EPA Approaches to Behaviour Change Project

Final Report

Prepared for:

EPA Victoria

Issue: October 2013

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Acknowledgements

The authors thank Susan Carter and Stefan Kaufman from EPA Victoria for commissioning and assisting with this research; and Jim Curtis, Lisa Curtis-Wendlandt and Liam Smith from BehaviourWorks at Monash University for their ongoing collaboration on this project. The research team are extremely grateful to the EPOs who generously gave their time and insights for this important project.
EXECUTIVE SUMMARY

As part of its commitment to be a risk-based, outcome-focused modern regulator, EPA Victoria engaged RMIT University’s Beyond Behaviour Change (BBC) team and Monash University’s BehaviourWorks Australia to conduct research with Environmental Protection Officers (EPOs) on how to achieve better compliance outcomes. The research focused on assessing the value and benefits of introducing a segmentation framework to assess businesses’ ability and willingness to comply with EPA laws and regulations, and to identify ways of improving compliance outcomes.

The BBC team used a social practice framework to analyse the practices EPOs perform in their daily work. These practices are underpinned by shared understandings about what it means to be an EPO and there are numerous competencies and materials required to perform them. These shared understandings, competencies, and materials are the three dynamic ‘elements’ that come together in complex ways to comprise EPO practices.

To identify and understand these practices a BBC researcher shadowed five EPOs on a total of ten site visits, and conducted a series of formal and informal interviews with each EPO.

Summary of findings

The research found that EPO practices can be grouped into four clusters: assessing compliance; dealing with non-compliance; encouraging better practice; and, managing the job.

Shared understandings and conflicting expectations

EPOs held strong shared understandings about the aims of their role and described a set of personal and professional qualities they believe are necessary to perform enforcement practices effectively. However, EPOs also discussed how these understandings conflicted with what they believe others expect of them and their role.

The key areas of conflict concerned expectations about how and when EPOs should use their prosecution powers; the balance between educating and enforcing; duty holder demands for specialised advice versus internal expectations of outcome-focused compliance and a generalist approach; and changing or unclear organisational priorities that EPOs struggled to interpret or apply on the ground. These conflicts were creating confusion and frustration about what EPOs are expected to achieve through their professional practice, and undermining the relatively clear identity that has begun to emerge for EPOs.

Competencies and materials

EPOs are skilled practitioners who employ an extensive set of competencies and materials in the performance of their practices. Section 3.3 outlines some of these competencies in detail, and explains how they are in contention or conflict. A key issue relates to capacity: while strengths and weaknesses vary between EPOs, there was clear consensus that participants feel under-skilled in some areas of their work. Technical knowledge (encompassing environmental systems and pollutants, and industrial processes and systems), investigative skills, and communication skills were the primary areas of concern.

Importantly, the findings in this section demonstrate how competencies and materials are practically employed at the discretion of EPOs in unique situations. While formal training is clearly important in facilitating and understanding how to perform practices, much of what is discussed resists codification: it is heuristic, informally learnt or passed down through practical experience.

Complexities of practice performance

The understandings, competencies and materials that shape EPO practices are not rigid or fixed, but are dynamically deployed in each situation as an EPO encounters a site and the people and practices being performed within it. Section 3.4 uses case studies from site visits to focus on how the three
elements come together on site, highlighting the complexities involved in performing practices. Social practice theory understands complexity as inherent within, and fundamental to, the performance of practices – that is, complexity is something we should seek to understand rather than stamp out.

The case studies presented in Section 3.4 highlight several issues, including:

- EPOs have a very limited range of tools for dealing with ‘unwilling and unable’ duty holders, and those that they do have are often compromised by conflicting expectations and understandings
- Many of the understandings, competencies and materials that shape duty holder practices fall outside an EPO’s control or influence
- Prescriptive tools restrict EPOs’ ability to employ the full range of competencies they have developed, and to apply discretion within their enforcement practices.

**Implications for the Segmentation Framework**

The findings of this report have some clear implications for the introduction of a segmentation framework. Firstly, if introduced as a procedural tool for EPOs to incorporate into their daily work it may be seen as further codifying the role and restricting EPOs’ ability to perform practices in a dynamic and contingent manner, while failing to address the challenges EPOs already face. This is because the segmentation framework in its current form:

a) Is unlikely to increase EPOs’ technical, investigative and communications competency;

b) May undermine or sideline the role of discretion and negotiation in enforcement practices;

c) Is unlikely to address duty holder practices, which inform their ‘willingness’ and ‘ability’ to comply;

d) Is unlikely to make regulations and policies any less difficult to implement; and,

e) May serve to highlight the lack of options for dealing with ‘unable’ duty holders without providing any new solutions.

Further, it is difficult to see how an EPO could make sufficiently accurate predictions about the willingness and ability of a duty holder to comply before having engaged with them on site.

**Recommendations**

EPA has an opportunity to position itself as a leading enforcement agency by focusing on its compliance staff as a primary asset. This research finds that EPA can maintain its commitment to be a risk-based, outcome focused regulator while simultaneously meeting the expectations and needs of EPOs by facilitating the effective and appropriate use of discretion in EPO practices. The BBC project team make the following recommendations about how to commence this task:

1. Consolidate and clarify the EPO identity by discussing, promoting or reinforcing shared understandings of the role, and addressing conflicts between shared understandings and stakeholder and internal expectations.

2. Recognise the extensive competencies EPOs already employ, and focus on strengthening capacity (particularly technical, communications and investigative skills and knowledge). As peer-to-peer learning and EPA’s mentoring program are highly valued among EPOs, these should be retained and extended where possible; there may also be opportunities to offer internal secondments or work-shadowing programs, and even to develop external secondments or training programs with other agencies.

