

Implementing the Precautionary Principle: A Tool for Georgia's Local Governments

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I. PRECAUTIONARY PRINCIPLE: HISTORY AND BACKGROUND

Stated plainly, the precautionary principle is the idea that in the absence of scientific certainty, one should take action against a practice or substance thought to be causing harm to the environment and/or human health rather than continuing the suspect practice without research or while research is ongoing.¹ In addition, the Precautionary Principle Handbook explains how the precautionary approach focuses on options and solutions rather than risk:

Instead of [relying on the risk assessment approach and] asking what level of harm is acceptable, a precautionary approach asks: How much contamination can be avoided? What are the alternatives to this product or activity, and are they safer? Is this activity even necessary?²

The precautionary principle originated in Germany in the 1970's and is derived from the German principle of *Vorsorge*, meaning foresight. In 1984, it was first introduced into the international forum at the International Conference on Protection of the North Sea. After that, it was integrated into many international agreements, including the Bergen declaration on sustainable development, the Maastricht Treaty on the European Union, the Barcelona Convention, and the Global Climate Change Convention.³ In 1992, the Rio Declaration became the first international treaty to include a statement of the precautionary principle and call for its implementation by all nations that ratified the treaty. That statement also known as Agenda 21, states:

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.⁴

The United States first endorsed the precautionary principle when the federal government signed and ratified the Rio Declaration in 1992. While the precautionary principle is not expressly mentioned in any federal laws or policies, the principle underlies many federal environmental statutes, including:

¹ Joel Tickner, Carolyn Raffensperger, and Nancy Myers, *The Precautionary Principle in Action: A Handbook* 3, available at <http://www.mindfully.org/Precaution/Precaution-In-Action-Handbook.pdf> (last visited November 22, 2004).

²*Id.*

³*Id.* at 2.

⁴ White Paper from the Seattle Precautionary Principle Working Group, to the City of Seattle and King County, entitled *A Policy Framework for Adopting the Precautionary Principle* 6, available at <http://www.asmalldoseof.org/precautionary/PPWhitePaperFinal.pdf> (January 30, 2004) [hereinafter Seattle White Paper].

- **The National Environmental Policy Act** requires that any project receiving federal funding and which may pose serious harm to the environment undergo an environmental impact study, demonstrating that there are no safer alternatives;
- **The Clean Water Act** establishes strict goals in order to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters;"
- **The Occupational Safety and Health Act (OSHA)** was designed to "assure so far as possible every working man and woman in the Nation safe and healthful working conditions;"
- **The Pollution Prevention Act** of 1990 sets prevention as the highest priority in national environmental programs.⁵

Despite U.S. acceptance of the precautionary principle in international treaties and its implicit presence in many federal environmental laws, little work has been done to implement the principle in the United States. In 1998, activists, scholars, scientists and lawyers gathered at the Wingspread Conference in Racine, Wisconsin to help combat this lack of implementation, and they discussed methods for how the precautionary principle could be used in daily environmental and public health policy decisions at the state and federal level.⁶ The conference produced the 1998 Wingspread Statement on the Precautionary Principle:

...When an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically. The process of applying the precautionary principle must be open, informed and democratic and must include potentially affected parties. It must also involve an examination of the full range of alternatives, including no action. In this context the proponent of an activity, rather than the public, should bear the burden of proof.⁷

Most recently, in May 2004, a group of physicians, farm worker advocates, human and environmental health advocates, representatives of environmental groups, and cancer prevention advocates gathered in Louisville, KY to produce *The Louisville Charter for Safer Chemicals: A Platform for Creating a Safe and Healthy Environment through Innovation*. The charter calls for "fundamental reform" to the United States' chemical policy in order to protect people, the environment, and the food web from further exposure to hazardous industrial, agricultural, and household chemicals. Specifically, the charter demands U.S. chemical policy be reformed to incorporate the precautionary approach by: (1) requiring safer substitutes and solutions to

⁵Joel Tickner, et al., *supra* note 1, at 2-3.

⁶*See id.* at 3.

