

Report on the Development of a Precautionary Principle Procedure in Mendocino County

November 2008

Summary of the Precautionary Principle in Mendocino County

It's the common sense familiar advice: "Look before you leap." "An ounce of prevention is worth a pound of cure." This process allows fundamental questions to be asked, such as, "Is the potentially harmful activity necessary? ", "What less harmful options are available?" and "How little damage is possible?"

The Precautionary Principle is a guiding framework for decision-making that anticipates how our actions will affect the environment and health of future generations. It is not an automatic ban on products or actions. When it is apparent that an activity is a potential threat to the environment or human health, full scientific certainty is not necessary to initiate precautionary action. Precautionary decision-making is based on a thorough examination of alternatives, transparency, public participation, and prevention of harm.

On June 27, 2006, the Mendocino County Board of Supervisors adopted the Mendocino County Precautionary Principle Administrative Policy (Policy #43), to apply precautionary decision-making to county decisions that could have a significant effect on human health or the environment. The Policy language calls for a report to the Board regarding its implementation and results within three years of adoption. This report and presentation are intended to fulfill that requirement.

The essential elements of the Precautionary Principle approach to decision-making include:

1. **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.
2. **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.
3. **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.
4. **Full Cost Accounting:** When evaluating potential alternatives, there is a duty to consider all the reasonably foreseeable short and long-term costs and benefits to public as well as private sectors of the community, even if such costs are not reflected in the price. Some of these costs and benefits may include raw materials, manufacturing, transportation, use, cleanup, eventual disposal, labor, energy, health, safety, and job-creation.
5. **Participatory Decision-Making Process:** Decisions applying the Precautionary Principle must be transparent, participatory, and informed by the best available information. The County will make a reasonable effort to include the public in an appropriate manner when making decisions that may affect the environment, health, and quality of life.

The Policy is not an ordinance, which would apply as law to private individuals and businesses, but applies to County decision making only.

Official Intentions of the Mendocino County Precautionary Principle Policy

From the Mendocino County Policy #43, Precautionary Principle Policy:

Policy Implementation and Three-Year Review

The implementation of this policy will begin with a pilot project utilizing two County departments to be selected by the County Executive Office. Implementation guidelines for the Precautionary Principle will be developed during this initial phase that will then be disseminated to other county departments for use and implementation. During this phase the participating departments will report to the CEO on a quarterly basis as to their progress in developing and use of precautionary principle guidelines. No later than three years from the adoption of this policy the Executive Office shall submit a report to the Board of Supervisors on the implementation and results of the Precautionary Principle Policy.

Thereafter, the Executive Office will conduct and present an annual report of the County's application of these principles and compliance with all applicable laws and regulations. The evaluation will be presented on a date as determined by the Chief Executive Officer.

Policy Application and Limitation

The Board of Supervisors, in accordance with the policy implementation requirements set forth above, directs all officers, boards, commissions, and departments of the County to take a precautionary approach and evaluate alternatives when making decisions that could impact health and the environment, especially where those actions could pose threats of serious harm or irreversible damage. This policy does not impose on its officers and employees, an obligation for breach of which it is liable in monetary damages nor may this policy provide any basis for any other judicial relief including, but not limited to a writ of mandamus or an injunction.

Timeline of Significant Events

- Spring '05 - A group of individuals from throughout Mendocino County, called the Mendocino Partnership for the Precautionary Principle, came together to discuss the application of the Precautionary Principle to county decision-making
- 6/05 - Mendocino County Public Health Advisory Committee unanimously decided to carry the study of the Precautionary Principle to the Board of Supervisors.
- 9/05 - Mendocino County Board of Supervisors voted to initiate a period of study of the Precautionary Principle. The Ad Hoc Committee met monthly for about nine months.
- 10/05 – Public Forums held in Ft. Bragg and Willits on how the Precautionary Principle can be applied to county decision-making with guest speaker Mary O'Brien, Ph.D. (Botany), who has served as a staff scientist with grassroots organizations for the past 24 years, including NW Coalition for Alternatives to Pesticides, Environmental Law Alliance Worldwide, among others.
- 1/06 – A public forum was held regarding how the Precautionary Principle can be applied to county decision-making with guest speaker Debbie Raphael, program manager for the City & County of San Francisco's Toxics Reduction and Green Building Programs
- 4/06 - The Ad Hoc Committee of the Mendocino County Board of Supervisors along with department heads and the Mendocino Partnership for the Precautionary Principle met to finalize the language for the Precautionary Principle Policy.

