

**Key Concepts and Rationalities in Canada's Environmental
Enforcement Act: *Tensions between Environmental Protection and
Economic Development***

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List of Abbreviations

CEPA	<i>Canadian Environmental Protection Act</i>
CITES	Convention on International Trade in Species or Wildlife Flora and Fauna
CPC	Conservative Party of Canada
EEA	<i>An Act to Amend Certain Acts that relate to the Environment and to Enact Provisions Respecting the Enforcement of Certain Acts that Relate to the Environment; short title the Environmental Enforcement Act.</i>
ENVI	The House of Commons Committee of Environment and Sustainable Development
EVAMPA	The <i>Environmental Violations Administrative Monetary Penalties Act</i>
IMO	International Maritime Organization
MARPOL	International Convention for the Prevention of Pollution from Ships
MP	Member of Parliament
NAFTA	North American Free Trade Agreement
NDP	New Democrat Party
OECD	Organization for Economic Co-operation and Development
Senate Committee	Standing Committee on Energy, the Environment, and Natural Resources
UNCLOS	United Nations Convention on the Law of the Sea
UNEP	United Nations Environment Programme
US	United States
WAPPRIITA	<i>The Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act</i>

Abstract

This thesis first describes and analyzes the key concepts and rationalities that are dominant in the content of the *Environmental Enforcement Act* (EEA). The research project concludes that despite legislative shifts towards increased punishment and deterrence, key concepts and rationalities such as the importance of economic globalization, the continuation of risk-management and anthropocentric values, and the dominance of staples development can be observed in the content of the EEA. The EEA also reflects growing concerns towards managing known structural economic problems such as Canada's staples development and economic globalization.

Secondly, this thesis critically evaluates whether the EEA is likely to contribute towards the effectiveness of Canadian environmental governance strategies. The EEA is likely to be ineffective based on observations of structural challenges in environmental governance and the Canadian political economic context. Neoliberalism, economic globalization, risk management, anthropocentrism, and staples based economic development characterize the problems identified in existing research that the content of the EEA does not adequately address.

Chapter 1: Overview of Canadian Environmental Governance

Environmental harm affects communities at the local, regional, and global level (United Nations Environment Programme, 2008: iii; White, 2005). The United Nations Environment Programme (UNEP) provides a concise summary of environmental issues recognized and discussed by the international community in their “Training Manual on International Environmental Law”. These issues include trans-boundary air pollution, ozone depletion, climate change, hazardous waste, marine pollution, conservation, biodiversity, freshwater, and ecosystem health. Environmental harm is problematic at a global level since the effects are hard to contain within state boundaries (White, 2005: 278-279).

Environmental harm is an increasing problem because it has the potential to negatively affect human and ecosystem health (Burns, Lynch & Stretesky, 2008: 3). Governments have attempted to deal with problems such as climate change and rising carbon emissions through international treaties such as the Kyoto Protocol. Although international agreements are not binding for non-signatory countries, treaties represent the global concern towards the consequences of environmental harm (Burns et al, 2008: 5). Recent international meetings and agreements has solidified the importance of addressing environmental harm.

This research project is concerned with the growing use of criminal sanctions in response to environmental harm. Crime is a social construction that reflects power relationships in society (Lynch & Stretesky, 2003: 85). Criminal sanctions towards environmental harms do not necessarily respond to the magnitude, impact, or risk of environmental harm (White, 2008: 33). The concern identified in environmental criminology is the disparity between what societies consider harmful to the environment and what society addresses using environmental policy tools (White, 2008: 38-40; Burns et al, 2008: 31). This research project builds on this problematization by seeking to determine

what dominant rationalities are present in a newer piece of regulatory legislation entitled the *Environmental Enforcement Act* (EEA)¹.

This research focuses on federal legislation because of the interest in rationalities such as globalization and the Canadian political economic context (Hessing, 2002). Canada's *Constitution Act* establishes jurisdictional authority over the environment (Hessing, Howlett & Summerville, 2005: 62). Canadian provinces hold most of the legislative power under this Act (Hessing et al, 2005: 63-64, 99). For instance, the provinces have control over environmental issues such as non-renewable natural resource exploration, development, conservation, and management (Hessing et al, 2005: 63). Although the provinces have most of the jurisdictional power, there are both provincial and federal pieces of legislation that address environmental harm. For example, federal legislation has authority over fisheries and offshore regions, and the international trade of natural resources (Hessing et al, 2005: 61-63). Federal legislation mainly addresses problems that relate to the Canadian national interest (Hessing et al, 2005: 63).

This research project is concerned with Canada's response to environmental harm at the federal level. Governments have used several different policy tools to address environmental harm. These policy instruments include laws and direct regulation, self-regulation, voluntarism, education, economic instruments, and free market environmentalism (Hessing et al, 2005: 218; White, 2008: 213-214). Direct regulation is the most coercive method whereas free market environmentalism involves the least intervention (*ibid*). Canada is one of several countries that enforce regulatory sanctions to address environmental harm (Hessing et al, 2005: 222; White, 2008: 216). For example, the *Canadian Environmental*

¹The act of interest in this research is *An Act to Amend Certain Acts that relate to the Environment and to Enact Provisions Respecting the Enforcement of Certain Acts that Relate to the Environment*. This research uses the short title, the *Environmental Enforcement Act* or the EEA to refer to this legislation.

Protection Act, 1999 (CEPA) is a federal, quasi-criminal piece of legislation that first came into force in 1988. The Canadian government also uses economic and voluntary instruments to address environmental harm. Canadian examples of economic and voluntary instruments include tax subsidies for oil development and exploration, or user charges on pollution (Hessing et al, 2005: 219-222).

This research project analyzes how a newer piece of Canadian federal legislation, the EEA, reflects and departs from dominant trends in ways of thinking about contemporary governance problems. This federal piece of legislation was introduced in the House of Commons shortly after thousands of ducks were killed in a tailings pond owned by Syncrude, a large oil company operating in Alberta (O'Neill, 2009; Zimonjic, 2009). Under the old legislation, Syncrude is liable to a \$300,000 fine or six months in prison² (Bigras in Parliament of Canada, 23 March 2009). This highly publicized example of environmental harm highlighted the perceived need for “tougher” responses to environmental harm (O'Neill, 2009; Zimonjic, 2009). The EEA aims to modernize “out of date” environmental Acts under the assumption that current legislation did not address the extent and severity of environmental harm (Environment Canada, 2009).

The EEA attempts to address the perceived lack of responsiveness to environmental offences under each of the nine amended Acts by creating several regulatory changes (Environment Canada, 4 March 2009). The EEA changes the fine structure, sentencing provisions and enforcement tools in each of the amended Acts. A new fine structure adds minimum fines and increases the maximum fines under each existing Act. Sentencing changes change attempt to achieve the goals of deterrence, denunciation, and restoration.

² Syncrude Canada Ltd. accepted a \$3-million fine settlement after being found guilty of one federal and one provincial charge (Wingrove, 2010).

Sentencing changes include new aggravating factors, fundamental purposes, and require the publication of the details of the offence as part of these new sentencing provisions. New enforcement tools include the addition of a public registry of corporate offenders, the increased authority to issue compliance orders, and the increased use of analysts and experts under each amended piece of legislation (Becklumb, 2009; Environment Canada, 2009).

The EEA also creates the *Environmental Violations Administrative Monetary Penalties Act* (EVAMPA). The EVAMPA establishes administrative monetary penalties for each of the nine amended Acts and the *Canada Water Act*. As stated in section 3 of the EVAMPA, the purpose of this piece of legislation is “to establish, as an alternative to the existing penal system and as a supplement to existing enforcement measures, a fair and efficient administrative monetary penalty system for the enforcement of the Environmental Acts”.

Canada’s historical economic development has been shaped by the many natural resources the country possesses (Hessing et al, 2005; Howlett & Brownsey, 2007; Watkins, 1989). Harold Innis established the staples theory of economic development to speak of the Canadian fur trade in the eighteenth century (Innis, 1995: xxix-xxxiii). This theory is still relevant to understanding the links between the natural environment and the economy in Canada. For instance, Canada still has abundant quantities of natural resources, or “staples”, such as fresh water, timber, fish, minerals and petroleum (Hessing et al, 2005: 4).

Canada is not unique in the continued reliance on staples-based economic growth. Countries such as Australia, Japan and Norway share similarities with Canada in terms of natural resource and economic development. Each of these industrialized countries still relies on staples-based economic production for economic growth. For instance, Australia’s forestry sector, Japans agriculture and fishing industries and Norway’s oil production are still

an important part of each country's economic development (Castells, 2010; Halsey, 2006; Larsen, 2004). Canada's economic growth is also reliant on natural resource production in sectors such as mining, oil production, and forestry (Howlett & Brownsey, 2008; Smandych & Kueneman, 2010).

Countries that have an abundance of natural resources share a potential economic disadvantage. When countries become reliant on international trade, they must rely on the global market for economic growth (Hessing, 2002: 28). The global market is a free and uncontrolled market (Burns et al, 2008: 31). If there is a decrease in the profitability of global trade, countries that rely on the export of natural resources experience economic loss in other economic sectors (Bergevin, 2006). Canadian Parliament documents that describe Canadian natural resources label this potential for economic loss as the "resource curse"³.

Canada shares a similar economic reliance on natural resources when compared with other industrialized countries. However, the context of trade agreements such as the North American Free Trade Agreement (NAFTA) places Canada in a unique position with a powerful neighbouring country. Canada is economically integrated with the United States because of NAFTA and the requirement to abide by trade rules (Hessing, 2002: 39-42). This integration has been said to weaken the Canadian government's capacity to protect the environment (Hessing, 2002: 39).

The geographical size of Canada has also meant that natural resources have developed differently in each Canadian province and territory. Canada has a history of economic development in mining, oil production, and forestry due to the abundance of natural resources. The differences between the political economic development of provinces

³The "resource curse" is defined as a negative relationship between economic growth and natural resources wealth (Bergevin, 2006; Larsen, 2004).

such as Quebec, Alberta, and Newfoundland in the context of various staples have caused a regionalism that impacts federal governance on a variety of issues (Brownsey, 2008; McMullan & Perrier, 2002). Similar relationships are not as apparent in other staples-reliant countries. Canada's reliance on powerful, neighbouring trading partners is also unique when comparing other industrialized countries.

Canada's political, economic, and historical context shapes Canada's legislative response to environmental harm. Canada is not unique in the application of fines, enforcement and sentencing tools towards environmental harm. In fact, international environmental norms and commitments are reflected in many national laws and policies (UNEP, 2008: 15-17). The need to respond to environmental harm is the basis behind many national and international environmental laws. For example, many countries around the world acknowledge the principles from international environmental agreements such as the Rio Declaration and the Kyoto Accord. However, the EEA provides an interesting case study because it serves as an example of the increasingly punitive approach to environmental protection a unique country such as Canada has developed.

Chapter Plan

This research project describes and evaluates the content of the EEA to achieve two objectives. First, the goal is to describe the content of the EEA as it relates to the key concepts, or rationalities, that dominate contemporary trends in governance. The second goal is to provide an evaluation of whether the EEA is likely to contribute towards the effectiveness of Canadian environmental governance strategies. To achieve this goal, this research project critically evaluates the quality of the content of the EEA in terms of what the existing literature has identified as the essential components of successful environmental regulatory legislation.

Chapter 2: Description of the Methodology, Research Problems, and Research Questions has three aims. First, a discussion of the literature will help to situate and justify the rationalities this research project deploys. These rationalities include neoliberalism, economic globalization, risk management, sustainability, philosophical anthropocentrism, and the staples theory of economic development. Second, the key concepts that this research hypothesizes will be present in the content of the EEA are defined. Third, this chapter will identify why the content analysis method is best suited for this research project.

The research questions and hypotheses develop from existing literature in the multi-disciplinary fields of sociology, political science, and criminology. However, this research primarily examines the content of the EEA in light of existing research in the field of environmental criminology. Environmental harm has only become a subject of interest for criminologists within the past two decades (Chunn, Boyd, & Menzies, 2002: 8). Some theorists blame limited access to information for the failure to develop research on the topic of environmental harm (Burns & Lynch, 2004: 2-5), while others blame the reluctance of academic institutions to examine “crimes of the powerful” for the late arrival of environmental criminology (Chunn et al, 2002: 8-9). Despite the delay in critical research on environmental crime, academics are starting to analyze environmental issues from a criminological perspective (Beirne & South, 2007; Hessing et al, 2005; Sollund, 2008; White, 2008). The chapter concludes by outlining the research questions and hypotheses that this research project addresses. The hypotheses are based on the rationalities that dominate contemporary trends in governance and that are identifiable in existing literature.

Chapter 3: Content Analysis of Key Concepts and Rationalities Present in the Environmental Enforcement Act will describe the key concepts that are found to be dominant in the content of the EEA. The purpose of this chapter is to reveal the types of dominant

rationalities for contemporary governance that are expressed or departed from in the content of the EEA. Four hypotheses focus on this purpose. The first hypothesis is that the key concepts of neoliberalism and economic globalization are dominant in the content of the EEA. In light of trends in environmental governance, the second hypothesis is that rationalities of environmental governance such as risk management and anthropocentrism are dominant in the content of the EEA. The third hypothesis predicts that environmental governance strategies such as sustainability do not dominate the content of the EEA. In light of Canadian political economic trends, the fourth hypothesis is that the content of the EEA emphasizes the political economic approach of staples development.

Chapter 4: Critical Evaluation of the Environmental Enforcement Act will critically evaluate the quality of the content of the EEA. Six hypotheses address the potential challenges towards enacting progressive environmental legislation that existing literature identifies. First, this chapter addresses the issue of neoliberalism by hypothesizing that the EEA does not address the potential challenges for environmental protection associated with neoliberal governance. Second, this chapter hypothesizes that the EEA does not effectively address structural problems associated with the growth of economic globalization such as the role of international trade and staples development. Third, this chapter hypothesizes that the EEA does not adequately address the challenges associated with rational-choice methods of deterrence. Fourth, this chapter hypothesizes that the EEA does not adequately address the problems associated with anthropocentric philosophical thought. Next, this chapter hypothesizes that any use of sustainability in the EEA does not change the debate between economic progress and environmental protection. Finally, this chapter presents the issue of staples development by hypothesizing that the EEA does not adequately address the contradictions between continued industrial development and natural resource protection.

Chapter 5: Discussion of the Findings will re-evaluate and discuss the significance of the findings from Chapter 3 and Chapter 4 in light of the debates in existing literature. This chapter has two goals: The first goal is to address the significance of findings concerning the content of the EEA. The second goal is to critically evaluate quality of this piece of legislation based on the qualities identified as progressive in existing literature. This research project re-addresses each hypothesis in light of trends in the research on governance, environmental governance, and political economy. Chapter 5 also reflects on the limitations of the findings.

Chapter 6: Conclusion will summarize the global findings of this research project. This chapter structures the findings according to the main rationalities identified or departed from in Chapter 3 and Chapter 4. This chapter addresses the global significance of challenges such as the tension between environmental protection and economic development developed in existing research and identified in this research project. Specifically, this chapter addresses the tension between the need to foster economic growth and the need to manage environmental sustainability in liberal, free market governance. As this research project will demonstrate, the two goals are often conflicting despite the governance strategies that are deployed to address environmental harm. Directions for future research will also be examined in order to conclude on the primary findings and developments identified by this research project.

Chapter 2: Description of the Methodology, Research Problems, and Research Questions

The goal of this chapter is to demonstrate the connection between the research questions, the hypotheses, and existing literature. This chapter provides an inventory of the relevant debates in existing literature that brought about the two goals of this research project. Next, this chapter outlines the research questions and hypotheses that Chapter 3 and Chapter 4 will each address. Finally, this chapter describes the methodology and data analysis approach of this research project.

Key Concepts in Governance

This section examines the potential problems associated with rationalities in governance. Key concepts in governance include the rising dominance of neoliberal programmes of government and the increasing relevance of economic globalization. Both of these concepts are dominant in existing research that examines the policy-making process and context of Canadian governance (Castells, 2010; Gillespie, 2006; Steger, 2003). The term “neoliberalism” encompasses several key characteristics. Deregulation is the main characteristic of neoliberalism that this research project predicts will be present in the EEA. This research defines deregulation as the removal of economic regulation as a method of governance (Braithwaite, 2008: 5-12; Steger, 2003: 41-44). This research project will also explore the paradox of increased criminalization and decreased regulation, taken to be an indication of rationalities of neoliberalism (Ratner & McMullan, 1983).

Economic globalization is a growing factor in the Canadian political decision-making process (Braithwaite & Drahos, 2000; Castells, 2010). Economic globalization also relates to changes in international law. For instance, international agreements and free trade have influenced global changes in environmental law. Existing literature has both analyzed and

evaluated international treaties and agreements such as the Kyoto Protocol and NAFTA (Schrecker, 2002; Hessing, 2002; Hessing et al, 2005). These two international agreements will be the focus of analysis in this research project, given their international relevance (Hessing et al, 2005). The themes identified in international treaties and agreements are likely dominant as political rationalities in the content of the EEA. This section examines trends in existing literature that describe the key concepts of neoliberal governance and economic globalization.

Neoliberal Governance

Neoliberal governance emerged as a response to the Keynesian economic model that facilitated welfarism as a political project (Steger, 2003: 40; Miller & Rose, 2008: 79). The movement away from Keynesian economics and the movement away from “bureaucratic” governance towards “entrepreneurial” governance generally characterize neoliberalism (Osborne & Gaebler, 1993: 12-20; Ratner & McMullan, 1983: 187). Other characteristics include the privatization of government-owned enterprises, the liberalization of trade and industry, the de-scaling of government functions, tax cuts, and a reduction in social spending (Gillespie, 2006: 31; Steger, 2003: 41). Neoliberalism as a programme of government is particularly associated with the Thatcher and Reagan governments of Britain and the United States (Braithwaite, 2000: 224; Steger, 2003: 40; Tombs & Whyte, 2003: 21).

Neoliberal methods of governance were designed to address problems such as the perceived ineffectiveness of welfare liberalism as a political programme (Osborne & Gaebler, 1993: 311-331). Existing research describes the ineffectiveness of welfare liberalism in the context of “declining markets, falling profits, and high inflation” experienced worldwide (Ratner & McMullan, 1983: 191). People who deploy neoliberal methods of governance generally support the decrease of direct, state “rowing” or service

provision in governance (Braithwaite, 2000; Osborne & Gaebler, 1993: 25-48). The solution presented through methods of neoliberal governance is the re-evaluation of state power and the restructuring of a “bloated” and ineffective government (Eggers & O’Leary, 1995: 19-21, 64). The role of the state moved from “steering” to “rowing” due to this change in governance (Braithwaite, 2008: 4-12; Osborne & Gaebler, 1993: 25-48).

Critical assessments of neoliberal methods of governance question the quick acceptance of neoliberalism as a solution to the crises of welfare liberalism that emerged in the 1970’s (Castells, 2010: 143-144). Some researchers conceptualize neoliberalism as a sign of increasingly coercive and hegemonic trends in governance (Ratner & McMullan, 1983: 185). Researchers also state that despite characteristic changes such as deregulation and liberalization, methods of neoliberal governance disperse regulation (Braithwaite, 2000; Miller & Rose, 2008; Ratner & McMullan, 1983). Criminology generally defines this trend as the paradox of increased coercion and decreased social spending. Researchers such as Gillespie and Ratner and McMullan identify this paradox in the context of criminal justice policy initiatives (Gillespie, 2006; Ratner & McMullan, 1983: 189). The implication in the context of criminal justice policy is that the social welfare system is scaled back, but the state continues to pay out for more extensive systems for crime control (Braithwaite, 2000: 227). Both Keynesian and neoliberal programmes of government characterize current governments due to this tension (Braithwaite, 2000: 224-226).

Dominant rationalities in neoliberal governance include characteristics such as fiscal restraint, privatization, liberalization, deregulation, global trade, and changes in how state power is exercised (Steger, 2003: 39-41). Existing literature sees problems such as the weakening of environmental protection and the increase in international economic production as the potential environmental consequences of neoliberal methods of governance

(Chunn et al, 2002; Hessing, 2002). This research project focuses on deregulation because existing literature identifies deregulation as a potentially problematic characteristic of neoliberal methods of governance (Friedrichs & Friedrichs, 2002; Schrecker, 2002).

There is no consensus on the effectiveness of deregulation, especially when considering environmental issues (Braithwaite, 2008: 8-12). Researchers criticize the use of deregulation because of the potential that it will lead to environmental harm. For instance, the need to restrict government control while enhancing competitiveness in the global economic market has implications for environmental issues (Schrecker, 2002: 47). If trade and finance are globalized, then the “staples trap”⁴ becomes likely given the need to export without a concern for national development once an economy is dedicated to global trade (Hutton, 2007: 23-24). Evidence of Canada’s tendency to exemplify the “resource curse” problem is acknowledged in Parliament of Canada publications such as *Energy Resources: Boon or Curse for the Canadian Economy?* (Bergevin, 2006). This research project also focuses on the key concept of economic globalization in light of the trends in existing literature.

Economic Globalization

Globalization has increasingly changed the international political economic context. This research project focuses on the economic aspect of globalization. This research defines globalization as an “intensification” of global social relations that has a long history (Gillespie, 2006: 28). For instance, the rise of globalized networks has accelerated the rate of “production, management, and distribution of goods and services” that has led to the intensification of resource extraction without restraint (Castells, 2010: xliii). Neoliberal

⁴The “staples trap” refers to the embedded ritual of resource exploitation, with the transition from one staple resource to the next as either supply or world demand decline (Howlett & Brownsey, 2008: 8).

techniques of governance such as trade liberalization and the deregulation of financial markets are also key concepts in economic globalization (Castells, 2010: xix-xxiv; Gillespie, 2006).

Economic globalization can lead to political and economic difficulties for countries reliant on natural resource growth. Economic globalization leads to the shifting of control from regional or national centres towards global control. This leads to a reduction in national control of the pricing and profitability of goods such as natural resources (Hutton, 2008: 49-50). For example, international businesses own the majority of the Canadian oil industry (Brownsey, 2008: 240). Free trade agreements such as NAFTA further remove national control over the Canadian oil industry (Brownsey, 2007: 245; Schrecker, 2002). The need to increase economic output shifts the policy-making process away from environmental protection when countries such as Canada rely on export trade development (Schrecker, 2002: 46).

Although the trend towards economic globalization is not necessarily problematic, tensions exist between the desire to deregulate and globalize staples-based industries and the desire to protect the environment by limiting natural resource development. There is a paradox in the Canadian economy of “a rising export-led sector coupled with a struggling manufacturing sector and a rising currency” (Bergevin, 2006). For instance, Canada’s oil and gas industry relies on protectionism but is represented by the Canadian government as a free market resource (Brownsey, 2008: 252).

The need to increase economic production has implications for international agreements. The contractual obligation to maintain NAFTA levels of economic production limits the ability for countries such as Canada to ratify international agreements such as the Kyoto Protocol. Hessing, Howlett, and Summerville (2005) discuss the tension between

ratifying international environmental protection treaties and the political economic context of Canada in detail. Other authors apply the tension between economic growth and environmental protection to the Canadian oil industry (Brownsey, 2007; Nikiforuk, 2010; Smandych & Kueneman, 2010). Existing research agrees that characteristics of economic globalization can “intensify” the weaknesses associated with a staples economy (Hessing, 2002: 27; Hoogensen, 2008: 104). Resource dependence increases the vulnerability of national economies when staples-led growth occurs, potentially leading to a “staples curse” or “staples trap” (Bergevin, 2006; Hessing et al, 2005: 48-51; Wellstead, 2008). Authors such as Ted Benton (2008) establish that the trends towards neoliberal governance and international trade and finance conflicts with “the imposition of normative restraints on economic activity” (Benton, 2008: 10).