⁷*Id.* at 3.

hazardous chemical use; (2) phasing out persistent, bioaccumulative, highly toxic chemicals; (3) giving the public and workers the full right-to-know by providing public access to data on hazardous chemicals; (4) assuming that a chemical is highly hazardous unless comprehensive safety data are available for the chemical; (5) acting on early warnings and taking immediate action when exposure occurs.⁸

In addition to action on the national level, several states, counties, and municipalities throughout the United States have adopted or are in the process of adopting laws or policies requiring use of the precautionary principle in aspects of government decision-making. These laws and policies are summarized below.

- The **City of San Francisco**, in 2003, became the first U.S. city to adopt an ordinance requiring use of the precautionary principle in all aspects of the city's decision-making.⁹
- The **City of Seattle/King County**, in January 2004, convened a precautionary principle working group that prepared a white paper recommending an amendment to the Seattle/King County comprehensive plan requiring use of the precautionary principle in land use decisions and other city/county planning decisions.¹⁰
- On September 23, 2004, **Multnomah County, Oregon** (Portland area) passed a resolution calling for use of the precautionary approach in the clean up and prevention of toxic pollution. The resolution requires the County to participate in a workgroup to create a Toxics Reduction Strategy for government operations using the precautionary principle.¹¹
- On October 5, 2004, **Marin County, California** passed a resolution to incorporate the precautionary principle into county operations.¹²
- The **Los Angeles Unified School District**, in 1999, adopted the nation's first comprehensive integrated pest management policy for all district schools requiring use of the precautionary principle in all pest management decisions. The policy statement also defines the precautionary principle.¹³

⁸ *The Louisville Charter for Safer Chemicals: A Platform for Creating a Safe and Healthy Environment through Innovation*, available at www.healthybuilding.net/pdf/environmental_justice/louisville_charter.pdf (May 2004).

⁹ SAN FRANCISCO, CAL., ENVIRONMENT CODE, ch. 1, §§ 100 –104 (2003), available at <http://temp.sfgov.org/sfenvironment/aboutus/innovative/pp/sfpp.htm>.

¹⁰ Seattle White Paper, *supra* note 4.

¹¹ Multnomah County, Or., Resolution 04-140, Recognizing National Pollution Prevention Week And Directing Development Of A Toxics Reduction Strategy Jointly With The City Of Portland Using The Precautionary Principle (Sept. 23, 2004), available at <http://www2.co.multnomah.or.us/cfm/boardclerk/viewdetail.cfm?DocID=9099>.

¹² Marin County, Cal., Resolution 2004-108, A Resolution to Continue to Incorporate the Precautionary Principle in County Operations (October 5, 2004), available at <http://www.sehn.org/rtfdocs/MarinCounty.doc>.

¹³ Taking Steps to Be Safe: Precautionary-Based Laws, Policies, and Agreements, available at <http://www.besafenet.com/Takingsteps.pdf> (last visited November 22, 2004). Thirty-three state laws and over 400 School Districts have policies or programs on Integrated Pest Management (IPM), pesticide bans and Right-To-

- In the **State of New York**, a bill was introduced in the state legislature in 2003 providing for use of the precautionary approach in the evaluation of new technologies, processes and materials supported by state funded research when there is evidence of potentially dangerous effects to human health or the environment.¹⁴
- The **City of Boston**, in 2003, adopted a resolution directing relevant city departments to discontinue purchase of "products that release dioxin during manufacture and/or disposal" wherever possible. Within one year, city departments must develop an Implementation Plan for the purchase of such and are directed to "achieve" the Implementation Plan within an additional six months.¹⁵
- In 2003, the **State of California** passed a statute banning the manufacture, processing, and distribution of polybrominated diphenyl ethers, chemicals used as flame-retardants, stating the precautionary principle as the rationale for the ban. The chemicals, developed in the 1960's, are found in the plastics and foams used in furniture and electronic equipment. The ban begins on June 1, 2006.¹⁶

II. PUBLIC INVOLVEMENT IN THE DRAFTING PROCESS IS KEY

It is important that local governments gain widespread public support for the precautionary principle if the policy is to be effective in their communities. Each local or state government that has enacted an ordinance or statute requiring use of the precautionary approach in some aspect of its decision-making process began by involving the public in the drafting process.