- 6/06 – The Mendocino County Board of Supervisors adopted the County’s first-ever environmental policy – the Mendocino County Precautionary Principle Policy.
- 10/06 - Mendocino County officials in coordination with the Mendocino Partnership for the Precautionary Principle selected two county departments to begin incorporating the Precautionary Principle into decision-making: Environmental Health and the Water Agency.
- 2/07 - Mendocino County officials in conjunction with the Mendocino Partnership for the Precautionary Principle worked to develop a framework for implementing the Precautionary Principle in the selected pilot departments.
- 8/07 - Guidelines for Public Participation in the County’s Precautionary Principle decision-making process were completed.
- 9/07 - County officials, with assistance from the Mendocino Partnership for the Precautionary Principle, completed a Precautionary Principle Procedure to provide a framework to assist Environmental Health and the Water Agency in applying the Precautionary Principle to decisions regarding mosquito control and storm water discharges into County surface water (respectively), the two projects selected to pilot implementation of the Precautionary Principle in Mendocino County.
- 1-4/08 - The Mendocino County Environmental Health Department applied the Precautionary Principle to its Mosquito Control Program. Public comment on the program closed February 2008 and the Department issued a final report. The County sought comment on the least harmful alternatives to control mosquito larvae in Mendocino County.
- 4/08 – Mendocino County officials decided that the Water Agency would not be available to participate in the Precautionary Principle pilot program.
- 7/08 – The regular monthly meetings began to focus on discussion and writing of the final report to the Board of Supervisors.
- 10/08 – The final report on the adopted Precautionary Principle Policy is presented to the Board of Supervisors.

Summary of the Environmental Health Pilot Program

In response to the spread of West Nile Virus the California Department of Health Services allocated grant money to local jurisdictions in 2005 for mosquito control activities. Mendocino County Environmental Health Division received \$9,000. Environmental Health staff met with representatives of the Sonoma County Vector Control District and the Vector Control Officer for Humboldt County to discuss and evaluate control practices they had implemented. Based on information gained from those meetings and additional research into mosquito larvacide the following controls were decided upon: mosquito fish, *Bacillus thuringiensis*, *Bacillus sphaericus*, and methoprene. Application of the controls was determined through a bio-rational approach that would minimize potential impact to the environment.

In August 2007, the Environmental Health Director volunteered to participate in the Precautionary Principle pilot program and suggested the Vector Control Program be used to investigate the use of the Precautionary Principle decision making process. Adhering to the Precautionary Principle Procedure and Public Participation Guidelines, Environmental Health prepared for a public workshop that was held on January 23, 2008. Preparation and presentation took 100 hours of staff time and included: research and writing of a larval control fact sheet; development of a PowerPoint presentation; advertising for the workshop that included the posting of a public notice in the Ukiah Daily Journal and a press release sent to all local media outlets. The public workshop was attended by several individuals. The public

comment period ended February 22, 2008. Two questions and one proposed alternative were raised at the workshop and two letters were received before the close of the comment period.

After reviewing public comment and researching and evaluating the proposed alternatives Environmental Health is confident the best action to take is to continue to follow its current larvae control procedure.

Importance of the Environmental Health Pilot Program

Environmental Health staff felt that participating in the pilot allowed Environmental Health to develop more confidence in its knowledge of mosquito abatement options and to inform the public of the program. The pilot process was a way to test the Precautionary Principle Procedure, and some needed changes were recognized. For example, posting a legal notification of a hearing in the classified section of the Ukiah Daily Journal went mostly unnoticed by the public. Also, media outlets did not pick up the press release, and few people attended. As a result the public workshop was not very productive

The changes proposed to improve the Precautionary Principle Procedure included:

- A “workshop” is preferred for public input rather than a “public hearing” that must be noticed in the classified section. The Precautionary Principle Public Participation guidelines were edited to clarify this change.
- The matrix in the procedure form could be less subjective so that someone using it would more objectively justify not going with a public forum, if circumstances did not require a high level of public input. The Procedure and Public Participation Guidelines have been changed to suggest that a public workshop be held only if risk to human health or the environment is determined to be high.
- Publicity for the workshop or forum could be enhanced by collaborating with the Agency Information and Communications Officer.