3. Reconsider how the segmentation framework can be used as a tool for EPOs to better achieve compliance outcomes. Our research suggests that this tool in its current form may hinder EPOs’ ability to perform their professional practices in a discretionary and dynamic fashion, as required on a case-by-case basis.
1. INTRODUCTION

1.1 Background

EPA Victoria (hereafter EPA) has committed to becoming a risk-based, responsive regulator (EPA Victoria, 2011a), bringing it in line with the trend towards ‘modern’ regulation. Modern regulators are defined as being risk-based, outcome focused and cost effective (Shiels & Hollander, 2013). According to its current 5 year plan, EPA has expanded those criteria to include:

- Targeted
- Proportionate
- Transparent
- Consistent
- Accountable
- Inclusive
- Authoritative
- Effective

(EPA Victoria, 2011a)

As part of this transition EPA has implemented procedures for assessing and prioritising environmental problems based on risk. These include the Licensed Operator Risk Assessment (LORA), a paper based questionnaire that EPOs are required to complete as part of annual licence checks; and, more recently, the Environmental Problem Risk Prioritisation (EPRP), a series of internal processes led by the Corporate Strategy Unit to identify the full range of current and emerging environmental problems, and decide which ones EPA will focus on.

In a recent report for EPA, Shiels and Hollander (2013) argued that while many regulators are now focusing on the question of where resources should be allocated to achieve the greatest ‘bang for buck’, none is adequately dealing with the question of how this should be achieved. The report advised EPA to develop “decision support tools” to facilitate “robust and transparent decision-making”.

There have also been significant efforts to reform institutional culture at EPA, with a renewed focus on compliance and enforcement. The role of EPOs in achieving regulatory outcomes has been positioned at the centre of this push.

Within this context, EPA engaged the Centre for Urban Research’s Beyond Behaviour Change (BBC) Research Program (RMIT University) and Behaviour Works Australia (BWA, Monash University) to conduct research with Environmental Protection Officers (EPOs) on how to achieve better compliance outcomes. The research specifically focused on assessing the value and benefits of introducing a segmentation framework to assess businesses’ ability and willingness to comply with EPA laws and regulations, and to identify ways of improving compliance outcomes. The segmentation framework attempts to map businesses across four quadrants based on their ‘willingness to comply’ and ‘ability to comply’, as depicted in Figure 1, below. EPA expects that knowing where a business is situated within this framework will assist EPA and its field officers to more effectively tailor and implement strategies to foster compliance.
EPA identified several questions to guide the research in regard to the segmentation framework:

- How can EPA predict where an individual or businesses is situated within the framework?
- Are certain organisational, contextual and industry sector variables predictive of a business’s willingness and ability to comply?
- Do certain observed behaviours in the field act as indicators of future compliance or non-compliance?
- What professional practices do field officers engage in to achieve compliance and how might these change to increase compliance?

The BBC research team focused on the fourth question, regarding the professional practices EPA field officers perform.

Both research teams approached and analysed the project using different theoretical frameworks to provide interdisciplinary understandings of ways to improve business compliance with EPA laws and regulations. The BBC team approached the research using a theoretical framework of social practices, focusing on the shared practices that EPOs participate in and perform in order to achieve compliance. BWA drew on behavioural and organisational change theories as outlined in their report.

This report outlines the results from the BBC research team’s interviews and site visits with EPOs, conducted in September–November 2013. This report is intended to complement, and be read in conjunction with, BWA’s report on their research findings.

Section 2 outlines the methodology the BBC team used for data collection and analysis, including a description of the theoretical framework upon which the research approach was based.

In Section 3 the findings of the research are presented in four subsections: 3.1 outlines the practices of an EPO and breaks them into separate categories; 3.2 describes the shared understandings participants hold about what it means to be an EPO; 3.3 describes some of the competencies and materials needed to perform EPO practices; and 3.4 uses examples to illustrate some of the complexities that arise when EPO practices are performed.

Section 4 outlines the implications of our findings for the segmentation framework; and Section 5 concludes with recommendations for improving and supporting EPO practices, and suggestions for further research.
2. METHODOLOGY

2.2 Conceptual framework and literature review
The BBC research team specialises in understanding social and technical problems using theories of social practice. These theories understand the world as being constituted first and foremost by social practices that people participate in, such as running, shopping, showering, or traveling by car (Strengers, 2013). A practice can be thought of as both an entity (an identifiable activity) and a performance. The framework we adopt in this report proposes that an entity is constituted by three ‘elements’: shared understandings about what is appropriate to do and what social meanings are held about how a practice should be performed; skills or competencies about how to practically undertake and perform a practice; and materials, or tangible things such as objects, infrastructures and technologies that are necessary to perform the practice (Shove et al. 2012). The performance of a practice is a dynamic process whereby people carry out an activity by bringing all these elements together to achieve a shared outcome, such as achieving compliance with EPA laws.

Practice theories are useful for decentring the role of the individual in achieving change, and for focusing attention on the elements of practice (shared understandings, competencies and materials) and how these are brought together ‘on the ground’ as people carry out activities.

While social practice theory is the central conceptual framework for this research, our work was also informed by a literature review that explored other theories and related research including:
- ‘Street-level bureaucracy’, a concept introduced by Michael Lipsky in 1980 to describe the relative autonomy of the ‘base’ level of government – that is, the workers who implement public programs. Lipsky (1980) argues that these workers have an inordinate and discretionary influence on policy outcomes through their day-to-day practices, and Hupe & Hill (2007) expand on his theory to propose a series of ‘grounding axioms’ for the study of street-level bureaucracy;
- Socio psychological and sociological understandings of habit, as defined by Darnton et al. (2011, p. 5) who argues that practitioners need to understand and employ both understandings because “different audience groups will respond better to different kinds of intervention”;
- Buysse and Verbeke (2003), whose analysis of ‘green’ business distinguishes between businesses whose environmental performance is compliance driven and those that are more proactive; and
- A large scale observational study into the role of the field environmental inspector in the enactment of regulation in the UK (Fineman, 1998).

The BBC team also reviewed a number of EPA publications to provide the background for this work, including strategic documents, internal reviews and practice guidelines.

2.3 Data collection
Data were collected through recorded and informal interviews with EPOs, and by observing EPOs at work in the field. A BBC researcher shadowed each participating EPO for several hours or whole days, accompanying them to sites and travelling with them. Researchers used the travel periods to ask scripted and unscripted questions, constituting a series of informal interviews to complement more formal recorded interviews with each participant.

