

WORKING GROUP ON SCIENCE AND PUBLIC POLICY DEVELOPMENT (SPPD)

Comments on Government Discussion Paper on Precautionary Principle/Approach

The federal government recently released a discussion paper on the Precautionary Principle entitled *A Canadian Perspective on the Precautionary Approach/Principle – Discussion Paper (September 2001)* (DP). It was accompanied by another document entitled *A Canadian Perspective on the Precautionary Approach/Principle – Proposed Guiding Principles (September 2001)* (PGP). These will be referred to below as DP and PGP. These documents can be found on the internet websites of the involved government departments: Agriculture and Agri-Food Canada, Canadian Food Inspection Agency, Department of Fisheries and Oceans, Department of Foreign Affairs and International Trade, Environment Canada, Health Canada, Industry Canada and Natural Resources Canada.

The Working Group on Science and Public Policy Development (SPPD) is a group of industry associations and companies interested in how science is used in the development of public policy, and in particular, the application of the precautionary principle/approach. The comments in this document will be worked into individual submissions from SPPD members. It would be useful to have the two SPPD documents "Vision, Objectives and Principles" (SPPD VOP) and "Application of the Precautionary Principle in Public Policy Decision-Making" (SPPD APP) while you review this.

Overall Impressions of Discussion Paper

Overall, this paper does a reasonable job of reflecting a balanced view of how best to apply the precautionary principle and agrees in large part with the views espoused in the SPPD documents.

Specific Issues of Concern

A. Diagram on DPP2.

In the DP on Page 2, there is a diagram entitled "Diagram 1: Risk Management in Public Policy: A Decision-Making Process". This diagram is confusing and does not relate directly to any of the text surrounding it. The precautionary principle is a part of the risk management process, and not part of the risk assessment stage, yet it is not clear that this is the case from this diagram unless one examines it very closely. This is confusing given the lack of context.

Recommendation: Remove Diagram 1.

B. Targeted Measures

In SPPD APP, one of the guiding principles our group has espoused concerns targeted measures.

"Where the precautionary principle is applied, risk reduction measures shall be targeted as precisely as possible at the specific issue or concern (eg. Specific chemical and specific application), using existing and reasonably obtainable scientific knowledge".

This principle is not included or adequately dealt within in the DP. All of the other principles in SPPD APP are covered in some fashion within the DP.

Note: It has been suggested that "targeted measures" are implied by Point 3.10 in the PGP. It is not clear that this is the case (cost-effectiveness is a different issue than specific targeting of measures although one tends to follow from the other).

Recommendation: Ensure this principle is included in the list of guiding principles in the DP.

C. Weight of Evidence (DP Page 5)

The subject of "Scientific Basis for Application" is discussed in Section 2.1. This is an area that we should review closely to ensure that it is consistent with our views. As noted in the document, it is important to determine what is *sufficiently* sound or credible scientific basis, what *follow-up* activities may be warranted and *who* should produce a credible scientific basis.

There is a concern that decisions are driven by "values" in some cases and not by science, which erodes faith in science-based decision-making. (see PCB export ban under CEPA several years ago as a poor application of the precautionary principle).

Given the use of the term "values" in the government documents to mean 'health, safety, environment, conservation', we would have difficulty objecting. Perhaps, we could argue for a more explicit treatment of what is meant by values -- i.e. balancing economic dynamism/innovation against protection of health, etc. (even though these sometimes are synonymous rather than opposed), especially when it comes to better technology. In this respect, the reference in the second last paragraph of the PGP to balancing 'science with social values' is somewhat disconcerting, if not downright misleading.

This is also discussed in Section 3.4 on DPp15. It indicates that burden of proof should rest with the party who is taking an action associated with potential or serious harm-- this raises the risk of "having to prove a negative". It should be clearer that no burden of proof should be required unless there is at least some evidence to show that there is risk of harm-- and that any actions to prevent that harm would be proportional to the solidity of that evidence.

The standard of proof to be used should be the civil standard, not the criminal standard. Please refer to the CPIA paper for more details.

Some serious thought needs to be given to how best to determine the level of protection that is appropriate. This is particularly important if no work has been done on the issue. Could this trigger the need for work to be done to "confirm the negative"?

Recommendation: Place the burden of proof on the proponent supporting a contention that there is a risk of serious or irreversible harm.

D. Reevaluation and Further Consideration (DPp16)

The discussion document states that "Mechanisms should exist for reevaluating the basis for the decisions and for providing a transparent process for further consultation".

This is very important. It should be clear from the first that actions taken under the precautionary principle (thus implying a certain "lack of evidence") will be reviewed on a periodic basis, particularly if new pertinent evidence is discovered. Consistent mechanisms to ensure that such reevaluations take place must be created.

E. Transparency/accountability (DPp16)

"A greater degree of transparency, clear accountability and increased public involvement are appropriate". We would maintain that "are appropriate" should read "are necessary". Any system which adds "judgement calls" to the scientific process must be transparent to ensure that the public will have faith in the process.

F. Cost-effectiveness (DPp8)

It is very important when considering cost-effectiveness to compare the costs (and risks) of taking action vs. the costs (and risks) of not taking action. Very often action to reduce risk will increase risk in some other less obvious fashion (possible example -- reducing GHG emissions by having people switch to diesel fuel in their cars which may increase particulate matter emissions while reducing GHG emissions).

Another example would be the substitution of nuclear energy for carbon-based electricity generation which could provide even greater risk management issues than the diesel issue.

G. Non-discrimination and consistency (DPp10)

3.9 "Precautionary measures should be non-discriminatory and consistent with measures taken in similar circumstances". There is concern that it is not clear just what would entail "similar" circumstances.

In that same section, SPPD is very supportive of the statement "The Precautionary approach should not be used to legitimize decisions that are unrelated to a threat or the presence of scientific uncertainty (but determined by other factors)." This is very important (see PCB export ban under CEPA).

H. International Issues

Currently the precautionary principle is not an accepted part of customary international law. It has been enshrined in several treaties, however, and has the potential to become so enshrined. It is very important, therefore to ensure consistency in the definitions being used in various treaties and legislation.