

IN THIS ISSUE

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Precautionary Principle Pushed In United States

Following San Francisco's lead, a growing number of jurisdictions consider adopting this "better safe than sorry" principle - but an industry representative argues that it would weaken the scientific basis for regulatory procedures already in place.

In the latest effort to apply the precautionary principle to chemical regulation, New York State lawmakers recently considered two bills that that could have severely restricted sales of pesticides and other chemicals.

Although neither the Assembly nor the Senate bill made it out of committee, the effort points to a growing trend toward incorporation of this European principle into everyday environmental and public health lawmaking efforts in the United States.

The City of San Francisco was first to turn the principle into law when it adopted its Precautionary Principle policy in June of 2003. Since then, jurisdictions in several other states have considered putting the principle into action.

Meanwhile, as the Precautionary Principle gains in popularity, opponents of this "better safe than sorry" approach are voicing their opinions as to why the concept may be flawed.

NEGATING EXISTING PRECAUTIONS?

"Putting the precautionary principle in place as a law that supersedes everything else negates all of the science and good, hard work and thoughts that the EPA and state departments of agriculture have put into protecting the public and regulating pesticides," Frank Gasperini, executive director of Responsible Industry for a Sound Environment, told *Insider*. "It would basically negate the entire federal and state registration process which takes into account precaution, and the EPA FIFRA registration process, I believe, goes beyond the precautionary principle."

Today, when discussing the precautionary principle, most people refer to the Wingspread definition, which is named for a conference where it was originally adopted.

The Wingspread definition says, "When an activity raises threats of harm to human health or the environment, precautionary measures should be

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taken, even if some cause and effect relationships are not fully established scientifically. In this context, the proponent of an activity, rather than the public, should bear the burden of proof. The process of applying the Precautionary Principle must be open, informed and democratic, and must include potentially affected parties.”

NEW YORK

In New York, two identical bills were introduced in April (S. 4545 and A. 7256) which incorporated the precautionary principle as follows: “It is hereby declared to be the policy of the state of New York that where threats of harm to human health or the environment exist, lack of full scientific certainty about cause and effect shall not be viewed as sufficient reason for state or local government to postpone precautionary measures to protect public health or the environment.”

“As written,” said Gasperini, “it appears that by declaring concern of ‘threat of harm or human health or the environment,’ any state or local governmental entity would have not only the ‘right’ but the responsibility to take action!

S. 4545 and A. 7256, as written, negates the science and due process of the regulatory system and pushes aside the concept of state preemption. They say that state and local governments had better take steps. It would put a tremendous burden on state and local agencies too because they would be in constant fear that if they didn’t perceive that something might be dangerous, and therefore didn’t do anything about it, later on they might get sued.”

Speaking on behalf of Senator Marcellino, who introduced the bill in the Senate, Debbie Peck Kelleher, Committee Director for the New York Senate Environmental Conservation Committee, told *Insider* that the bill “has some merit, but it is very difficult to implement a precautionary principle into a statute because it is a risk-based standard. We have inherent risks that we take every day such as driving, yet we don’t place a risk-based standard on it. So if we were actually to implement a precautionary principle in our lives, across our lives, we would have to change a lot of things that we do now, things that we believe are high-risk that are not, or things we believe have a low risk that actually have a high risk.”

Kelleher said the legislation is supported by the breast cancer action groups in the state, and that it was introduced on their behalf. The bills were not voted on this year, but because New York has a two-year cycle, Kelleher said “it is possible” they could be voted on next year.

“Putting the precautionary principle in place as a law that supersedes everything else negates all of the science and good, hard work and thoughts that the EPA and state departments of agriculture have put into protecting the public and regulating pesticides.” *Frank Gasperini, Executive Director, Responsible Industry for a Sound Environment*

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NEW MEXICO

Two bills were also considered in New Mexico this year that would require the precautionary principle to be incorporated into environmental and public health decision-making.

Antonio Lujan (D-Dona Ana), introduced in the first session a House Joint Memorial (HJM 24) “requesting the Department of Health to establish a task force to develop a long-term plan to implement precautionary principles in departments of state government.” The Memorial recommended that “when an activity threatens harm to human health or to the environment, precautionary measures should be taken, even if cause and effect relationships are not fully established scientifically...”

Similar legislation (SJM 54) was introduced in the New Mexico Senate by Bernadette Sanchez (D- Bernalillo), but neither bill made it of Senate Rules Committee before time ran out.

