

Precautionary Principle Operationalization in CEPA 99

Multistakeholder Consultations
March 20, 2002

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Purpose

- Getting from GofC Discussion Document to CEPA 99
- Solicit advice on how proposed GofC principles may advance understanding of how to apply precautionary principle in CEPA 1999
 - Using principles in GofC paper as basis for discussion on four themes
 - Focus on proposed GofC principles that are unique to precautionary decision making
- Discussion document does not reflect official EC or HC policy: it is intended to stimulate and support discussion

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Precautionary Principle in CEPA

“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”

- Preamble
- Section 2 - Administrative Duties
- Section 6 - National Advisory Committee
- Section 76.1 – “conducting and interpreting” various risk assessments under Part 5

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EC’s Preliminary Observations

- Administrative Duties and Preambular references mean we must consider precautionary principle throughout CEPA 1999
- Principles-based approach of GofC Discussion Paper designed to enable exercise of professional judgment, not prescribe how judgment should be exercised
- Although explicit inclusion of precautionary principle in CEPA 99 is new, applying precaution is not new to EC or HC

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Themes for Consultation

- Theme 1: Use of PP as a legitimate and distinctive decision making tool
- Theme 2: Circumstances where PP can apply
- Theme 3: Designing precautionary measures
- Theme 4: Public involvement and precautionary decision making

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Theme 1: Use of precautionary principle as a legitimate and distinctive decision-making tool

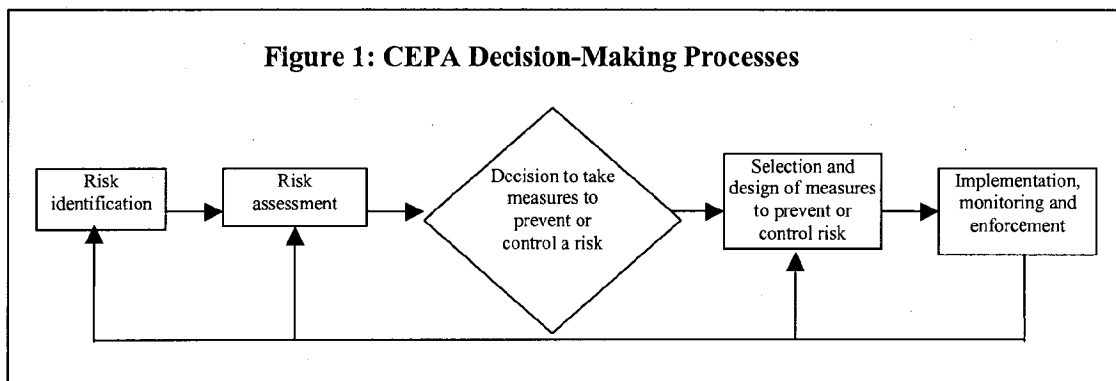
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Relevant Principles Proposed in GofC Paper

- The Precautionary Principle is a legitimate and distinctive decision making tool within risk management (*principle 1*)

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Discussion



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Questions for Consideration

- When implementing CEPA 99, should Environment Canada and Health Canada apply the precautionary principle throughout CEPA decision-making processes?
- Is the precautionary principle a “legitimate” and “distinctive” decision-making tool?

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Theme 2: Circumstances Where the Precautionary Principle Can Apply

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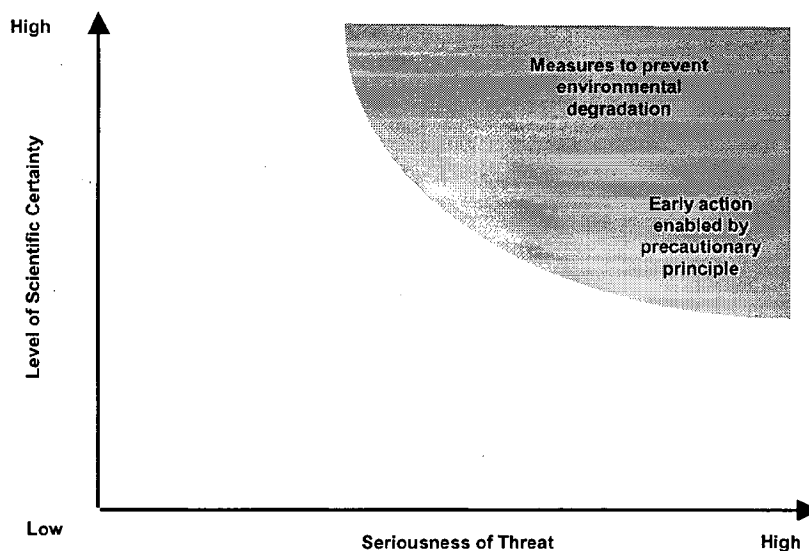
Relevant Principles Proposed in GofC Paper

