

“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. In this context, the proponent of an activity, rather than the public, should bear the burden of proof. 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.”

—Wingspread Statement on the Precautionary Principle, Jan. 1998



Paul Steel/Corbis

Precautionary Principle advocates celebrate its ten years of impact by asking:

Should We Appoint a Legal Guardian for Future Generations?

We told you about the Precautionary Principle and how it came into being ten years ago on pp. 6-9. Now, Carolyn Raffensperger—executive director of the Science and Environmental Health Network and the woman who co-convened the Wingspread Conference, which birthed the Principle as we know it today—tells us what’s coming next. Her latest effort is to get US government officials to appoint a “Legal Guardian” for future generations, and she’s got the nation’s most prestigious law school on her side.

CAQ/Tracy Fernandez Rysavy: You convened the Wingspread Conference almost exactly ten years ago, where the Precautionary Principle as we know it came into being. You’ve said that while the Wingspread Statement (see above) gets at the core of the message of Precaution, there’s more to it that tells us how to take action.

Carolyn Raffensperger: The Wingspread Statement defines the Precautionary Principle as follows: In the face of uncertainty, the proponent of an activity has a responsibility to prevent harm, to prove that the activity is safe.

That’s all well and good, but then what? Building on the Wingspread Statement, we know there are five ways to take action:

1) SET GOALS. If you know what you want to head toward, you’ll get where you’re going. But if you define it badly or vaguely—as in “We are for progress”—that’s a recipe for disaster. “Progress” is whatever project I take on.

So you set a goal. For example, we know what the rate of increase has been in breast cancer over 30 years—since 1975, it has more than doubled. That can’t be genetic. The difference between my mother’s generation and my generation is not genetic; it must be something else. So we set the goal of finding out what the cause is and reducing that breast cancer rate.

2) THEN, LOOK AT ALTERNATIVES. If plastics or chemicals in the environment might be contributing to a rise

in cancer, let’s look for alternatives. Are there alternatives to lead in children’s toys? Yes! Are there alternatives to using nasty solvents in our computers and electronics? Yes!

3) REVERSE BURDEN OF PROOF. For the most part, there’s no obligation on the part of government or the company who’s manufacturing or using chemicals to test them and look for better alternatives. So say I’m injured by your chemical. We go to court, and I say your chemicals hurt me. And you say, “Can’t prove it.”

The courts will ask where the scientific basis for my accusation is, and there won’t be any, because there’s no obligation on the part of companies to test the chemicals they use for safety. It ends up being my responsibility to prove that the chemicals are hurting me. That is insane!

Through the Precautionary Principle, we would test all the chemicals we use or want to use for safety and disclose that information to the public. And you’re responsible if you make a mess.

The Precautionary Principle gives the benefit of the doubt to children, to the Earth, to the health and well-being of future generations of all species.

4) LOOK FOR EARLY WARNINGS. We will approve some substances, and then we’ll get more information. It’s important that as we do so, we heed early warnings. We need to put into place systems that look at signs like declining species, increased body burden of chemicals, increased asthma rates. And when we see that there may be a problem, the Precautionary Principle means taking protective action sooner rather than later.

5) Because we’re looking for the best alternative, the most protective action, science alone can’t make decision. We require AFFECTED STAKEHOLDERS TO BE AT THE TABLE. It requires democracy. I get to stand up and say what I love. I get to stand up and say I have an alternative. I get to be at the table when decisions affect me and the things I love.

“The Precautionary Principle says there needs to be a place for all stakeholders in decision-making—and that includes future generations.”

Early critics of the Precautionary Principle said, “You’re going to stop all action.” The beauty of the Precautionary Principle is that it *requires* action to prevent harm: You start looking for alternatives. You start working toward your goals. You start requiring the person who is advocating for the new development, or importing toys, or using new paint to look ahead, to be responsible parties for their actions. Asking people to be responsible for their actions changes behavior.

CAQ/Tracy: What’s next for you and for SEHN’s work to get governments to implement the Precautionary Principle?