Although most theorists see the characteristics of economic globalization as negative for environmental protection, there is potential for environmental protection. For instance, there are approximately 500-900 international agreements that address environmental regulation (Braithwaite & Drahos, 2000: 261). Agreements such as the Montreal Protocol on CFC’s, the Basel Convention on hazardous wastes, and the Convention on International Trade in Species or Wildlife Flora and Fauna (CITES) are all recognitions of the increasingly global characteristic of environmental harm (Braithwaite & Drahos, 2000: 262-267; White, 2008: 133). Despite efforts at international environmental protection, economic globalization has occurred alongside the globalization of environmental harm. Existing research criticizes global political and economic powers for their failure to substantively address environmental harm (Hessing, 2002, Schrecker, 2002). These global forces include transnational corporations, and transnational political and economic institutions such as the United Nations and the World Bank (Barry, 1999, pp. 212-213).

Rationalities in governance such as neoliberalism and economic globalization are likely described in the content of the EEA. Both key concepts have been labelled in existing research as potentially problematic for environmental protection efforts. Deregulation has the potential to lead to environmental harm, and economic globalization is unlikely to address environmental issues, according to the literature identified above. The next section expands on the rationalities associated with environmental governance that existing research identifies.

Key Concepts in Environmental Governance

The following section describes the rationalities associated with environmental governance. This section examines the key concepts of interest such as risk management, sustainability, precaution and anthropocentrism. Existing research notes that risk-based, utilitarian approaches to environmental policy are increasingly favoured as programmes of government (Beck, 1997; Hessing et al, 2005: 7-21). In Canada, environmental legislation is generally “compliance-centred” due to the dominance of economic interests (Snider, 2000: 173; White, 2008: 216-217). The viewpoint of philosophical anthropocentrism is also examined in this section in order to describe how anthropocentrism compliments capitalist market-based, risk management techniques. This section will conclude by describing how existing research has observed that anthropocentric approaches are favoured over sustainability or precaution (Halsey & White, 1998; Hessing et al, 2005: 16-18).

Risk Management, Sustainability and Precaution as Environmental Governance Solutions

Risk management and sustainability are the dominant approaches to environmental governance identified in existing research (Beck, 1997: 51-17; Jacobs, 1991; White, 2008: 54-83). Risk management prioritizes economic gain over environmental protection or precaution (Beck, 1997: 20-22; White, 2008: 76). Risk management as a method of

governance is problematic to many researchers due to the “dogma[ti]c” use of scientific research to justify the continuation of the status quo rather than a change towards environmental protection (Beck, 1997: 104-106; Snider, 2000: 180; White, 2008: 74). This market-based method of governance favours growth, competition, and liberalized markets rather than sustainable development or limits to resource extraction (Jacobs, 1991: 22-23). Researchers that assess risk based approaches to environmental harm question the accountability of this decision-making process. The issue is the criteria used to define what constitutes a “threat” to the environment (Beck, 1997: 6).

In the context of environmental legislation, the alternative to risk-management is precaution (Hessing et al, 2005: 8). When considering environmental governance, the opposite side of the spectrum to a risk based perspective is a preservationist (Hessing et al) or a precautionary approach (Hessing et al, 2005: 7-11; White, 2008: 64-66). The “precautionary principle” is different from risk management because it advocates for the avoidance of risk, even when the extent of environmental risks is unknown (Barry, 1999: 159-160; Dobson, 2000: 59-60). Risk requires that the threat be calculable, whereas precaution requires action even when the full extent of risk is unknown (White, 2008: 56-64). The Rio Declaration [1992] popularized the precautionary approach. This declaration essentially states that scientific uncertainty will not postpone cost-effective methods to preventing environmental degradation (White, 2008: 65; UNEP, 1992). Despite the growing popularity of precaution as an environmental governance strategy, risk-management techniques tend to dominate the environmental policy-making process (Beck, 1997; Halsey & White, 1998: 31-34).

Sustainability has become the “middle ground” between precaution and continued economic growth (Jacobs, 1991: 98-100). Environmental sustainability acknowledges the

needs for development limits while allowing continued economic growth (Barry, 1999: 205-206). Sustainable development emerged as an international concept in the 1987 'Brundtland Report'. This report defines sustainability as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs" (Jacobs, 1991: 79-80; World Commission on Environment and Development, 1987).

Terms such as sustainability have the capacity to either justify the status quo or limit economic growth. The concept of environmental sustainability can align with economic growth theories (Hessing et al, 2005: 8; Jacobs, 1991: 58-61; White, 2008). Conversely, sustainability can represent a departure from the economic status quo if the approach considers ecological issues over market growth (Hessing et al, 2005: 13). The potential benefits of sustainability as an alternative approach are contested (Barry, 1999: 207; Benton, 2008: 14; O'Connor, 1994b; O'Connor, 1994c). Although middle ground theories appear to solve the tensions between the economy and the environment, they tend to reinforce the status quo (Hessing et al, 2005; O'Connor, 1994c; White, 2008). As the next section will describe, risk management theories are dominant rationalities in environmental governance due to the use of policy tools that favour economic growth over environmental protection.

Philosophical Anthropocentrism

This section discusses the viewpoint of philosophical anthropocentrism to explain why risk-based and utilitarian approaches to environmental harm tend to be the most common methods of environmental governance. Anthropocentrism is a philosophical approach to the environment that "giv[es] exclusive or arbitrarily preferential consideration to human interests as opposed to the interests of other beings" (Hayward in Dobson, 2000: 51). Philosophically, anthropocentrism is a belief that humans are biologically, mentally, and morally superior to all other living and non-living beings (Halsey & White, 1998: 31).

According to existing research, philosophical anthropocentrism conceptually reinforces the movement towards neoliberal, risk-based methods of governance (Halsey & White, 1998: 32). These “utilitarian” and risk-based solutions to environmental harm are problematic because they involve a decision-making process that does not consider the intrinsic value of things such as biodiversity or clean water (Douglas & Wildavsky, 1982: 70; Halsey & White, 1998: 31-33; Hessing et al, 2005: 7-21). Although this research project cannot examine whether the actors in the policy-making process accept this viewpoint, existing research problematizes the dominance of this viewpoint in the environmental policy-making process (Halsey, 2006: 43; Halsey & White, 1998: 33).

Existing research sees non-anthropocentric philosophies towards environmental harm as more effective than anthropocentric philosophies. Non-anthropocentric philosophies of environmental harm involve a reconsideration of the current structural economic context. Several dichotomies attempt to separate anthropocentric thought from non-human centered thought. These include the differences between anthropocentrism, ecocentrism, and biocentrism (Halsey & White, 1998), environmental and ecological justice (White, 2007), and reformist and radical assumptions towards the causes of environmental harm (Levy, 1997: 126). Alternative approaches question the lack of emphasis in capitalist economics on the intrinsic value of the environment (O'Connor, 1994: 125-127). Non-anthropocentric approaches threaten economic growth because they propose limits on the consumption of environmental resources (Snider, 2000: 177-178). Existing research tends to see environmental governance strategies that are based on the principles of anthropocentrism are ineffective in protecting the environment (Halsey & White, 1998; Hessing et al, 2005). Environmental criminologists who question the effectiveness of anthropocentrism must propose structural changes to the political, economic, and social contexts of the policy-

making process (Lynch & Stretesky, 2003: 87). This is because shifts away from human-centered solutions to environmental harm must also involve a counter-discourse to neoliberalism, globalization, risk management and the current political economic context (Benton, 2008; Gillespie, 2006; Seis, 1999).

The governance of environmental harm changes depending on details such as who defines the victims, the geographical location of the legislation, and the temporal effects of harm (White, 2008: 92-102). For instance, when environmental harm is defined through legislation, the impacts discussed are to human health and the economy (Situ & Emmons, 2000: 7-9). Key concepts such as the loss of biodiversity and the rights of non-human life are not generally dominant in environmental legislation (South, 1998; White, 2007). In this research project, philosophical anthropocentrism is a potentially dominant key concept in understanding how the environment is described in the content of the EEA.

The environment has been objectified using instrumental rationality since the outset of modernity (Barry, 1999: 83-86). The environment is seen as useful insofar as it can fulfill the needs of human beings (Barry, 1999: 39). Intrinsic value is an alternative to instrumental value. Intrinsic value means that the environment has value in itself, not as defined by human need (Barry, 1999: 141, 220). If the environment is instrumentally valuable rather than intrinsically valuable, legislation maintains the status quo, given that it supports structural reality of exploitation for human advantage (Benton, 2008: 24-26). The “intrinsic” value of the environment is not considered beyond human welfare when anthropocentric philosophical thought is dominant in the policy-making process (Jacobs, 1991: 66-67).

Philosophical assumptions are part of the policy-making process and thus they are important to understand in order to recognize how particular programmes of government change or reinforce the status quo (Snider, 2000). Ulrich Beck (1997) states that “talk of risk

is a substitute for morality”, meaning that rational choice decision-making strategies are replacing the philosophical assumptions that represented morality in society (Beck, 1997: 125). Although Beck is referring more to human effects of environmental harm, his statement is a poignant reminder of the moral implications that the dominant philosophical assumptions carry. There is pragmatism in the assignment of accountability for both white-collar and environmental crimes because of the consequences of moral blame towards perpetrators (Snider, 1993: 13-14). The section below describes Canada’s political economic context in order to highlight how the problems associated with staples development relate to trends in environmental governance such as risk management, anthropocentrism, and sustainability.

Key Concepts in Political Economy

The staples theory of economic development is a dominant rationality in Canada’s political economic context. The importance of staples-based commodities for Canada’s economic development has implications for environmental governance. Politicians present legislation such as the EEA as rational and responsive solutions to environmental harm. However, the “symbiotic relationship” between political and economic factors that is reinforced by international trade has potentially negative implications for environmental legislation (Castells, 2010: 145; Hessing, 2002; Tombs & Whyte, 2003: 4). The reliance on staples for economic development limits the capacity for change to the political economic structure (Hessing et al, 2005; Hutton, 2007). Although this research project cannot determine the magnitude of this constraint, knowledge of Canada’s economic development in the context of staples is necessary to understand the political economic context of Canadian environmental legislation. Some theorists contend that Canada is still a staples economy (Hutton, 2007). However, many researchers still consider the staples theory of economic

development relevant when examining Canadian environmental legislation (Hessing et al., 2005; Howlett & Brownsey, 2008; Wellstead, 2008). A description of the political economic perspective and the staples theory of resource development will conclude with a conceptualization of Canada's political economy.

The Political Economic Perspective

The political economic context helps to situate the tensions between the goal of economic growth and the goal of environmental protection. Canadian examples of this relationship include job loss versus environmental protection in the timber industry (Clifford, 1998: 57) and the oil industry (Brownsey, 2007). Canadian environmental legislation also addresses the opposite goals of environmental protection and economic growth when ratifying agreements such as the Kyoto Protocol (Brownsey, 2007: 246-251; Hessing et al, 2005). As discussed in the previous section, the need to balance amongst promoting precaution, risk, or sustainable development has consequences for environmental protection and economic growth. Economic interest is generally opposed to environmental protection initiatives because they limit the rate of economic activity that is possible (Jacobs, 1991: 122; White, 2008). The two opposing rationalities vary between the political and economic need to deregulate the extraction of natural resources and the need to limit human consumption to protect the environment (Barry, 1999: 221; O'Connor, 1994b: 5).

The importance of natural resource development increases the need to examine how economic interests can change the ability of the state apparatus to limit growth in staples based industries. The political economic approach can recognize the relationship between "political economic modes of production" and environmental harm (Garmany, 2007). This is especially possible when the modes of production are dependent on environmental resources. The political decision-making process will likely involve tension between

environmental and economic need when resource extraction is economically beneficial (Hessing et al, 2005: 39, 104). A political economic approach can address this tension by examining the relationships between the capitalist system and globalization, political decision-making, and the environment (Garmany, 2007; Hessing, 2002; Political Economy Approach, 2009). Environmental criminologists support this method but rarely apply these considerations to conceptualizations of environmental regulation (White, 2008: 222).

The perceived tension between economic production and environmental protection addressed in existing research is especially relevant to the Canadian context. Existing research labels the inability to promote economic diversification as the “staples trap” (Hessing et al, 2005: 49). The “staples trap” refers to the embedded cycle of resource exploitation. This cycle is characterized by the transition from one staple resource to the next when supply or world demand declines (Howlett & Brownsey, 2008: 8). The next section describes the staples theory of resource development to contextualize how researchers have described the role staples in the context of Canadian environmental legislation.

Canada, the Staples theory and Resource Development

A discussion of the Canadian political economic context requires a conceptualization of the staples theory of development (Howlett & Brownsey, 2008: 7). The staples theory, as developed by Harold Innis, has expanded to include the criticisms and changing conditions of Canada’s economy (Watkins, 1989). Staples are a central part of Canadian economic history (Hessing et al, 2005: 28; Howlett & Brownsey, 2008: 4). Staples such as fur, fish, timber, pulp and paper, mining, oil, gas, and electricity characterized the economies of all Canadian provinces throughout Canada’s history (Wellstead, 2008: 25-28). Staples theorists state that the exportation of staples throughout the history of Canada shaped the Canadian

political economic context (Wellstead, 2008: 20). Due to the recognized importance of staples to Canadian economic development, it is necessary to include the staples-based economy as part of the political economic considerations in this research project.

Economic dependence on natural resources can lead to a reliance on international markets. This reliance can lead to fluctuations in the value of exports. When the value of exports declines, there tends to be uneven internal development between staples-intensive areas and regions that do not rely on staples for economic growth (Clement, 1989: 43-52; Hessing et al, 2005: 25-51). There is a paradox in the Canadian economy of “a rising export-led sector coupled with a struggling manufacturing sector and a rising currency” (Bergevin, 2006). Canada is unique as a so-called developed nation, as it is mainly less developed countries that experience trade dependency in the world economy (Hessing, 2002: 28).

Due to a reliance on the export trade development, a staples economy is susceptible to changes in international demand for staples goods (Wellstead, 2008: 24). A dependence on the supply and demand needs of the international system also causes political instability in countries dependant on international trade (Hessing et al, 2005: 38). A lack of focus on internal development and diversification puts Canada’s economy at odds with the economic development of other countries. If diversification characterizes recent evolution in international trade, Canada’s continued reliance on staples trade may lead to economic decline (Castells, 2010: 107-113). Economic decline is labelled a “staples trap” when dominant interests invest in the primary sector, preventing diversification in other sectors (Hessing, 2005: 49). This “underdevelopment” (Hessing et al, 2005) is problematic because the progression of a staples economy generally transitions into the promotion of knowledge and technology based industries (Castells, 2010: 13-18; Hessing et al, 2005: 39; Howlett & Brownsey, 2008: 6). In Canada, staples such as fresh water, timber, fish, and mineral and

petroleum resources are still sources of economic growth in Canada (Hessing et al, 2005: 4). The continued dominance of these natural resources is a potential indication that the “resource curse” is an important rationality in the context of this research project and a potential key concept in the content of the EEA (Bergevin, 2006). The next section expands on Canada’s current political economic context.

Canada’s Political Economic Context

This section details the key rationalities that describe Canada’s current political economic context. Many researchers who study the Canadian economy and environment deploy conceptualizations of the staples theory of economic development (Hessing et al., 2005; Howlett & Brownsey, 2008; Hutton, 2007; Wellstead, 2008). Some state that Canada has shifted to a “mature” staples state (Hutton, 2007). Several political and economic assumptions are characteristic of the shift to a “mature” staples economy. For instance, resource depletion, global market changes, environmentalism, and development towards human capital formation rather than resource extraction all characterize the “mature staples state” (Howlett & Brownsey, 2008: 6; Hutton, 2007: 13-17). Others say Canada is a “post-staples state”, whereby technology and market demand coincide with the growth of core-periphery cities (Howlett & Brownsey, 2008: 6). Post-staples theorists see the reduction of manufacturing employment and the rise in service and information-based employment as a sign that Canada no longer has a staples-based economy (Castells, 2010: 216-231; Howlett & Brownsey, 2008: 7-9). There is a consensus that some Canadian staples-based industries appear to be in a post-staples state, whereas others still demonstrate the characteristics of a mature staples economy (Howlett & Brownsey, 2008: 9). For instance, despite a decline in industrial sectors towards “knowledge-based” industries, several Canadian provinces still

rely on high revenue staples such as oil and gas, forest products, and grains (Hutton, 2007: 10-11; Wellstead, 2008: 33-34).

Canada's political economic development is characterized by the historical dominance of natural resource development. Examinations of environmental policy in Canada must involve a serious consideration of both the political and economic context of Canada's history as a staples-based state. The concentration of political and economic power amongst few individuals exacerbates the economic dependency on resource extraction (Hessing et al, 2005: 25-27; Wellstead, 2008: 24). A "symbiotic relationship" between capital and political interest is encouraged by global competition (Castells, 2010: 145). It is important to understand how these power relationships are described in Canadian environmental legislation, given the importance of natural resource development to Canada's historical and political economic context.

This research is concerned with a particular piece of Canadian environmental legislation: The *Environmental Enforcement Act*. As the next section will outline, this research project determines the extent that several rationalities are present and evaluates whether the presence of these rationalities is likely to contribute towards the effectiveness of Canadian environmental governance strategies. The rationalities and key concepts include neoliberal programmes of government, economic globalization, risk management, sustainability, precaution, anthropocentrism, and the staples theory of economic development are dominant rationalities. Each of these concepts has been identified in existing research in the context of environmental harm, Canadian natural resources, and both Canadian and international legislation. The next section expands on the goals and aims of the research project by describing the research questions and hypotheses that this research project addresses.

Research Questions and Hypotheses

This research project involves two major objectives. This research project first seeks to determine what key concepts and rationalities are dominant in the content of the *Environmental Enforcement Act*. Three research questions arose from a review of existing literature. First, are key concepts in governance such as neoliberalism and economic globalization present in the content of the EEA? Second, are key concepts in environmental governance such as risk management, sustainability, precaution, and anthropocentrism present in the content of the EEA? Finally, are key concepts in political economy such as staples development present in the content of the EEA?

Four hypotheses address the three questions that arose from existing literature. The first hypothesis is that the key concepts of neoliberalism and economic globalization are dominant in the content of the EEA. Although there are many characteristics that can define neoliberalism, deregulation is the main characteristic of interest to this research that relates to the concept of neoliberalism. Existing research focuses on deregulation in the context of political rationalities and environmental harm (Hessing, 2002; White, 2008: 210-212). This question also involves determining whether the paradox of increased regulation and decreased social spending is present in the content of the EEA. Given the EEA focuses on environmental enforcement, the tension between a reduction in social spending and a continuation of law and order maintenance is a potentially dominant rationality in the content of the EEA (Braithwaite, 2000). Economic globalization is of interest in light of trends identified in exiting research towards free trade and the rising importance of international agreements such as the Kyoto Protocol and NAFTA (Hessing, 2002; Hessing et al, 2005; Schrecker, 2002). The main characteristic of economic globalization that this research examines is the internationalization of trade and finance (Steger, 2001, p. 41).

Second, this research project hypothesizes that rationalities of environmental governance such as risk management and anthropocentrism are dominant in the content of the EEA. Conversely, this research hypothesizes that environmental governance strategies such as sustainability do not dominate the content of the EEA. Risk management involves an economic, utilitarian approach to environmental governance. Finally, the fourth hypothesis is that the content of the EEA emphasizes the political economic approach of staples development. Staples-based economics will be determined to be dominant if the content of the EEA mentions staples such as fresh water, timber, fish and mineral and petroleum resources (Hessing et al, 2005: 4). These four hypotheses were developed using the findings of existing research.

The second research question critically evaluates whether the EEA is likely to contribute towards the effectiveness of Canadian environmental governance strategies. Six research questions arose from the reviewed literature. First, does the EEA address the potential challenges for environmental protection associated with neoliberal governance? Second, does the EEA address structural problems associated with the growth of economic globalization such as the role of international trade and staples development? Third, does the EEA address the challenges associated with rational-choice methods of deterrence? Fourth, does the EEA address the problems associated with anthropocentric philosophical thought? Next, does the EEA address the debate between economic progress and environmental protection? Finally, does the EEA address the contradictions associated with staples development?

The six research questions address each of the theoretical constructs that are characterized as problematic in existing literature. The first hypothesis is that the EEA does not address the potential challenges for environmental protection associated with neoliberal

governance. The challenges presented in existing research are deregulation and the paradox of increased enforcement and decreased social spending. This research project inquires into the likely efficacy of the increased fines and sentencing the EEA establishes. This question also involves evaluating the link between deregulation and broader structural trends such as globalization and the dominance of a staples based economy that the reviewed literature identifies (Hessing, 2002; White, 2008: 268-270).

Second, this research project hypothesizes that the EEA does not effectively address structural problems associated with the growth of economic globalization such as the role of international trade and staples development. The “staples trap” is identified as a potential problem of economic globalization that creates tension between the need to protect natural resources and the need to meet export demands (Hessing et al, 2005: 30-34). Existing literature shows that international trade and staples development have the potential to limit the effectiveness of the EEA (Hessing, 2002; Brownsey, 2008; Hessing et al, 2005). These limitations will be examined in order to identify how adequately the EEA addresses these potential problems.

The third hypothesis is that the EEA does not adequately address the challenges associated with rational-choice methods of deterrence. This question involves evaluating the reliance on deterrence and the problem of overdeterrence contextualized in the debates in existing research. The implication is that the tension between economic development and environmental protection is not resolved due to the problematic application of risk management techniques.

Fourth, this research project hypothesizes that the EEA does not adequately address the problems associated with anthropocentric philosophical thought. Existing research views anthropocentrism as problematic because the concept does not take into consideration the

intrinsic value of the environment (Douglas & Wildavsky, 1982: 70; Halsey & White, 1998: 31-33; Hessing et al, 2005: 7-21).

Next, this research project hypothesizes that any use of sustainability in the EEA does not change the debate between economic progress and environmental protection. The use of sustainability as an environmental rationality is contested in existing literature (Barry, 1999: 207; Benton, 2008: 14; O'Connor, 1994b; O'Connor, 1994c). The dominance of rational choice theories over sustainability approaches means that sustainability rationalities are generally part of the status quo (Hessing et al, 2005: 8; Jacobs, 1991: 58-61; White, 2008). This research project hypothesizes that sustainability approaches will not significantly alter the reality of debate between precaution, risk, and sustainable development approaches to environmental governance.

Finally, this chapter considers the key concept of staples development. This research hypothesizes that the EEA does not adequately address the contradictions between continued industrial development and natural resource protection. Existing literature notes that Canada's history is characterized by a political and economic reliance on staples-based economic growth (Hessing et al, 2005; Howlett & Brownsey, 2008). This research predicts that the tension between industrial development and natural resource protection is still a part of the Canadian political economic context and is likely represented in the content of the EEA.

Outline of the Methodology and Data Analysis Approach

This research project applies the qualitative content analysis method to analyze a piece of Canadian legislation. The source of data in this research project is the *Environmental Enforcement Act*. This research examines the version of this Act that received Royal assent.

The following section describes the data analysis approach, the constructs this research project used to code the EEA, the strengths and weakness of the method, and the data source.

Data Analysis Approach

This research project involved conducting a qualitative, cross-sectional content analysis of the *Environmental Enforcement Act*. First, the research questions and hypotheses were derived. Next, this research used the following sociological constructs to sort the findings: neoliberalism, economic globalization, risk management, cost-benefit economics, precaution, philosophical anthropocentrism, sustainability and the staples theory of economic development. This research uses written codes as a systematic rule for observation and documentation that this research project used to code the findings (Neuman, 2011: 364). This section describes the coding system that this research project uses to determine which concepts are present in the EEA.