Both Memorials were written and proposed to the New Mexico Legislative Health and Human Service Committee by the New Mexico Environment and Health Coalition, which launched the New Mexico Precautionary Principle Campaign in 2003 to further its goal of “increasing community influence over environmental and public health decision-making in New Mexico to enhance community health.”

OREGON

In September 2004, Portland City and Multnomah County, Ore., passed a Precautionary Principle Resolution in which they agreed to create a Toxics Reduction Strategy for government operations using the precautionary principle.

“Chronic diseases and disabilities have reached epidemic proportions in the United States,” a 2004 news release authored by the Oregon Center for Environmental Health announcing the workgroup stated. “Cancer, asthma, birth defects, developmental disabilities, autism, endometriosis, infertility, and Parkinson’s disease are becoming increasingly common, and there is a growing body of scientific evidence linking these serious health problems to the chemicals we are exposed to in our air, water and food, homes, schools and workplaces.”

In its Resolution, the Multnomah County Board of Commissioners resolved to identify within one year “short-term and long-range goals for toxics reduction in government operations, and actions to support those goals.”

GEORGIA

Utilizing a model precautionary principle ordinance and a document entitled, “Implementing the Precautionary Principle: A Tool for Georgia’s

“Risk assessments haven’t been set based on children, material safety data sheets aren’t about children, so they have been looking for some way to promote good health but they just didn’t know how. I think the precautionary principle gives them that path.” *Carol Williams, Executive Director, ECO-Action*

Local Governments,” ECO-Action, an advocacy group based in Atlanta, has been encouraging local Georgia governments to begin applying the precautionary principle when making environmental and public health decisions.

Carol Williams, executive director for ECO-Action, told *Insider* her organization has a “lot of activities going on,” but so far, “no one has passed any kind of policy. We’re currently focusing on a community called Athens-Clarke County, where we have had preliminary discussions with school board administrators and the government, but it hasn’t gone to the point where there is policy in place.”

William said ECO-Action sponsored a forum in April which was conducted by a team of professionals from the Science and Environmental Health Network – the group that often credited with getting the idea of the precautionary principle started in the United States.

“It was really good to have these people of conscience with their degrees explaining to our public health officials why the precautionary principle is necessary,” said Williams. “People are ready for it. They understand prevention of harm. Risk assessments haven’t been set based on children, material safety data sheets aren’t about children, so they have been looking for some way to promote good health but they just didn’t know how. I think the precautionary principle gives them that path.”

SAN FRANCISCO

In June 2003, San Francisco and San Francisco County became the first U.S. jurisdictions to adopt the precautionary principle into policy, setting the standard for other jurisdictions. In fact, almost all precautionary principle legislation proposed in other jurisdictions has included excerpts from San Francisco’s policy. Those excerpts on decision-making include:

- *Anticipatory Action*: “There is a duty to take anticipatory action to prevent harm. government, business, and community groups, as well as the general public, share this responsibility.”
- *Right to Know*: “The community has a right to know complete and accurate information on potential human health and environmental impacts associated with the selection of products, services, operations or plans. The burden to supply this information lies with the proponent, not with the general public.”
- *Alternatives Assessment*: “An obligation exists to examine a full range of alternatives and select the alternative with the least potential impact on human health and the environment including the alternative of doing nothing.”
- *Full Cost Accounting*: “When evaluating potential alternatives, there is a duty to consider all the costs, including raw materials, manufacturing, transportation, use, cleanup, eventual disposal, and

health costs even if such costs are not reflected in the initial price. Short- and long-term time thresholds should be considered when making decisions.”

- *Participatory Decision Process*: “Decisions applying the Precautionary Principle must be transparent, participatory, and informed by the best available information.”

Like the bills proposed recently in New York, the San Francisco ordinance was also heavily influenced by the breast cancer action groups. Kevin Donegan, spokesman for the Breast Cancer Fund in San Francisco, told *Insider* that one way the policy is being implemented is that when the city considers making any purchases, it must take the precautionary principle into account.

For example, said Donegan, if the City wishes to purchase paint in bulk, “it must consider whether the paints are free of volatile, organic compounds in order to reduce the chemical exposure to workers and communities.” Janitorial products are another area the city has focused on, “working with janitorial staff to create a list of affordable and effective products that they are now beginning to use.”

Donegan said it is too early to tell whether the incidence of breast cancer has been reduced by the ordinance, and “it would be difficult” to track anyway.

“At the Breast Cancer Fund,” he said, “our approach is to eliminate chemicals, whether they be pesticides or other chemicals, that are known or probable carcinogens, from our communities and from any kind of products we use, from household products to cosmetics. So we have focused on identifying certain chemicals and working to eliminate those from our environment.

