



Trump's NAFTA 2.0: An Environmental Failure

Before, during, and after the Trump administration's renegotiation of NAFTA, leading environmental organizations repeatedly named [specific changes](#) to curb NAFTA's environmental damage. The administration [ignored nearly all of our concerns](#), producing a deal in 2018 that would exacerbate the climate crisis, encourage further outsourcing of pollution and jobs, offer handouts to notorious corporate polluters, and prolong Trump's polluting legacy for years.

To correct these environmental failures, environmental groups repeatedly offered detailed recommendations for essential changes to the 2018 deal, as summarized in a [recent letter to Congress](#). On December 10, 2019, the Trump administration signed a "[protocol of amendment](#)" with some revisions to the 2018 deal. A review of the text of the protocol reveals that the deal's core environmental failures have not been resolved.

Below are the essential changes to NAFTA 2.0 that the environmental community has consistently called for, and an assessment of whether the revised deal meets the mark, based on the text of the 2019 revision. In short, the revised deal would perpetuate NAFTA's environmental damage.

1. Binding climate standards: **FAIL**

- **Why it matters:** Binding climate standards are essential to curb [outsourcing of climate pollution](#) and jobs and to ensure the U.S. and its trading partners fulfill commitments to the Paris Climate Agreement. The U.S. is by far the world's largest outsourcer of climate pollution, thanks in part to trade deals that ignore climate change. In September, [110 members of Congress](#) called for binding climate standards in a renegotiated NAFTA, reinforcing a [longstanding demand](#) of the environmental community.
- **What's in NAFTA 2.0:** Far from including binding climate standards, the 2018 deal failed to even mention climate change. Nor does the 2019 revision. This glaring omission would leave intact NAFTA's incentives for corporations to dodge the hard-fought clean energy policies of U.S. states by moving to Mexico, eliminating jobs and perpetuating climate pollution.

2. Binding clean air, water, and land standards: **FAIL**

- **Why it matters:** There is a well-documented [track record](#) of corporations using NAFTA to dodge our hard-fought environmental standards by shifting their production to Mexico, free of charge, to [dump toxic air and water pollution](#) under Mexico's weaker environmental policies. The result has been job loss in the U.S. and toxic poisoning in border communities. To reverse this damage, we have consistently called for a revised deal to include binding limits on air, water, and land pollution.
- **What's in NAFTA 2.0:** The 2018 deal barely mentions pollution and fails to include specific and binding terms to actually address documented pollution dumping. For example, the text "recognizes that air pollution is a serious threat to public health," but then fails to include a single binding rule to reduce the air pollution that NAFTA has exacerbated. The 2019 revision repeats this failure by omitting essential limits on air, water, or land pollution.

3. Obligations to fulfill commitments under key multilateral environmental agreements: **PARTIAL FAIL**

- **Why it matters:** The environmental community asked for a renegotiated NAFTA to require each country to adopt, maintain, and implement policies to fulfill their obligations under [top-priority Multilateral Environmental Agreements](#) (MEAs), including all of the MEAs to which the U.S. is a party and other critical MEAs ratified by most countries in the world. Otherwise, countries will continue to have the incentive to violate their MEA commitments in order to boost trade or investment, spelling threats to air, water, climate stability, and ecosystems.
- **What's in NAFTA 2.0:** The deal replicates the same, inadequate list of seven MEAs that were reinforced in the last four U.S. trade agreements. (The 2019 revision returns to the inadequate status quo after the 2018 deal took a step backwards by only effectively reinforcing one MEA.) The deal makes no mention of additional top-priority MEAs

that serve critical roles for trade-related environmental protection, including [other MEAs ratified by the U.S.](#) and/or nearly all countries in the world concerning climate change, transboundary air pollution, mercury pollution, protection of the Caribbean, and other environmental priorities.

4. A new, independent and binding enforcement system to stop environmental violations: FAIL

- Why it matters: Under the enforcement mechanisms of existing U.S. trade agreements, the U.S. has never even brought a case against a trade partner for systemic environmental abuses, despite [widely documented violations](#). To correct this categorical failure, we have repeatedly called for an effective enforcement mechanism that is both binding and independent. That means creating a body of environmental experts, independent from any government (to avoid conflicts of interest), to proactively investigate and initiate cases against environmental abuses. And it means that findings of environmental abuses must be subject to trade sanctions.
- What's in NAFTA 2.0: Instead of including an independent and binding enforcement system for environmental terms, the 2018 deal largely replicated the same, weak enforcement mechanisms of past trade deals that have consistently failed to curb environmental abuses. The 2019 revision repeats this failure, as it does not create an independent body to investigate and initiate cases against environmental abuses. Instead, the implementing legislation for NAFTA 2.0 creates an “interagency committee” that is not independent and that has virtually no power to correct environmental abuses. The committee can only write non-binding reports and in rare instances issue non-binding recommendations. The committee is chaired by the U.S. Trade Representative, an agency whose clear conflict of interest has consistently inhibited environmental enforcement in U.S. trade deals to date. Due to this copy and paste of a failed enforcement system, the environmental terms of NAFTA 2.0, even if they were strong, are unlikely to be enforced.

5. Removal of corporate polluter handouts that support tar sands oil and fracked gas: FAIL

- Why it matters: The Trump administration’s 2018 text included a new “rule of origin” that would make it cheaper for oil corporations to export climate-polluting tar sands oil to the U.S. through dangerous oil pipelines like Keystone XL. The text also failed to include a provision that is needed to preserve the U.S.’s autonomy to determine if gas exports to Mexico and Canada are in the public interest. This provision is necessary to fix NAFTA’s automatic gas export guarantee, which has contributed to [a five-fold surge in gas exports](#) to Mexico since 2010, fueling increased fracking in the U.S. and expansion of controversial cross-border gas pipelines.
- What's in NAFTA 2.0: The deal’s 2019 revision keeps intact both of these handouts to corporate polluters. As such, the deal would promote reliance on fossil fuels, undercutting our transition to a clean energy economy.

6. Elimination of broad rights for corporate polluters to sue Mexico over environmental policies: FAIL

- Why it matters: While the 2018 text curtailed NAFTA’s [Investor-State Dispute Settlement](#) system, it preserved this illegitimate, shadow legal system for notorious corporate polluters like Chevron and ExxonMobil. The deal would let oil and gas corporations with Mexican government contracts sue Mexico over climate and environmental protections in private tribunals, using the same broad corporate rights that they’ve repeatedly used to successfully challenge environmental policies.
- What's in NAFTA 2.0: The 2019 revision failed to eliminate this clear-cut handout to oil and gas corporations. As such, the revised deal would allow corporate polluters to sue Mexico in private tribunals if new environmental policies undercut their government contracts for offshore drilling, fracking, oil and gas pipelines, refineries, or other polluting activities.

7. Elimination of rules that would help corporate polluters weaken our environmental regulations: FAIL

- Why it matters: The 2018 text included new, binding rules – not found in any prior U.S. trade agreement – that offer corporations multiple opportunities to challenge proposed regulations before they are finalized, and to ask that existing regulations be “repealed” for being more burdensome than necessary. After Donald Trump leaves office, we will need to swiftly enact stronger environmental regulations to reverse his administration’s [many harmful environmental rollbacks](#). That task will be difficult if regulators face onerous requirements to justify proposed regulations in response to repeated challenges from the corporations that would be regulated.
- What's in NAFTA 2.0: The deal’s 2019 revision failed to revise or delete these deregulatory rules. As such, NAFTA 2.0 could help corporations slow down or weaken the process of re-regulation, extending Trump’s polluting legacy even after Trump leaves office.