2.3.1 Sample
EPA selected a number of EPOs for participation in this research and provided their contact details to the BBC and BWA research teams. The BBC research sample comprised two participants from the metropolitan office and three from regional offices. One participant was a member of the Illegal
Dumping Strikeforce and all others were generalist practitioners. There were three female participants and two male. Of those, two had been in the EPO role for less than two years; one for three years; one for six years; and one for more than seven years.

The sample was not intended to be representative of EPOs generally, and participants were selected by their managers on the basis that they were considered highly experienced and/or effective practitioners.

While the identities of participants are known to the EPA staff who commissioned this research, every effort has been made to ensure the quotes and anecdotes used throughout this report are not identifiable at the individual level, in accordance with RMIT University’s ethical obligations. Similarly, demographic data is deliberately broad and brief so as to protect the identities of participants should this report be read by a wider EPA audience.

2.3.2 Interviews
Two types of interviews were conducted: formal interviews of 60-90 minutes duration, which took place in cafes, offices and cars; and informal interviews, which took place during travel to and from sites and included a mix of scripted and unscripted questioning.

Formal interviews were recorded and later professionally transcribed, while informal interviews were captured by manual note-taking.

The interview schedule is included at Appendix 1; note that this schedule was a guide only and the researcher frequently asked questions and pursued topics not included in the schedule.

2.3.3 Observation
A BBC researcher shadowed participants on a total of ten site inspections, of which three were pollution response inspections, five were annual licence checks and two were conducted to follow up on notices. The researcher was deliberately unobtrusive during site inspections, observing and taking notes rather than actively participating in the inspection. During travel to and from the inspections, however, the researcher conducted informal interviews with each EPO: prior to an inspection the researcher asked question about what the EPO expected to find on site, what they knew about the site or duty holder already, and any history with the site; and after an inspection the researcher asked whether the EPO’s expectations had been met, what they planned to do next, whether they thought the duty holder would comply, and so on.

The full list of questions is set out in the Site Visit Guide (Appendix 2). This document was a guide only and the researcher frequently asked questions and pursued topics not included in the guide.

2.4 Data analysis
Interview transcriptions and written notes were analysed using the social practice conceptual framework outlined at Section 2.2. A qualitative analysis software program was used to thematically analyse the data.

3. FINDINGS

3.1 The practices of an EPO
EPOs perform a range of practices in their daily work as they try to achieve the aims of their jobs. These practices are underpinned by shared understandings about what it means to be an EPO – i.e. their aims, personal qualities and the expectations others have of them – and there are numerous competencies and materials required to perform them. These shared understandings, competencies,
and materials are the three dynamic ‘elements’ that come together in complex ways as EPOs perform the practices of their daily work.

This research identified four areas into which the majority of EPOs’ practices can be grouped:

**Assessing compliance**
Finding out whether or not a business is compliant, be it through an annual licence check, following up on a previously issued notice, or responding to a complaint/report.

**Dealing with non-compliance**
What EPOs do when a business is found or thought to be non-compliant. Includes enforcing regulatory requirements, but can also involve the use of discretion to avoid enforcement/prosecution.

**Encouraging better practice**
This category encompasses the practices EPOs perform when a business is essentially compliant but could improve their practices to reduce their environmental impacts. It focuses on voluntary rather than regulated measures.

**Managing the job**
This category covers all the things EPOs do when not engaging with duty holders or enforcing compliance – it is the ‘background’ work, which includes administrative tasks and procedures, time management and workload management.

In the following sub-sections we look firstly at shared understandings about the EPO role, which cut across all of these practice clusters. We then list and discuss some of the competencies required to perform the practices of an EPO, and the materials that help shape those practices. Finally we use some examples from our field observations to illustrate the complexity of EPO practices and how the various elements come together in practice performance. Throughout this discussion we identify areas of ‘conflict’ within the defined practice categories and examine their implications for achieving better compliance outcomes.

3.2 Shared understandings about the EPO role
The EPOs we interviewed held strong shared understandings about the aims of their role, which inform all of their professional practices. However, they also discussed how these understandings were in conflict with what they believed others expected of them within their role. This was creating confusion and frustration about what EPOs are expected to achieve through their professional practice.

3.2.1 Shared understandings about the aims of job
Research participants shared some clear and consistent understandings about the aims of the practices they perform – that is, what they hope to achieve by doing what they do. First and foremost they see themselves as the ‘frontline’ of environmental protection, whereby their enforcement practices are an opportunity to make a real impact on environmental quality and amenity. By performing their daily activities, EPOs uphold what is ‘right’ as illustrated in the quotes below:

[We] are making real change right here, right now, as opposed to sitting in an office writing reports.

Our first need is to protect the environment.

I want people to do the right thing by the environment and to be honest and fair... I get very upset with things when they’re not right.
What’s driving me? I think I’m making a difference.

That’s what you come here to do – you’re here to serve not only the community but the environment as well, to make sure that we’re not using our backyard as a toilet...

Understanding themselves as environmentalists gives meaning to the enforcement practices they perform:

I’ve always been a bit of a greenie at heart...

I think generally you have to have a passion for the environment [and] to try and do right.

Seeing positive environmental outcomes resulting from the performance of their practices helps EPOs confirm their understandings about making a difference:

When we take something to our enforcement review panel and it’s signed off and approved and it goes ahead for an investigation; or I’ve got a [Penalty Infringement Notice] out of it, or I’ve got an official warning out of it; that’s a good day, because all your work has finally led to something of significance that’s going to make a change.

Probably the best feeling of all is when you go back to a site that you’ve issued a notice on, and they have done everything you’ve asked. And then they’ve done above that, and decided to implement a waste management plan that you didn’t ask for, but you were thinking about asking for. Yeah, it’s – that feeling is really good.

When you go out and see a site and you go, “Oh, this is going to be a lot of work,” there’s not that immediate satisfaction. But when you see the before and after photos [you think] “yes, I’ve done something; I’ve protected the environment”. You have to put the politics and all the other stuff aside and see what the net outcome is to the environment.

When in the field, participants understand themselves to be representatives of EPA, serving the community through the performance of their practices:

You’re representing the EPA, and if you get a bad experience [people] are just going to say, “Alright, the EPA came, they were useless”.