“The question in terms of how do you track the impact of this,” Donegan continued, “these efforts that I have

Excerpts By Stephen Johnson On The Precautionary Principle

Berlin, Germany

June 2003

In a 2003 speech in Berlin, Germany, Steve Johnson, now the EPA Administrator, said “precaution has been an integral part of U.S. domestic health and safety regulations for many years. ... Our history of health, environmental and safety legislation and regulation is about taking precautions. ... Health and safety regulations in the United States have saved millions of lives. And virtually all of these laws and regulations support precautionary approaches to risk management.”

Johnson also said that:

- The dictionary defines the word “precaution” as “a measure taken beforehand against possible danger.” Taking that definition at face value, I feel confident in saying that precaution has been an integral part of U.S. domestic health and safety regulations for many years.
- Our history of health, environmental and safety legislation and regulation is about taking precautions. This goes for rules affecting air travel, autos, food, drugs, worker safety and industrial emissions, as well as for the scores of laws that underpin those safeguards. Health and safety regulations in the United States have saved millions of lives. And virtually all of these laws and regulations support precautionary approaches to risk management.
- In the United States, we’ve never adopted the so-called “Precautionary Principle” as a formal credo per se, and we have no single agreed-upon formulation or “principle” of precaution to be followed in all regulation. Nevertheless, the U.S. government wholeheartedly agrees that there is a basic concept of “precaution” that rightfully belongs in governmental actions.
- In the United States, a combination of forces affect our regulations – the free market, liability law and individual federal, state, and local laws. But most compelling for us – and what I would like to stress today – is that in the case of health and environmental regulation, precaution is exercised as part of a rigorous science-based approach to risk management.

been describing are pretty recent. What we've had, really, since the end of the second World War is a huge increase in the number of synthetic chemicals in the environment. There are close to 100,000 chemicals that are registered for use, so it is certainly going to take time to undo some of the harm that we know has already been caused. I think that would be the next step, to look at ways to measure the impact. We're not in a position to be able to do that yet because the modest changes that we have been able to succeed on are really only a very first step at best."

HISTORY OF THE PRECAUTIONARY PRINCIPLE

The Precautionary Principle has its roots in German philosophy and is practiced widely in Europe. It has been a part of Swedish law for 32 years and guides the European Union's environmental policies.

The first major effort in the United States to put the precautionary principle into action began in January 1998, when it was discussed at a conference of activists, scholars, scientists, and lawyers at Wingspread, home of the Johnson Foundation in Racine, Wisconsin.

Carolyn Raffensperger, executive director for the Science and Environmental Health Network, attended that meeting. In fact, it was her idea.

"The precautionary principle is fairly straightforward," Raffensperger told *Insider*. "It essentially says, 'If you are faced with the likelihood of harm, some kind of plausible harm, and we are uncertain about it, then we should take action to prevent harm.'

"In the old days," Raffensperger continued, "if someone harmed another person – if I hit you with my horse and buggy and you broke a leg – it was pretty obvious what had happened. On the other hand, if we put a chemical into the environment and have not asked the right questions, like the chlorofluorocarbons that have destroyed the ozone layer in the upper atmosphere, we didn't ask the right questions and it got us into trouble. So are there other ways of going about this that will help us make better decisions? The precautionary principle is a road out of that."

PREVENTION DRIVES INNOVATION

But the precautionary principle does more than just prevent future harm, said Raffensperger. It actually helps drive innovation.

"First we see this with energy," she said. "We know that a lot of our energy choices are altering the climate of the planet. Are there energy sources that we can use that don't do that? We're looking for safer alternatives, so what you see is innovation in the automobile industry,

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innovation in the electricity generation industry. What we are seeing is that by trying to prevent harm, we drive innovation by choosing a safer alternative. And that's been pretty exciting.

"There has been one misconception about the precautionary principle," Raffensperger added. "You'll hear people say, 'Proponents of the precautionary principle want people to prove safety.' Well, you can't prove safety. On our farm, we use salt and vinegar to get rid of non-native species, alien and invasive weeds that need to be controlled. But we choose to use salt and vinegar. Well, salt and vinegar will kill anything – it will kill you if you eat enough of it. So you can't prove safety. But you can compare to a chemical or to technologies, and choose the least damaging. And that in itself drives innovation.

"So when we talk about reversing the burden of proof under the precautionary principle, it does not mean that a proponent of an activity has to prove safety – that can't be done," said Raffensperger. "But it does mean that the environment and public health does get the benefit of the doubt. Wouldn't we rather have children's brains have the benefit of the doubt rather than the process of a chemical company? That just makes sense."

