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San Francisco Chronicle

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### Will the Environmentalists Find Their Voice? Once an environmental leader, U.S. now barely follows

Clifford Rechtschaffen

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For U.S. environmentalists, 2005 will be remembered harshly, because it marked the clear and undeniable end of U.S. global environmental leadership. For three decades, the United States was the world's environmental trendsetter. But now leadership comes from the European Union, a phenomenon I observed firsthand last spring as a Fulbright scholar teaching comparative environmental law at the University of Ljubljana in Slovenia.

The most prominent example is global warming. Despite a strong scientific consensus that Earth's temperatures are rising because of human activity, the Bush administration clings stubbornly to its opposition to mandatory limits on greenhouse gases, most recently evidenced at the Montreal climate change talks. Meanwhile, in 2005 the EU embarked on an aggressive approach to limiting greenhouse gases, modeled after market-based strategies to controlling acid-rain emissions pioneered by the United States. About 12,000 industrial facilities are required to limit their emissions of carbon dioxide (a leading contributor to global warming), but have flexibility in how to achieve these limits.

The EU also is on the verge of adopting a "chemicals policy" embodying the principle of precaution -- a "better safe than sorry" approach. In both the United States and Europe, thousands of chemicals are used in commerce, even though we know very little about their potential toxic impacts. Under current regulation, chemical producers rarely are required to test chemicals before using them; instead, the government must demonstrate a toxin is unsafe to halt its use. The EU's new policy shifts the burden of proof. Before chemicals that raise significant health concerns may be used, producers will have to show, through testing if necessary, that the chemical is safe, or that the benefits of its use outweigh the risks, including that there are no available substitutes. The EU already has forged the lead in banning polybrominated diphenyl

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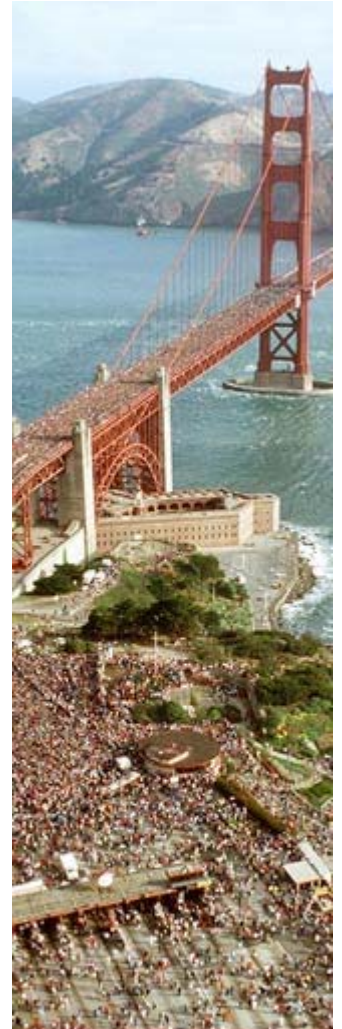
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ethers, widely used as flame retardants in furniture, bedding and other products, after evidence showed rapidly rising levels of these compounds in breast milk. (California imposed a similar ban in 2003.)

Additionally, the EU is leading the way in innovative recycling practices, including laws requiring producers to "take back" products from consumers at the end of their useful life and to pay for their recycling and disposal. In this way, the price of these products will reflect the true costs they impose on the environment. Under recent EU directives, consumers can now return computers, electronic equipment and automobiles at the end of their useful life free of charge to certified collection centers. The United States has no comparable system, although in 2003, California imposed a fee on electronics purchases to fund recycling facilities.

The EU is outpacing the United States with incentives for market-based environmental strategies, including promoting a reliable market for Earth-friendly products. Unlike the United States, where "green" consumers must sift through a confusing array of labels and advertising claims, in Europe, certifying boards determine whether products meet environmental goals. Consumers in Europe can shop for green appliances, cleaning and paper products, home and garden supplies, lubricants, clothing and tourist services. Likewise, large companies in the EU are expected to disclose to investors and the public far more detailed information about the environmental impact of their activities -- a boost to the socially responsible investment movement.

The record is not one-sided. Our Endangered Species Act, although now under attack, has more teeth than comparable EU laws. The EU has no equivalent to the federal Environmental Protection Agency's Superfund program, despite its thousands of contaminated waste sites. And the culture of strong environmental enforcement is still only taking root in many EU countries.

On balance, however, the EU is tackling its most pressing environmental problems with a focus and creativity Americans can only envy. As we start the new year, we should learn from the EU's innovative approaches. (Indeed, California's recent electronic waste law and ban on flame retardants were modeled in part after Europe's system.) By doing so, we can reassert our role as the world's environmental leader.

*Cliff Rechtschaffen is a member scholar of the Center for Progressive Reform ([www.progressivereform.org](http://www.progressivereform.org)) and a professor of law at Golden Gate University School of Law in San Francisco.*

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