EPA has a reputation to maintain and I would hate to think we’re establishing a bad reputation with people who are trying to do the right thing.

I think our role is serving the community – if there are environmental issues, then we’re the ones that go out and address those issues...

It’s really about serving the community and preventing pollution...

Participants also felt that they, or the organisation generally, should play a proactive role in educating duty holders and the wider community:

I also see a sort of informative role in the organisation, an educative role I should say, that we could be playing around dissemination of information and research into best practice, and ensuring that the industry can access that information, and also the community as well.

We’re trying to pass on knowledge or information or legislation on what [duty holders] need to do to comply, so [we] need to educate them.

3.2.2 Shared understandings about the ‘qualities’ of EPOs

Participants shared understandings about the kinds of personal and professional qualities EPOs require to perform enforcement practices effectively. There was consensus that an EPO should be a
‘people person’, as communication skills and interacting with people are central to achieving environmental outcomes in their daily enforcement practices:

I think you need to be a people person... you need to be able to speak to people and start conversations and have that investigative mind.

I’ve taken staff members out with me who are technically on paper extremely qualified and fantastic, but when they go and speak to someone in a different environment that they’re not used to they just can’t cope or they can’t talk; they freeze up, get a bit nervous... they’re fantastic on paper, but the job’s just not for them.

I think [EPA] expect us to be fairly good communicators, which is a good expectation to have... communication skills I think are critical.

You want that balance of working with somebody, educating them and helping them to comply, but you also need that harder part where you say, ‘this is wrong, and this is what’s going to happen now’.

However, most were clear about the need for this to exist in tandem with a degree of toughness or hard-headedness:

You have to be able to take things with a grain of salt, have a bit of a thick skin.

I quite like a challenge. So those tougher customers we deal with, I actually quite enjoy that process.

I see compliance [people] as people that are pretty well black and white: they see an issue, they identify what the cause is, they find a resolution, they issue a notice – black and white. Here’s the law, enforce the law.

If you’re really trusting, do not get into compliance.

Some people just shouldn’t be in compliance and there were two people that have worked in this office in the past and [my manager] looked at them and [said], “Nope, you’re in the wrong job. You should be in community engagement or something a bit warmer and fuzzier instead of the confrontational stuff”...

EPOs also see themselves as being relatively powerful in terms of the regulatory backing for their enforcement practices:

I think we’ve got more power than we actually realise.

We’ve got really good powers as far what our Act enables us to do... we can direct someone under a 62B, for example, if there’s imminent risk to life or the environment. So if we see something, we say “you there, you fix this immediately, do it now, failure to do so is an offence...”

EPOs also held shared understandings about the responsibility that comes with their power, and what that means for the way they use power in their enforcement practices:

With power comes great responsibility... you are given these responsibilities and you do have to take them seriously. And at the start I found that quite intimidating, that you have all these commitments, and you have to say and do the right things, you can’t step over those powers, so you have to understand exactly what they are, and know the limitations of [them] as well.
3.2.3 Conflicting understandings of the EPO role

While EPOs share many understandings about what it means to be an EPO, they feel that EPA, the community and duty holders in general have different and often conflicting expectations of them. This section outlines what participants perceived others’ expectations of EPOs to be, then discusses how those expectations conflict with EPOs’ own understandings.

Community expectations

Participants felt community members often expect them to be all-powerful protectors of amenity, able to fix any and all environmental issues:

- "I think the wider community thinks EPA will solve all environmental problems, because that’s what EPA does. But that’s not what we do. We regulate [but] we’re not the ones that actually implement the procedures to protect the environment, nor do we do the clean-up; we just do the legal kind of, enforce the legislation I suppose."

- "The community I believe wants to see action out of EPA and expect us to hold industry to account for any issues they may be causing; and [they] essentially want to be left alone from environmental problems."

As suggested by the latter quote, participants felt the community often sees them as having significant power to enforce the law and to punish those who do not comply. However, participants also acknowledged that some community members may have had negative experiences where issues haven’t been resolved, leading them to be cynical or pessimistic about EPA’s ability or willingness to hold industry to account:

- "Unfortunately I think some [in the community] have come to expect very little of us, whereas others expect us to close down a business because of a relatively minor odour issue..."

Participants also felt community members expect them to be responsive to their complaints and concerns.

Duty holder expectations

Participants felt duty holders expect them to have a high level of technical knowledge about their respective industries, and to give them clear advice on how to comply with regulatory requirements. They also felt duty holders expect consistency in the way regulations are applied, and in their interactions with EPA generally; and that EPOs will follow up any issues duty holders report (which may include self-reported breaches, questions about compliance, tip-offs or complaints about other businesses, or difficulties they are having with EPA’s systems) as well as being responsive to the data they supply:

- "I guess if we’re issuing licences and [duty holders] have got to put in testing parameters and all that kind of stuff, they would expect EPA to enforce it and take action, because [it] costs them time and money to do testing and all that stuff. And if we’re not using that information to improve our licences or techniques or consistency, [then] what are they achieving? They’re not gaining anything out of it. So I think [duty holders] would expect the EPA to take note of the data [they supply] and take action and be consistent."

Organisational expectations

Participants believed EPA expects them to be ‘generalists’ with a broad knowledge of environmental systems and pollutants, which they can apply to a diverse range of duty holders from across the spectrum of Victorian businesses and industries. There was some confusion about the degree to which EPOs are expected to have specialised or expert knowledge: some participants felt this clearly wasn’t required of them, while others believed it was necessary in order for them to achieve the objectives of their role.
Participants also felt EPA expects them to avoid giving prescriptive or overly detailed technical advice about how to comply with regulations, which they understood to be a clear and deliberate shift away from how notices were issued in the past: the focus is now understood to be on directing duty holders to comply in whatever way they choose, rather than telling them how to comply.

As discussed in section 1, EPA is transitioning to being a risk-based, responsive regulator. From our interviews and observations it is clear that this message has filtered through to the EPO level. Participants generally felt that EPA expects them to target their activities, and spoke about how they assess risks and prioritise actions informally as they perform enforcement practices in the field. In doing so they draw on understandings of culpability and risk informed by EPA’s Compliance and Enforcement Policy (2011b).