INADEQUATE TESTING

Raffensperger said in too many cases, products are not adequately tested before being put on the market. She used the example of phthalate esters – a group of chemicals found in a large array of products, including

A PESTICIDE.NET PROFILE

CAROLYN RAFFENSBERGER

Carolyn Raffensperger, Executive Director of Science and Environmental Health Network, was "an innocent archeologist in the desert southwest" until James Watt was appointed Secretary of the Interior.

"He wanted to put radioactive waste near a national monument where I was working," she said. "I didn't want him to do it, but I didn't know how to stop him. So I really became an environmentalist under Ronald Reagan's presidency."

Raffensperger grew up in Chicago, where her father was surgeon-in-chief of a large hospital. "He operated for 50 years to the day," she said. "He really pioneered a lot of the surgeries done on certain childhood tumors and certain birth defects. Over the course of his career, those tumors and birth defects increased, and he felt they were due to pollution. But he said he couldn't prove it. I saw that as a terrible challenge to science. If my dad had a hunch that these were being caused by industrial activity, and we were damaging children – it is one thing to talk about cost/benefit analysis, but when you start adding in a suffering quotient, it is unspeakable. So in the back of my mind I always thought about this."

Ten years after completing graduate school in archeology at Northwestern, Raffensperger returned to the classroom – this time to become a lawyer. "I wanted to understand what the law could be," she said. "My understanding of the law is that it is a set of rules that a community agrees to be bound by, and what rules do we want to live by in our life together on this planet? And so I went to law school."

In October, Raffensperger is publishing a book she co-authored with Nancy Myers called "Precautionary Tools for Reshaping Environmental Policy."

"Essentially the book is to help people who want to try out the precautionary principle," she said. "It is really designed to walk people through options. The amount of waste that we generate on this continent is pretty obscene. Are there ways to make all waste food for something else? Are there ways that counties and municipal governments can think through the precautionary principle that fits that?"

"There are challenges and exciting possibilities out there for working to make a world where we can eat, where we can clothe ourselves with beautiful things, where we can beautify ourselves – how can we this in a way that is respectful, that is beautiful, and that promotes health rather than damage? That is what the precautionary principle is all about."

building materials, automobiles, toys, and medical devices – to demonstrate her point.

“What we have is a chemical that is in everything – well, not everything, but it is in many, many products – and we are finding out that it probably alters little boys’ genitalia. I don’t know about you, but to me, it’s just not a good idea to say, ‘We have to have phthalate so that we can have fingernail polish, so we’ll just have to accept little baby boys with little tiny penises.’ At what point do we say that our health and well-being and the beauty of the world is more important than whether I can have pink or orange fingernail polish?”

But according to Phthalate Information Center, which is maintained by the American Chemistry Council, “Research has shown that [phthalates] do not persist in the environment. Once inside us, they break down quickly and are excreted. Perhaps most important, in their long history of beneficial services to consumers, no reliable evidence has ever shown that phthalates (or adipates for that matter) have ever caused any harm to anyone.”

According to Raffensperger, “Manufacturers of chemicals want to be able to make a profit and do what they want to do without public scrutiny, without public testing, and without interfering with their shareholders’ right to make a profit. But at the same time, we cannot paint all of industry with a black brush. In many ways, industry is leading the way and they are ahead of the federal government.


“If you look at major chemical users – Samsung, BristolMeyersSquibb, Verzion, Kaiser Permanente – they have adopted the precautionary principle and are doing fantastic things,” Raffensperger continued. “More and more industries are saying, ‘Our business depends on having air and water that we can breathe and drink. It depends on having healthy people that can make decisions, and having a population in the world of people who have developmental disabilities and brain damage because we are doing things we shouldn’t be doing just doesn’t make sense – it’s not a good business proposition.’ So we are seeing industry adopting the precautionary principle and moving out of using toxic chemicals – what a good idea!”

FEAR-DRIVEN POLICY

But Gasperini said that the way the activists are interpreting it, the precautionary principle “relies on somebody being afraid of something and saying, ‘we think this is bad.’

“Under the precautionary principle, as the activists would like to define it, you can’t get in your car and drive from Washington to Baltimore,” Gasperini continued. “You assume you can do that safely, but you can’t guarantee it, and under the precautionary principle, if you can’t guarantee that you can make that trip safely, that your brakes won’t fail, that

someone won't hit you, then the state and local government must take steps to prevent you from taking the trip."

Furthermore, said Gasperini, U.S. testing standards are so rigorous that they actually exceed any expectations that might be brought about by the precautionary principle. 

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