

# Corporate Attacks: Environment

## Case Study: Toxic Waste

Investor-State Dispute Settlement (ISDS) grants corporations shocking powers to attack the laws we rely on for a clean environment, financial stability, affordable medicines, safe food and decent jobs. The cases are decided by tribunals composed of three private attorneys, some of whom rotate between serving as “judges” and bringing cases against governments. The tribunalists are paid by the hour and are unaccountable to any court system or electorate. Under U.S. trade and investment pacts alone, corporations have already won more than \$3.6 billion in taxpayer money, with \$38 billion still pending.

### **S.D. Meyers v. Canada** *Investor Win (awarded \$5.6 million)*

In 1998 S.D. Myers, a U.S. waste treatment company, launched a [NAFTA investor-state challenge against a temporary Canadian ban](#) on the export of a hazardous waste called polychlorinated biphenyls (PCBs). Canada banned exports of toxic waste to the United States absent explicit permission from the U.S. Environmental Protection Agency. And, as a [signatory to the Basel Convention](#) on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Canadian policy generally limited exports of toxic waste. Meanwhile, the [U.S. Toxic Substances Control Act](#) banned imports of hazardous waste, with limited exceptions such as waste from U.S. military bases. The U.S. Environmental Protection Agency has [determined that PCBs are harmful](#) to humans and toxic to the environment. However, in 1995, the U.S. Environmental Protection Agency [decided to allow](#) S.D. Myers and nine other companies to import PCBs into the United States for processing and disposal. Canada issued a [temporary ban on PCB shipment](#), seeking to review the conflicting laws and regulations and its obligations under the Basel Convention. S.D. Myers [argued](#) that the Canadian ban constituted “disguised discrimination,” was “tantamount to an expropriation” and violated NAFTA’s prohibition of performance requirements and obligation to afford a “minimum standard of treatment.”

A tribunal [upheld S.D. Myers’ claims of discrimination](#) and found the export ban to violate NAFTA’s “minimum standard of treatment” obligation because it limited the firm’s plan to treat the waste in Ohio. The [panel also stated](#) that a foreign firm’s “market share” in another country could be considered a NAFTA-protected investment and eschewed Canada’s argument that S.D. Meyers had no real investment in Canada. The tribunal ordered Canada to pay the company \$5.6 million.