Conflicting expectations
Participants agreed there was often conflict between their own expectations of the role, what EPA expects of them, and what duty holders and the community expect of them. For example, while participants believe the Environment Protection Act gives them significant power to hold industry to account and that the community expects them to enact that power, they feel restricted by what they perceive as a ‘prosecution shy’ or risk-averse culture within EPA:

We’re probably a fairly, I was going to say conservative, but considered litigant, and don’t take matters to court unless it’s a fairly tight case... [But] I think we need to be prepared to lose some cases and find out where the line is a little bit.

[EPA is] very risk-averse and that’s something that EPA’s always been. If it’s not signed, sealed and delivered with a rubber stamp that we will get a guilty plea or a positive outcome, we won’t go near it.

Changed requirements around how notices are written have also created conflict or confusion for some EPOs, especially those who have been in the role for some time. Most participants understood the rationale behind the change from prescriptive to ‘open-ended’ or outcome-focused notices, and some welcomed or supported it:

I see us as more of a surveillance or regulatory body that ensures industry is largely doing the right thing, but not so much [spending] a lot of time within industry providing technical advice. I guess there still is a role for us to provide some input – whether it be informally to steer them in the right direction, or formally, of course, when it’s sought; but I don’t see a big part for us in reviewing industries’ problems and essentially telling them how they should resolve their issues.

I feel as an EPO more comfortable with the notices we have now than the past notices. I struggled a lot with the previous notices because I was concerned about how much I was telling [duty holders] to do. I mean, if we issue a notice on a licensed site... if they come up with an innovative idea on how to basically comply with the license, and then maybe even go beyond that, then I don’t think EPA should be prescribing to them how exactly they should do that process.

However, even for those who felt comfortable with the changed approach it clearly creates tension as they perform their daily work, because duty holders continue to expect and demand technical advice from them:

We give generalist advice [and] if we’ve got an area of expertise we might give more specific advice; but [we’re] very reluctant to do that nowadays because the onus is really on the duty holder to demonstrate to us that they’re compliant. But sometimes it seems that we have to try to see if they are compliant. It’s a really weird place to be in at the moment... you think well, how do they demonstrate compliance? Or is it my role to demonstrate non-compliance?
This highlights another area of conflict for EPOs: while they believe EPA expects them to be ‘generalists’ with a broad knowledge of all areas of enforcement, they often find it difficult to perform the practices associated with their roles because they lack the specialised knowledge duty holders expect them to have (discussed further in section 3.3.4). Similarly, participants were unsure about how much effort they should allocate to educating industry and community. While most felt they, or the organisation generally, should play a proactive role (as described in section 3.2.1); and while it was generally understood that the organisation supported a role for education; many participants were unsure how this should translate into their daily practices. Should they focus more on enforcement, or education?

This conflict was underpinned by a consistent feeling among participants that they lack technical knowledge (discussed further at section 3.3.4), which impacts on their ability to educate effectively. Additionally, some participants felt there were ‘fashions’ or trends in enforcement which came from higher up in the organisation, and which EPOs didn’t always understand or agree with:

How clear the regulations are and the organisational appetite to pursue those regulations [varies] from time to time, and there is a ‘flavour of the month’...

If we do an investigation around, say, depositing of industrial waste, and then it gets up to Major Investigations and they decide it’s not a priority, and the case falls over; then the officer is left feeling like, “Oh, well, I’ve just spent two months on this case and it wasn’t prioritised – why am I wasting my time?” So there might be at this point a bit of disconnect between the organisation’s priorities of what they want to pursue through to a prosecution, and what groundwork we are doing on the officer side.

This issue relates to a perceived gap between what EPOs know to do, and what the Major Investigations Unit needs or expects them to do:

[There needs to be] clear communication between the Major Investigations area and the EPOs, to understand exactly where the end game is, exactly how they want us communicating with [duty holders], and what they want us collecting, and what questions they are really wanting answered early on... before it gets to the serious side. Because I think sometimes there is a disconnect between what we are producing at our end and what they expect to be presented at their end...

A related issue is a sense among participants that non-field staff do not understand what field staff do or the challenges they face; and a perception that metropolitan EPOs have different roles and working conditions than those in regional offices:

Maybe everyone in head office should come out and work in a regional (office) for a while to see what it’s actually like on the ground – because we get asked a lot of questions on the spot that we don’t know the answer to, and we’re the frontline of the EPA...

In the regions they [do] even more than what [metropolitan] EPOs do, because they have involvement in works approvals and licensing and community engagement; they take on a lot more of the whole organisation’s role because they are a smaller group out there. Whereas here in the main office, because we’ve got more people we can segregate into specific areas.

I know that’s one of the sources of frustration [for EPOs], that sometimes the advice centralised units are giving to the duty holder might be different to what we’re seeing in the field...

In summary, some of the key questions arising from how EPOs understand their role and what is expected of them by others include:

1. EPOs have power but can they use it?
2. What balance should EPOs seek to achieve between educating and enforcing?
3. How much specialist knowledge should EPOs have?
4. What are the organisation’s priorities, and how can EPOs feed into or influence them?
5. What does the Major Investigations Unit need from EPOs, and how best can they work together?

3.3 Competencies and materials required for performing practices

As discussed in section 3.1, this research identified four separate groupings or clusters of practices that EPOs perform (assessing compliance; dealing with non-compliance; encouraging better practice; and, managing the job). Table 1 (below) gives examples of some specific practices associated with each cluster, and the various competencies and materials involved in the performance of those practices. However, it is important to note the significant crossover between groupings, as it is not always possible to say that a particular practice falls neatly into one group or another. Likewise, the shared understandings, competencies and materials that comprise a practice often cut across several different practices.

This section begins by exploring the range of competencies and materials EPOs need to perform their work practices, and concludes with a discussion of competencies that need to be strengthened in order for EPOs to achieve better compliance outcomes.