First, neoliberalism is an important concept in this research. Neoliberalism is a political rationality and a governance strategy that has become increasingly relevant in the last few decades. This research focuses on the single characteristic of deregulation to demonstrate the presence of neoliberal governance strategies in the EEA. Deregulation is defined in this research as the removal of economic regulation as a method of governance (Braithwaite, 2008: 5-12; Steger, 2003, 41-44). This concept is linked to consequences such as environmental degradation and is therefore important in this examination of a piece of environmental legislation (Hessing, 2002). This research only focuses on deregulation because of the relationship between deregulation, globalization, and the staples theory of economic development. The theoretical considerations will focus on the presence of the concept of deregulation, from a political economic standpoint, in the EEA.

Second, the construct of globalization is defined in this research in light of the growing importance of international trade and transnational economics (Friedrichs & Friedrichs, 2002: 131-132). Globalization has a political, economic, and social perspective. The focus in this research project is on the economic characteristics of globalization. Indicators such as free trade, the internationalization of trade, the liberalization of finance, and the growth of transnational corporations are linked to economic globalization (Steger, 2003: 37-55).

However, this research is open to the possibility that political and social aspects of globalization will also be present in the EEA. Researchers who examine environmental issues from a global perspective often consider the consequences of economic restructuring on local populations (Hessing, 2002; Lynch & Stretesky, 2010; White, 2010). For instance, the liberalization of trade and finance has social implications (Steger, 2003: 42-45). There are social justice implications because of potential consequences such as volatile markets, inflation, and a lack of local political control over international economic forces (Gillespie, 2006: 37-41; Steger, 2003: 45-51). This research project focuses on the presence of economic globalization to answer the first research question. The second research question may involve a consideration of the political and social consequences of economic globalization, since the goal is to examine how the EEA contributes to the overall effectiveness of Canadian environmental governance strategies. If the economic characteristics of globalization are overwhelmingly present in the EEA, then there are potential political and social consequences that must be considered in light of the findings of existing research.

Third, in order to determine whether risk management rationalities are present in the content of the EEA, this research seeks terms such as “risk” and “certainty” in the context of

risk. Environmental criminologists link rational choice and deterrence theories to the use of risk management for environmental offences (Akella & Cannon, 2004; Friedrichs, 2007; Stretesky, 2006). This research searches for the term “deterrence” and “rational choice”. This research will also describe and evaluate the enforcement techniques present in the content of the EEA. As mentioned previously, the EEA changes the fine structure, sentencing provisions, and enforcement tools in each amended Act (Environment Canada, 4 March 2009).

Fourth, anthropocentrism is operationalized using the accepted definition in environmental criminology. Anthropocentrism is taken to be the philosophical belief that humans are biologically, mentally, and morally superior to all other living and non-living beings (Halsey & White, 1998: 31). Anthropocentric values align with the belief that the market can be used as an incentive in environmental enforcement techniques (Snider, 1993: 99). The use of the term “overdeterrence⁵” will be examined in order to determine whether the penalties proposed are critiqued for their human impact. Finding indications of philosophical anthropocentrism in the content of the EEA is also possible if other issues such as neoliberalism, staples development, and risk management are present. Conversely, terms such as “limits”, “precaution”, “conservation” and “protection” are taken to be indications that risk management techniques are not present in the EEA. These terms are described at the opposite spectrum of anthropocentrism in existing research (Hessing et al, 2005: 7-21; Lynch & Stretesky, 2003: 87; White, 2008: 182-183).

Next, sustainability is operationalized in this research using the World Commission on Environment and Development’s definition of “development that meets the needs of the

⁵Overdeterrence is a concern in environmental legislation when the punishment is so high that the industry is adversely affected through avoidance of environmental harm (Cohen, 1998, p. 234).

present without compromising the ability of future generations to meet their own needs” (Jacobs, 1991: 79-80; World Commission on Environment and Development, 1987). This research will search for the term sustainability as an explicit indication. However, each incidence of the term will be checked to ensure the use of the term sustainability in the EEA aligns with the proposed definition.

Finally, the staples theory of economic development is operationalized with the understanding that “staples” are the “raw, unfinished, bulk resource commodity sold in the market” (Hessing et al, 2005: 28; Howlett & Brownsey, 2008: 4). This construction also includes the possibility of a “staples trap”. This concept refers to the embedded ritual of resource exploitation, with the transition from one staple resource to the next as either supply or world demand decline (Howlett & Brownsey, 2008: 8). This concept is also referred to as the “resource curse” in Canadian parliamentary documents (Bergevin, 2006).

Strengths of Content Analysis

This section addresses the strengths and weaknesses of content analysis. The strengths include reliability and accessibility. Reliability refers to the level of consistency with which the chosen categories will produce the same analysis with different researchers or by the same researcher in different instances (Silverman, 2006: 403). Accessibility refers to the fact that the EEA and the related House of Commons and Senate proceedings are publicly available. The accessibility of these texts also means that the research is cost-effective and unobtrusive because it does not involve interaction with participants (Berg, 2004: 287).

The content analysis method is best suited to answer the research questions and hypotheses of interest. This research project is not concerned with conducting experimental or causal research (Berg, 2004: 288). This research is concerned with gathering information and analyzing a particular text (Neuman, 2011: 361). Because this research is grounded in

social constructivism, the interest is in describing the EEA as a cultural object with a social meaning (Neuman, 2011: 362).

Addressing the Weaknesses of Content Analysis

The main critique is the problem of bias. Some theorists believe bias is inescapable when a priori political stances exist (Weninger, 2008). Due to this constraint, this research project primarily examines the manifest presence of words, phrases, and explicit content that touch upon the central questions and hypotheses. This research project started with the gathering of data from the *Environmental Enforcement Act* and only applied information from other documents to further address the findings from the content of the EEA.

Rigorous examination strengthens the findings of this research and reduces the potential for bias (Gillen & Petersen, 2004). Triangulation also mitigates this problem through a consistent reliance on theory and other kinds of data to ground the content analysis of the EEA (Silverman, 2006: 404). The use of multiple documents will ensure that the conclusions based on the content analysis of the EEA consistently relate to the key concepts and rationalities of interest. Triangulation between different concepts, texts, and semantics⁶ in the EEA and supplementary documents will help to eliminate the potential threat of bias in this research project (Berg, 2004: 269-274, 287-288). Triangulation will help ensure that the description of the EEA that this research project produces is grounded by the mention of previously established theories. This research project also considers other government documentation such as Committee Reports, House of Commons debates, and other written records that speak to the EEA (Rothbauer, 2008). However, the content analysis focuses solely on the EEA.

⁶ Semantics involve the examination of “not only the number and type of words used but also in how...strong or weak a word (or words) may be in relation not the overall sentiment of the sentence” (Sanders & Pinhey, 1959 in Berg, 2004: 274).

Data Source: The *Environmental Enforcement Act* (EEA)

The EEA amends nine existing pieces of legislation⁷ and creates the Environmental Violations Administrative Monetary Penalties Act (Becklumb, 2009: 1). This research project examines the related House of Commons, Senate, and Environment Canada media releases as secondary documents that clarify the research post-analysis. LEGISinfo data for the EEA provides links to several sources that will aid in triangulating the analysis of the primary text (Library of Parliament, 2010). The Act was presented in the 40th Parliament, 2nd Session. The first reading of the EEA occurred in the House of Commons on March 4, 2009. There were two days of debate following the first reading. The Committee of Environment and Sustainable Development (ENVI) met six times to discuss the EEA. Following the Committee meetings, ENVI issued a report on May 8, 2009. After the report, there was one day of debate on May 12, 2009 and two days of debate at the third reading stage.

There were two days of debate at the Senate level in May 2009. The second reading occurred on May 27, 2009. The Senate did not amend the Act, and the Senate Committee made observations but also did not amend the Act (Becklumb, 2009: 1). There were two days of Committee meetings at the Senate level. The report presentation and debate occurred on June 11, 2009. Finally, the debates at the third reading state occurred on June 16, 2009. The *Environmental Enforcement Act* received Royal Assent on June 18, 2009. In total, there were five days of debate at the House of Commons level and four at the Senate level. There were a total of eight Committee Meetings and two Committee Reports.

⁷the nine pieces of legislation include the *Antarctic Environmental Protection Act*, the *Canadian National Marine Conservation Areas Act*, the *Canada National Parks Act*, the *Canada Wildlife Act*, the *Canadian Environmental Protection Act* [1999], the *International River Improvements Act*, the *Migratory Birds Convention Act* [1994], the *Saguenay-St. Lawrence Marine Park Act*, and the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act* (WAPPRIITA).

Summary of Chapter 2: Content Analysis and Critical Evaluation of the *Environmental Enforcement Act*

This chapter had three goals. First, this chapter identified existing literature that situates and justifies the rationalities and key concepts in this research project. Second, this chapter defined the key concepts and hypotheses that this research project will address in Chapter 3 and Chapter 4. Finally, this chapter discussed the content analysis method and the data analysis approach that this research project uses.

The next two chapters, Chapter 3 and Chapter 4, will expand on the research questions and hypotheses that this research project addresses. Chapter 3 will address the first research question: what key concepts and rationalities are present in the content of the *Environmental Enforcement Act*. This chapter will conduct a content analysis to reveal the types of dominant rationalities for contemporary governance that are expressed or departed from in the EEA. Chapter 4 critically evaluates the EEA to answer the second research question: is the EEA likely to contribute towards the effectiveness of Canadian environmental governance strategies.

Chapter 3: Content Analysis of Key Concepts and Rationalities Present in the EEA

The goal of this chapter is to address the first research question: what key concepts and rationalities are dominant in the content of the *Environmental Enforcement Act*? As discussed in the previous chapter, this chapter presents and analyzes the findings of the content analysis of the EEA. The goal of this chapter is to reveal the types of dominant rationalities for contemporary governance that are expressed or departed from in the content of the EEA. The interpretations of the content analysis of the EEA are clarified, post-analysis, through the examination of related House of Commons, Senate, and Environment Canada reports. These reports include Environment Canada media releases, House of Commons and Senate debates, and Committee meeting minutes.

This chapter is divided into three sections based on the three key concepts, or rationalities, of interest in this research project: governance, environmental governance, and political economy. First, this research project found that rationalities in economic globalization were found to be more dominant in the EEA than the rationalities of neoliberalism. Second, this research project found that risk management and anthropocentrism, not sustainability, were dominant in the content of the EEA. Third, this research project describes the ways in which key concepts and rationalities in political economy present were found to be dominant in the EEA. This chapter concludes with a summary of the types of dominant rationalities for contemporary governance that are expressed or departed from in the EEA. As this chapter will describe, this research project found that the most problematic trends in the EEA include the dominance of economic globalization, the continuation of risk-management and anthropocentric values, and the dominance of staples development in the content of the EEA.

Rationalities in Governance Identified in the Content of the EEA

This section demonstrates that the key concept of globalization is dominant in the content of the EEA. However, this research project found that the key neoliberal concept of deregulation is not dominant in the content of the EEA. This represents a departure from existing research on global trends in governance and from existing Canadian environmental legislation (Hessing, 2002; Schrecker, 2002). This section describes how neoliberal rationalities of governance and the key concept of economic globalization are both expressed and departed from in the content of the EEA.

Deregulation, or the key characteristic of neoliberal governance to this research project, was not a dominant key concept in the content of the EEA. Although policy-makers state that the EEA “streamlines” and modernizes existing environmental legislation, many of the amendments in the EEA increase regulation (Becklumb, 2009; McGuinty in Parliament of Canada, 12 May 2009). For instance, the EEA adds “enforcement, offence, penalty and sentencing provisions” to the nine amended Acts (Environment Canada, 2009). The EEA increases the power given to enforcement officers by adding “immunity” provisions to all nine amended Acts. The EEA also increases regulation in three of the amended Acts by:

[D]irecting the offender to publish, in the manner specified by the court, the facts relating to the commission of the offence and the details of the punishment imposed, including any orders made under this subsection.⁸

The movement towards regulation is present in the content of the EEA. Regulation is also mentioned in the policy-making process. One of the main purposes of the EEA is “to enhance enforcement, to provide direction to the courts with minimum and maximum

⁸ Section 17(3) of EEA and section 66(1)(e) of the *Antarctic Environmental Protection Act*; section 85(2) of EEA and section 291 of the CEPA; section 103(1) of EEA and section 16(1)(c) of the *Migratory Birds Convention Act*.

sentences”, and to provide regulatory tools to enforcement officers (Warawa⁹ in Parliament of Canada, 23 March 2009). Researchers such as Braithwaite (2008) and Steger (2002) state that these purposes are contrary to the removal of economic regulation that is characteristic of neoliberal deregulation (Braithwaite, 2008: 51-23; Steger, 2002: 41-44).

Deregulation is not dominant the content of the EEA. However, other rationalities relating to the key concept of neoliberalism are not absent in the content of the EEA. The presence of both increased and decreased penalties for environmental offences in the context of the EEA reflects the paradox of increased coercion and decreased regulation identified in existing research (Braithwaite, 2000: 227; Ratner & McMullan, 1983: 189). House of Commons and Senate debates demonstrate the contradiction between increased enforcement and decreased spending. The question that David McGuinty¹⁰ poses in the House of Commons discussions on the EEA summarizes this paradox:

I have an important question concerning two significant things that have happened recently on the environmental front. One is this environment enforcement bill and the second is the government's decision to make changes to environmental assessment, not only through the *Navigable Waters Protection Act* where now unfettered discretion has been given to the minister to decide when and when not it will apply, but also new changes that exempt environmental assessment for projects of \$10 million or less.

Can he help Canadians understand how, **on the one hand, we are driving up enforcement and fining and giving discretion to judges to apply fines in different contexts, while, on the other hand, we are actually reducing the standards for environmental assessment?** (McGuinty in Parliament of Canada, 12 May 2009, emphasis added).

At the surface, the EEA addresses environmental enforcement, but in effect, the broader context demonstrates that decreased spending on environmental assessment actually weakens current legislation. This is true despite the increase in fines and criminalization. The

⁹Mark Warawa, Parliamentary Secretary to the Ministry of the Environment. Langley, Conservative Party of Canada (CPC).

¹⁰MP, Ottawa South (Liberal).

problem with the presence of the paradox of increased enforcement in Canadian environmental legislation is that the EEA appears to promote environmental enforcement through increased punishment, but the financial allocations show that this goal is undermined by the decrease in funding for environmental assessment. In the context of environmental policy, existing literature notes that this contradiction is aligned with the need to both export and protect natural resources (Brownsey, 2008: 250-251; Hessing et al, 2005: 206-211). This conflict is further described in the discussion on economic globalization.

Economic globalization is one of the dominant rationalities in the content of the EEA. The section below discusses the key concept of economic globalization using the examples of free trade, international agreements, and climate change. This research project found that the social and political characteristics of globalization were also present in the content of the EEA. The preceding section will first examine the findings of the content analysis of the EEA, then address debates and discussions that occurred during the policy-making process to demonstrate how several rationalities of globalization were present in the content of the EEA.

Section 12 of the EEA speaks to the economic, social, and political consequences of globalization in the change to section 50.9 the *Antarctic Environmental Protection Act*. This section adds fundamental purposes of sentencing “in light of the global significance of the Antarctic and the Treaty”. The “Treaty” section 12 of the EEA refers to is the *Protocol on Environmental Protection to the Antarctic Treaty* (Becklumb, 2009: 4). Several of the Acts also represent the implementation of international law or respond to the need to define Canada’s sovereignty (Becklumb, 2009: 4). For example, the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act* (WAPPRIITA) is an implementation of a United Nations Environment Programme (UNEP) Convention

(Becklumb, 2009: 5). The *Migratory Birds Convention Act, 1994* implemented the Migratory Birds Convention between Canada and the United States (Becklumb, 2009: 5).

This research project found that the EEA changes the content of several of the Acts in light of growing international trade. For instance, section 6 of the EEA changes section 32(2) of the *Antarctic Environmental Protection Act* to the following:

(2) If, on ex parte application, a justice is satisfied by information on oath that there are reasonable grounds to believe that an offence has been committed by a Canadian vessel or any other vessel or the pilot in command of a Canadian aircraft, he or she may issue a warrant authorizing an enforcement officer, or authorizing any other person named in the warrant, to seize the vessel or aircraft anywhere in Canada.

The change in this section is the addition of “any other vessel”. Only Canadian vessels were subject to seizure in the previous legislation. Section 7 of the EEA also amends the headline of a section of the *Antarctic Environmental Protection Act* from “Detention of Canadian Vessels” to “Detention of Vessels”. The change from “Canadian vessel” to “vessel” is repeated throughout section 12 of the EEA.

Section 220(2) of CEPA contained a similar section:

(2) If on ex parte application a justice is satisfied by information on oath that there are reasonable grounds to believe that an offence **under this Act** has been committed by an owner of any ship, aircraft, platform or other structure, the justice may issue a warrant authorizing an enforcement officer, or authorizing any other person named in the warrant, to seize the ship, aircraft, platform or structure anywhere in Canada and, in the case of a ship, platform or structure, within Canadian waters (emphasis added).

However, the change in this case is “under section 272” was amended in section 55 of the EEA to “under this Act”, meaning that a warrant may now be issued for any offence under CEPA. CEPA is one of the most comprehensive pieces of Federal Canadian environmental legislation. The change in the scope and application of enforcement capacities demonstrate that the EEA actually increases the regulatory response to environmental offences in the case of at least two of the amended Acts.

Most of the amendments that increased the administrative powers appeared to address Canadian waterways. For instance, section 92 of the EEA added the permission of international river improvements to the *International River Improvements Act*:

(2) Despite subsection (1), inspections may be carried out under this Act in respect of any international river improvement referred to in paragraph (1)(c) to verify that the improvement is being constructed or continues to be operated or maintained solely for domestic, sanitary or irrigation purposes or other similar consumptive uses.

Subsection (1) was section 7 in the previous Act. This section indicated that the “Act does not apply in respect of an international river improvement”. It is clear that the EEA contained specific changes that recognize the potential environmental impact of increased trade. The changes identified above especially relate to vessels. The next chapter will speak to the marine industry and the tension between protecting Canada’s waters while promoting the marine and shipping industry in Canada.

Although some of the amended Acts represent the implementation of international treaties, the EEA does not explicitly mention international trade agreements. However, the discussion of NAFTA, an agreement that governs a large portion of trade in Canada, is dominant in the supplementary documents (Hessing, 2002). The House of Commons debates mention NAFTA in the context of expedited trade:

A lot of the federal laws deal with the transport back and forth of contaminated fuels, and so forth. What has happened is that, under NAFTA, greater priority has been given to expediting goods across the border, instead of 20 years ago, where attention was given to actually inspecting the goods to make sure that contaminated fuel did not come into Canada (Duncan in Parliament of Canada, 25 March 2009).

Environmental criminologists take issue with NAFTA because the movement of goods and services between borders has negative environmental consequences. For instance, the flight of capital associated with trade liberalization can lead to lower environmental standards on problems such as effluent levels (Schrecker, 2002: 46). Authors such as Smandych and

Kueneman (2010) have blamed NAFTA and free trade with the United States (US) for the rise in production of Alberta tar sands oil (91-93). Article 605 of NAFTA, or the ‘proportionality clause’, has traditionally meant that Alberta supplies more oil to the US than to the eastern provinces. The implication is that environmental degradation from extracting oil occurs on Canadian soil, but the US receives the oil supply (*ibid*). Although free trade is not explicitly mentioned in the content of the EEA, the Acts are the outcome of international treaties and are subject to the restrictions imposed by agreements such as NAFTA (Brownsey, 2008: 245). Although free trade agreements contextualize resource policy more than environmental policy, the importance of trade agreements such as NAFTA on environmental policy has been recognized in existing research since the implementation of NAFTA in 1992 (Hessing et al, 2005: 88-98).

This section demonstrates that the EEA tends to promote increased regulation, not deregulation, throughout the text of the legislation. This research project found that neoliberalism is not a dominant rationality in the EEA. It was also found that there are few examples in the content of the EEA that demonstrate a move towards deregulation or the paradox of increased enforcement.

The interpretation of the EEA showed that economic globalization is a dominant key concept in the *Environmental Enforcement Act*; however, the key concepts and rationalities in environmental governance present in the content of the EEA are not new to Canadian environmental legislation. Many of the amended Acts represent Treaty obligations or the increase of international traffic in Canadian waters. For instance, the *Antarctic Environmental Protection Act*, the WAPPRIITA, and the *Migratory Birds Convention Act* all represent the ratification of international treaties and agreements. The increase of international traffic is recognized through the scope of punishment from “Canadian” to

“international” vessels. The EEA also relates to discussions that occurred during the policy-making process on NAFTA and Canada’s role in international climate change discussions. The next section examines the key concepts of interest such as risk management, sustainability, and anthropocentrism in light of the findings in this section.

Rationalities in Environmental Governance Identified in the Content of the EEA

This section discusses the finding that that risk management is a dominant rationality in the content of the EEA. The changes in enforcement tools increase the level of punishment for environmental offences, but the tools proposed conform to the rationality of a utilitarian, risk-based analysis of the costs and benefits of committing offences against the environment. Enforcement tools such as increased fines, the enactment of minimum fines, and the addition of fundamental purposes to some pieces of legislation that were added to the EEA conform to a risk-based rationality of environmental governance. Although many of the added provisions depart from the viewpoint of philosophical anthropocentrism, rational choice approaches to environmental harm are dominant in the EEA. The examples of overdeterrence and “undue financial hardship” characterize the dominance of rational choice approaches in the content of the EEA.

This research found that some of the enforcement tools in the EEA appear to reflect sustainability-based approaches to environmental offences. However, despite additions such as the “polluter pays principle” and “use value”, risk management rationalities tend to dominate the content of the EEA. The next section analyzes the dominance of risk management, anthropocentrism, and sustainability as key concepts and rationalities in the content of the EEA.

The EEA amends all nine existing legislation with added enforcement tools. These tools include increased fines, the enactment of minimum fines, and the addition of sentencing

purposes. For instance, the minimum and maximum fines for offences under six of the amended Acts are increased:

- (2) Every individual who commits an offence under subsection (1) is liable,
 - (a) on conviction on indictment,
 - (i) for a first offence, to a fine of not more than \$100,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$200,000; or
 - (b) on summary conviction,
 - (i) for a first offence, to a fine of not more than \$25,000, and
 - (ii) for a second or subsequent offence, to a fine of not more than \$50,000¹¹.

By increasing the fines for committing environmental offences, regulation stabilizes and controls the market (Snider, 1993: 99-100). This method of deterrence relies on a cost-benefit and risk analysis. Existing research addresses cost-benefit approaches to environmental offences in the context of deterrence and environmental legislation (Cohen, 1998: 230; Situ & Emmons, 2000). The goal is to make the cost of committing an environmental offence greater than complying with the legislation (Cohen, 1998: 230-231). This is possible by transferring the costs of environmental offences onto the businesses that cause environmental harm (Burns & Lynch, 2004: 47).

Several other sentencing provisions added to each amended Act demonstrate the dominance of deterrence-based approaches to environmental offences. For instance, the text of the EEA emphasizes the addition of “disgorging benefit” sanctions. “Disgorging,” means that the offender must pay to the court the estimated benefit (if any) of the offense (Becklumb, 2009: 8). Disgorging benefits appear in all of the amended Acts. Seven of the amended Acts contain the following clause:

If a person is convicted of an offence under this Act and the court is satisfied that, as a result of the commission of the offence, the person acquired any property, benefit or

¹¹ Section 12 of the EEA and Section 50(2) of the *Antarctic Environmental Protection Act*; Section 48 of the EEA and section 13(2) of the *Canada Wildlife Act*; Section 72 of the EEA and section 272.1(2) of CEPA; Section 102 of the EEA and section 13(2) of the *Migratory Birds Convention Act*; Section 122 of the EEA and section 22 of the WAPPRIITA.

advantage, the court shall order the person to pay an additional fine in an amount equal to the court's estimation of the value of that property, benefit or advantage. The additional fine may exceed the maximum amount of any fine that may otherwise be imposed under this Act.¹²

The addition of disgorging benefits relates to the key concepts of deterrence and rational choice. The requirement for companies to pay back the benefits they gained from the commission of an environmental offence recognizes that fines are only effective when they are able to take away from the profit margin (Fisse & Braithwaite, 1993: 87). Deterrence relies on a rational choice perspective that suggests perpetrators will avoid breaking the law when the potential consequences of the action outweigh the potential benefit (Stretesky, 2006: 609).

