In January 2011, a large group of Chinese NGOs unearthed and publicized major pollution and labor violations in the Chinese supply chain for the corporate giant Apple, which had cultivated an image as a responsible and progressive company.

With the violations—some of the worst in the industry—out in the open, Apple conducted its own audit, and disclosed instances of unsafe working conditions, improper handling of toxic chemicals, and the use of underage labor by some of its Chinese suppliers. The company then agreed to an independent auditor to monitor its supply chain and it joined a fair labor association.

Today, Apple refuses to do business with suppliers who violate environmental and labor regulations, giving these suppliers powerful motivation to change their practices. “The incentive used to be only to cut costs; now it’s also to clean up, or not supply Apple,” says Robert Percival, Robert F. Stanton Professor of Law and director of the Environmental Law Program.

The power of this NGO coalition, which was led by the Beijing-based Institute of Public and Environmental Affairs, represents one of several types of strategies being used in today’s new order of global environmental law, says Percival.

International treaties are not as influential as they once were. Regional agreements are on the rise. And much of the energy of environmental activists is devoted to “bottom-up” approaches to
environmental law, as activists persuade nations to adopt each other's innovations—like the U.S. ban on unleaded gasoline spreading to most of the world.

One way that NGOs in the developing world influence corporate practice is by using the tool of transparency to mobilize consumers—in much the same way that U.S. environmental groups did in the 1980s—but with the added efficiency of the Internet, Percival says. China, where air pollution kills 1.2 million people a year, has no express provision for the citizen enforcement lawsuits that helped reform environmental practices in the U.S. But as activists push for improvements through alternative types of pressure, China has begun to see itself as a global environmental leader. “The environment is so bad there that the same amount of effort can make a lot bigger difference there than here, where our laws are more mature,” Percival says.

A different strategy involves the recognition by nations that they share environmental challenges. So they borrow legal and regulatory innovations from one another to respond to those challenges, Percival says. For example, Apple Chapman ’99, associate director of the EPA's Air Enforcement Division, recently attended a conference in India where countries shared information and ideas to improve environmental compliance. She spent much of her time with a representative from Kenya who wanted to know what U.S. companies were doing to comply with emissions regulations. She gave the Kenyan in-depth information about the EPA's national enforcement initiatives and multi-facility approach to settlements. “It was helpful to them to have a model,” Chapman says.

The exchange reflects a growing trend of nations leading by environmental example, Chapman says. “India is looking to countries who have been there, done that, and hopes to avoid some of the mistakes the U.S. made, for example,” she says. Next-generation technology—enabling better monitoring, electronic reporting, and third-party auditing—should help make that possible.

A third strategy involves a questioning of boundaries. A growing number of lawsuits seek to hold companies liable for environmental harm they caused elsewhere, raising questions about where transnational liability litigation should occur, and what standards should apply for enforcement of foreign judgments.

“What's fascinating is that so many diverse strategies are being employed to improve the environment in various countries,” Percival says. “The baseline norm is you can't engage in activities that are going to cause serious harm to others without having to face the music eventually.” —Robert Percival

U.S. environmental groups did in the 1980s—but with the added efficiency of the Internet, Percival says. China, where air pollution kills 1.2 million people a year, has no express provision for the citizen enforcement lawsuits that helped reform environmental practices in the U.S. But as activists push for improvements through

strengthened through a website (http://www.globalenvironmental law.com/) and a weekly blog (http://globalenvironmentallaw.blogspot.com/).

When it was reported on May 10 that concentrations of carbon dioxide in the atmosphere had passed the threshold of 400 ppm, Percival had just finished presenting a paper on “The Role of Civil Society in Environmental Governance” with Professor Zhao Huiyu of Shanghai Jiatong University Law School at a conference in Nanjing, China.

“While it may now be easier to pass environmental legislation in China, it may be harder to enforce such laws because they are not the product of hard-fought compromises

ENVIROMENTAL IMPACT

ROBERT PERCIVAL has played a leading role in conceptualizing the new field of global environmental law as a founding member of the IUCN Academy of Environmental Law. Percival's impact is
going to cause serious harm to others without having to face the music eventually.”

A complicated and ongoing legal battle illustrates this third type of strategy, Percival says. In the 1970s, the Ecuadoran government invited Texaco to develop the South American nation’s petroleum resources. In 1993, a group of Ecuadoran villagers, seeking compensation for severe pollution from the oil drilling, filed suit against Texaco in federal district court in New York under the Alien Tort Statute, which allows foreigners to sue in U.S. courts for torts committed in violation of the Law of Nations.

A federal trial court dismissed the suit, but the Second Circuit Court of Appeals later affirmed the dismissal only if Texaco would submit to the Ecuadoran courts instead. So the company, by then Chevron, re-filed in Ecuador. Realizing changes in the Ecuadoran government were not in the company’s favor, Chevron in 2009 filed an international arbitration claim against the government of Ecuador in the Permanent Court of Arbitration in The Hague to expand the litigation’s venues. In February 2011, an Ecuadoran court handed down a judgment of $18 billion. But days before the decision, Chevron filed a racketeering lawsuit against the Ecuadoran plaintiffs and their attorneys in a U.S. court. Ironically, the U.S. Supreme Court recently closed the U.S. courts to lawsuits by foreigners over harm caused abroad.

However this story may end, Percival says that such transnational environmental litigation is helping to create new norms of corporate behavior in remote corners of the globe. It may make multinational companies less likely to seek dismissal of litigation if that would mean submitting to the jurisdiction of foreign courts. It may put pressure on governments to enforce foreign judgments. And, as the courts continue to wrestle with the case, they may shape global norms of due process. Chinese companies, Percival predicts, could be such litigation’s next target. He cites Chinese mining companies that relocate communities in South America and Africa to build mines.

What all of this means, Percival says, is that it’s no longer a question of domestic law versus international law, but a new kind of global law. “The lines dividing domestic and international law and public and private law are starting to blur as various countries borrow environmental innovations from one another and private actors work more closely with government officials,” he notes.

Apple Chapman ’99, associate director of the EPA’s Air Enforcement Division

with the regulated community,” Percival notes. “The NGOs are playing an increasing role in environmental policy, though their greatest successes appear to be through transparency initiatives rather than litigation.”

Closer to home, Percival teaches a Global Environmental Law seminar that compares how legal systems in different countries are responding to environmental problems. Students in the seminar examine the legal and political factors that may explain differences in policy responses, and explore how the common law, civil law, and socialist legal traditions have influenced the development of environmental law and policy.

Percival is also the principal author of the country’s most widely used environmental law casebook. Now in its seventh edition, Environmental Regulation: Law, Science & Policy is available in e-book format through Wolters/Kluwer’s SmartBooks program.