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European Environmental Rules Propel Change in U.S.

By OTTO POHL

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BRUSSELS - When Darcy White of Raytown, Mo., chose to breast-feed her baby daughter two years ago, she had never heard of brominated flame retardants. But after randomly participating in a study, she learned that her breast milk carried unusually high levels of the chemicals.

Since then, the Environmental Protection Agency has announced an agreement with chemical manufacturers to phase out the worst of these toxic compounds, which are present in a wide variety of consumer goods like furniture and computer monitors, and Congress is considering legislation to make the ban permanent.

But it was only after the chemicals had been banned here in Europe that sufficient political pressure built for a phaseout in the United States.

That cycle was no accident. Globalization has often been condemned as encouraging a race to the bottom as multinationals seek the cheapest and least regulated place to do business. But increasingly, American environmental and public health advocates see globalization as a way to start a race to the top. They are taking their issues to the European Union, hoping to use regulations there as a lever for regulations in the United States.

"We are putting more resources into Europe than we otherwise would have done," says Charlotte Brody, coordinator of Health Care Without Harm, a Washington-based group attempting to reduce harmful substances in hospital supplies. "We desperately need the E.U. to be raising the bar and show what is possible."

Environmental groups, too, are working more closely with European lawmakers.

"We feel that Europe is a real opportunity," says Ned Helme, executive director for the Center for Clean Air Policy in Washington. Once Europe moves ahead on programs to curb the gases believed to cause global warming, Mr. Helme believes, it will promote change in the United States. "We're pushing where the opportunity for innovation is greatest," he said.

The regulations affect a broad range of American chemical, energy and electronics companies, and industry groups say bureaucrats they did not elect are wielding unprecedented power over them, based on insufficient evidence of harm.



Don Ipock for The New York Times
Darcy and Steve White's daughter, Katelyn, is healthy despite the fact that Ms. White's breast milk was found two years ago to carry high levels of toxic chemicals.

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"The E.U. is going where no man has gone before," says James Lovegrove, managing director of the European division of the American Electronics Association, a United States industry lobby. "The moment the ink hits the paper in Europe it becomes a global piece of legislation."

The generally stricter European laws reflect a different philosophical approach to regulation, says Dr. Indra Spiecker, a lawyer specialized in comparative law and assistant professor for American law at the University of Osnabrück in Germany. American lawmakers primarily look to cost-benefit analysis, which holds that the benefit of imposing regulation should outweigh its cost. European nations have more readily embraced what is called the precautionary principle. Essentially, Europeans emphasize the cost of inaction, while Americans tend to focus on the cost of action.

"Fifteen years ago consumer issues would start in the United States and sweep over to Europe," says Ursula Schliessner, a product safety lawyer at McKenna Long & Aldridge in Brussels. "Now when there are consumer issues in the E.U. they trigger reactions in the United States."

In the case of the flame retardants, scientists from the Environmental Working Group, researching the prevalence of the chemicals in American mothers, discovered that Ms. White, an outwardly healthy 31-year-old practicing nurse, had some of the highest levels ever recorded. Studies have shown that, in laboratory animals, the chemicals can cause severe damage to the brain, especially in the first months of life. No one has proved that the substances are dangerous to humans, and Ms. White's daughter, Katelyn, is thriving.

Although concerned, Ms. White does not warn expectant mothers who come to her maternity ward to be tested for the chemicals. "You don't want to freak out mothers more than they already are," she says.

But Dr. Linda Birnbaum, director of the experimental toxicology division at the E.P.A., says the risk identified in the European studies, which then triggered additional research in America, was high enough to warrant action.

A co-author of the current legislation in Congress, Representative Diana DeGette, Democrat of Colorado, also says the European action against the substance was important to raise the issue in the United States. "The fact that the E.U. is taking steps really helps give us an argument" to ban the substances, she said.

European legislation can have an even more immediate impact in an area like consumer electronics. Because of the global nature of the electronics business, a multinational that redesigns its product to eliminate a substance banned in the E.U. often finds it cheaper to sell that product worldwide.

One such law that came into force last year limits or eliminates metals used in electronics considered particularly noxious when they leach into the environment.

The E.U. is now considering sweeping new regulation of its chemical industry that has unleashed what analysts here say is the biggest lobbying effort in Brussels ever mounted by American industry.

The new law, known as Reach, would place the burden of proof of safety on the producers before its sale, rather than waiting for problems to spur regulation later. It would force American chemical companies to comply with the legislation in order to continue exporting to Europe - and raises the fear of similar legislation in the United States.

The chemical industry points out that few if any of the unregulated chemicals are causing obvious health crises and says the legislation is overly bureaucratic and expensive. The American Chemical Council has marshaled its members to alter or derail the legislation.

But American environmental groups are eagerly supporting the law. "This is the place

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where the action is," says Tony Long, director of the World Wildlife Fund European policy office. He sees the potential effects of Reach broader than its technical jurisdiction. "This will have results around the world," he says.

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