The quasi-criminal sanctions added in the content of the EEA also speak to rational choice deterrence. Existing literature states that criminal sanctions deter individuals from committing illegal acts through social control, as criminalization attaches the highest moral stigma available to respond to environmental offences (Cohen, 1998: 231; Situ & Emmons, 2000: 20; Snider, 1993: 134). Despite the perceived benefits of harsh sanctions, “overdeterrence¹³” is possible. An example of overdeterrence is the potential for punishment for an oil spill to adversely impact business. If the penalty for causing an oil spill is higher than any the economic benefit of shipping oil, then production is halted (Cohen, 1998: 232).

The EEA added quasi-criminal sanctions to several of the nine amended pieces of legislation. For instance, section 274 (2) of CEPA addresses criminal negligence punishable

¹² Section 25 of the EEA and section 24.3 of the *Canada National Marine Conservation Areas Act*; section 37 of the EEA and section 27.3 of the *Canada National Parks Act*; section 48 of the EEA and section 13.04 of the *Canada Wildlife Act*; section 93 of the EEA and section 39 of the *International River Improvements Act*; Section 114 of the EEA and section 20.6 of the *Saguenay-St. Lawrence Marine Park Act*; section 122 of the EEA and section 22.04 of WAPPRIITA.

¹³Overdeterrence is a concern in environmental legislation when the punishment is so high that the industry is adversely affected through avoidance of environmental harm (Cohen, 1998: 234).

under sections 220-221 of the *Criminal Code*. The amendment states in section 72 of the *Environmental Enforcement Act* that:

272 (2) Every person who, in committing an offence under subsection 272(1) or 273(1), shows wanton or reckless disregard for the lives or safety of other persons and thereby causes death or bodily harm to another person is subject to prosecution and punishment under section 220 or 221 of the *Criminal Code*.

All amended Acts except for the *Canada National Marine Conservation Areas Act* include criminalization and strict liability¹⁴ as a potential response to environmental offences. At the surface, the criminalization of environmental harm is a movement away from anthropocentric philosophical thought. The shift from soft to strict regulation demonstrates that human and economic impact analysis must also consider ecological health and well-being (Barry, 1999: 207; Hessing et al, 2005: 13). Criminal liability is the harshest punishment the state can use to punish offenders (Fisse & Braithwaite, 1993: 140-143). The criminalization of environmental offences sends a strong message that harm towards the environment will not be tolerated (Becklumb, 2009). For instance, the EEA amends seven of nine pieces of legislation with the following clauses:

12. If a Canadian vessel or other vessel commits an offence under this Act and the owner, operator, master or chief engineer of the vessel directed, authorized, assented to, acquiesced in or participated in the commission of the offence, the owner, operator, master or chief engineer, as the case may be, is a party to and guilty of the offence and is liable on conviction to the penalty provided for by this Act for an individual who commits an offence under subsection 50(1), whether or not the vessel has been prosecuted or convicted.

25, 37, 48, 93, 114, 123 If a corporation commits an offence under this Act, any director, officer, agent or mandatory of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the penalty provided for by

¹⁴Strict liability offences do not require a demonstration of intent or negligence to be shown (Cohen, 1998: 234). The Crown need only prove that the accused committed a prohibited act. The accused person may avoid conviction by showing they were duly diligent. In other words, they must show that they acted reasonably to avoid committing the act on a balance of probabilities (Becklumb, 2009: 38).

this Act for an individual in respect of the offence committed by the corporation, whether or not the corporation has been prosecuted or convicted.

Section 12 of the EEA amends section 52(1) the *Antarctic Environmental Protection Act*. The other sections of the EEA listed above represent all Acts except for CEPA and the *Migratory Birds Convention Act*. The approval of increased punishment and criminalization implies that the political interest behind this piece of legislation reflects more than just human well-being (Barry, 1999: 214-215). Given that anthropocentrism is *human-centered*, increased punishment and liability represents a concern for the well-being of non-human environments and organisms over humans who contravene environmental law. Although these added provisions appear to move away from human-based conceptions of environmental protection, rational choice methods of deterrence still involve a utilitarian analysis of costs and benefits by the potential offender (Hessing et al, 2005: 7-21).

As mentioned in the previous section on economic globalization, the EEA amends several Canadian and international regulations concerning waterways. The key concept of “overdeterrence” also characterizes the concerns brought up by the members of the marine transport industries in the House of Commons and Senate Committees (Cohen, 1998: 232). Overdeterrence is the potential for prohibited acts to cease completely (Cohen, 1998: 212). Several stakeholders from the marine transport community spoke in opposition to the increased fines and criminalization that the EEA presents. Sea transport constitutes a large portion of international trade (Braithwaite & Drahos, 2000: 418). Most of the stakeholders invited to Committee meetings represent marine trading interests. The main speakers for the ENVI and the Standing Senate Committee on Energy, the Environment, and Natural Resources include Kaity Arsoniadis Stein¹⁵, Mark Boucher¹⁶, Christopher Giaschi¹⁷, Peter

¹⁵President and Secretary-General, International Ship-Owners Alliance of Canada Inc.

Lahay¹⁸, John O'Connor¹⁹, and Captain Stephen Brown²⁰. Mark Boucher presented as a witness to ENVI on behalf of the Canadian Merchant Services Guild, an affiliate of the International Transport Workers' Federation. The argument presented on behalf of these groups is that the EEA creates a disincentive for potential seafarers due to the high fines and possibility of conviction resulting from the implementation of harsher penalties (ENVI, 30 April 2009). The specific concern was that criminalization would serve as a "disincentive" to potential candidates to the marine industry (Boucher in ENVI, 30 April 2009). As Boucher states below:

What we see the EEA doing is communicating to potential candidates in the marine industry that if you are a seafarer, you might get caught up in this, and you might be fined huge amounts of money and spend a fortune trying to defend yourself. These are very negative things when we are trying to attract new people into the marine industry. Canada needs a strong marine industry. We need to be able to attract a new generation of seafarers and do everything we can to make it fair for them and not have them treated unfairly.

We feel that this bill is unfair. One of the things it is proposing to do is reduce the crown's job by making it easier to get a conviction. **We see this as a serious disincentive and a threat to having a strong domestic seafaring industry, which is important to Canada.** Whether we foster it in legislation or not, Canada is a maritime nation, and the marine shipping that's going on right now across the country is vital. We need to build the marine industry, and that won't happen if seafarers here are treated unfairly, making it even more difficult to recruit a new generation of seafarers (Boucher in ENVI, 30 April 2009; emphasis added).

This argument reflects the potential for rational choice approaches to create a "disincentive" resulting from increased punishment in the context of environmental offences. The stakeholders questioned the legality of the increased regulation using the example of Canada's commitments to treaties such as the International Convention for the Prevention of

¹⁶National President, Canadian Merchant Service Guild, International Transport Workers' Federation.

¹⁷West coast vice-president of the Canadian Maritime Law Association (spoke as individual).

¹⁸National Coordinator, International Transport Workers' Federation.

¹⁹Chair, Committee on Pollution and the Marine Environment, Canadian Maritime Law Association.

²⁰President, Chamber of Shipping of British Columbia; executive director of the Western Marine Community; Director of the Vancouver International Maritime Centre.

Pollution from Ships (MARPOL) and the United Nations Convention on the Law of the Sea (UNCLOS) (Mitchell²¹ in Senate of Canada, 11 June 2009).

The content of the EEA appears to address the possibility of overdeterrence. The EEA provides a clause to prevent fines so large that they would cause “undue financial hardship” to the perpetrator of environmental offences. Each of the nine amended Acts includes a clause in the “Relief from Minimum Fine” section that states:

The court may impose a fine that is less than the minimum amount provided for [. . .] if it is satisfied, on the basis of evidence submitted to the court, that the minimum fine would cause undue financial hardship. The court shall provide reasons if it imposes a fine that is less than the minimum amount provided for in any of those sections. ²²

Each amended Act references the section within the legislation that prescribes where the minimum amount can be found. Although this clause addresses the possibility of “overdeterrence”, individuals and corporations that contravene this Act could use this provision to avoid strong penalties. This would create a “business as usual” atmosphere if everyone sentenced under the Act were able to use this clause to avoid receiving large fines (Lynch & Stretesky, 2003: 87). If the result was that every defendant could apply this clause, it leaves a potential “loophole” for offenders to avoid a large fine when they can demonstrate it would cause undue financial hardship (ENVI, 31 March 2009). The EEA does not provide a legal definition for “undue hardship”. Chantal Proulx²³ notes that the term would be “defined by the courts over time through jurisprudence” (Proulx in ENVI, 31

²¹ Senator Grant Mitchell, Alberta.

²² Section 12 of the EEA and section 50.6 of the *Antarctic Environmental Protection Act*; section 25 of the EEA and section 24.2 of the *Canada National Marine Conservation Act*; section 37 of the EEA and section 27.2 of the *Canada National Parks Act*; section 48 of the EEA and section 13(3) of the *Canada Wildlife Act*; section 72 of the EEA and section 273 of CEPA; section 93 of the EEA and section 38 of the *International River Improvements Act*; section 102 of the EEA and section 13.06 of the *Migratory Birds Convention Act*; section 114 of the EEA and section 20.5 of the *Saguenay-St. Lawrence Marine Park Act*; section 122 of the EEA and section 22(5) of the WAPPRITA.

²³ Acting Deputy Director of Public Prosecutions, Regulatory and Economic Prosecutions Branch.

March 2009). Although the intention is to have this clause used in extreme circumstances, there is potential that every defendant will attempt to use the undue financial hardship clause to justify avoiding a mandatory minimum fine when an environmental offense occurs.

This section also addresses the presence of rationalities in sustainability in the content of the EEA. Sustainability is not a dominant rationality in the EEA. However, there is some discussion of sustainability in legislative debates surrounding the EEA. For instance, Member of Parliament Bernard Bigras spoke to the key concept of sustainability in the House of Commons debates on the EEA (emphasis added):

This government said that an economic crisis should not hamper Canadian and international efforts to protect the environment. Furthermore, I would remind this House what the Secretary-General of the United Nations, Ban Ki-moon, said. He told the international community that one crisis is not an excuse for failing to take action on another crisis. The fact is, measures to fight climate change, or the absence thereof, demonstrate that **this government has chosen to favour accelerated economic development, to the detriment of protecting the environment**[...] It has decided to go the old “law and order” route by upping the penalties for those who commit environmental offences and bringing in tougher sentences for those who violate the nine environmental acts (Bigras in Parliament of Canada, 25 March 2009).

In this example, Bigras presents the concept of sustainability as a viable alternative to the “law and order” approach. At the Senate level, then-Minister of the Environment Jim Prentice mentions sustainability in the context of the Copenhagen process. Prentice mentions that the international community “have talked more generally about domestic commitments and sustainability” in the context of the Copenhagen process (Prentice in Senate Committee, 2 June 2009).

Several key concepts found in the content of the EEA relate to the key concept of sustainability. For instance, the “polluter pays principle” relates to the use of sustainability approaches. The polluter pays principle encourages countries to avoid compensating or subsidizing industry for environmental costs (Organization for Economic Co-operation and

Development [OECD], 1995: 12-13). This idea originates in principles of the internationally recognized Rio Declaration [1992]. Principle 16 of this Declaration states that “...the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment” (UNEP, 1992). Economically, the principle prevents government subsidization of environmental damage caused by pollution. The EEA adds this principle to section 50.9 of the *Antarctic Environmental Protection Act*, section 287 of CEPA, and section 13.09 of the *Migratory Birds Convention Act*. The fundamental purposes of sentencing in each of these three Acts are outlined, respectively, in sections 12, 81 and 102 of the EEA:

50.9 The fundamental purpose of sentencing for offences under this Act is to contribute to respect for the law protecting the Antarctic environment and dependent and associated ecosystems in light of the global significance of the Antarctic and the Treaty through the imposition of just sanctions that have as their objectives

- (a) to deter the offender and any other person from committing offences under this Act;
- (b) to denounce unlawful conduct that damages or creates a risk of damage to the environment; and
- (c) to reinforce the “polluter pays” principle by ensuring that offenders are held responsible for effective clean-up and environmental restoration

287 The fundamental purpose of sentencing for offences under this Act is to contribute, in light of the significant and many threats to the environment and to human health and to the importance of a healthy environment to the well-being of Canadians, to respect for the law protecting the environment and human health through the imposition of just sanctions that have as their objectives

- (a) to deter the offender and any other person from committing offences under this Act;
- (b) to denounce unlawful conduct that damages or creates a risk of damage to the environment or harms or creates a risk of harm to human health; and
- (c) to reinforce the “polluter pays” principle by ensuring that offenders are held responsible for effective clean-up and environmental restoration.

102 The fundamental purpose of sentencing for offences under this Act is to contribute, in light of the long-standing recognition of the social, cultural and environmental importance of migratory birds, to respect for the law protecting and conserving migratory birds and their nests through the imposition of just sanctions that have as their objectives

- (a) to deter the offender and any other person from committing offences under this Act;
- (b) to denounce unlawful conduct that damages or creates a risk of damage to migratory birds or their nests; and
- (c) to reinforce the “polluter pays” principle and to restore migratory birds and their habitats.

Although the “polluter pays principle” is not new to Canadian environmental legislation, this key concept was presented as a fundamental sentencing principle in the legislation and in Committee Meetings regarding the EEA. The addition of the “polluter pays principle” is a recognition of developments in international treaties such as the Rio Declaration. However, the EEA does not abide by the “precautionary principle” that the Rio Declaration and other international environmental Agreements have emphasized (White, 2008: 64-71).

Despite the inclusion of key concepts in sustainability, the EEA also contains rational choice as a key concept in sentencing. The changes in each amended section above explicitly recognize the need to “deter” offenders, to “denounce” unlawful conduct, and to reinforce the “polluter pays” principle to restore the damage done by the unlawful act. Seven of the amended Acts state that the “fundamental purpose of sentencing for offences” under each Act is to deter the offender and denounce the specific activities that the Acts define as offences.²⁴ The EEA presents the “polluter pays principle”, a concept based on precaution, and the need to “deter” and “denounce” offenders and unlawful conduct. The “fundamental principles of sentencing” added by the content of the EEA represent both spectrums of environmental criminology (Lynch & Stretesky, 2003).

²⁴Section 25 of the EEA and section 24.6 of the *Canada National Marine Conservation Areas Act*; section 37 of the EEA and section 27.6 of the *Canada National Parks Act*; section 48 of the EEA and section 13.08 of the *Canada Wildlife Act*; section 93 of the EEA and section 42 of the *International River Improvements Act*; section 102 of the EEA and section 13.09 of the *Migratory Birds Convention Act*; section 114 of the EEA and section 21 of the *Saguenay-St. Lawrence Marine Park Act*; section 122 of the EEA and section 22.07 of the *WAPPRIITA*.

This research project acknowledges that there are several linguistic indications that sustainability is a dominant rationality in the EEA. However, at the semantic level, the content of the EEA tends to present anthropocentric rationalities because it still relies on market-based incentives for regulation (Snider, 1993: 99). For instance, section 287 of CEPA specifically mentions the creation of “risk of harm” or “risk to human health” as part of the fundamental purpose of sentencing offenders under the Act. Although section 287 speaks to the “importance of a healthy environment”, this goal is outlined in the context of human health and well-being. The rational choice, risk-based analysis is the basis of the term “risk” in section 287, as the provision deters offenders by forcing them to bear the cost of pollution (Jacobs, 1991: 150; UNEP, 1992).

The addition of the term “use value” to the EEA is another example of linguistic changes to the EEA that appear to reflect the key concept of sustainability. Sections 12, 25, 37, 48, 81, 93, 102, 114, and 122 of the EEA and section 4 in all nine amended Acts defines “damage” as “includ[ing] loss of use value and non-use value”. This definition conforms to international definitions developed in 1998 (UNEP, 2008: 52). The addition of non-use value recognizes the *existence* value of environmental resources outside of the market-based use-value (ENVI, 26 March 2009; Hoeschele, 2007). The essential difference is that use-value defines value through the ability to use the environment for human benefit whereas non-use value is determined through the existence of any attribute of the environment (ENVI, 26 March 2009). Cynthia Wright²⁵ clarifies this addition in the House of Commons sessions that discuss the EEA:

The Bill ensures that when considering the gravity of aggravating factors, such as damage to the environment, the court takes into account damage to both use and non-uses of the environment. Use value and non-use values are terms of environmental

²⁵Acting Assistant Deputy Minister, Environmental Stewardship Branch.

economics. Their inclusion in these statutes will ensure that the full value of the environment is considered by sentencing judges.

Use values include the value derived from the direct use of the environment, such as the use of water for drinking, as well as the value derived from indirect use of the environment, such as the value of a healthy river for recreational fishing. It also includes option value, the value of the environment for a future use.

Non-use value includes the environment's existence value, the value received from knowing that a resource, a good, or a service exists, and its bequest value, the value received from ensuring that a resource, good, or service will be available to future generations (Wright in ENVI, 26 March 2009).

Use value challenges the rationality of anthropocentrism by “includ[ing] the environment’s existence value (Seis, 1999: 293). The House of Commons discussion of use value presents this amendment in the EEA as a positive movement towards the ability to protect the environment and internalize costs of environmental harm. At the surface, inclusion of the term illustrates a change away from the use of “instrumental rationality” in environmental legislation in Canada (Barry, 1999: 83-86). The change to the definition of damage attempts to internalize the costs of environmental harm. However, this definition still assumes economic costs can be attributed to environmental goods such as clean air and water (Jacobs, 1991: 62-70; OECD, 1995: 13). The lack of substantive change despite the addition of “use value” in the EEA is due to the application of this concept. The EEA only applies to aggravating factors and is not part of compensation or fines. The limited application of this term implies that there is not a substantial change in the utilization of a risk-based, economic calculus model of environmental governance.

This research project found inconsistencies in the EEA due to the use of non-anthropocentric definitions and enforcement tools. Existing research differs by separating the concepts of sustainability and risk-management as incompatible (Jacobs, 1991; Halsey & White, 1998; O’Connor, 1994: 154-155). Chapter 4 will expand on this inconsistency by

examining whether the addition of key concepts in sustainability increase the ability of environmental legislation to achieve the goals of increased environmental enforcement.

Despite the contradiction in the presence of sustainability, risk management, and anthropocentrism, this section concludes rationalities towards risk management and anthropocentrism are dominant in the content of the EEA. This was expected in light of existing research on the risk-based, utilitarian characteristic of Canadian environmental legislation (Douglas & Wildavsky, 1982; Halsey & White, 1998; Hessing et al, 2005; Stretesky, 2006: 609-610). Although the “polluter pays” principle and the addition of use-value appear to reflect sustainability, the dominant key concepts tend to reflect a rational choice, utilitarian calculus. The next section addresses the key concepts in political economy to further conceptualize the presence of a trend towards rational choice and anthropocentric solutions to environmental offences.

Key Concepts in Political Economy Identified in the Content of the EEA

This section outlines the various staples-based political and economic rationalities that emerge from the content of the EEA. Although Canada does not have a traditional “staples-based economy”, some of the regulatory changes in the EEA may negatively affect stakeholders in the marine industry. The previous sections identified amendments that affect international seafarers and that address Canadian and international waterways. The majority of the debate in the House of Commons and Senate Committees centred around the problems that were brought up by stakeholders in the marine industry. This section examines whether examples of staples-based development are dominant in the content of the EEA.

The content of the EEA indirectly addresses staples-based industries with the addition of “new penalties and sentencing provisions” that “reflect more accurately the seriousness of environmental offences” (Environment Canada, 2009). For instance, the problem of

regulation in the oil industry was a catalyst in justifying the need for increased environmental enforcement. Oil sands development was a factor in the decision-making process of the ENVI Committee. The ENVI Committee travelled to the oil sands and Fort Chipewyan in helicopters and met with stakeholders, oil sands workers, and front line environmental enforcement officers (ENVI, 26 March 2009).

The EEA was publicized as a “tough on crime” legislation that was reacted to the deaths of over 1600 ducks in a Syncrude-owned tailing pond near Fort McMurray (Becklumb, 2009: 2; O’Neill, 2009; Zimonjic, 2009). Bernard Bigras summarizes the context of the EEA in detail:

Canada does have environmental legislation, but [...] we realize that for some companies it may unfortunately be to their advantage to pollute. The penalties and fines are so low that it is worth it to break the laws enacted by Parliament [...] The truth of this can be seen in the fact that in February 2009 a company like Syncrude in Alberta could discharge toxic substances into the tailings ponds used in oil sands production, with the result that nearly 500 ducks were killed. What was the consequence for Syncrude? It was sentenced to a maximum fine of \$800,000 or a maximum of six months’ imprisonment [...] An \$800,000 fine is not much to pay to keep exploiting the oil sands. And so we saw companies polluting our environment with impunity, telling themselves it was better to keep going and pay the fines than to lose some of their profits. This is not acceptable in a regulatory regime when we want to send business a message (Bigras in Parliament of Canada, 12 May 2009).

Although the policy-making process involving the EEA occurred before this event, the incident served as the catalyst that helped table and pass the EEA through Parliament. This public event highlighted the ineffectiveness of previous, “softer” legislation and the need to enforce harsher responses to environmental offences (Becklumb, 2009; Situ & Emmons, 2000: 23-24). Corporate crime literature sees “getting tough” as a response in environmental legislation only when serious environmental crisis or disaster causes public outrage (Snider, 2000: 134). Increased enforcement is recognized as a potential governmental reaction to increased publicity and concern towards the environment (Burns & Lynch, 2004: 177). The

EEA also provided a way for the Conservative government to reinforce their commitment to increase funding towards the environment in the 2007 budget. This funding promise allocates “\$22 million over two years to increase the number of environmental enforcement officers” (Woodworth²⁶ in Parliament of Canada, 23 March 2009). It is for these reasons that the EEA is part of a specific situational context (Fairclough, 2003: 27).

Although the EEA does not explicitly mention staples-based industries, this research found that increased fines and criminalization tend to apply to Canadian waterways. The stakeholders that were consulted during the policy-making process of the EEA see the amendments to fines and sentencing as threats to the economic growth of the marine industry. The marine industry questions the added enforcement measures in the EEA by questioning the punishment of bilge²⁷ dumping in unauthorized areas. The dialogue emerges during the second reading of the EEA in the House of Commons. Member of Parliament Linda Duncan²⁸ highlights the potential problems with adding punishment to bilge dumping without providing for waste disposal facilities:

In the course of drafting these amendments to these statutes in relation to illegal shipping dumping, I'm asking if consideration was given to the availability or affordability of onshore in-Canada bilge or other waste disposal facilities--in other words, an alternative to dumping at sea, which is something that may well come up in a due diligence defence (Duncan in ENVI, 5 May 2009).

The problem with this amendment is that there are not enough bilge waste dumping facilities to ensure a harsh response to bilge dumping does not either contravene MARPOL or discourage ships from entering Canadian ports for business interests (ENVI, 5 May 2009).

The essential problem with this enforcement response is that aggressive enforcement efforts

²⁶MP, Kitchener Centre, CPC.

²⁷ Bilge is a term used to describe the waste oil that ships are required to dump as a regular part of their operation.

