

The Organic Rule: An opportunity to test the Precautionary Principle

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Since its inception, organic agriculture has been a farming system that has, in principle, adhered to the precept of precaution. It is a system of farming that uses nature's own ecosystem services to produce food and fiber for human consumption. Instead of using exogenous inputs, it uses nature's own cycles and organisms to achieve production goals. Instead of using manufactured soluble nitrogen, for example, it uses leguminous plants whereby bacteria "fix" atmospheric nitrogen in the soil.

This approach to agriculture means that organic farmers have been alert to the fact that they need to protect, from harm, the natural systems on which their production practices depend. Hence the precautionary approach.

About a decade ago the organic community with consumer and environmental groups, lobbied the U.S. Congress to pass federal legislation to regulate organic production and handling. That request was market driven. Since organic food had become popular unscrupulous entrepreneurs had started to label foods as organically produced when they had not been produced or manufactured in accordance with organic principles.

As a result the Organic Foods Production Act was enshrined in the 1990 Farm Bill and USDA was instructed to craft the rule to implement the legislation. The proposed rule was published in the Federal Register December 16, 1998.

The proposed rule generally follows a risk assessment approach to regulation. The philosophy of risk assessment allows a potentially harmful practice to continue unless or until cause/effect data substantiates that the practice in question causes a level of harm

that can not be justified in relationship to the benefits of the practice.

While much of the rule proposes sound organic principles, it allows for practices and materials to be used in organic production and handling that have previously not been allowed by most private certification systems. The rule allows such previously prohibited practices PROVIDED THAT certain kinds of environmental degradation do not occur. This is where the risk assessment, rather than the precautionary principle, drives the regulatory scheme.

The rule would, for example, allow certain soil amendments to be used so long as no "measurable degradation" to soil quality could be established. This means that while organic agriculture has traditionally said "no" to any materials that were inconsistent with a natural farming system as a precaution against harmful affects, the rule would ALLOW suspect practices so long as measurable degradation could not be established.

A good example of how this would play itself out in the organic world can be seen in an example that the rule provides in its Preamble.

For example, if nitrate levels in an adjacent well are found to increase over two or more crop years following application of a highly soluble mined source of nitrogen to soil...then the practice would have to be terminated or modified to prevent further adverse effects on water nitrate levels. (205.2)

This is clearly a risk assessment approach. It would allow the use of a material (highly soluble nitrogen), which had previously been prohibited in principle, until it could be demonstrated by cause/effect scientific measurement that degradation had occurred. Rather than taking precautionary steps to prevent the

degradation from occurring, this rule requires that the practice be stopped after the degradation has occurred.

Such a risk assessment approach not only runs a greater risk of doing harm to the environment, it also runs the risk of destabilizing the organic agriculture system. Organic farmers depend on the health of natural ecosystem services to achieve their production goals. Allowing the use of exogenous inputs in place of practices that encourage more robust ecosystem services could result in the degradation of those very services, and therefore impair the productivity of organic farming. Numerous ecologists have demonstrated how the health of natural ecosystems and agricultural productivity are intimately connected. (See, for example, Y. Baskin, *The Work of Nature*, 1997, and S. Buchmann & G. Nabhan, *The Forgotten Pollinators*, 1996)

The organic rule provides a perfect opportunity for federal regulatory agencies to apply the precautionary principle. Since organic agriculture has traditionally used the principle of precaution in practice, applying the precautionary principle to the regulatory scheme should be a perfect fit. And once a regulatory scheme has been developed for organic agriculture, using the precautionary principle, it might become more feasible to apply it to other, appropriate regulatory initiatives.

There is some indication that the industry is interested in applying the precautionary principle to the organic regulation. At its annual conference on February 9, 1998, the Northern Plains Sustainable Agriculture Society proposed, as one of their six priorities concerning the rule, that the precautionary principle should guide the final rule.