

# **Some Legal Principles for Mining, Fracking, and Pipelines: Defending Our Communities and Future Generations**

By Carolyn Raffensperger for the Science & Environmental Health Network and  
the Women's Congress for Future Generations

Last updated June 2015



We have entered the Age of Extreme Energy. Every region is facing threats – from Virginia to Wisconsin, from Nebraska and Iowa to California. New destructive techniques – for mining, drilling, processing, and transporting fossil fuels – are swarming across the land like locusts.

## **Communities and the natural world are threatened**

Corporations come in and pick off individual landowners and county boards with threats of eminent domain and false arguments about national security. They bring unparalleled threats to our water, land, and climate from tar sands, fracking, mountain-top removal, and deep drilling beneath our coastal waters. After they get what they're after, the corporations move on, leaving behind a ruined landscape, toxic water and soil, communities worse off than before.

The old legal principles that permitted exploitation of land and people have failed us, failed to protect the necessities for life – air, water, land, water, plants, animals, and public health. To protect our communities and the natural world, we can establish new legal principles.

To succeed in this effort, we must stand together. The work of protecting our communities can be so lonely when we believe we are the only ones facing a monumental threat. We must stand together because we have a new story to tell and new legal principles to guide us. We must stand together because the Earth is too precious to hand over to faceless corporations enriching their shareholders at the expense of future generations. This story can only be told with all our voices.

We stand together around these legal principles, which are essential to protect the land, water and health of our communities:

### **1) The common wealth is the basis of the economy.**

The commons include water, air, wildlife, roads, parks, schools and other things that the people share. The commons are what provide value to private property. Farms can't get their grain to market without public roads. Businesses (and their owners, employees and customers) can't function without clean air and water. We get hunting and fishing licenses to limit the taking of wildlife, so our common heritage can endure.

### **2) Government has fiduciary and public trust responsibilities to protect the commons for the people.**

The primary responsibility of state and local governments is to take care of the common wealth and health of its people. Government's responsibility is not to make private parties (such as corporations) rich. It is not to steal common assets from the people with one hand and sell them as private property with the other.

Government's responsibility is to protect the common wealth for all its people. That is the central purpose of government.

### **3) The precautionary principle is the best decision-making tool for governments to use to fulfill their public trust obligations to the commons.**

Most environmental decisions are made balancing the costs and benefits of an activity to the economy. The economy gets the benefit of the doubt rather than people's health, clean drinking water and breathable air. The precautionary principle stands for the idea that we need to take action to prevent harm in the face of scientific uncertainty. Methods for implementing the principle include heeding early warnings, setting goals, identifying and choosing the best alternatives to harmful activities, reversing the burden of proof and the democratic engagement of affected stakeholders.

### **4) No eminent domain for private gain!**

Eminent domain is the unique power of government to "take" private property (with just compensation) and move it into the commons to create a public good. Eminent domain must not be used to move private property from one private owner to another private owner. Nor should it privilege a private corporation that will destroy any part of the commons.

Using eminent domain to give private property (or public land) to a corporation is an abuse of power by government. A polluting pipeline that enriches its shareholders and damages the commons is not a public good.

**5) Citizens have a right and a duty to withdraw consent from government actions that threaten the common wealth, communities or future generations.**

In a democracy, the legitimacy of government derives from the consent of the governed. If government does not have the consent of the people then we face either anarchy or dictatorship. Local communities have a right to give or withhold their consent from activities that threaten their future. New mechanisms for giving consent must be implemented. These mechanisms include referendums, ballot measures and town hall meetings.

**6) The Polluter Must Pay**

The public cannot be stuck paying the bill for spills or other damage to water, land or air. Accordingly, bonds and other mechanisms sufficient to clean up a worst-case accident must be in place before ever siting a well, a pipeline, a mine or a toxic waste facility. The bond must be in cash, not the stock of the company and not self- insurance.

**7) Tribal nations have sovereignty to protect their land and water.**

All treaties must be honored. We stand with tribes who are defending their land, water, people and heritage.

**8) Corporations are not people and have no inherent rights. They operate solely at the will of the people.**

The recent legal claim that corporations have the right of free speech, and the power to exercise eminent domain, has had disastrous consequences for communities and for future generations. The fiction that corporations are people must end. Anything that doesn't breathe isn't protected by the Bill of Rights.

**Our Stand**

We stand by these principles because they are pillars of justice. Without justice the rule of law is meaningless.