Table 1: Competencies & Materials Needed to Perform Practices

<table>
<thead>
<tr>
<th>Practice group</th>
<th>Competencies</th>
<th>Materials</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessing compliance</td>
<td>Technical knowledge (pollutants, environmental systems, industrial processes)</td>
<td>Sampling &amp; monitoring equipment</td>
</tr>
<tr>
<td>– establishing rapport, credibility &amp; authority</td>
<td>Communication and interpersonal skills (e.g. establishing rapport; conveying complex information; conflict resolution)</td>
<td>Cameras</td>
</tr>
<tr>
<td>– interpreting regulation &amp; policy</td>
<td>Cross cultural skills</td>
<td>Notebooks</td>
</tr>
<tr>
<td>– conducting LORA</td>
<td>Investigative skills (e.g. drawing out information; gathering evidence; pursuing leads; using the senses; reading body language)</td>
<td>Regulatory &amp; policy documents (e.g. copy of the Act)</td>
</tr>
<tr>
<td>– collecting samples</td>
<td>Risk assessment and prioritisation skills</td>
<td>Mobile telephones</td>
</tr>
<tr>
<td>– analysing test results</td>
<td>Knowledge of organisational objectives</td>
<td>LORA checklist</td>
</tr>
<tr>
<td></td>
<td>Driving skills</td>
<td>Calibrated noses</td>
</tr>
<tr>
<td></td>
<td>Personal safety and self-defence skills</td>
<td>Portable printers</td>
</tr>
<tr>
<td></td>
<td>Practical know-how and dexterity to measure and test for pollutants</td>
<td>Laptops</td>
</tr>
<tr>
<td></td>
<td>Ability to ‘read’ situations and engage with diverse workplace cultures</td>
<td>Marked and unmarked vehicles</td>
</tr>
</tbody>
</table>

Dealing with non-compliance

| As above; also: | As above |
| Conveying compliance instructions in appropriate language | As above |
| Negotiation and mediation skills (outcomes, timelines) | As above |
| Formal interviewing skills | As above |
The table above illustrates the diverse and extensive set of competencies required to perform the practices of an EPO, many of which are gained ‘on the job’ or through peer-to-peer learning rather than formal training. The following sub sections outline some of these competencies in detail: the first three practice clusters are discussed together as there is significant crossover between them, and the final cluster (managing the job) is discussed briefly at the end. We then identify some ways in which these competencies are in contention or conflict; and we conclude with a discussion of the materials implicated in EPO practices.

Importantly, these findings demonstrate how competencies, skills and materials are practically employed at the discretion of EPOs in unique situations. While formal training is clearly important in facilitating and understanding how to perform practices, much of what is discussed below resists codification: it is heuristic, informally learnt or passed down through practical experience.

3.3.1 Assessing compliance, dealing with non-compliance and encouraging better practice

Technical knowledge
EPOs need to be comfortable discussing a wide range of pollutants, environmental systems, industrial processes, and environmental regulations and policy. They also need skills in conducting sampling and monitoring. These technical skills and knowledge underpin many of the other competencies EPOs need – for example, investigation skills are often dependent on knowledge of the pollutants a business produces and their impacts on the surrounding environment.
Communication skills

Communicating and engaging with duty holders and other stakeholders is a central part of EPOs' practices, and there is a lot of crossover between investigative skills and communication skills. As with other skills, many of the communications and engagement skills EPOs employ have been learned on the job and by observing colleagues:

We all have different ways of approaching people, and different clients. So I think for me I've learnt most of my stuff from being in the field.

Doing site inspections with other officers to see how they operate [is valuable], and to see how they communicate as well; because a big part of our job is trying to get that point across.

The ability to establish rapport with duty holders while maintaining credibility and authority is a key communication skill. Participants agreed that establishing rapport is an integral part of their work, and is usually the first task of an inspection:

I guess if we were to break it down, [I probably spent] about 60 or 70% of the inspection trying to get rapport with them.

I always ask how they're going, how long have they been doing the job, something interesting to make [them think] “Oh, well they're interested in me” – [that] tends to make them talk more.

However, EPOs are also judicious about when to focus on building rapport, recognising it is not always an appropriate or achievable aim:

If they've said, “I’ve had a shocking day; now you’re here, you’re wasting my time,” well, alright, my guard’s up; I have to be careful about how am I going to progress.

If you get a sense they don’t like the regulator, you just say, “Well, I’m just here to do a job. You have a license, it has to be checked. We can’t just issue licenses and then leave them for 20 years.” And yeah, move on to the next stage.

Sometimes the first task would be to establish credibility or authority instead, demonstrating how competencies are fluidly integrated and deployed on site as EPOs seek to achieve the aims of their job. This was particularly the case with duty holders who were clearly resistant to the EPO’s presence, hostile toward EPA or authority generally, or had been reported for illegal dumping or burning of waste:

When I first met him I had to start that process and try and get him to understand that I am a regulator and I’m here to do a license inspection; and if I see any breaches then it would be followed up. So that he understands that’s what we’re here to do.

It also depends on the severity of the non-compliances: if there’s something kind of catastrophic, then I’d be less interested in getting rapport than actually telling them what they need to do there and then, and letting them know what the implications are for not doing the right thing.

Participants discussed how they often try to achieve a balance between maintaining a friendly rapport, and being seen as credible, authoritative enforcers:

I guess it’s [about] not crossing that line to the point you’re compromising yourself with establishing a rapport. I mean rapport is not necessarily a conscious thing; to me it’s a human thing. Being in others’ company, you’ve got to get some rapport going unless they’re absolutely repulsive. But I try [not] to cross the line to the point where I can’t point out significant issues later on... establishing rapport is not a compromise.
It’s something that I think had to be learnt, that I could be flexible in my style. I mean just because I’ve established a rapport doesn’t mean I can’t be assertive about what needs to be done, and I would hope that establishing rapport generates a more trusting and respectful relationship – because there is a relationship: they’re essentially a regulated industry, and we’re the regulator.

The researchers observed this balancing act in practice during several site inspections: EPOs switched frequently between friendly, casual conversation with duty holders, and a more authoritative tone. This technique appeared particularly important for annual licence checks, which would often begin to take on the feel of a tour (with the site operators as expansive hosts). When this happened the EPO would interrupt the flow of conversation with a clear, direct question about a process or piece of equipment, thereby reminding the duty holder that the inspection was a matter of compliance. The researcher observed that the tone of the interaction would usually change noticeably after such an intervention.