Changes in Mendocino County that have affected Precautionary Principle Implementation

During the more than two years since the adoption of the Precautionary Principle by the County Board of Supervisors, and the selection of the two pilot projects, the following changes and situations in staffing, workload and budget have affected this project:

- The Water Agency staff has become deeply involved in the ongoing county water issues that have become a priority for the Board of Supervisors which caused them to withdraw as the second Precautionary Principle pilot.
- An inquiry to General Services about becoming the second Precautionary Principle pilot was not accepted as General Services is already working on “greening” county purchasing and the resources to perform a pilot were not available.
- As Public Health has now become part of the larger Health and Human Services Agency, it would be appropriate that the Agency take the project on and continue to institutionalize precautionary decision making.

Precautionary Principle in action in Public Health programs

The following are examples of existing uses in Public Health of Precautionary Principle-based responses to public health risks in order to avoid harm to the population:

- The Every 15 Minutes Program, sponsored by Alcohol and Other Drug Programs, organizes dramatic enactments of crash scenes caused by young impaired drivers, which have killed one person every 15 minutes in the United States. The presentations are given to schools. Students arrive on the scene to witness two demolished cars, real fire trucks and emergency personnel who saw open the cars to extract the bodies played by student actors. Students are loaded onto real ambulances and taken away. Sometimes the emergency helicopter takes the students away. A professional make-up artist is hired to give the effect of blood and destroyed body parts. The student actors portraying the killed or injured youth do not return to school the rest of the day, so that the impact of the disappearance of friends taken by drunk driving sinks in to the student body. During the rest of the school day, an actor dressed as Black Death comes to a class every 15 minutes to remove a student and take them away. The students write their own obituaries and letters to parents regarding their own deaths.
- The Needle Exchange Program provides clean needles and paraphernalia confidentially to intravenous drug users and provides safe disposal of used needles, to prevent spread of HIV and other blood-borne diseases such as Hepatitis B and C.
- The Communicable Disease Program at Public Health responds to public health risks in the county with a precautionary stance that this situation could spread to more people and needs to be contained. The following are examples:
 - Two Ukiah school children were diagnosed with Neisseria meningitis. Neisseria meningitis can cause severe illness or death. Vaccines for eligible children and antibiotics were given to children that might possibly have had contact with the infected children, with the permission of a parent.
 - Methicillin-Resistant Staphylococcus Aureus (MRSA) is a bacteria that can cause skin infections and has built resistance to a variety of antibiotics. It is communicable from person to person. Personal hygiene is strongly recommended to prevent and control MRSA. A widespread public education campaign, including public forums and education to day care providers, is the best way to keep outbreaks from happening.

Many public health programs have emphasized the precautionary element of “anticipatory action” to prevent harm, or prevention. Some programs have also conducted outreach to the public about health issues, complying with the public’s “right to know”. Most programs have procedures in place for deciding amongst alternatives, but the alternative with the least risk to the environment has not necessarily been a consideration in decision making. Programs do not often engage in “full cost accounting”, as tight budgets promote a focus on the immediate outcome and financial cost, discouraging consideration of long-term costs and benefits to health and the environment. Finally, the public is rarely involved in making major decisions about public health programs. This is often due to the need for swift action, lack of interest on the part of the public, or the minor nature of the decision to be made. However, if staff were versed in the Precautionary Principle they may be able to consciously involve the public in order to make more informed, democratic program decisions.

Recommendations on future use of the Precautionary Principle

- (1) Focus on using the Precautionary Principle uniformly across the HHS.

- (2) Establish clear criteria for different levels of public input such as using the public input and public expression time at the Board of Supervisors meetings, comments through the county website, phone calls, emails, and public workshops.
- (3) Develop a process whereby the HHS Information and Communications Officer or another office can regularly consolidate public input from many and varied sources in order to keep up with issues with a magnitude of public interest and concern that requires the Precautionary Principle Procedure to be activated.
- (4) Keep in mind that resources to fully implement the Precautionary Principle may not always be available and may need to be adapted.
- (5) The Precautionary Principle Workgroup will continue within Community Health Services of the Health and Human Services Agency, with consultation from the County Executive Office. The Workgroup will develop strategies for educating and involving staff in ways to implement Precautionary Principle values as well as Policies and Procedures, ie. "greening" the cleaning products used in county buildings.
- (6) Add to the County's Mission Statement that it strives to promote health and ecological sustainability by living within available resources. This would help to institutionalize precautionary mind-set within county government.

After a period of refinement and implementation of the Policy in the HHS by the Workgroup, the Board may wish to consider adopting the Precautionary Principle Procedures for other County departments.