For example, before introducing use of the precautionary approach into its comprehensive plan, the City of Seattle created the Seattle Precautionary Principle Working Group. This group consisted of representatives of a wide range of local stakeholders, including the League of Women Voters of Washington, Antioch University, the Toxic-Free Legacy Coalition, the Environmental Protection Agency Region 10, the American Lung Association of Washington, the Institute for Neurotoxicology and Neurological Disorders, Newground Investment Services, the Institute for Children's Environmental Health, the Seattle Biotech Legacy Foundation, the Community Toolbox for Children's Environmental Health, the Washington Public Interest Research Group, the Washington Toxics Coalition, Washington Physicians for Social Responsibility, and the Washington State Nurses Association. The group drafted a white paper entitled "A Policy Framework for Adopting the Precautionary Principle,"

Know. IPM was established as a program of prevention, monitoring and control that offers the opportunity to eliminate or drastically reduce hazardous pesticide use in schools. *Id.*

¹⁴ A.O. 6695, 2003-2004 Assembly, Reg. Sess. (N.Y. 2003) (amended and re-referred to Government Relations Committee on March 10, 2004) *available at* <http://assembly.state.ny.us/leg/?bn=A06695>.

¹⁵ Boston, Mass., Resolution 0389 (October 29, 2003) *available at* <http://www.noharm.org/details.cfm?ID=858&type=document>.

¹⁶ CAL HEALTH & SAFETY CODE § 108922 (West 2003).

upon which the Seattle comprehensive plan amendment was based.¹⁷ Without this public support and input, the Seattle comprehensive plan amendment would most certainly not have been implemented. The group provided the technical expertise and local support necessary to implement such a widespread and comprehensive policy change.

Therefore, it is recommended that each Georgia local government considering adoption of a precautionary principle ordinance first hold public meetings and otherwise fully involve the community in the development of its ordinance. Local governments should first seek public input as to what the ordinance's findings should be. This will increase public support for the principle as well as aid the jurisdiction in tailoring the ordinance to fit the individual community's needs.¹⁸ In addition, the jurisdiction should seek public input regarding the ordinance's precautionary policy. Local governments are highly encouraged to modify the model ordinance's policy of precaution to better fit the needs and desires of the community.¹⁹

For more information on how to involve the public in the ordinance's development and how to organize grassroots support for the precautionary principle, contact ECO-Action at 404-584-6499 or www.eco-act.org.

III. MODEL ORDINANCE

The Georgia model ordinance has been created and is largely based upon the City of San Francisco's Precautionary Principle Ordinance.²⁰ The decision to base this model ordinance on San Francisco's ordinance was made because it is the only existing local ordinance that incorporates the precautionary approach into all aspects of government decision-making. Other adopted ordinances, while well drafted and effective, apply the precautionary principle to only one or two areas of government activity. For example, the Multnomah County, Oregon ordinance calls for use of the precautionary approach only in the area of toxic chemical pollution prevention.²¹ Taking this comprehensive approach to implementing the precautionary principle, as has San Francisco, ensures local governments that they are using the most effective method for safeguarding the health of their communities and residents.

A copy of the Georgia Model Precautionary Principle Ordinance can be downloaded from ECO-Action's website at www.eco-act.org. The ordinance authors can be contacted at the River Basin Center at 706.583.0282 or www.rivercenter.uga.edu.

¹⁷ See Seattle White Paper, supra note 4.

¹⁸ In the model ordinance below, the findings are found in Section 1.

¹⁹ In the model ordinance below, this policy is stated in Section 2.

²⁰ SAN FRANCISCO, CAL., ENVIRONMENT CODE, ch. 1, §§ 100 –104 (2003), available at <http://temp.sfgov.org/sfenvironment/aboutus/innovative/pp/sfpp.htm>.

²¹ Multnomah County, Or., Resolution 04-140, Recognizing National Pollution Prevention Week And Directing Development Of A Toxics Reduction Strategy Jointly With The City Of Portland Using The Precautionary Principle (Sept. 23, 2004), available at <http://www2.co.multnomah.or.us/cfm/boardclerk/viewdetail.cfm?DocID=9099>.