EPOs also have skills in conflict resolution, and develop techniques for defusing tense or confrontational situations:

I took over a job and this guy said to me, “I’d rather go to VCAT than deal with you guys.” But once I got to know the guy and explained the situation he kind of backed down and he wasn’t aggressive.

If you go in with an attitude, “I know more than you do,” they’re not going to treat you with much respect, especially when you say something stupid.

You’ve got to think of when is a suitable time for them, and you’re not going to book an inspection at two o’clock on a Friday afternoon, because that’s just going to annoy everyone. So you’ve got to be mindful of their situation, because if you’re mindful of their situation I find you get a lot more out of them.

I think we have to acknowledge that we’re going to come up against confrontation within our role and just finding ways of de-escalating confrontation is pretty critical to stress management, and self-preservation.

Other competencies which are similarly drawn on in a dynamic or ‘as-needed’ basis include cross-cultural and written communication skills.

Educating duty holders
All EPOs we observed in the field displayed willingness and often an enthusiasm for educating duty holders, which is consistent with their shared understanding about their role (see Section 3.2). Even when a site is found to be compliant, EPOs see their visit as an opportunity to encourage better practice.

You get some people who have no idea who we are, and are very stand-offish and don’t want to talk to us. But once they start to understand what we’re about, they are quite keen to learn, and they’re very receptive to – we’ll give them guidelines or show them what they can do, or where they can go, what help they can get – it usually works quite well and they are quite positive about it.

The EPOs we observed have developed various techniques for communicating complex regulatory and technical information, including using examples and analogies:

Most people understand the recycling of a plastic bottle, for example, because it’s been documented heaps of times on the news and all that sort of stuff; so they usually understand that process. And I say that applies to concrete, scrap metal, all that sort of stuff that you can recycle. So I try and get them to understand.
If you [can give] a tangible example or you’ve seen something or you’ve read something... it just works wonders, absolutely works wonders.

Researchers noted that participants often relayed examples to duty holders of how problems had been dealt with at other sites. When asked about it later in interviews, participants said this was a way of helping duty holders conceive of their own options, and to make them feel they were being treated in accordance with a consistent process – i.e. other duty holders have had to comply with that requirement too. Giving examples of other sites could also be an indirect, non-confrontational way of getting duty holders to talk about issues at their own sites.

EPOs often deal with people who have difficulty understanding what is required of them, including people with English as a second language or who are not highly educated. In these cases EPOs draw on their cross cultural and other communication skills to guide duty holders through the requirements:

A lot of people seem to get mixed up with the bottom section [of a particular form], and we often have to guide them through it. Sometimes you may even actually write parts of those sections, show them what you’ve written, explain everything, and then say, “Do you agree? If you agree, sign and date it”... people who are – what’s the word – of a lower sort of socio-economic background, often don’t quite understand these complicated forms.

If you’re going to stand there and read them parts of the Act, they are going to be totally lost and bewildered. And if you use all these confusing terms, they’re going to become quite uptight and upset because they don’t actually understand what it is you’re trying to get them to do. Sometimes it’s just better to [rephrase] EPA jargon into layman’s terms and, yeah, to make sure that they actually understand the overall meaning of what you are trying to get them to do, instead of trying to bewilder them with 55(3-d)s and 62(a)s...

Often I’ll have, say, somebody who’s quite elderly as well, and really isn’t in a state of mind to handle what I need to tell them. So in those situations I’ll ask them to bring, say, a daughter or someone that can represent them, so they can then explain it in a better way...

When EPOs try to motivate duty holders to comply or improve their practices, a commonly employed technique is to explain the environmental risk and potential impacts of non-compliance or poor practice:

You tell them what the environmental risk is first, and work your way back through the process of what they need to do to protect the environment. And [try] to make them understand that everybody is responsible for protecting the environment in their own little way.

Researchers observed this technique being employed frequently on site; however, participants pointed out that it’s not appropriate for all duty holders. When duty holders appeared disinterested in or even hostile to environmental protection, participants would typically fall back on a harder, enforcement-focused approach, referring to the law and legality rather than environmental outcomes:

Yeah, there are people like that. And basically when it comes to that I generally go the hard line and say, “what you’re doing here is behaving as a landfill. That’s illegal... So here’s your notice”... Just to make it completely cut and dry, so they understand what they are doing is breaking the law.

It often depends on the situation. If they are genuinely confused you would break it down to them [and] say, “This is what you’ve done, this is what our Act says, this is why you can’t do this.” But at the end of the day, if they are not going to cooperate there’s not that much you can do other than, as the officer, you explain what they need to do and what
you are going to do. They can either take that on board or not. And then you gather your evidence...

So you want that balance of working with somebody and educating them on a level, and helping them to comply; but you also need that harder part where you say, “This is wrong, [and] this is what’s going to happen now”.

It should be noted that the educational role is considered a rewarding part of the EPO job:

I really enjoy trying to think of different ways to say the same thing so that they understand their responsibility to the environment.

**Negotiation and discretion**

Negotiating outcomes and applying discretion were important and widely employed skills in achieving compliance outcomes when duty holders were not compliant or were at risk of not complying:

And then you go into negotiations a little bit on time frames, but really only on time frames – not on how or what we want them to clean up, but just on how long it might take them to do that.

After the first clean-up notice was issued, if he’d actually shown he’d started to do something, then perhaps at this point we could consider revoking and reissuing [his notice]. Because we can see he’s starting to make an effort.

The site we went to yesterday, it’s disappointing for me to see that he hasn’t decided to even remotely try to comply with the clean-up notice. It would be a lot easier process for him and for us if he just started to comply with it.

I can talk to most people I reckon, and I reckon that you can influence someone by issuing them a notice or you can influence them without that whole formal process if you can demonstrate what the good of it is.

**Investigative skills**

EPOs learn to use and trust their instincts, and to recognise evidence of an offence. Drawing on past experiences they ‘read’ and interpret body language and other cues to figure out if people are being truthful or not ‘in the moment’ of a practice performance, and they hone practical techniques for drawing information out of duty holders:

Generally I don’t use fear tactics straight away. I try to firstly make them feel a bit more comfortable and relaxed, and when they are in that state of mind, they’re not as standoffish, they are more willing to talk and explain their situation and tell you what they are really doing, and then you can go from there.