²⁸MP, Edmonton-Strathcona (NDP).

can harm business (Burns & Lynch, 2004: 118). Although the EEA increases punishments for environmental harm, there is still opposition to environmental enforcement initiatives that harm potential business interests. Senator Bert Brown²⁹ speaks to the possibility that a lack of reception facilities would either contravene MARPOL or lead to a reduction in international trade:

In 2006, the Marine Environmental Protection Committee at the IMO³⁰ did emphasize the importance of adequate reception facilities. They said that:

In the chain of implementation of the MARPOL convention, the policy of zero tolerance of illegal discharges from ships can only be effectively enforced when there are adequate reception facilities in ports [. . .] It is not necessarily going directly after, or just after the polluters, but also as a nation that relies so heavily on international trade, that we do provide those reception facilities in our ports (Brown in Senate Committee, 9 June 2009).

The political economic context of the EEA tends to generate economic discussion related to staples-based production. Canada's economic reliance on staples is likely related to the dominance of Canadian waterways in the content of the EEA. Canada's economy is not entirely based on staples; however, the importance of these industries likely shapes the content of legislation such as the EEA. This importance is further presented in the content of the EEA through the discussion of overdeterrence and the potential for the amendments to contravene international law. As predicted based on the findings of existing research, the political economic perspective allows for inquiry into the key concepts of interest such as risk analysis (Beck, 1997; White, 2008) and the environmental policy-making process (Hessing, 2000; Hessing et al, 2005). The next section summarizes the findings of this chapter and establishes the main concerns that will be addressed in Chapter 4.

²⁹ Senator from Alberta.

³⁰ International Maritime Organization.

Key Concepts and Rationalities in the Content of the EEA

The goal of this chapter was to identify the key concepts and rationalities in Canadian legislative approaches to the environment, using the EEA as an example of Canadian environmental legislation. The findings show that rationalities towards economic globalization, risk management, anthropocentrism, and the staples theory of economic development were dominant in the content of the EEA.

The first hypothesis was that the key concepts of neoliberalism and economic globalization are dominant in the content of the EEA. This research project found that deregulation was not as dominant as the key concept of economic globalization. The paradox of increased enforcement and decreased regulation was present in the content of the EEA. Environmental enforcement initiatives were increased at the same time the Canadian government decreased regulation on environmental assessment. Neoliberal rationalities of governance were expected to be more dominant based on the findings of existing research (Chunn et al, 2002; White, 2008: 57). Many researchers comment on the use of neoliberal techniques of governance to address environmental crime, so it was expected that the key concept of deregulation would be a dominant rationality in the content of the EEA (Hessing, 2002).

On the other hand, economic globalization was a dominant rationality present in the content of the *Environmental Enforcement Act*. The political focus on international trade agreements such as NAFTA is not new in Canadian environmental legislation (Schrecker, 2002; Hessing, 2002; Hessing et al, 2005). However, the content of the EEA affirmed that there is growing concern towards free trade and international treaties and agreements. This research project expected a strong relationship between international trade and

environmental legislation due to the presence of this relationship in existing research (Friedrichs & Friedrichs, 2002; White, 2008: 256-265).

The second hypothesis predicted that rationalities of environmental governance such as risk management and anthropocentrism would be dominant in the content of the EEA. The content analysis of the EEA showed that rational choice and risk-based deterrence were dominant approaches to environmental enforcement in the EEA. The presence of the term “risk” helped to demonstrate that human-based concerns characterized the content of the EEA. Many of the techniques of enforcement presented in the content of the EEA conformed to conceptions of rational choice presented in existing research (Beck, 1997; Benton, 2008: 10; Douglas & Wildavsky, 1982).

The third hypothesis predicted that environmental governance strategies such as sustainability would not dominate the content of the EEA. This research project did not confirm this hypothesis due to the presence of several concepts that reflected the concept of sustainability in the content of the EEA. The addition of the “polluter pays” principle and the inclusion of use-value both relate to the concept of sustainability as outlined in existing research (Hoeschele, 2007; Jacobs, 1991: 62-70). Although these key concepts are present, the dominant rationality in the content of the EEA is the focus on rational choice, anthropocentric solutions to environmental offences.

The fourth hypothesis was that the content of the EEA emphasized the political economic approach of staples development. The marine and oil industries characterize the political economic context of the *Environmental Enforcement Act*. These staples-based industries played a dominant role in discussion on criminalization, deterrence, and the “tough on crime” approach advocated for in light of the situated context from which the EEA emerged. The objections made by oil and marine industry representatives in the

Parliamentary debates surrounding the EEA highlighted the tension between increased penalties and the possibility of overdeterrence.

This chapter concludes that the most problematic trends in the EEA include the importance of economic globalization, the continuation of risk-management and anthropocentric values, and the dominance of staples development in the content of the EEA. In light of the findings of this chapter, Chapter 4 postulates that the EEA is not likely to contribute towards the effectiveness of Canadian environmental governance strategies. This research project expands on the problems, debates, and conflicts identified in existing literature and uncovered in this chapter in order to critically evaluate the content of the EEA in the next chapter.

Chapter 4: Critical Evaluation of the *Environmental Enforcement Act*

This chapter addresses the second research question: is the EEA likely to contribute towards the effectiveness of Canadian environmental governance strategies? The goal is to critically evaluate the quality of the content of the EEA. This chapter addresses six hypotheses that relate to key concepts and rationalities such as neoliberalism, economic globalization, rational choice deterrence, risk management, anthropocentrism, sustainability, and staples-based economics. The findings suggest that a complex set of structural factors are likely to decrease the potential of this new environmental legislation to achieve the goals of increased environmental enforcement and environmental protection.

Neoliberalism

This section critically evaluates how well the EEA addresses the potential challenges for environmental protection associated with neoliberal governance. Chapter 3 described how deregulation was not interpreted as a dominant key concept in the content of the EEA. The EEA increased regulation through the implementation of fines and sentencing. The previous chapter also found that the paradox of increased enforcement and decreased social spending was present, but not dominant, in the context of the EEA.

This section expands on the findings of Chapter 3 by examining some of the less coercive regulatory tools in the EEA (White, 2008: 182-183). Environmental criminologists (Akella & Cannon, 2004; Snider, 1993; Stretesky, 2006) contest the effectiveness of less coercive approaches such as self-regulation. Existing research notes that decriminalization, deregulation, and a decrease in enforcement capacity are softer techniques of governance that can lead to a decrease in white-collar crime enforcement (Snider, 1993: 172-174). This section also evaluates the presence of the paradox of increased coercion and decreased regulation in the context of neoliberal techniques of governance. The presence of this

paradox likely decreases the effectiveness of the EEA due to the contradictory goals of increasing enforcement and decreasing funding for environmental assessment.

The EEA adds self-regulation to the sentencing tools of all amended Acts by requiring convicted corporations to publish the facts of the offence and punishment imposed (Becklumb, 2009: 9). All nine amended pieces of legislation contain an “Orders of Court” section that adds the following:

If an [offender³¹] has been convicted of an offence under this Act, in addition to any other punishment that may be imposed under this Act, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order[...]:

directing the [offender] to publish, in the manner specified by the court, the facts relating to the commission of the offence and the details of the punishment imposed, including any orders made under this subsection³²

If an offender does not abide by the above subsection of the “Orders of Court” section, The “Publication” section of each amended Act may be applied. The “Publication” section is outlined in all nine amended Acts as follows:

[...] the Minister may, in the manner that the court directed the offender to do so, publish the facts relating to the commission of the offence and the details of the punishment imposed and recover the costs of publication from the offender³³

Existing research notes that the “Orders of Court” subsection in each Act represents the dispersion of state control through neoliberal methods of governance such as self-regulation

³¹[Offender] indicates minor linguistic differences between “person” and “offender” in each Act.

³²Section 17(3) of the EEA and section 66(1)(e) of the *Antarctic Environmental Protection Act*; section 27(1) of the EEA and section 27(1) of the *Canada National Marine Conservation Act*; section 39(4) of the EEA and section 30(1) of the *Canada National Parks Act*; section 49(1) of the EEA and section 16(c) of the *Canada Wildlife Act*; section 85(5) of the EEA and section 291(1)(g) of CEPA; section 93 of the EEA and section 45(1)(h) of the *International River Improvements Act*; section 103(1) of the EEA and section 16(1)(c) of the *Migratory Birds Convention Act*; section 114 of the EEA and section 20(2)(i) of the *Saguenay-St. Lawrence Marine Park Act*; section 122 of the EEA and section 26(2)(c) of *WAPPRIITA*.

³³Section 17(7) of the EEA and section 66(2) of the *Antarctic Environmental Protection Act*; section 27 of the EEA and section 27(1.1) of the *Canada National Marine Conservation Act*; section 39(5) of the EEA and section 30(4) of the *Canada National Parks Act*; section 50 of the EEA and section 16.2 of the *Canada Wildlife Act*; section 85(6) of the EEA and section 291(2) of CEPA; section 93 of the EEA and section 45(2) of the *International River Improvements Act*; section 103(3) of the EEA and section 16(1.2) of the *Migratory Birds Convention Act*; section 114 of the EEA and section 21.3(4) of the *Saguenay-St. Lawrence Marine Park Act*; section 122 of the EEA and section 22.12(2) of *WAPPRIITA*.

(Braithwaite, 2000: 225-226; Braithwaite, 2008: 51-23; Steger, 2002: 41-44). The use of self-regulation is potentially effective in the context of corporate crime. For instance, the ordering of adverse publicity in corporate crime is the harshest penalty a corporation can receive (Fisse & Braithwaite, 1993: 141). The example of the “Orders of Court” shows how self-regulation may appear to increase the effectiveness of environmental legislation.

However, it appears that the addition of the “Publication” section added by the EEA increases the enforcement tools available in the nine Acts by allowing the Minister to order an offender to abide by the “Orders of Court” self-regulatory enforcement provision. The “Orders of Court” subsection punishes offenders and corporations by ordering negative publicity. This method of enforcement has the goal of improving compliance by deterring the offender from committing illegal acts (Akella & Cannon, 2004: 530). Although the addition of negative publicity pressures companies to comply with legislative changes, the reliance on neoliberal methods of governance is problematic because the global economic market still guides any changes in corporate behaviour (Snider, 1993: 99-100). The punishment implies that offenders will be deterred from committing environmental crimes because of the potentially negative impact on their business, not because of any concern towards the environment (Clifford, 1998; Situ & Emmons, 2000: 61-62). In other words, in a free market economic system, a corporation will demonstrate concern towards the environment providing that there are market-based incentives (Burns et al, 2008: 26). The ordering of negative publicity may deter the offender, but it does not address the social and political pattern that leads to environmental harm (Simon, 2000: 104; Snider, 2000; 177-179).

The ordering of negative publicity challenges the goal of environmental protection. The problem with relying on economic solutions is that the global economic market does not

place monetary value on protecting the environment (Hessing, 2002: 26-27). Using the example of negative publicity, corporate morality is defined less by the desire to protect the environment, and more by stewardship and conformity to environmental legislation that is based on the desire to avoid adverse moral and economic costs to business (Fisse & Braithwaite, 1993: 78-71; Friedrichs, 2007: 308-331).

Although there is no consensus in existing research on the ideal response to environmental harm, there is concern that the movement towards less coercive methods of regulation has negative consequences for environmental protection (Hessing, 2002: 26-27; White, 2008: 211-212). The tools that are characteristic of neoliberal methods of governance do not cause environmental degradation. However, a decrease in environmental protection is generally the consequence of a decrease in the regulation and funding of environmental agencies (Burns, 2004: 32-35; Hessing, 2002: 26-27; White, 2008: 210-221).

In light of existing research, this section finds that the paradox of increased enforcement and decreased social spending is not likely to address the potential challenges for environmental protection, and therefore the EEA is unlikely to substantively contribute to Canadian environmental legislation. In the context of criminal justice policy initiatives, the implication is that the social welfare system is scaled back, but the state continues to pay out for more extensive systems for crime control (Braithwaite, 2000: 227). The authors that discuss this paradox describe the potential problem of hegemony and state repression in the context of criminology (Ratner & McMullan, 1983: 195-199). Chapter 3 highlights the question that David McGuinty poses in the House of Commons (McGuinty in Parliament of Canada, 12 May 2009). McGuinty summarizes how the EEA addresses environmental enforcement, but in effect, the broader context demonstrates that decreased spending on environmental assessment actually weakens current legislation.

The Canadian government seems to communicate that the EEA is a “tough on crime” piece of legislation (Environment Canada, 2009; Zimonjic, 2009). However, changes in the funding dedicated to the *Environmental Assessment Act* undermine the likely efficacy of the EEA. This potential weakness is mentioned in the discursive content of the EEA but is not adequately addressed by any of the legislative changes. The implication is that the EEA has the potential to be a “theatrical”³⁴ representation of environmental protection rather than a viable answer to the problem of environmental harm (Neocleous, 2008: 137).

The link between environmental regulation and broader structural trends such as economic globalization and staples based economic development is identified in the reviewed literature (Hessing, 2002; White, 2008: 268-270). Although regulatory changes do not cause environmental harm, a combination of structural factors undermines the likely efficacy of legislation that uses “soft” regulation as a tool to address environmental offences (Stretesky, 2006: 608-609). The enforcement tools added to each amended Act represent a continuation of classical liberal³⁵, not neoliberal trends. The upcoming sections expand on the structural limits that challenge the likelihood that neoconservative methods of governance will effectively govern environmental security and integrity.

³⁴ Mark Neocleous (2008, 123-141) discussed the “theatrics of security” to describe the ways in which the political importance of loyalty has led to the unquestioned acceptance of politically defined security. Neocleous uses the example of “theatrics” such as public degradation ceremonies and confessions in his discussion on “theatrical representations” of security (137-138). Erving Goffman (1959) also discussed the “dramaturgical” metaphor that has been used to describe the postmodern society (Goffman in Denzin, 2004).

³⁵ Classical liberalism implies that “governmental power should be restricted to the provision of security and the enforcement of just laws” (Johnston, 2010). In the context of environmental criminology, classic liberal techniques of governance aim to “facilitate, privilege and rationalize the human benefits (as defined by and organized through capitalist market relations) which flow from the exploitation and protection of the natural environment” (Halsey & White, 1998: 32-33).

Economic Globalization

This section addresses Canada's international legal commitments and the tension between economic and environmental needs in the context of climate change. The goal of this section is to evaluate the likely efficacy of the EEA in addressing structural problems associated with the growth of economic globalization. Existing research conceptualizes the role of international trade as potentially negative to environmental protection initiatives (Hessing, 2002; Howlett & Brownsey, 2008). In the context of staples development, international trade has the potential to "trap" countries that rely on export trade for development when the supply or demand declines (Howlett & Brownsey, 2008: 8). It is in this way that national governments are constrained by the characteristics of economic globalization.

Difficulties especially arise when resource depletion adversely affects the export-led growth characteristic of a staples-based economy (Howlett & Brownsey, 2008; Hessing, 2002). The reliance on resource extraction can lead to the movement of capital and labour towards the manufacturing industry (Larsen, 2004: 4). The conversion of resource revenue into domestic currency, or the increase in aggregate and domestic demand, can create excess demand if the economy is at capacity (Larsen, 2004: 14). This leads to a decreased in the competitive edge of the manufacturing sector when the market becomes saturated (Larsen, 2004: 5). In the Canadian context, the use of the Canadian dollar as a "petrocurrency"³⁶ is discussed in Canadian Parliamentary documents as a negative economic consequence to oil extraction (Bergevin, 2006). The next section expands on the findings of Chapter 3 to evaluate how the EEA responds to the challenges associated with economic globalization.

³⁶ The term implies that the value of the Canadian dollar is strongly correlated to the price of oil (*The Economist* in Bergevin, 2006).

Chapter 3 noted several ways in which the desire to ratify or respond to international environmental treaties led to an increase in environmental enforcement provisions. Although treaties are a dominant approach to international environmental legislation, they only obligate the states that have consented to them to ratify the content of the Treaty in national legislation (Situ & Emmons, 2000: 183). Canada has ratified several international environmental treaties. For instance, the sentencing principles in the *Antarctic Environmental Protection Act* mention international legal commitments and Canada's desire to conform to these commitments by holding polluters responsible under Canadian legislation. As mentioned in Chapter 3, the fundamental principles of sentencing in Section 12 of the EEA are "to contribute to respect for the law protecting the Antarctic environment and dependent and associated ecosystems in light of the global significance of the Antarctic and the Treaty"³⁷. This principle is reinforced in the House of Commons discussion on the EEA. Larry Bagnell speaks to this addition of fundamental principles of sentencing in relation to international commitments:

I am here to discuss the provisions of this Act that alter the Antarctic Environmental Protection Act. I am certain that some Canadians will wonder why legislation originating in Ottawa features any mention of the Antarctic. **The reason is our commitment to international law [...]** **The Madrid protocol** came into force in 1998, designating the Antarctic as a natural reserve devoted to science and peace [...] its purpose is to ensure that countries regulate the activities of their nationals in the Antarctic. The protocol has been ratified by 30 countries [...] this is truly international legislation (Bagnell in Parliament of Canada, 25 March 2009, emphasis added).

In Bagnell's example, the changes to enforcement tools in the EEA represent some of the solutions presented in international treaties such as the Madrid Protocol. In this case, the changes proposed through the EEA strengthened existing Canadian environmental legislation in light of the need to ratify and conform to international protocols. This change likely

³⁷ Section 12 of the EEA and section 50.9 of the *Antarctic Environmental Protection Act*.

increased the efficacy of the EEA by proscribing into legislation the importance of Antarctic environmental protection.

Although international agreements can strengthen Canadian environmental legislation, these agreements can also serve as potential barriers to the passing of environmental enforcement legislation. For instance, the final discussion of the EEA at the Senate level spoke to international legal requirements and the lack of reception facilities for boats to discharge waste into water. This waste is often referred to as bilge³⁸. This discussion is relevant to the requirements under the MARPOL Convention. The Convention covers “both accidental pollution and that from routine operations” of vessels; however, the Convention only punishes “accidental” discharge (IMO, 2011). The Senate debates discussed how the EEA’s added fines and enforcement measures on pollution from vessels could contravene this international legal Convention. The observations summarize these concerns:

It is important that we do not lose sight of fundamental principles of law. There are serious flaws associated with the loss of the presumption of innocence. One is that they breach international principles that are codified in the IMO convention and UNCLOS, to which Canada is party. MARPOL 73/78 makes a fundamental distinction between accidental and intentional pollution. The UN Convention on the Law of the Sea supports MARPOL and points to monetary penalties rather than imprisonment being the normal sanction. They provide serious criminal sanctions against almost everyone involved in the shipping operation without regard to whether the incident was accidental (Arsonaidis Stein³⁹ in Parliament of Canada, April 30, 2009).

The MARPOL Convention does not explicitly punish accidental pollution. Canada’s EEA adds minimum fines and imprisonment for environmental offenders that includes pollution from international marine vessels. However, none of the provisions in the EEA consider if

³⁸ Bilge is a term used to describe the waste oil that ships are required to dump as a regular part of their operation.

³⁹ President and Secretary-General, International Ship-Owners Alliance of Canada Inc.

pollution is “accidental” or a result of “routine operations” of marine vessels (IMO, 2009). The potential problem is that the EEA adds enforcement tools that are stronger than the internationally accepted standards for sanctions for environmental offenders. Existing literature notes the “soft regulatory” approach of most international legislation (Situ & Emmons, 2000: 183).

Existing literature also postulates that if the United States is not a signatory to these types of international treaties, countries such as Canada would be at a competitive disadvantage (Brownsey, 2008: 246-251). Canadian policymakers seem to address this fact in the debates and discussions on the EEA. For instance, David McGuinty stated in the second round of debates on the EEA that:

The cap and trade system is a system whereby we put a price on the right to emit greenhouse gases into the atmosphere. Our 760 large polluters are asked to pay for that privilege, to emit into the atmosphere. It is a market mechanism. It is a very efficient tool to use to price carbon emissions, greenhouse gas emissions, and reduce them over time [...] we need to ensure, using 1990 as the baseline year, unlike 2005 or 2006, as proposed by the government, that it is in line with the international community of 174 countries that have ratified the Kyoto treaty and the United Nations Framework Convention on Climate Change. We are all using 1990 as the baseline year. The only two or three exceptions would be the Canadian government and, because of the last eight years under the republican administration of Mr. Bush, now, I believe, President Obama is using 2005, but that is also under negotiation (McGuinty in Parliament of Canada, 12 May 2009).

Canada’s position on climate change must consider the political and economic actions of the United States. Although baseline targets are not directly addressed in the content of the EEA, the debate on climate change demonstrates the difficulties involved in the decision to adopt a cap and trade system. Existing literature extensively describes how governments have attempted to address problems such as climate change through the implementation of international treaties such as the Kyoto Protocol (Hessing et al, 2005; White, 2008). The Kyoto Protocol was established by the international community with the goal of setting

baseline limits to carbon dioxide emissions (Hessing et al, 2005: 192-193). The difference in baseline amounts influence factors such as job loss or growth, lifestyle changes, and the growth or decline of the Canadian economy (Hessing et al, 2005: 52). The baseline year chosen by the United States also influences the decision-making process in Canada on what year will provide the baseline. If Canada's largest trading partner does not adopt an equally low baseline, the decision to protect the environment by lowering the baseline may compromise economic growth (Brownsey, 2008: 250; Clement, 1989: 43-46). The example of baseline targets and the Kyoto Protocol demonstrates how economic interests generally dominate the decision-making process when environmental and economic interests are both present (Braithwaite & Drahos, 2000: 294; Hessing, 2002: 26-27).

Existing literature finds that environmental protection is often "sidelined" in the interest of export production when countries are tied into free trade agreements (Schrecker, 2002: 46). Free trade intensifies the structural weakness of a staples-based economy, especially when goods such as oil are a central part of the trade agreement (Hessing et al, 2005: 28-30; Smandych & Kueneman, 2010). For instance, export requirements call into question the ability of government actors to limit the production of staples such as oil and gas (Brownsey, 2008; Clement, 1989). This is because efforts at environmental protection almost inevitably require a reduction in the export of natural resources (Barry, 1999; Dobson, 2000; O'Connor, 1994b).

Many theorists see free trade agreements as facilitators for the potentially negative effects of staples-based economics, globalization and capitalist economics (Chunn et al, 2002: 17; Watkins, 1989: 31). However, there are several ways that governments who are subject to free trade agreements can protect the environment. For instance, countries can withdraw from the international economic community. This solution is dangerous because

countries that “unplug” from the world economy also risk becoming isolated from the benefits of economic capitalism (Castells, 2010: 142). This type of protectionism damages the world economy by limiting the free flow of goods (Castells, 2010; Scott, 2006). The abrogation of agreements is also possible, but it is unlikely that this solution would be presented to a powerful neighbouring state such as the United States (Watkins, 1989: 32). The decision to contravene international legal agreements would put Canada at a competitive disadvantage with trading partners such as the United States (Brownsey, 2008: 246-251). The flight of capital demonstrates the economic risk involved with protecting the environment over trade. For instance, if solutions such as zero emission quotas are proposed, business interests can easily move their resources to countries with less stringent environmental laws (Schrecker, 2002: 46).

The EEA reflects several problematic conflicts associated with the growth of economic globalization. The importance of free trade agreements, international treaties, and conventions highlights the potential problem associated with the growth of economic globalization. When it is often easier for companies to move their business to countries with less strict environmental standards than it is to follow environmental policy, countries must consider economic loss when increasing environmental enforcement standards (Braithwaite & Drahos, 2000: 295-296). Although the enforcement tools proposed in the EEA change the discursive content of environmental legislation in Canada, the solutions proposed do not adequately address the structural weaknesses associated with staples-based economies (Hessing, 2002: 27). The next section expands on the observed dominance of economic interests in the context of risk management.