- Sound scientific information and its evaluation must be the basis for applying the precautionary approach, particularly with regard to:
 - (i) the decision to act or not to act (i.e. to implement precautionary measures or not), and
 - (ii) the measures taken once a decision is made*(principle 3)*
- The scientific evidence required should be established relative to the chosen level of protection *(principle 4)*

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Discussion

Figure 2: The Precautionary Principle Enables Early Action to Prevent Environmental Degradation in the Absence of Full Scientific Certainty



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Question for Consideration

- On what basis should Environment Canada and Health Canada decide that there is sufficient threat of serious or irreversible damage, notwithstanding lack of full scientific certainty, for the precautionary principle to apply?

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Theme 3: Designing Precautionary Measures

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Relevant GofC Principles

Precautionary measures shall be:

- Subject to reconsideration (principles 5 & 7)
- Proportional to the potential severity of the risk being addressed and to society's chosen level of protection (principles 2 & 8)
- Based on sound scientific information (principle 3)
- Non-discriminatory and consistent with measures taken in similar circumstances (principle 9)
- Cost-effective (principle 10)
- Least trade-restrictive (principle 11)

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Discussion: Measures to Prevent Environmental Degradation

- EC and HC manage a wide range of issues under CEPA 99
- Manage issues throughout generic process in Figure 1
- Seriousness of risks varies widely (Figure 2)
- As such, appropriate precautionary action may depend on both:
 - Nature of issue
 - Point in decision-making process
- In particular, PP may influence priority setting and support early action

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Question for Consideration

- Does the appropriate precautionary measure depend on the issue being addressed and the stage of decision-making?

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Discussion: Cost-Effective

- Distinguish “whether to act” from “how to act”
- Cost-effectiveness considerations may apply more to “how to act”
- In any event, scientific uncertainty associated with precautionary issues may limit scope of cost-effectiveness considerations to decisions about “whether to act”

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Question for Consideration

- When applying the precautionary principle, to what extent should EC and HC apply cost-effectiveness considerations when deciding whether to act?
- When deciding how to act?

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Discussion: Subject to Reconsideration

- Importance of follow-up is heightened when scientific uncertainty is high
- May require ongoing research and monitoring

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Question for Consideration

- Should the degree of efforts to ensure that a measure is subject to reconsideration reflect the level of scientific uncertainty, among other factors?

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Theme 4: Public Involvement

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Relevant GofC Principles

- 1: It is legitimate for decisions to be guided by society's chosen level of protection
- 4: the scientific evidence required should be established relative to the chosen level of protection
- 5: Mechanisms should exist for reevaluating the decisions and for providing a transparent basis for further consultation
- 6: A greater degree of transparency, clear accountability and increased public involvement are important

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Discussion

- Transparency and public involvement are very important
- Communicating uncertainty to public could be very important feature of operationalizing PP under CEPA 99
- Appropriate extent of public involvement may reflect factors such as seriousness of risk, level of uncertainty, public tolerance and economic stakes
- Transparency may support documenting intended overall approach to precautionary principle
- May also be appropriate to document reliance on PP in specific decisions

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Questions for Consideration

- When EC and HC are addressing threats of serious or irreversible damage and less than full scientific certainty, should they apply a greater degree of transparency and public involvement?
- Should the Departments describe their intended application of the precautionary principle under CEPA 99, and should they document and communicate their application of the principle to specific decisions made under the Act?