancingo were sent to President Fox and Víctor Lichtinger, the new Minister of SEMARNAT. EHC and residents of Colonia Chilpancingo, along with Mexican and U.S. supporters and allies, held a march and demonstration at the offices of New Frontier Trading Company, Metales y Derivados' parent company in San Diego, California.

2002

February – After the CEC made public the *Factual Record on Metales y Derivados*, EHC and Colonia residents organized a press conference demanding cleanup of the site.

March – EHC and Colonia residents met with a representative of the United Nations High Commission on Human Rights concerning contamination in Colonia Chilpancingo.

April – Colonia Chilpancingo residents formally inaugurated the

<http://www.jornada.unam.mx/2005/09/08/043n1est.php>.

⁹² Documentation of the actions in the timeline is available at Environmental Health Coalition's archive of the Metales y Derivados case. EHC, 401 Mile of Cars Way, Suite 310, National City, CA 91950.

⁹³ SEMARNAT was then known as the Secretaría de Medio Ambiente, Recursos Naturales y Pesca, the Ministry of the Environment, Natural Resources and Fishing.

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Colectivo Chilpancingo Pro Justicia Ambiental citizens community action team. EHC, the Colectivo and supporters from Mexico and the U.S. held a 24-hour vigil in front of Profepa offices in Tijuana to demand the immediate cleanup of Metales y Derivados. A tour of the site was conducted with the head of the Profepa office.

May – EHC and the Colectivo initiated a campaign generating hundreds of postcards sent to President Fox demanding cleanup of Metales y Derivados.

July – EHC and the Colectivo celebrated receipt of a document from the Office of the President of Mexico asking SEMARNAT Minister Lichtinger to take measures to resolve the problem of Metales y Derivados.

2003

January – A representative of EHC and the Colectivo met in Washington D.C. with representatives of Profepa, who stated that Baja California state authorities were developing a cleanup plan for Metales y Derivados.

March – Officials of the Baja California state government, the federal government, the Border Environmental Cooperation Commission (BECC), and Profepa announced the formation of a working group to develop a plan for the cleanup of Metales y Derivados. EHC and the Colectivo demanded participation in the working group.

May – With no response from the working group or any other government body, EHC and the Colectivo developed a cleanup plan for Metales y Derivados, which EHC community organizer Magdalena Cerda Baez presented to the public at a rally staged during the opening of a crossborder conference in Tijuana.⁹⁴

June – A representative of EHC and the Colectivo, attending the annual meeting of the CEC in Washington, D.C., challenged SEMARNAT Minister Lichtinger to commit to making an announcement by August 1st of funding for the Metales y Derivados cleanup. The Minister accepted.

⁹⁴ EHC and the Colectivo were supported in the development of the plan by Enrique Medina, an environmental justice advocate, biologist and President of Alliance Consulting International, who was involved earlier in documenting contamination at Metales y Derivados for the development of the CEC *Factual Record*. The plan was presented to the public at a plenary meeting of the Border 2012 Program, a binational environmental program convened by the U.S. EPA and its Mexican counterparts. EHC and the Colectivo raised the profile of the Metales y Derivados case at Border 2012 public meetings, and the program eventually served as the convening mechanism for the Metales y Derivados cleanup working group.

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2004

March – EHC and the Colectivo met with officials from the U.S. EPA, SEMARNAT, Profepa, the Ecology Agency and the Agency for Infrastructure and Urban Development of Baja California state. An agreement was reached to establish a working group with EHC and the Colectivo to plan and carry out a comprehensive cleanup of the Metales y Derivados site.

June – The landmark cleanup agreement was signed by representatives of the Colectivo and the Mexican government, making official the commitment to work with the community to achieve a comprehensive cleanup of Metales y Derivados within 5 years, as well as to initiate removing surface toxics immediately.⁹⁵

2005

September – The first stage of the Metales y Derivados cleanup was nearly complete, with the removal of 1,976 tons of toxic waste and its return to the country of origin at a cost of \$750,000. Fifty soil samples were taken at and near the site, showing concentrations of lead as high as 200,000 mg/kg (800 mg/kg is the EPA industrial cleanup level).⁹⁶

2006

February – A fire at Metales y Derivados sent black toxic smoke into Colonia Chilpancingo, calling attention once again to the urgency of cleaning up the site.