Rational Choice Methods of Deterrence

As mentioned in the Chapter 3, a rational choice approach characterizes the enforcement tools such as increased fines, the enactment of minimum fines, and the addition of fundamental purposes of sentencing by the EEA. This trend is problematic for environmental protection. Business interests tend to benefit from policies that rely on utilitarian and risk-based analysis over precautionary methods (Halsey & White, 1998: 31-33). When business interests dominate the policy-making process in pieces of legislation such as the EEA, environmental protection is often secondary to economic concerns such as poverty, job loss, and economic growth (Beck, 1997: 28; Simon, 2000: 103-104). This section critically evaluates whether the EEA substantively addresses the challenges associated with rational-choice methods of deterrence. Specifically, this section evaluates how likely the use of enforcement tools such as increased fines, rational choice methods of deterrence and overcriminalization addresses the tension between economic development and environmental protection.

The solutions proposed in the EEA attempt to address the potential conflicts that result from the use of purely risk-based enforcement tools. Bernard Bigras summarizes the potential problems with fines in the House of Commons discussions on the EEA:

We know these companies that make profits that might be described as colossal. An \$800,000 fine is not much to pay to keep exploiting the oil sands. And so we saw companies polluting our environment with impunity, telling themselves it was better to keep going and pay the fines than to lose some of their profits. This is not acceptable in a regulatory regime when we want to send business a message (Bigras in Parliament of Canada, 12 May 2009).

Existing research also describes the potential problems with the use of fines (Fisse & Braithwaite, 1993; Stretesky, 2006). Fines are generally too small to damage the overall profit of a large corporation (Burns & Lynch, 2004: 48). Alternative methods such as

innovation and “strengths-based” enforcement are preferred because they move away from traditional risk management approaches (Hope, Nicol & Braithwaite, 2008: 112-119). Fines are fundamentally part of the status quo, as they do not challenge market-based solutions by problematizing the need for economic growth. The presumption in a utilitarian, risk management approach is that the potential financial loss deters the offender (Stretesky, 2006: 609-610). As the above example demonstrates, there is also difficulty in creating a fine that affects the profit margin of a large corporation (Fisse & Braithwaite, 1993: 87).

Existing research questions the effectiveness of similar solutions. For example, quantitative research that examines environmental enforcement and deterrence in the United States questions the effectiveness of deterrent-based solutions in preventing environmental crime (Stretesky, 2006). Although there is no consensus on whether deterrence-based methods work on corporate criminals, there is consensus that a rational choice, utilitarian calculation occurs alongside the choice to engage in corporate crime (Friedrichs, 2007: 315-317; Stretesky, 2006: 209). Existing research supports the potential for deterrent approaches to work in the context of corporate crime; however, there is no consensus on which methods work best in response to environmental offences (Friedrichs, 2007; Stretesky, 2006). Several factors lead to the effectiveness of deterrence approaches. These include factors such as the uneven application of laws, the certainty of punishment, and the financial impact of fines on corporate profitability from committing the offence (Akella & Cannon, 2004; Friedrichs, 2007: 315-318; Snider, 1993: 134-135).

Most environmental crime research concludes that environmental protection requires some restraint on capitalist economic development, especially when economic development relies on resource extraction (Benton, 2008: 10). The use of scientific uncertainty in the decision-making process generally means that precaution is abandoned in the interest of

deregulation and risk management (Braithwaite & Drahos, 2000: 284). The content of any piece of environmental legislation is based on risk management when information about the potential risks is available the accuracy of this information is contested (Douglas & Wildavsky, 1982: 5). This implies that there is knowledge of the potential for environmental harm, but there is no political consensus on what to do in response to this risk. This tension explains why theorists see risk-based language as a substitution for moral consciousness. When risk is the dominant decision-making approach, action is only considered to be required when environmental risks are meaningful in relation to human needs (Beck, 1997: 124-125). Accordingly, deterrence-based approaches tend to be more effective when moral inhibitions are weak (Stretesky, 2006: 612).

Critics of the use of rational choice methods question the desirability of responding to environmental harm with an economic calculation. The power to limit economic growth is limited when market-based solutions are deployed (Benton, 2008: 10; Chunn et al, 2002: 21; White, 2008: 257). Although deterrence as a sentencing goal may benefit the nine amended Acts, the change is still problematic because it relies on market-based solutions to environmental offences (Snider, 1993: 99-100; Stretesky, 2006). These changes are further complicated because industry representatives perceive the added enforcement measures as a threat to both individual liberties and economic progress. The following examples of increased criminalization and overdeterrence question the ability for rational choice methods of environmental enforcement to address environmental protection.

For instance, industry members argue that increased criminalization is not fair for marine industry employees, as it does not hold the employer liable for offences committed in the context of shipping. For instance, Katy Arsonaidis Stein states that the EEA “should not, however, imperil individual liberty” by deploying strict criminal liability to environmental

offences (Arsonaidis Stein in ENVI, 30 April 2009). Some of the problems associated with the use of strict liability in marine pollution incidents are demonstrated in the context of the *Hebei Spirit* in Korea. Christopher Giashi mentions this incident as a reminder of the negative consequences to strict liability:

I think it's important to recognize too that internationally there is a very great deal of concern over the imposition of what are perceived to be unfair and unjust criminal sanctions against seafarers in respect to marine pollution incidents. Many of us are familiar with the *Prestige* incident, where the master was detained for [...] I think it was two years, and the *Hebei Spirit* in Korea, where the master and chief engineer are still being detained.

There's a real concern about this movement towards excessive penalties and imprisonment and imposing them automatically without really going through due process. It is almost as if we've forgotten the Magna Carta and all our history about due process and why it's important (Giashi in ENVI, 30 April 2009).

The above excerpt refers to the change from “Canadian vessels” to “any other vessel” in section 6 and 7 of the EEA and section 32(2) of the *Antarctic Environmental Protection Act*. Chapter 3 discusses this change in detail. The concerns identified by Christopher Giashi illustrate the harsh penalties in the EEA and their potential to adversely affect individual liberties. The possibility of overdeterrence is another problem identified in the discursive content of the EEA. Katy Arsoniadis Stein best describes the potential consequences of this problem in Senate consultations on the EEA:

I briefly mentioned the Hong Kong Administration and the Republic of China and the paper that came in on the criminalization of seafarers. It suggested that, regionally, a number of reports emphasized the point that with the fear of being criminalized, young Asians are becoming reluctant to join the seafaring profession. This situation was also echoed by the EU Economic and Social Committee involved in recruitment and training of seafarers. I emphasize that this is criminalization where the right to be presumed innocent is in place (Arsonaidis Stein in Senate Committee, 9 June 2009).

Chapter 3 discussed the increased enforcement of Canadian waterways in several of the nine amended Acts. Industry representatives present during the policy-making process of the EEA were concerned that overdeterrence would reduce the potential for growth of the

Canadian marine industry. Environmental criminologists acknowledge the potential problems associated with the use of strict liability in order to illustrate the controversy in deploying criminal sanctions for environmental offences (Burns & Lynch, 2004: 118; Cohen, 1998: 234; Situ & Emmons, 2000). The potential problem in the context of strict criminal liability is overdeterrence (Cohen, 1998: 232).

Member of Parliament Bernard Bigras problematizes the potential problems with risk-based, cost-benefit methods of deterrence in House of Commons debates on the EEA:

Penalties need not necessarily be increased; what is needed instead is to engage in an industrial repositioning so that Canada will be responding to the call by the United Nations to be part of the “green new deal”, which recommends that nations reinvest in sectors of activity that will contribute to repositioning the global economy at a time when an economic stimulus is needed [...]but the approach the federal government has chosen instead is to increase fines for major polluters, while at the same time continuing to fund them. Basically, the big winner in the end is that industry, which Canada is helping out. The big losers are Canada's ecosystems and its taxpayers (Bigras in Parliament of Canada, 25 March 2009).

Bigras discusses the tensions between economic development and environmental protection in order to question the extent that the EEA can contribute to environmental protection efforts. The tension that Bigras addresses by mentioning alternative enforcement tools summarizes the debate in existing literature between risk management and precautionary responses to environmental harm. Most responses to environmental harm fall into two categories. Radical transformation theories aim to challenge “business as usual” and the status quo of utilitarian and anthropocentric values, whereas regulatory and socio-legal approaches maintain the status quo (Lynch & Stretesky, 2003: 87; White, 2008: 182-183).

However, the EEA appears to attempt to respond to the tension between risk management and precautionary approaches by adding both to sentencing principles in each amended Act. For example, Chapter 3 identified the “polluter pays” principle, use-value, and risk-based solutions as dominant rationalities of sustainability and anthropocentrism in

the content of the EEA. The finding that both risk management and precautionary rationalities were present in the EEA departs from existing research that separates both sustainability and risk management as irreducible (Lynch & Stretesky, 2003; O'Connor, 1994). However, as Chapter 3 demonstrates, risk-based approaches are dominant in the content of the EEA.

This research project found that the use of rational choice and risk management techniques in the discursive content of the EEA is likely to decrease the potential effectiveness of the environmental enforcement tools added to this legislation. There is consensus in existing research that risk management is generally supported over precaution, especially when capitalist economic interests rely on continued resource extraction and the level of harm caused is difficult to measure (Douglas & Wildavsky, 1982: 48; White, 2008: 73-76). Anthropocentrism compliments the preference towards risk, as the value of environmental resources tends to be seen in the context of human-based value over intrinsic value (Hessing et al, 2005: 20; Snider, 1993: 74-75; White, 2008: 15). The next section expands on this contention.

Anthropocentrism and Sustainability

Existing research confirms risk-based solutions to environmental harm are potentially problematic for environmental protection because they involve a cost-benefit assessment of harm that does not calculate the intrinsic value of the environment (Douglas & Wildavsky, 1982: 70; Halsey & White, 1998: 31-33; Hessing et al, 2005: 7-21). Philosophical anthropocentrism involves instrumental rationality because it constructs the value of the environment according to human needs rather than as something valuable in itself (Barry, 1999, 141, 220). This section critically evaluates the contention that the EEA does not adequately address the problems associated with anthropocentric philosophical thought. This

section will also address whether rationalities in sustainability in the content of the EEA speak to the larger debate between economic progress and environmental protection.

The content of the EEA introduces several new enforcement tools that appear to reflect the movement away from anthropocentric rationalities. For instance, Chapter 3 examined the addition of the term “use value” as a linguistic change that appeared to reflect the key concept of sustainability. Use value requires that “the court takes into account damage to both use and non-uses of the environment” so that “the full value of the environment is considered” in sentencing (Wright in Parliament of Canada, 26 March 2009). This definition of value in each of the nine amended pieces of legislation calculates the value of the environment beyond the human ability to benefit from the use of the environment. For instance, section 274 (1)(a) of CEPA adds the concept of use-value to the definition of damage in the Offences and Punishment section. The amendment states in section 72 of the *Environmental Enforcement Act* that:

274. (1) Every person is guilty of an offence and liable on conviction on indictment to a fine or to imprisonment for a term of not more than five years, or to both, who, in committing an offence under this Act,
 (a) intentionally or recklessly causes a disaster that results in a loss of the use or the non-use value of the environment

This amendment appears to move away from human-centered conceptions of the environment by internalizing the costs of environmental harm. However, existing research is divided on the effectiveness of use value as a movement away from anthropocentric conceptions of environmental harm. The addition of use value is potentially beneficial because the intrinsic, non-use value of the environment is not defined in current economic calculus (O’Connor, 1994c: 144-145). Use value challenges the rationality of anthropocentrism by “includ[ing] the environment’s existence value” (Seis, 1999: 293). However, existing research also criticizes use value for being too anthropocentric (Jacobs,

1999: 66-67). This is primarily because use-value does not explicitly recognize the non-commoditized aspects of nature that have value such as clean air and drinkable water (Hoeschele, 2007).

Enforcement tools that recognize the intrinsic value of the environment address the problem of environmental harm before considering market-based needs. Rational choice deterrence “substitutes” morality by determining the importance of environmental protection through market-based and human-centered methods (Barry, 1999: 159; Beck, 1997: 125; Douglas & Wildavsky, 1982: 69-73). When rational choice approaches are used, emphasis is placed on preserving market growth, not towards environmental sustainability. Anthropocentrism compliments the philosophical assumption that costs and benefits are measurable through capitalist, market-based economic analysis (Douglas & Wildavsky, 1982: 68-69). The next section expands on the complex and dual desire for the Canadian government to promote environmental protection *and* market-based, industrial development.

Staples Based Economy

Existing research recognizes that most environmental legislation does not address the tension between industrial development and the natural environment (Clement, 1989; Helsing et al, 2005; Hoogensen, 2008; Hutton, 2007; Smandych & Kueneman, 2010). The difference between “business as usual” and transformative approaches to environmental offences is relevant when discussing the content of the EEA (Lynch & Stretesky, 2003: 87; White, 2008: 182-183). This section evaluates the hypothesis that the EEA does not adequately address the contradictions between continued industrial development and natural resource protection.

The concerns that the marine industry identified during the policy-making process of the EEA represent the long-standing internal and external pressures that a staples-based commodity creates (Hoogensen, 2008). The discussion of the EEA in the debates stage in

the House of Commons demonstrates the pressure between environmental enforcement and economic interests. For instance, David McGuinty⁴⁰ discusses fish habitat in terms of economic potential when the concept of added enforcement is discussed in Parliament:

I now turn to the question of environmental enforcement when it comes to protecting our fish habitat. Fish habitat, one might say, is not too important and maybe it is something that is tangential but not quite. The commercial fishing sector in 2005 generated \$2.2 billion in economic activity and it employed more than 80,000 people in fishing and fish processing activities. More than 3.2 million Canadians participate in recreational fishing which contributed in 2005 some \$7.5 billion to Canada's economy.

Now that we know the context in which we are talking here, the magnitude of the economic opportunities, let us talk about what is happening with environmental enforcement here” (McGuinty in Parliament of Canada, 12 May 2009).

McGuinty calls for environmental enforcement action because of the economic potential of the fishing industry, not the intrinsic environmental value of fish habitats. Environmental harm is presented as a revenue loss issue when added enforcement is discussed in this context in existing research (Clifford, 1998: 70). This example illustrates the tensions identified in existing literature between “providing a safe, clean environment and the economic concerns about the costs (in terms of jobs, prices, and the like) of tough environmental law enforcement” (Friedrichs [1996] in Burns & Lynch, 2004: 118). Kaity Arsonaidis Stein also calls for a focus on continued economic growth in the Senate Committee meetings:

We are concerned about the impact of criminalization and unfair treatment of seafarers [...] Canada's inconsistencies with international treaties to which it has subscribed, which make a fundamental distinction between accidental and intentional pollution and point to monetary penalties rather than imprisonment being the normal sanction. You have received detailed briefs from our international counterparts in London, Denmark and Hong Kong, which detail Canada's infringements.

Trade has always been at the forefront of our nation's economy. In the 1950s, Canada was considered a major maritime nation. This is no longer the case. We have lost our way. This state of affairs is inconsistent with our government's portfolio of a comprehensive economic package to stimulate the Canadian economy.

⁴⁰MP, Ottawa South (Liberal).

With government investments of over \$2.5 Action for the Asia-Pacific Gateway and further investments for Atlantic trade corridors, we should not ignore shipping, which can become a true economic engine for Canada's GDP, especially during this time of economic crisis (Arsonaidis Stein in Senate Committee, 9 June 2009).

There is a dual need to encourage industrial development and global economic growth. Increased criminalization is dismissed as a threat to economic progress and a potential competitive disadvantage to industry.

The economic potential of natural resources is also recognized in the EEA with the example of the oil industry. As described in Chapter 3, an oil company caused the environmental offence that catalyzed this legislative response. However, the business of oil production is not questioned when enforcement measures are produced in the EEA. Instead, there is pressure to resolve concerns related climate change in order to continue oil production, as Hon. Grant Mitchell demonstrates:

Alberta has a huge stake in getting this climate change issue settled because the U.S. is expressing serious reservations about buying Alberta's oil sands oil. Canada needs to provide leadership to sustain our exports in that area and many other products that could be jeopardized because of what the Americans do (Mitchell in Senate of Canada, 27 May 2009).

In light of the findings of existing research, this pressure in the EEA to continue staples development is unlikely to help this piece of legislation adequately address environmental harm. Existing literature recognizes that the reliance on staples is not always economically advantageous. The reliance on staples has the potential to “trap” the economy from diversifying into less production based sectors (Hessing et al, 2005: 48-49). In terms of environmental protection, the constant extraction of natural resources required for capitalist economic growth is at odds with environmental conservation and protection (White, 2008: 175-176). Documents published by the Parliament of Canada also illustrate the potential disadvantages to promoting staples based economic growth (Bergevin, 2006). There is no

clear consensus that staples are beneficial for economic growth, especially as the international economy diversifies (Castells, 2010).

Existing literature also notes that the push for continued natural resource development in the content of the EEA reflects the competitive disadvantage of national policy changes in environmental protection (Snider, 1993: 100). The findings of this section support the consensus in environmental crime literature is that “threats” to the environment also threaten the “economic foundation” of industrial society by affecting capital, jobs, and economic growth (Beck, 1997: 28; Clifford, 1998; Lynch & Stretesky, 2003: 87). Because discussion of staples resources tends to involve conflict between economic and environmental interests, the continued economic growth of staples based likely means that the contradictions between industrial development and natural resource protection will continue after the implementation of the EEA. As discussed in the next section, the implication is that the EEA is unlikely to substantively contribute to existing Canadian environmental legislative efforts.

Summary: Critical Evaluation of the *Environmental Enforcement Act*

This research project finds that the EEA does not adequately consider the problems associated with neoliberalism, economic globalization, risk management, anthropocentrism, and staples based economic development identified in existing literature. A complex set of structural factors decrease the ability of environmental legislation to achieve the goals of increased environmental enforcement.

This chapter critically evaluated the EEA to address whether the potential challenges for environmental protection associated with neoliberal governance were addressed in the content of the EEA. This research project found that the market-based incentives associated with less coercive forms of regulation do not adequately address the moral implications of

environmental harm. This research also determined that the paradox of increased enforcement and decreased social spending has the potential to become a theatrical representation of environmental protection rather than an effective response to the problem of environmental harm (Neocleous, 2008: 137).

Next, the context of international law and agreements and staples development does not contribute to addressing the problems associated with the growth of economic globalization in existing research (Hessing et al, 2005: 30-34). The tension between industry and environmental interest is specific to countries reliant on exports for economic development (Hessing, 2002; Schrecker, 2002). Although the changes the EEA reflected the desire to adopt international standards for environmental protection, the context of economic growth also meant that larger issues such as climate change were not addressed in the EEA. This research finds that the enforcement tools proposed do not substantively address the structural weaknesses associated with staples-based economies (Hessing, 2002: 27).

Subsequently, this research project finds that the EEA does not effectively address the moral implications of environmental harm due to a reliance on rational choice, human-based methods of deterrence. The regulatory changes proposed in the EEA are limited by the reliance on market-based solutions to environmental harm (Halsey & White, 1998: 31-33). Although the EEA increases the scope and application of enforcement capacity of the nine amended Acts, the examples of increased liability and overdeterrence demonstrate how the EEA is likely to be ineffective due to the unresolved concern that the added enforcement will harm the marine industry.

Next, the contradiction between anthropocentric and sustainability-based enforcement tools limits the likelihood that the use of sustainability in the EEA changes the debate between economic progress and environmental protection. Although use value

encourages seeing the environment as intrinsically valuable, it still favours the market-based logic that believes the environment can be “harnessed” for economic production (O’Connor, 1994b: 6). This research project confirms that the problems associated with anthropocentrism limit the likelihood that the EEA will substantively address the problem of environmental harm. However, the presence of sustainability, precaution, and rational choice methods of deterrence and enforcement limits the ability of this research to conclusively evaluate the contributions of each of key concept and rationality.

The challenges associated with risk management, anthropocentrism and neoliberalism demonstrate the tension between environmental protection and economic growth that is characteristic of staples-based economies. This chapter concludes that the content of the EEA does not substantively address the tension between continued industrial development and natural resource protection. Economic interest and environmental protection are generally opposed, especially when natural resources create job growth (Clifford, 1998; Jacobs, 1991: 122; Howlett & Brownsey, 2008; White, 2008). Although the content of the EEA did not speak directly to staples-based development, the policy-making process surrounding the EEA was characterized by bargaining between the priorities of the marine industry and government. Existing research states that a similar “conciliatory approach” characterizes the policy-making process of existing Canadian environmental legislation (Hessing et al, 2005: 230). This chapter concludes that although the EEA responds to the challenges of environmental harm through added enforcement and the use of key concepts in sustainability, the solutions proposed are still situated in the same context.

The next chapter discusses how this research project conceptualizes Canadian environmental techniques of governance using the findings of the content analysis and critical evaluation of the EEA. Chapter 5 re-examines the findings of the content analysis in

order to situate the EEA in light of the findings of existing literature. The next chapter synthesizes the findings of this chapter in order to evaluate how the observations speak to the likelihood that the EEA will contribute towards the effectiveness of Canadian environmental governance strategies. The next chapter will also discuss the potential implications of a continued tension between economic growth and environmental protection and the structural importance of staples and economic globalization in greater detail.

Chapter 5: Discussion of the Findings

The goal of this chapter is to elaborate upon the significance of the findings of the content analysis and critical evaluation of the EEA. The findings from the each research question and hypothesis will be analyzed and contextualized by the findings in existing literature. The first section will concentrate on the dominant key concepts and rationalities present in the content of the EEA by re-examining and evaluating the significance of the findings of Chapter 3. The second section will address the quality of the content of the EEA, in light of the findings of Chapter 4. The third and final section concludes by reflecting on the limitations of the findings.

Research Question 1: What key concepts and rationalities are dominant in the content of the *Environmental Enforcement Act*?

This research project conducted a qualitative, cross-sectional content analysis of the EEA. The key sociological constructs of interest to this research included neoliberalism, economic globalization, risk management, cost-benefit economics, precaution, philosophical anthropocentrism, sustainability and the staples theory of economic development. The expectation was that most concepts would be dominant in the content of the EEA, with the exception of the key concepts of sustainability. The findings demonstrated that rationalities towards economic globalization, risk management, anthropocentrism, and the staples theory of economic development were dominant in the content of the EEA. The growing need to honour global conferences and agreements, and the concern with criminalization and overdeterrence contextualize newer trends in this piece of Canadian environmental legislation. The next section expands on the findings from Chapter 3 in order to further analyze and contextualize how the content of the EEA reflected and departed from some of the key concepts and rationalities identified in existing literature.

Hypothesis 1: The key concepts of neoliberalism and economic globalization are dominant in the content of the EEA

This research project focused on the single characteristic of deregulation to demonstrate the presence of neoliberal governance strategies in the EEA. Existing research has addressed the political movement towards deregulation and the paradox of increased enforcement and decreased regulation in environmental legislation (Gillespie, 2006: 31; Steger, 2003: 41). This research project found that the EEA did not demonstrate many instances of deregulation, or the removal of economic regulation as a method of governance (Braithwaite, 2008: 5-12; Steger, 2003, 41-44). Many of the enforcement tools in the EEA increased regulation. For instance, the EEA increased fines, sentencing, and “immunity” provisions in the nine amended Acts. The goal of the EEA, according to the policy-makers, was actually to “enhance enforcement”, not to decrease regulation (Warawa in Parliament of Canada, 23 March 2009).

However, the surrounding context of budget cuts to the Canadian Environmental Assessment Agency challenge the notion that the EEA will unequivocally lead to an increase in enforcement. This research project linked these budget cuts to the paradox of increased enforcement and decreased spending. The paradox of increased enforcement and decreased regulation is mentioned in existing literature that examines neoliberal programmes of government (Braithwaite, 2000; Ratner & McMullan, 1983). The implication is that the changes to the content of the nine amended Acts reflect contradictory goals of environmental protection and economic growth if the enforcement tools are present but the political willingness to fund environmental regulation is not dominant.

