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Overview of the Precautionary Principle

This overview is meant to serve as a brief background on the Precautionary Principle, places that it is in effect globally, as well as the limited places it is used in practice in the United States.

The principle is used when an activity raises threats of harm to the environment or human health and precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically. The principle implies that there is a social responsibility to protect the public from exposure to harm when scientific investigation has found plausible risk. These protections can be relaxed only if further scientific findings emerge that provide sound evidence that no harm will result. This places the burden on the specific companies to overcome this baseline “better safe than sorry” approach that regulatory state agencies will take.

Those that are against the Precautionary Principle argue that applying a concept this vague as a legal requirement creates two types of problems. First, it creates the opportunity for arbitrary and unpredictable decisions by agencies, governments, and courts. Second, it makes it very difficult for courts to perform their responsibility to ensure reasonableness of agency decisions. An example of this is when the European Union applied the Precautionary Principle to ban the import of North American beef from animals treated with hormones, even though the European Union scientific committees and the World Trade Organization found no scientific rationale for the ban.

The European Union is probably the most notable organization that employs the Precautionary Principle. A core principle of European Union environmental law, enshrined in Article 191(2) of the Treaty on the Functioning of the European Union. The classic definition of a ‘precautionary approach’ comes from the 1992 Rio Declaration on Environment and Development, which states that:

“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.” (UNEP 1992)

The first and foremost example of the Precautionary Principle being used in the United States is San Francisco, CA. Passed in 2003, the ordinance in San Francisco has served as a model for other local governments that have implemented or have considered a precautionary measure. Examples include Marin and Mendocino Counties in California; Berkeley, California; Eugene and Portland, Oregon; and Seattle, Washington. The rest of the United States continues to operate with their primary regulatory mechanism as the risk management approach (i.e. how much harm is allowable, rather than how little harm is possible). An example of the Precautionary Principle’s use in San Francisco happened in 2005 when the San Francisco Board of Supervisors adopted a purchasing ordinance that required the city to use safer alternatives when purchasing commodities for the city (cleaning products and electronics). The ordinance also sets product categories that specify which products in the categories will be given preference of the next few years. The list was created with input from the residents, business owners, and city employees.