V. CONCLUSION

As of this writing, the final cleanup of Metales y Derivados is still pending. Yet the community can celebrate many achievements, including calling attention to a case that has inspired a proposed Superfund law in Mexico.⁹⁷ The most important achievement, however, may be the unique

⁹⁵ See MAQUILAPOLIS (film produced by Vicky Funari & Sergio De La Torre, 2006), available at <http://www.maquilapolis.com> (including footage of the signing of the cleanup agreement, as well as a number of episodes in the community's struggle).

⁹⁶ Public Broadcasting System Maquilapolis Film Update, <http://www.pbs.org/pov/pov2006/maquilapolis/update.html> (last visited Aug. 6, 2007) (for the film "Maquilapolis: City of Factories").

⁹⁷ Verbal communication to the author by Gabriel Calvillo, then Director General de Delitos Ambientales (General Director of Environmental Crimes) of Profepa, at the Commission for Environmental Cooperation Transboundary Law Enforcement Workshop, Jan. 9-10, 2003,

experience of binational, as well as community-government, collaboration on the cleanup working group. A climate of mutual respect has been cultivated in the working group, often in simple ways such as EHC and the Colectivo hosting working group meetings in the Colonia Chilpancingo office, where government representatives share space with Colectivo members and their children, break bread, and build trust.

It was no coincidence that the Zapatista Army of National Liberation issued its First Declaration of the Lacandón Jungle from Chiapas state in southern Mexico in December 1993, precisely on the eve of NAFTA's implementation.⁹⁸ From Chiapas, one of the most indigenous and poorest states in Mexico, the Zapatista movement launched an uprising to oppose NAFTA and the neoliberal economic policies it enforces. Today, the evidence is indisputable that the NAFTA model of trade exploits workers and the environment and perpetuates or worsens poverty and racism. One of the lessons of *Metales y Derivados* is that NAFTA-style trade agreements must be replaced with a model that puts people before profits and works to reduce inequality and eliminate racism.

David Naguib Pellow and Lisa Sun-Hee Park point out that "EJ [Environmental Justice] scholars and the EJ movement are largely U.S.-based. . . . While a few scattered studies suggest links between environmental racism in the United States and EJ struggles around the globe, such research remains woefully scarce."⁹⁹ As corporate globalization continues to assert itself around the world, the environmental justice movement has not only the opportunity but also the responsibility to expand its research methodologies and areas of concern to correspond to other cultures and contexts. Pellow and Robert J. Brulle argue persuasively that "if the EJM [environmental justice movement] is to survive at all (even in its nation of origin) it must go global."¹⁰⁰

Increased impacts of international trade on communities in the U.S. also invite researchers and activists to explore transnational environmental justice issues. The goods movement, for example, has created heavily polluted transportation corridors through communities in

Washington D.C.

⁹⁸ David Bacon, *THE CHILDREN OF NAFTA: LABOR WARS ON THE U.S./MEXICO BORDER* 19 (University of California Press 2004) (alluding to the connection between the Zapatista movement and NAFTA); see also Zapatista Army of National Liberation, <http://www.ezln.org.mx/>.

⁹⁹ David Naguib Pellow and Lisa Sun-Hee Park, *THE SILICON VALLEY OF DREAMS* 7 (New York University Press 2002).

¹⁰⁰ David Naguib Pellow & Robert J. Brulle, *The Future of EJ Movements*, in *POWER, JUSTICE, AND THE ENVIRONMENT* at 296 (David Naguib Pellow & Robert J. Brulle eds., Massachusetts Institute of Technology Press 2005).

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California, transforming neighborhoods in much the same way that Colonia Chilpancingo was transformed by the arrival of the maquiladoras. As it adapts to a more globalized context, the environmental justice movement, inspired by the Warren County case and many other struggles, can only be deepened and strengthened.