The dominance of regulatory techniques of governance indicates a change from existing pieces of Canadian environmental legislation. The trend towards enforcement

demonstrates the social and political change away from compliance-based enforcement towards increasingly coercive methods of punishment (Burns & Lynch, 2004: 54-56; Ratner & McMullan, 1983: 187-188; White, 2006: 186). For instance, the amendments to CEPA that punish offenders for criminal negligence under section 220 and 221 of the *Criminal Code* reflect the use of quasi-criminal sanctions in Canadian environmental legislation. This represents a change from existing international environmental legislation. Generally, only administrative regulations address corporate and white-collar crimes in most countries (Situ & Emmons, 2000: 30, 38-39; Snider, 1993: 13). The movement towards criminalization is a rare shift away from global responses to environmental offences (White, 2008: 183). Marine industry representatives that spoke during the policy-making process of the EEA mentioned overdeterrence as a possible consequence to increased enforcement.

The first hypothesis also addressed economic globalization. The construct of globalization was defined in this research in light of the growing importance of international trade and transnational economics (Friedrichs & Friedrichs, 2002: 131-132). Although this research project recognized the possibility that social and political aspects of globalization would be present in the content of the EEA, the first question focused on the presence of economic globalization, since the goal was to comment on the presence of key concepts and rationalities. Economic globalization is defined as a key concept in existing research (Friedrichs & Friedrichs, 2002; White, 2008: 256-265).

As expected, economic globalization was a dominant rationality in the content of the EEA. The increase of international traffic was recognized through the scope of punishment from “Canadian” to “international” vessels. Although several of the amended Acts represent Canada’s commitment towards international treaties and agreements, this research project found that the desire to honour international treaties and trade agreements was not present in

the content of the EEA. NAFTA and other international agreements were mentioned during the policy-making process but were not present in the content of the EEA.

The dominance of free trade agreements and international treaties can have a positive or negative effect. In the example of the EEA, international treaties led to an increase in enforcement and sentencing tools, “in light of the global significance of the Antarctic and the Treaty”.⁴¹ On the other hand, the reliance on international trade can undermine the autonomy of countries such as Canada. Countries must connect with the global economy or they remove themselves from the global flow of resources (Castells, 2010, pg. 147). This weakness is especially present in staples-based economies (Hessing, 2002: 27; Hoogensen, 2008: 104). Although these economic trends are not necessarily problematic, tensions exist between the desire to deregulate and globalize staples-based industries and the desire to protect the environment by limiting natural resource development. This tension will be discussed further when the second research question is addressed.

Hypothesis 2: Rationalities of environmental governance such as risk management and anthropocentrism are dominant in the content of the EEA

The second hypothesis was based on the contention that risk-based, utilitarian approaches to environmental policy are generally favoured as programmes of government (Hessing et al, 2005: 7-21). This research project examined the content of the EEA for terms such as “risk”, “certainty”, “deterrence”, and “rational choice”. The second hypothesis also involved an examination of the changes to the fine structure, sentencing provisions, and enforcement tools in each amended Act. The findings confirmed that risk management is a dominant rationality in the content of the EEA. The enforcement tools in each amended Act conformed to a rational choice and risk-based rationality of environmental governance.

⁴¹ Section 12 of the EEA and section 50.9 of the *Antarctic Environmental Protection Act*.

Environmental criminology addresses “cost-benefit” approaches to environmental offences in the context of rational choice and deterrence (Cohen, 1998: 230; Situ & Emmons, 2000). The goal is to make the cost of committing an environmental offence greater than complying with the law (Cohen, 1998: 230-231). Enforcement tools such as increased fines, the enactment of minimum fines, and the addition of fundamental purposes to some pieces of legislation that were added to the EEA conform to a risk-based rationality of environmental governance. The use of rational choice responses to environmental offences is not new for Canadian environmental legislation (Stretesky, 2006: 609-610). However, increased sentencing represents a shift towards harsher methods of enforcement. Chapter 3 examined disgorging benefits and the addition of quasi-criminal provisions to highlight this increase in enforcement.

Existing research notes that philosophical anthropocentrism conceptually reinforces the movement towards rational choice methods of environmental governance (Halsey & White, 1998: 32). Both anthropocentrism and risk management only recognize the human-based value of objects because of their focus on the capitalist economic market (Hessing et al, 2005: 20; Snider, 1993: 74-75; White, 2008: 15). The “liberal-ecolog[ical]” and human-centric outlook associated with anthropocentrism and risk management essentially describes the problem of environmental degradation as fixable using market forces (Halsey, 2006: 43).

This research project found that neoliberal and risk-based approaches to enforcement are similar because they both rely on environmental regulation to stabilize and control the market (Snider, 1993: 99-100). For instance, Chapter 3 discussed overdeterrence and “undue hardship” to characterize the dominance of rational choice approaches in the content of the EEA. Although the changes in the EEA appear to increase the level of punishment for environmental offences, the additional enforcement tools reflect cost-benefit, utilitarian

approaches to environmental offences. The implication is that if risk-based, utilitarian approaches are dominant in the content of the EEA, anthropocentrism is likely to be dominant as well.

This research project defined anthropocentrism as the philosophical belief that humans are biologically, mentally, and morally superior to all other living and non-living beings (Halsey & White, 1998: 31). Anthropocentrism was expected to be dominant in the content of the EEA because alternative philosophies involve structural reconsiderations of the capitalist, market-based economy. The central problem that non-anthropocentric philosophies focus on is the lack of emphasis in capitalist economics on the intrinsic value of the environment (O'Connor, 1994: 125-127). Non-anthropocentric philosophies threaten economic growth because they propose a reconsideration of the unlimited consumption of environmental resources (Snider, 2000: 177-178). This need to reconsider structural concerns means that most alternatives to anthropocentrism must present counter ideologies to problems such as neoliberalism, globalization, risk management and the political economic status quo (Gillespie, 2006; Seis, 1999). The implication is that structural reconsiderations of the capitalist economic structure are unlikely to be reflected in Canadian environmental enforcement legislation, especially considering the historical context of staples-based economic growth (Wellstead, 2008: 20).

The findings of this research project challenge the dominance of anthropocentrism as a key concept in Canadian environmental legislation. Several alternative ideologies were presented as key concepts in the content of the EEA. For instance, the addition of the “polluter pays principle” and use-value both appear to represent a shift towards sustainability. The “polluter pays principle” is an example of the unwillingness to subsidize environmental damage caused by pollution. The addition of “use value” also recognized the

existence value of environmental resources outside of the market-based use-value. However, these elements do not conform to the definition of sustainability this research project accepted because they do not value ecological issues over market growth (Hessing et al, 2005: 13). As mentioned in Chapter 2, sustainability was defined in this research as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs” (Jacobs, 1991: 79-80; World Commission on Environment and Development, 1987). The next section further addresses the presence of rationalities towards sustainability in the content of the EEA.

Hypothesis 3: Environmental governance strategies such as sustainability do not dominate the content of the EEA

This research project acknowledges that there are several linguistic indications that sustainability is a dominant rationality in the EEA. However, at the semantic level, the content of the EEA tends to present anthropocentric rationalities because it still relies on market-based incentives for regulation (Snider, 1993: 99).

Researchers who are sceptical about the effectiveness of sustainability question whether the use of sustainability-based approaches to enforcement can lead to structural economic change (Barry, 1999: 207; Benton, 2008: 14; O’Connor, 1994b). The central problem is these alternatives still take place within the market-based economy and therefore do not challenge the predisposition towards instrumental rationality in environmental governance (Barry, 1999: 83-86). In light of this debate, the third hypothesis was that environmental governance strategies such as sustainability do not dominate the content of the EEA.

The addition of the “polluter pays” principle and of use-value both relate to key concepts such as sustainability and precaution mentioned in existing research (Hoeschele,

2007; Jacobs, 1991: 62-70). Although these key concepts are present, the dominant rationality in the content of the EEA is towards utilitarian, risk-based solutions to environmental offences. The addition of principles such as use-value and the “polluter pays” approach reflected market-based incentives (Snider, 1993: 99-100). The content of the EEA does not abide by the “precautionary principle” that the Rio Declaration and other international environmental Agreements have emphasized (White, 64-71). The implication is that if neoliberalism, risk management, and anthropocentrism all support the market-based definition of environmental value, then no alternatives to this viewpoint are presented in the content of the EEA.

This research project found inconsistencies in the EEA due to the use of non-anthropocentric definitions and enforcement tools. Existing research differs by separating the concepts of sustainability and risk-management as incompatible (Jacobs, 1991; Halsey & White, 1998; O’Connor, 1994: 154-155). The context of a staples-based economy further complicates the presence of key concepts such as economic globalization, risk management and anthropocentrism in the content of the EEA. Philosophies that challenge the logic of economic capitalism generally propose limits to economic growth and natural resource consumption (Snider, 2000: 177-178). Non-anthropocentric philosophies of environmental harm threaten economic growth when they propose limits on the consumption of environmental resources (Snider, 2000: 177-178). This conflict is especially visible when economic growth is directly reliant on the exploitation of the environment. The next section addresses the connection between economic globalization, risk management, and anthropocentrism in the context of staples development.

Hypothesis 4: The content of the EEA emphasizes the political economic approach of staples development

This research project found that the marine and oil industries characterized the staples-based and economic rationalities that were found to be present in the content of the EEA. This finding reflects the importance of staples-based resource development in existing research on the Canadian political economic context (Clement, 1989; Hessing et al, 2005; Hutton, 2008). Although Canada's status as a staples economy is contested, the content of the EEA reinforces the tensions in existing research between resource development and environmental protection.

Existing research notes that economic protectionism is difficult to implement due to the obligation under NAFTA to export goods such as oil (Seis, 1999; Schrecker, 2002; Smandych & Kueneman, 2010). This research project found that the complex relationship between free trade, international economic development, and environmental issues such as climate change were reflected in the content of the EEA. The content of the EEA repeatedly reflected Canada's economic integration with countries such as the United States, especially in the context of the Kyoto Protocol (Parliament of Canada, 25 March 2009). Canada's integration with the international community also reflected the tension between economic protectionism and free trade. Any protectionism would place Canada at an economic disadvantage, especially because economic globalization has led to the integration of most countries around the world (Brownsey, 2008; Castells, 2010).

Although the EEA does not explicitly mention staples-based industries, this research found that increased fines and criminalization tend to apply to Canadian waterways. The stakeholders that were involved in the policy-making process of the EEA saw the amendments to fines and sentencing as threats to the economic growth of the marine industry. The marine industry stakeholders also questioned the use of criminalization, overdeterrence, and the "tough on crime" approach that contextualized the content of the

EEA. For instance, stakeholders in the marine industry argued that several of the initiatives presented in the EEA would over-deter potential seafarers and lead to job loss and difficulties in recruitment. This research project found that the content of the EEA demonstrated a familiar tension between post-staples development and the desire to continue capitalist economic growth in several staples industries (Hutton, 2007).

The continued importance of staples-based industries in the content of environmental legislation has implications for Canadian environmental legislation. Resource development is a central factor in Canada's economic growth (Hessing et al, 2005: 20). The implication is that it is difficult for countries such as Canada to encourage natural resource protection when there is still a reliance on staples for economic growth. Further, most of the methods of enforcement in the EEA portray market-based conceptions of environmental harm. The next section builds on these tensions by critically evaluating the ways in which the content of the EEA contributes towards the effectiveness of Canadian environmental governance strategies.

Research Question 2: is the EEA likely to contribute towards the effectiveness of Canadian environmental governance strategies?

The goal of the second research question was to critically evaluate the quality of the content of the EEA. Chapter 4 examined the potential challenges towards enacting progressive environmental legislation in Canada, in light of what existing literature has identified as problematic to the success of environmental legislation. Six hypotheses addressed the main key concepts and rationalities that existing research has identified as contested concepts when present in Canadian environmental legislation. This research project found that the dominance of key concepts such as economic globalization, risk management, anthropocentrism, and staples based economic development in the content of the EEA implies that the EEA is not likely to substantively contribute towards the effectiveness of

Canadian environmental governance strategies. This section identifies the implications of the findings on the possibility that the EEA will contribute towards the effectiveness of Canadian environmental governance strategies. The main problem identified in this research project is that the EEA does not adequately address the tension between economic development and environmental protection and the structural importance of staples-based economics and of economic globalization.

Hypothesis 1: the EEA does not address the potential challenges for environmental protection associated with neoliberal governance

Chapter 3 found that deregulation was not present in the content of the EEA. Self-regulation was examined in Chapter 4 as an example of less coercive methods of enforcement. The implication was that the “Orders of Court” sentencing tools were still coercive in that the “Publication” section allowed the Minister to order an offender to abide by the self-regulation provisions in the “Orders of Court” section.

The findings in Chapter 4 concluded that the use of the market as a regulatory tool meant that anthropocentric values were more likely to be present in the content of the EEA (Halsey & White, 1998: 32-33). Although regulatory changes do not cause environmental harm, a combination of structural factors undermines the likely efficacy of legislation that uses “soft” regulation as a tool to address environmental offences (Stretesky, 2006: 608-609). The hypotheses that address economic globalization and staples-based economics further address this contention.

This section also evaluated the presence of an increase in enforcement and a decrease in environmental assessment. The presence of this paradox means that the Canadian government is scaling back the funding and requirements towards environmental assessment, but is also funding the increase in enforcement tools through the enactment of the EEA. The

implication based on existing research is that the EEA represents the tendency for neoliberalism to reflect a dispersion of state control rather than the devolution of state power (Braithwaite, 2000; Miller & Rose, 2008; Ratner & McMullan, 1983).

The paradox of increased enforcement and decreased social spending has implications towards the potential effectiveness of the EEA. The problem is that there are dual goals of protecting the environment and promoting economic growth by reducing the requirements for environmental assessment. This paradox reduces the effectiveness of each decision since both have contradictory goals. The implication is that if economic growth is favoured over environmental protection, the legislation becomes a smokescreen that covers the priority of economic growth over protecting the environment (Hessing, 2002: 37; Neocleous, 2008: 137). If the content of the EEA increases the presence of enforcement tools used against environmental offenders, yet deregulation and decreased environmental assessment is occurring alongside these changes, there is a disconnect in the legislative responses to environmental offences. This implication is explored further in the context of risk management and anthropocentrism.

Hypothesis 2: the EEA does not effectively address structural problems associated with the growth of economic globalization such as the role of international trade and staples development

Concerns such as climate change and free trade were not dominant in the content of Canadian environmental legislation two decades ago. International treaties and agreements such as NAFTA, UNCLOS, and the Kyoto Protocol have grown in importance since most of the nine pieces of legislation were first enacted (Clement, 1989; Hessing, 2002). Although concerns such as international agreements and climate change are mentioned in the content of the EEA, this piece of legislation does not substantively consider the structural problems associated with the growth of economic globalization.

Existing research predicts that without a change in the structural and ideological status quo, there is a strong possibility that legislation such as the EEA will not assist in Canadian political efforts to increase environmental protection (Beck, 1997: 5; Hessing et al, 2005: 20). This research project found that the EEA does not substantively address the conflict between the need to promote international economic development and the need to protect national environmental resources. The role of international trade and staples development is of growing importance to Canadian environmental legislation. The relationship between the need to promote economic development while protecting the environment is not addressed by the content of the EEA. The implication is that the tension between these concerns will likely reduce the potential effectiveness of the enforcement tools added by the EEA.

The economic need to export natural resources and the requirement to adhere to international agreements created a recognizable tension between the need to promote international economic development and the need to protect the environment (Bergevin, 2006). Chapter 4 addressed this tension by evaluating how the EEA addressed the lack of bilge dumping facilities. The need to comply with MARPOL requirements meant that an increase in enforcement was challenged because of the likelihood that it contravened an international legal convention. Chapter 4 also examined the competitive disadvantage of signing international treaties that competitors such as the United States did not support.

Countries such as Canada cannot respond to issues such as climate change by setting their environmental standards higher than competitor countries such as the United States (Brownsey, 2008: 246-251). This is because efforts at environmental protection almost inevitably require a reduction in the export of natural resources (Barry, 1999; Dobson, 2000; O'Connor, 1994b). Environmental protection becomes an issue of economic loss when the

political decisions to ignore issues such as climate change are made (Braithwaite & Drahos, 2000: 295-296).

The examples of bilge dumping and climate change demonstrate several ways in which the structural problems associated with trade agreements and staples development are considered in the context of export production (Schrecker, 2002: 46). This research project recognizes that Canadian environmental legislation has attempted to address environmental problems such as climate change through the implementation of international treaties such as the Kyoto Protocol (Hessing et al, 2005; White, 2008). However, the content of the EEA only appears to recognize the structural importance of addressing environmental problems. For instance, the EEA does not address climate change in any of the amended sections.

Existing literature also points out that there is also a potential for international trade to “trap” countries such as Canada that rely on staples-based development (Howlett & Brownsey, 2008: 8). This research project found that although the enforcement tools in the EEA change the content of environmental legislation in Canada, they do not substantively address the challenges and tensions of structural weakness associated with staples-based economies (Hessing, 2002: 27). This problem is especially significant in the context of Canada due to the continued importance of staples development to Canada’s economy. As long as the structural reality of staples-based economic growth, international trade, and economic globalization continue to contextualize the structural context of environmental enforcement in Canada, cost-benefit motives will likely characterize environmental legislation (Snider, 1993: 74-75; White, 2008: 15). This is due to the reliance on market-based incentives to achieve economic needs (Hoeschele, 2007). The next hypothesis further addressed this contention.

Hypothesis 3: The EEA does not adequately address the challenges associated with rational-choice methods of deterrence

The problem with rational choice methods of deterrence is that the use of economic calculation does not call for the limitation of growth needed to limit environmental resource extraction (Halsey, 2006: 39; O'Connor, 1994b; White, 2008). Specifically, by focusing on market-based solutions, alternative approaches such as precaution are not considered when addressing environmental offences (Barry, 1999: 158-161; Halsey & White, 1998: 45; White, 2008: 64-71). This research project finds that the potential benefits of the regulatory changes in the EEA are ideologically limited by the reliance on market-based solutions to environmental offences.

For instance, increased fines appear to shift the philosophical emphasis towards the goal of environmental protection; however, fines rely on rational choice deterrence (Stretesky, 2006: 609-610). Existing research accepts that an economic, cost-benefit calculation occurs alongside the choice to engage in corporate crime (Friedrichs, 2007: 315-317; Stretesky, 2006: 209). However, the solutions proposed in existing literature question the reliance on rational choice deterrence to address environmental offences (Akella & Cannon, 2004; Hope et al, 2008). There are too many factors involved in the choice to engage in environmental offences to assume that a simple cost-benefit deterrent will address the problem. These factors include the uneven application of laws, the certainty of punishment, and the financial impact of fines on corporate profitability from committing the offence (Akella & Cannon, 2004; Friedrichs, 2007: 315-318; Snider, 1993: 134-135). The potential problem with fines is that “an \$800,000 fine is not much to pay to keep exploiting the oil sands” (Bigras in Parliament of Canada, 12 May 2009). Although it is possible that fines will lead to effective environmental enforcement, this research project concludes that

the EEA is not likely to contribute to techniques of governance in existing Canadian environmental legislation based on the problems with rational choice deterrence identified in existing research.

Precaution and sustainability are two alternative approaches to anthropocentric, rational choice methods of environmental crime control. Existing literature favours precaution and sustainability as solutions to environmental offences (Jacobs, 1991; Lynch & Stretesky, 2003; White, 2008). Existing research favours precautionary approaches because they question the prioritization of economic incentive over environmental protection (Beck, 1997: 125). The acceptance of alternative approaches is based on the perceived need to consider a variety of possible solutions to the problem of environmental harm that are not based solely on human-based and economic concerns (White, 2008: 80-83).

This research project found that although the EEA changes the enforcement tools in the nine amended pieces of legislation, a rational choice logic justifies the added enforcement tools. Precaution and sustainability were not substantively addressed as part of the logic of enforcement in the content of the EEA. Although some amendments relate to sustainability and precaution, the implication is that although the EEA added new enforcement tools, the rationale for enforcement does not change. Although the tools added through the EEA change the content of each amended Act and depart from traditional responses to environmental offences, the EEA is unlikely to be effective due to the reliance on rational choice deterrence (Douglas & Wildavsky, 1982: 48; White, 2008: 73-76).

Hypothesis 4: The EEA does not adequately address the problems associated with anthropocentric philosophical thought

Anthropocentrism compliments the risk management technique of governance. The value of environmental resources for both key concepts tends to be seen in the context of human-

based, utilitarian values (Hessing et al, 2005: 20; Snider, 1993: 74-75; White, 2008: 15). Existing research notes that economic calculus has the tendency to “substitute” morality by determining the importance of preserving the environment with methods such as risk assessment (Barry, 1999: 159; Beck, 1997: 125; Douglas & Wildavsky, 1982: 69-73). Despite the addition of “disgorging” benefits and ‘use value,’ mentioned in Chapter 4, there is still a philosophical assumption that environmental costs are measurable through economic analysis because of the methods of deterrence used (Douglas & Wildavsky, 1982: 68-70; O’Connor, 1994b: 6). This research supports the contention in existing research that anthropocentrism is problematic when applied to environmental legislation (Douglas & Wildavsky, 1982: 70; Halsey & White, 1998: 31-33; Hessing et al, 2005: 7-21).

Existing research finds that non-anthropocentric methods of enforcement are more effective because they propose limits on the extraction of environmental resources (Snider, 2000: 177-178). There is a consensus that structural changes are needed to address the political, economic, and social contexts of the policy-making process that lead to human-centered methods of environmental enforcement (Lynch & Stretesky, 2003: 87). The dominance of anthropocentric responses to environmental offences is problematic because of the value this philosophical viewpoint attributes to the environment. If the environment is *instrumentally* valuable rather than *intrinsically* valuable, legislation maintains the status quo, given that it supports structural reality of exploitation for human advantage (Seis, 1999: 293). This research project finds that the change in enforcement tools is not likely to substantively address the problems associated with risk management or anthropocentrism. However, as the findings of the next hypothesis will address, the content of the EEA also presented alternatives to rational choice, utilitarian approaches to environmental enforcement.

Hypothesis 5: Any use of sustainability in the EEA does not change the debate between economic progress and environmental protection

This research hypothesized that sustainability could be dominant in the content of the EEA due to the growing role as an “alternative” to risk management (Jacobs, 1991: 79-80). The concept of sustainability was found to be present in the content of the EEA. However, the addition of the “polluter pays principle” and “use value” does not indicate a shift towards the adoption of sustainability approaches to environmental harm. This research project concluded that the alternative approaches in the EEA were linguistic, not semantic because the rationalities present in the content of the EEA still rely on market-based incentives for regulation (Snider, 1993: 99). In other words, the use of sustainability does not change the debate between economic progress and environmental protection.

This research project found inconsistencies in the EEA due to the use of non-anthropocentric definitions and enforcement tools. However, the dominance of anthropocentrism implies that the EEA is likely to be ineffective. Despite the inclusion of key concepts in sustainability, the EEA also contains rational choice deterrence as a key concept in sentencing. The main problem is the lack of “normative change” and the imposition of an economically based calculation towards environmental protection (Beck, 1997; Benton, 2008: 10). The implication is that the EEA is not likely to contribute towards the goal of environmental protection due to the reliance on market-based, economic approaches to environmental harm. This contention is based on the findings of existing literature that calls for alternative methods to cost-benefit economic analysis in the context of environmental legislation (Beck, 1997; White, 2008:80-83).The tension between economic growth and natural resource protection further challenges the likelihood that the EEA will substantively contribute to effective Canadian environmental enforcement strategies.