Carolyn: We’re working to expand on the part of the Precautionary Principle that says there needs to be a place for all stakeholders in decision-making—and that includes future generations.

Through the Precautionary Principle, we say, “This generation will refrain from doing harm to your generation to come. We will do for your generation what we want done for ours: we want clean air; clean water; healthy babies, polar bears and pollinators; healthy prairie ecosystems; and old redwoods. And we want those for you, too.”

So we’re actually trying to change laws to reflect the need to protect future generations, which includes all of us here and those to come. This is a continuum—it is not “them” and “us.” You and I also have a future, so we are representatives of this generation *and* the future. And all the future generations that will ever be born are present in the world today, in everyone’s eggs and sperm. The DNA is here already.

CAQ/Tracy: That’s a radical shift from the type of government oversight of chemicals we have in place now.

Carolyn: It is! The theory of government that most clearly reflects the Precautionary Principle is the idea that governments hold a primary function to serve as the trustee, not the owner, of the common wealth and the common health of this and future generations. What that means is government is to take care of the things we share—air, water, wildlife, agricultural seeds. They are not the owners, they are the stewards, caretakers—of national parks, public health, clean water—things I cannot protect on my own.

So what we are proposing is that the next US president should designate a “Legal Guardian for Future Generations” to evaluate policy decisions and proposals based on the impact they will have on future generations, and to speak on behalf of future generations.

Can you imagine having someone at the presidential cabinet level who would evaluate the budget, litigation at the Department of Justice, the national debt, and environmental regulations in light of what we’re going to leave to the people who will come after us? Our government is really good at evaluating proposals for their impact on business. We’re not good at looking at future generations.

CAQ/Tracy: A lot of people feel that way about the Earth on a personal level, but the idea of it at a federal level is a beautiful one.

Carolyn: Yes, many people are already fulfilling that idea, even if it hasn’t been given the name of Guardianship, like

river keepers, prairie restorers.

And in the short term, the Legal Guardian is something that governments at any level could elect or designate. We could have a community-based Legal Guardian who would, among other things, make sure that the river that runs in my backyard is as clean or cleaner when I leave the community as when I came to it.

In fact, early next year, SEHN should have draft constitutional amendments for states, nations, and tribes, as well as a draft statute that would implement US Constitutional provisions and a job description of a Legal Guardian. We are collaborating with the Harvard Law School’s Human Rights Clinic to help put draft laws in place at these levels to help guide people on how they could make decisions for those who come after us.

There are 759 Indian tribes, and most have constitutions. Fifty states and Puerto Rico have constitutions. And then there’s the US Constitution. These governments all have processes to amend those documents, and we’ll share this idea with them all.

We are also cooperating with the law schools at University of Vermont and the University of Iowa to take these “future generations” laws further when it comes to climate change. And it’s in that context that we’re writing an actual job description for a Legal Guardian for Future Generations.

For so long, the environmental movement said “no.” What I’ve discovered with the Precautionary Principle is that we are saying “yes” to safer products, goals, progress that means health, wholeness, beauty. To not living ugly and poor and degraded lives.

And then with Guardianship, we say “yes” to the invitation to this larger vision of who we can be individually *and* what we can do together.

CAQ/Tracy: What can people do to be Guardians?

Carolyn: They can start out with the small and respectful gesture. Many small and respectful gestures add up. We can stand up with the nobility, the honor, the sacred obligation to live in this world in ways that grace our children and those to come with health and wholeness.

Whatever it is that you can start to do to reduce your impact on the world—whether it’s eliminating paper towels, changing light bulbs, driving less, walking more, adopting a river ... advocating for a Legal Guardian at your city council—do it. Ask yourself what your gift or skill in the world is and what the problem you hear calling to you is, and line those up. Know what you do well and use it to address the problems in the world that call to you.

As Mary Oliver asked, “What will you do with your one wild and precious life?” 

For up-to-date information on SEHN’s Guardianship Project, sign up for its free “Networker” e-newsletter at www.sehn.org. If you are interested in establishing guardianships for future generations in your town or county, e-mail info@sehn.org.