

---

## Threatens the Environment

*Environmental protections are threatened by the terms at the heart of NAFTA that empower thousands of multinational corporations to drag governments to a tribunal of three corporate lawyers to demand unlimited taxpayer compensation if they think a country's environmental, conservation, climate, energy or other policies violate their NAFTA privileges. These multinational corporations only have to convince the lawyers that a law in Mexico or Canada, or a U.S. federal, state or local environmental law violates their NAFTA rights. The corporate lawyers' decisions are not subject to appeal.*

Under the expansive corporate privileges in NAFTA, the Canadian government has been forced to pay U.S. firms over water rights, a ban on trans-boundary trade in hazardous waste, timber policy and the blocking of an environmentally destructive quarry. A Canadian fracking ban is now being attacked. The Mexican government paid the U.S. Metalclad firm millions after they were denied an operating permit when they refused to clean up a contaminated toxic waste facility. These are selected NAFTA cases that threaten the environment:

### **The Investor Wins Taxpayer Compensation via Tribunal Order**

**Bilcon v. Canada:** A NAFTA tribunal ruled in favor of a company that planned to blast a basalt quarry and marine terminal in an environmentally-sensitive area in Nova Scotia. The tribunal decided that the impact assessment ordered by Canada's Department of Fisheries and Oceans was a violation of the company's NAFTA rights. A dissenting tribunalist called the decision "a remarkable step backwards in environmental protection."

**Mobil/Murphy Oil v. Canada:** A NAFTA tribunal agreed with U.S. oil corporations Mobil (of ExxonMobil) and Murphy Oil that a requirement that all domestic and foreign firms with offshore oil concessions contribute some oil revenue to fund research and development in Newfoundland and Labrador – Canada's poorest province – was a NAFTA-barred "performance requirement".

**Metalclad v. Mexico:** A Mexican municipality's refusal to grant the U.S. firm Metalclad a construction permit, which it had also denied to the contaminated facility's previous Mexican owner (until and unless the site was cleaned up), resulted in \$15.6 million in compensation being paid by Mexico.

**S.D. Myers v. Canada:** A NAFTA tribunal ordered Canadian taxpayers to pay \$5.6 million for a temporary ban on the export of a hazardous waste called polychlorinated biphenyls (PCB). Though the ban complied with a multilateral environmental treaty encouraging domestic treatment of toxic waste, the tribunal deemed it to violate the corporation's NAFTA right to a "minimum standard of treatment."

### **The Investor Extracts Payment Through a Settlement**

**Ethyl v. Canada:** The U.S. Ethyl Corporation used NAFTA's investor-state system in the late 1990s to reverse a Canadian environmental ban of the carcinogenic gasoline additive MMT, also banned by numerous U.S. states, while also obtaining \$13 million in compensation from Canadian taxpayers.

**AbitibiBowater v. Canada:** AbitibiBowater, a paper corporation, used NAFTA's ISDS regime to extract \$122 million from Canadian taxpayers after the Newfoundland and Labrador provincial

---

government took back water and timber rights that the corporation had obtained on the condition that it continue to operate a paper mill. The corporation closed the mill, putting 800 employees out of work, but insisted it still should have control of the water and paper resources.

## Other Cases with Dire Environmental Implications

**Lone Pine v. Canada:** In September 2013, Lone Pine Resources, a U.S.-based oil and gas exploration and production company, launched a \$241 million NAFTA claim against Canada to challenge Quebec's suspension of oil and gas exploration permits for deposits under the St. Lawrence River as part of a wider moratorium on the controversial practice of hydraulic fracturing, or fracking. The provincial government had declared a moratorium in 2011 so as to conduct an environmental impact assessment of the extraction method widely known for leaching chemicals and gases into groundwater and the air.

**TransCanada v. United States:** In June 2016, the TransCanada Corporation launched a NAFTA claim demanding \$15 billion in compensation because the corporation's bid to build a pipeline was [rejected by the U.S. government](#). The company said it had invested \$3 billion to date but demanded the larger sum to compensate for the future expected profits it would lose if the pipeline was not allowed to operate. The decision by the U.S. government not to approve the pipeline project because it was not in the national interest and would exacerbate climate change came after years of government studies. Tens of thousands of citizens in the states that would be affected and environmental activists nationwide had worked for six years to demonstrate that the pipeline would pose serious health and environmental risks. Then in his first week as president in January 2017, Donald Trump signed an order inviting TransCanada to submit a new application for approval of the pipeline's construction. TransCanada's case remained in limbo until the White House clarified that a previous Trump executive order calling for pipelines to be constructed with American-made steel and pipe would not apply to the Keystone XL. The State Department then promptly issued the permit, and TransCanada dropped its case. Close observers suspected that the quick permit approval and the Buy American steel/pipe waiver were likely the "settlement" price extracted from the Trump administration by TransCanada for dropping its NAFTA claim.

### Featured Resources:

- [Oil Corporations vs Climate: How Investors Use Trade Agreements to Undermine Climate Action](#)
- [Table: Foreign Investor-State Cases and Claims under NAFTA and Other U.S. "Trade" Deals](#)
- [Climate Roadblocks: Looming Trade Deals Threaten Efforts to Keep Fossil Fuels in the Ground](#)
- [Letter: 450+ Environmental, Landowner, Indigenous Rights, and Allied Organizations to Congress: Pending Trade Deals Threaten Efforts to Keep Fossil Fuels in the Ground](#)