Hypothesis 6: The EEA does not adequately address the contradictions between continued industrial development and natural resource protection

The tension between economic and environment values is presented as a job loss issue in existing research and in the EEA (Clifford, 1998: 70). Chapter 4 mentioned the marine industry to illustrate the tensions between job loss and environmental protection (Clifford, 1998: 70; Burns & Lynch, 2004: 118). Although the EEA received Royal Assent despite opposition from industry, the concerns that the marine industry identified during the policy-making process of the EEA represent the long-standing internal and external pressures that a staples-based commodity creates (Hoogensen, 2008). The continued presence of the contradictions between industrial development and natural resource protection likely means that these conflicts will continue after the implementation of the EEA.

For instance, Chapter 4 analyzed overdeterrence as an opposition to the increased criminalization and sentencing initiatives proposed by this piece of legislation. As mentioned previously, overdeterrence is a concern in environmental legislation when the punishment is so high that the industry is adversely affected through avoidance of environmental harm (Cohen, 1998: 234). Marine industry representatives problematized increased criminalization as a threat to economic progress. The argument presented by industry representatives is that the EEA provided a “disincentive” for potential seafarers due to the high fines and possibility of conviction due to the harsher penalties presented by the EEA (ENVI, 30 April 2009).

Environmental criminologists contend that environmental protection and economic interest are opposed to each other, as environmental protection efforts limit economic growth by decreasing the rate of resource extraction (Clifford, 1998; Jacobs, 1991: 122; Seis, 1999: 243; White, 2008). This research project found that there is disconnect between the solutions

proposed in existing research and the structural reality that contextualizes environmental legislation such as the EEA. This tension is presented in the Senate readings of the EEA: “There are two opportunities to provide leadership facing this government right now. One is on the economy [...] the other is on the environment” (Hon. Grant Mitchell in Senate of Canada, 27 May 2009).

The content of the EEA does not substantively examine the key concepts associated with environmental protection that environmental criminology characterizes as central. For instance, the marine industry did not demonstrate concern towards the problem of resource depletion in the House of Commons or Senate Debates surrounding the EEA (Hoogensen, 2008). Most speakers in House of Commons, Senate, and Committee debates did not address the environmental consequences of oil sands development (Brownsey, 2008; Nikiforuk, 2010; Smandych & Kueneman, 2010). This research project found that the EEA did not substantively address this conflict between natural resource protection and economic development. The presence of this conflict is especially problematic for countries staples-reliant economies such as Canada (Hessing et al, 2005; Howlett & Brownsey, 2007; Watkins, 1989).

Reflections on the Limitations of the Findings

This research project addressed the two research questions through content analysis and through critical evaluation. Chapter 3 found that the most dominant key concepts and rationalities in the content of the EEA were economic globalization, the continuation of rational choice and anthropocentric values, and the importance of staples development. However, this research project cannot conclude with confidence that rationalities such as neoliberalism and sustainability were dominant in the content of the EEA. Chapter 4 found that the content of the EEA is not likely to contribute to existing Canadian environmental legislation due to the presence of several problematic key concepts and rationalities. Although these findings align with existing research, several unresolved debates arose. This section outlines two of the areas where additional research is needed to increase the confidence of the findings. First, the presence of the key concepts of anthropocentrism and sustainability in the content of the EEA will be examined. Second, this section discusses the complex and dual desire for the Canadian government to promote environmental protection and market-based industrial development. A discussion of the most unexpected conclusions in this research project will identify the limitations of this research project and the next steps required for future research.

This research project expected that anthropocentrism *or* sustainability would be dominant in the content of the EEA. The presence of both key concepts departs from the findings of existing literature. Most theorists that study environmental legislation state that anthropocentrism is mutually exclusive from other philosophies towards environmental protection (Halsey & White, 1998; Jacobs, 1991; O'Connor, 1994c). This research project is limited because it cannot speculate why both key concepts are present in the legislation.

Since the content of the EEA cannot explain why both key concepts were present in the EEA, future research would have to move beyond content analysis as a method of research.

For example, another research project would have to include interviews with the legislators involved in the policy-making process to determine *why* both anthropocentrism and sustainability were present. The content analysis method can explain and analyze the content of the EEA, but this research project cannot explain the intentions of legislators in using concepts such as anthropocentrism or sustainability. The unanswered question is: *why* are key concepts such as anthropocentrism and sustainability both present in the content of the EEA?

The unresolved question involves an examination of the opinions of legislators in the policy-making process. This research project has identified the relevant categories, or key concepts, that future research could examine in detail using interviews (Berg, 2004: 84-85). The logical next step to uncovering the intentions of legislators would be to develop interview questions concerning sustainability and anthropocentrism. Interviews would help determine what each concept means to the legislators involved in the policy-making process of the EEA. The goal would be to uncover the intentions of the legislators in order to determine why the EEA departs from the mutually exclusive, binary oppositions present in existing literature (Halsey, 2006: 35).

This research project also addressed the tension between environmental protection and market-based industrial development through the evaluation of concepts such as economic globalization, rational choice and anthropocentric values, and the economics of staples development. Although this research project concluded that there is tension between the desire to promote environmental protection and the need to encourage economic development, further research is needed to increase the confidence of this research. The

unanswered question is: is there a causal relationship between environmental protection and economic development in Canadian environmental legislation?

In order to address the causality of the relationship, similar studies need to conduct case studies over a longitudinal period (Berg, 2004: 257). This research project focuses on specific key concepts that are presented in existing literature and only examines a single piece of Canadian environmental legislation. This research project confirmed many of the hypotheses due to the strong conceptualizations in existing literature. However, this research project cannot speculate on the causes of the relationship between decreased economic growth and increased environmental protection that develop in the analysis of the EEA. The content analysis method is limited because it can only describe the content of the EEA and likely impacts. This research cannot assume that the findings speak to all Canadian environmental legislation without conducting further content analysis and evaluation of similar pieces of legislation. Further studies that critically evaluate and analyze the content of similar pieces of environmental legislation over a longitudinal period are needed to increase the confidence of the findings.

Although this research is limited in explaining some of the relationships identified in the content of the EEA, the findings solidify some of the conclusions presented in existing literature in the field of environmental criminology. Chapter 6 will summarize the global findings of this research project in light of the relationship between anthropocentrism and sustainability and the tension between environmental protection and economic development.

Chapter 6: Concluding Comments on the Significance of the Key Concepts and Rationalities in the *Environmental Enforcement Act*

This research project aimed to achieve two objectives. The first objective was to analyze how a newer piece of Canadian federal legislation, the EEA, reflects and departs from dominant trends in ways of thinking about contemporary governance problems. The second objective was to provide an evaluation of whether the EEA is likely to contribute towards the effectiveness of Canadian environmental governance strategies. This chapter summarizes the global significance of the observations in Chapter 3 and Chapter 4 in order to comment on the two objectives of this research project.

The first section will describe and evaluate the significance of the findings in light of the growing academic attention towards environmental issues from the criminological perspective. The most significant finding of this research project was that a complex set of structural factors decrease the likelihood that this new environmental legislation will substantively achieve the goals of increased environmental enforcement and environmental protection. Existing research characterizes this relationship as a conflict between economic development and environmental protection. The second section will discuss directions for future research in light of the unresolved tensions and debates identified in this research project.

This thesis project aimed to answer two research questions. Chapter 3 described the dominant key concepts and rationalities in the EEA. Key concepts such as economic globalization, risk management, anthropocentrism, and the staples theory of economic development were dominant in the content of the EEA. The discussion on trade agreements and international commitments is a long-standing feature in Canadian environmental legislation. This research found that the concern towards free trade, international

agreements, and current issues such as climate change characterized the dominance of economic globalization in the content of the EEA. For instance, the then-upcoming Copenhagen Conference on climate change was a central part of the House of Commons and Senate debates in the surrounding content of the EEA. The fundamental principles of sentencing in Section 12 of the EEA also note the importance of sentencing environmental offenders “in light of the global significance of the Antarctic and the [*Protocol on Environmental Protection to the Antarctic*] Treaty”. Although climate change is not a new political concern in Canada, the legislative debates surrounding the EEA spoke to the need to address climate change in light of the international recognition of this global environmental issue. The example of climate change also demonstrated that globalization, as a social and political concept, was present in the content of the EEA.

Despite changes to the enforcement tools, a rational choice, anthropocentric approach dominated the content of the EEA. Rational choice and anthropocentric approaches compliment the neoliberal movement towards deregulation because they tend to support a market-based morality (Benton, 2008: 10). The presence of a staples-based economy further characterizes the dominance of key concepts such as risk management, anthropocentrism, and economic globalization in the content of the EEA (Halsey & White, 1998). The implication is that many of these concerns reinforce the status quo problematized in the reviewed literature (Hessing, 2002; Schrecker, 2002). Previous research conceptualizes instrumental rationality as the dominant political economic approach to addressing environmental harm (Barry, 1999: 83-86). Even though some enforcement tools in the EEA appeared to reflect alternative approaches such as sustainability, rational choice approaches that rely on the market are dominant in the content this legislation (Halsey & White, 1998: 31). This finding reflects the conclusions in existing research (Beck, 1997; Benton, 2008:

10; Douglas & Wildavsky, 1982). However, the presence of both sustainability and anthropocentrism implies that the current “binary oppositions” between the concepts may need to be reconsidered (Halsey, 2006: 35).

Chapter 3 also found that the concern over staples-based resources present in existing research was also dominant in the content of the EEA. The legislative debates surrounding the EEA contained discussion on staples-based industries such as the oil and marine industries. The role of staples-based economic growth was important to understanding and justifying the increased penalties in light of the situational context. As mentioned previously, the EEA emerged as a response to the public outrage from the deaths of hundreds of ducks in a Syncrude-owned tailings pond (O’Neill, 2009; Zimonjic, 2009). The significance of the findings from Chapter 3 is that the dominance of key concepts and rationalities such as economic globalization, the continuation of risk-management and anthropocentric values, and the dominance of staples development correspond with most of the problematic trends from existing research (Beck, 1997; Halsey & White, 1998). As mentioned in Chapter 1, academics only started to examine environmental harm from the criminological perspective within the past two decades (Chunn et al, 2002: 8). This research project established and problematized relevant connections between environmental legislation and key concepts such as economic globalization, rational choice deterrence, anthropocentrism and staples-based economic development. As mentioned in Chapter 2, the key concepts of interest in this research reflected what existing research problematized in the context of environmental harm. The findings of this research imply that these theories accurately portray the content of the Canadian environmental legislation, in this case.

Chapter 4 critically evaluated whether the EEA is likely to contribute towards the effectiveness of Canadian environmental governance strategies. The chapter concluded that

the content of the EEA does not adequately consider the problems associated with neoliberalism, economic globalization, risk management, anthropocentrism, and staples based economic development identified in existing literature. For instance, the finding that the EEA did not adequately address the paradox of increased enforcement and decreased environmental assessment relates to the overall theme of economic growth over environmental protection. The implication is that there are dual goals of protecting the environment and promoting economic growth by reducing the requirements for environmental assessment. On one hand, the EEA attempted to make a political statement that increasingly coercive methods of punishment are appropriate to address the social problem of environmental harm (Burns & Lynch, 2004: 54-56; Ratner & McMullan, 1983: 187-188). At the same time that increased enforcement and fines were established, the Canadian government decreased regulation by reducing the requirements for environmental assessment (McGuinty in Parliament of Canada, 12 May 2009). The implication is that the EEA has the potential to be a theatrical representation of environmental enforcement rather than a viable answer to the problem of environmental harm (Neocleous, 2008: 137).

This research project also found that trade agreements and international law limit the ability of policymakers to challenge the status quo without the risk of contravening international political, economic, and legal commitments. Although this research project recognizes that the growth of economic globalization has the potential to either benefit or weaken Canadian environmental legislation, the reliance on human-centered solutions to environmental harm means that the EEA is not likely to substantively address the structural weaknesses associated with staples-based economies (Halsey & White, 1998: 32; Helsing, 2002; Schrecker, 2002).

This research project identified connections between neoliberalism, rational choice deterrence, and anthropocentrism. Existing research connects these three concepts because they share the liberal ecological belief that environmental harm can be addressed using market forces (Halsey, 2006: 43). Researchers that evaluate anthropocentrism question the use of a cost-benefit analysis that does not consider the intrinsic value of things such as biodiversity or clean water (Douglas & Wildavsky, 1982: 70; Halsey & White, 1998: 31-33; Hessing et al, 2005: 7-21). Researchers have extensively debated the rational choice approach to deterrence. The central problem is that any approach that takes place within the market-based economy does not question the moral implications of the reliance on risk-based, human-centered solutions to environmental harm (Barry, 1999: 83-86; Halsey & White, 1998: 31-33).

A synthesis of the significant themes from Chapter 4 supports the contention that the EEA does not address the conflict between environmental protection and economic growth. The content of the EEA maintains the status quo of resource extraction, international trade, and international political economic relationships (Garmany, 2007). Most of the dominant key concepts and rationalities in the EEA support continued economic growth. The findings of existing research can help to explain why, despite an increase in environmental enforcement and the political desire to address environmental harm, the EEA is unlikely to substantively contribute to existing Canadian environmental legislation.

For instance, the relationship between neoliberalism, risk management, and anthropocentrism supports a liberal ecological belief that environmental problems are fixable using market forces (Halsey, 2006: 43). This belief is flawed because the market does not often involve moral calculations of the value of objects beyond their human-based, economic use value (Beck, 1997: 125). The structural reality of Canada's export-reliant economy

increases the likelihood that the choice between limiting economic growth and protecting the environment will favour international development over local environmental concerns. Any disconnect from the global market is potentially catastrophic for a nations' economy (Castells, 2010: 147). This is especially true for countries such as Canada that continue to rely on the export of staples goods in the marine and oil industries (Hessing et al, 2005; Hoogensen, 2008; Smandych & Kueneman, 2010).

The tension between resource extraction, international trade, and staples-based development is problematic if the desire to encourage economic growth outweighs environmental protection interests. The problem identified in existing literature is that the intrinsic, non-use value of the environment is not acknowledged when economic calculus is used (O'Connor, 1994c: 144-145). This tension between resource extraction, international trade, and staples-based development has implications for the future of environmental protection. If Canadian environmental legislation is determined from an economic viewpoint that does not intrinsically value the environment, the goal of environmental protection will not be reconciled within the political, economic, and ideological context. A rational choice, utilitarian calculation cannot reconcile the goals of sustainability and precaution that existing research advocates (Beck, 1997; Jacobs, 1999).

The most dominant theme resulting from this research is the conflict between economic growth and environmental protection. Both environmental and economic interests are presented throughout the content of the EEA. For instance, both sustainability and rational choice methods of environmental enforcement are added to the nine amended Acts. However, the political, economic, and ideological constraints that may arise from the dominance of key concepts such as economic globalization, risk management, anthropocentrism, and staples-based development substantially minimize the capacity for a

structural change to the status quo. Halsey & White (1998) summarize this limitation by stating that:

Under anthropocentrism, the purpose of environmental regulation is to contain instances of specific environmental harms (e.g. oil spills), rather than to eradicate structural problems (e.g. reliance on fossil fuels) (p. 33).

In the case of the EEA, a similar problem exists that limits the likelihood that this piece of legislation will add to existing Canadian environmental legislation by addressing the political and economic challenges that constrain environmental protection efforts. Chapter 3 described the EEA as part of a specific situational context. This piece of legislation emerged as a “tough on crime” legislation that aimed to address the deaths of hundreds of ducks in a Syncrude tailings pond. The added sentencing, fines and increased punishment provisions are practical responses to environmental harm. However, the dominant key concepts present in the content of the EEA call into question the potential for change possible towards the goals of environmental enforcement and protection.

Existing research notes that it is generally only after catastrophic and unexpected environmental disasters that environmental policy responds to environmental destruction (Beck, 1997: 123; Snider, 1993: 134). Laureen Snider summarizes the implications of this research by stating, “laws against corporate crime have to be struggled for, and are typically passed only after an environmental crisis or major disaster has aroused public outrage” (Snider, 1987 in Snider 1993: 134). Although this statement is not directly related to environmental harm, it speaks to the reluctance to enact legislation that adversely affects business interests. The increased punishment is often met with opposition from business interests, making any changes the result of constrained policy-making (Chunn et al, 2002; Hessing, 2005: 28-30; Seis, 1999).

The most significant conclusion this research project can establish relates to the subject of environmental criminology. Criminological interest in environmental harm has been recent, and until more recently, minimalist. Academics in the field of criminology only started to address the problem of environmental crime in the past two decades (Chunn et al, 2002: 8). This research project is one example of the ways in which researchers are able to validate and confirm the findings of existing research in environmental criminology.

For instance, sustainability, risk management, and anthropocentric rationalities towards environmental enforcement were all present in the content of the EEA. The reliance on all three key concepts in the EEA demonstrates that the separation between socio-legal, regulatory, and social transformation as three separate approaches in environmental criminology may need to be reconsidered (Clifford, 1998; Situ & Emmons, 2000; White, 2008). Authors such as Mark Halsey have criticized the use of “binary oppositions” between anthropocentrism and non-anthropocentrism in environmental criminology (Haley, 2006: 35). These oppositions include the differences between anthropocentrism, ecocentrism, and biocentrism (Halsey & White, 1998), environmental and ecological justice (White, 2007), and reformist and radical assumptions towards the causes of environmental harm (Levy, 1997: 126). The findings of this research project show that a complex response to environmental offences is prescribed in Canadian Federal environmental legislation.

This research project also reinforces the relevance of environmental criminology as a sub-discipline of criminology. For instance, the field of environmental criminology is especially concerned with the relationship between globalization and the study of environmental issues (Sollund, 2008; Aas, 2007). One of the newest trends in environmental criminology is the call to re-name the sub-field “eco-global criminology” in light of the increase in ecological considerations that are global in scale and perspective (White, 2010:

5). The growing importance of economic globalization is relevant for the direction of future studies in both criminology and environmental criminology (Braithwaite & Drahos; Hessing, 2002; Sollund, 2008; White, 2010).

The findings support many aspects of existing literature that speak to the strength of current trends in environmental and corporate criminology. This research project relies on a variety of resources in the self-described fields of risk analysis (Beck, 1997; Douglas and Wildavsky, 1982), economics (Castells, 2010), environmental criminology (Chunn et al, 2002; Halsey, 2006; White, 2008), politics (Hessing et al, 2005), and more. The implication is that a multi-disciplinary approach is crucial to uncover the systematic ways in which the content of environmental legislation economically, politically, and ideologically reinforces the status quo of a continued tension between environmental and economic needs. Future research must deploy a variety of different theories to address the wide range of ideas that apply to the problem of environmental enforcement and legislation.

Directions for Future Research

Several unresolved debates emerged from the content analysis and critical evaluation of the EEA in light of the findings in existing literature. For instance, current research is divided on the efficacy of enforcement tools such as increased fines and rational choice deterrence. However, the use of anthropocentric and neoliberal methods of governance was rarely questioned in the content of the EEA. Alternative approaches such as sustainability or precaution are not substantially adopted in the added provisions despite their consistent representation in existing literature that examines the problem of environmental harm (Benton, 2008; Lynch & Stretesky, 2003; South, 2008; White, 2008).

This research is limited by the focus of the EEA. The examination of a climate change Bill such as Bill C-311, had this Bill passed the Senate review stage, would enable

the researcher to address key concepts such as climate change, sustainability, precaution, and anthropocentrism. The findings may indicate that Canadian environmental legislation takes a different approach towards sustainability when the purpose of the Act is to address climate change rather than enforce environmental regulations. By analyzing and critically evaluating a climate change centered Act, the unanswered questions regarding climate change in the surrounding content of the EEA could be addressed. Further research on Acts that do not call for increased enforcement could reveal that the Canadian legislative approach towards the environment does call for sustainability when different enforcement tools are used, for example.

This research project speculates that the key concept of sustainability is present in the content of the EEA due to an increase in global attention towards environmental issues such as climate change and pollution. Additional research could move beyond speculation by analyzing and critically evaluating other pieces of legislation that address sustainability. This would help to further contextualize why this key concept is becoming dominant in Canadian environmental legislation. For instance, the polluter pays principle was mentioned in section 50.9 of the *Antarctic Environmental Protection Act*, section 287 of CEPA, and section 13.09 of the *Migratory Birds Convention Act*. A similar research project could conduct a content analysis of these Acts with a stronger focus on the global economic structure that was relevant in the surrounding legislative debates regarding the EEA. Future research could replicate this study by analyzing one of these Acts and focusing primarily on the key concepts of anthropocentrism, sustainability, and precaution. If similar key concepts and rationalities were present in the selected Act, the findings would strengthen the reliability of this research project. However, if the key concept of sustainability were

dominant over anthropocentrism, this would weaken the confidence in the findings of this research project.

Interviews could also potentially answer why the risk-based solutions proposed in the EEA were tabled over approaches that can be labelled as sustainability approaches, and vice versa. Since a content analysis and critical evaluation cannot uncover the intentions of the legislators, interviews with members of the policy-making process could help to determine why sustainability was not the favoured approach in the EEA. A future research project could re-examine the EEA by interviewing members of the policy-making process such as the members of the House of Commons (ENVI) and Senate Standing Committees. These interviews could address the limitations of this research project by uncovering the intentions of the legislators. Interviews would enhance the confidence of this research by helping to address whether the speculation on why sustainability is increasingly present is supported by the findings of interviews with the legislators.

This research project did not find that sustainability represented a dominant trend in the content of the EEA. However, several changes such as the polluter pays principle and use value were indicative of sustainability approaches. The presence of both sustainability and risk-management as responses to environmental offences is an underdeveloped problem in existing research. There is no consensus in academic literature that risk management approaches are generally harmful when applied to environmental enforcement legislation. For example, Pat O'Malley has written about the "promise of risk", or the potential for risk to be socially "dangerous, as well as promising" (O'Malley, 2004). The effectiveness of sustainability approaches is also contested (Barry, 1999: 207; Benton, 2008: 14; O'Connor, 1994b; O'Connor, 1994c). There is also no explanation on why both rationalities would be present in one piece of legislation, especially since previous research sees each approach as

either departing from or justifying the status quo (Barry, 1999: 207; Jacobs, 1991: 58-61). Further research could address why both key concepts are present by interviewing the individuals involved in the policy-making process. The goal would be to examine the concepts of risk management and sustainability further in order to determine which perceptions relate either to risk management or sustainability approaches to environmental harm. A future research project could seek to uncover the intentions of legislators by conducting interviews of the policy-makers in existing Canadian environmental legislation. Since the EEA did not address the *Species at Risk Act* (SARA) because the House of Commons Standing Committee on Environment and Sustainable Development was conducting a five-year review, a future project could evaluate SARA by conducting interviews with members of the Committee. The interviews could shed light on why certain key concepts such as anthropocentrism tend to be more dominant than sustainability. The interviews could also weaken the confidence in the findings by establishing that the members of the Committee intended on promoting sustainability and precaution over anthropocentrism.

This research project concluded that many of the key concepts and rationalities of interest were present in the content of the EEA. Although it is likely that the role of staples development is the most problematic trend for Canadian environmental legislation, it is unclear which trend will be the most problematic or will lead to the most negative consequences. Chapter 5 noted that a historical examination of Canadian environmental policy could provide a potential response to this problem. Existing research has conducted similar studies when a dichotomy between overall themes existed. For instance, Halsey (2006) conducts a genealogical study on the governance of a particular ecosystem in Australia in order to further address the nuances between familiar “David and Goliath

narratives” such as economy versus environment (Halsey, 2006: 3). Since these narratives are recognized in existing research, the next step would be to focus on a micro-level relationship. Based on the importance of the oil and marine industries in the conflict identified in the EEA, a Canadian study could conduct a genealogy of tar sands development or the development of the marine industry in a specific maritime or west coast town. This further research would have the goal of moving past the dichotomy between environmental protection and economic development in order to create a fuller image of this conflict between environmental needs and the need to encourage economic growth through resource extraction.

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