[EPOs should] ask lots of questions, act dumb... because if you can pause enough, people will usually spill their guts... if you give them a pause, people by their nature are obliged subconsciously to talk it seems. You can use that to your advantage all the time.

It is a bit more complicated in the waste area because it is so hard to catch somebody actually dumping. You can’t go on site and suddenly solve the issue. You need to do a lot of investigating.

Even though I’m pretty comfortable with [certain types of sites], I always start at the beginning. I say, “You take me to the inlet, let’s start at the beginning of this whole process from when the waste comes in, to the point of [where] the waste goes out.”

The senses are also important tools in investigation, to the extent where some officers have ‘calibrated noses’ (which are also a dedicated ‘material’ of practice) recognised as being relatively
accurate in picking up and identifying odours. In other cases the senses are used to assess the material environment.

If you don’t see things, hear things, smell things, feel things, you’re not being observant enough.

While there are clear competencies and procedures involved in investigation – such as gathering evidence and conducting formal interviews – participants often described their investigative abilities as being based on instinct or intuition:

Somehow your brain picks up, “this person’s lying to me”, or “this doesn’t quite seem to ring true”… I think the human brain is pretty clever at picking up on that, even though you’re not really sure why...

If I hear some of these one-liners my subconscious just goes “bing, bullshit artist!” and that's when you think, alright, let’s ask a few more questions here. Let's dig a little bit deeper with you...

I don’t know if it’s a radar or sixth sense or whatever you want to call it but you just, you pick up on stuff. I don’t know what makes these people do what they do... or not do what we want them to do. You just sort of pick it up. You just think if there’s a lot of “yes, yes, yes, yes” to everything you say, you know that they’re just fobbing you off and they don’t really care.

EPOs felt that duty holders would sometimes pretend not to understand what was required of them as a way of stalling or deflecting enforcement action. When EPOs suspected a duty holder was not being truthful, they would adopt a tougher approach; and in order to feel good about this they would draw on common understandings about the importance of upholding the law and protecting the environment, and the idea that duty holders have responsibilities:

I think sometimes they pretend they don’t know much, when they actually do. But regardless of that, there’s no excuse for not knowing the law. And if you are going to set up this kind of business and operate in that kind of way, you need to do it responsibly.

I’m never the bad guy because I’m upholding the law – so they’re the bad guys and if they don’t like me, I don’t care.

I’m a big believer that ignorance is no defence. It never should be.

For some EPOs the default approach to duty holders is suspicion, particularly when dealing with pollution response cases. This position has been developed through years of practical experience:

I think at the start I was more trusting of people. I thought a lot of the polluters were actually genuine in what they were saying. But through my years of experience I found that there are a lot of games being played.

You know, a person once said to me [that] people are innocent until proven guilty, which in life is pretty well accepted. Sometimes I get a mentality that they’re guilty and they have to prove to me that they’re innocent.

Basically I don’t trust anybody. If it’s a skip bin company, I go in thinking that they probably haven’t done the right thing if we’ve received a report. I’ll give them the benefit of the doubt, but oftener than not they have done the wrong thing. Well, that’s been my experience, anyway.
Assessing and prioritising risks
EPA’s new risk-based approach aims to target resources toward the greatest potential impact. The EPOs we interviewed and observed were generally aware of this objective and were constantly assessing, reassessing and prioritising as part of their daily enforcement practices.

What we try to think about is “what’s the worst case scenario?”, and that’s what I was thinking [when we were on site earlier]; and [I thought] well if that [problem] does happen again, the risks are quite low to the receiving environment so I’m not that concerned about it.

Sometimes you want to go and investigate and read up and do some research, but inevitably with our job it’s difficult a lot of the time to do that reading and that research. Because we are so busy already with other issues that are higher risk.

When you go on site, there are certain things you think of; you think of pollution outside the boundary. And then you think risk: what could possibly pollute outside the boundary that’s not contained properly? And then you may go a level lower than that, to a lower risk issue...

In so doing EPOs draw not only on their technical knowledge, but also their understandings about what is expected of them – by the community, duty holders, the EPA, or a combination thereof (see Section 3.2.3)– and what they personally understand to be logical or reasonable outcomes.

So we’d be looking at what the actual impacts [would be] if they weren’t complying, and if they’re negligible then we’re less likely to be – unless we’re wasting our time and the organisation’s time – we wouldn’t be looking at that particular issue.

Personal safety
Managing personal safety is an important competency, and EPOs have various skills for staying safe in the field. Some of these have been learned on the job or in previous jobs, and some came from formal safety training provided by EPA.

I never turn my back on someone if they’re a bit dodgy. There’s a few people that are licence holders that I will never let them walk behind me, never; [I’m] always next to them or behind them.

Particularly when it’s a one-on-one situation, you’ve not been to the site before, you don’t know the person – I always err on the side of caution. I make sure that the car is easily accessible and I have a good escape route to get out. I think of that at every point when I’m on the site, so even if I’m at the far point from where the car is I think about, “I’ll jump the fence, I’ll run around through those trees, and I’ll get around the front and get into the car and run away”. Silly little things like that...

Don’t let your car be locked in a premises: that’s an absolute don’t for me.

While hostile duty holders represent a clear threat, EPOs visit a diverse range of sites and need to be aware of numerous other occupational hazards:

You should always have that presence of mind to think about your safety in any aspect, whether it’s a slip that you could have, a snake, which we’ve had a couple of times... or whether it’s the people themselves, obviously safety is always something you need at the front of your mind.

Several participants said driving and vehicle handling skills are important for occupational health and safety, especially for those who work in regional areas and drive often on dirt roads.
3.3.2 Managing the job
The skills required for this group of practices are largely administrative, and include IT competency, written and verbal communications, knowledge of organisational priorities, and time and workload management. These latter skills are crucial as EPOs typically have large case loads, and must balance the sometimes competing demands of office and field work:

I think the stressful part [of the job] is just trying to get everything written up and sent out in the timelines. That’s probably the most stressful part at the moment.

This appears particularly challenging for regionally based EPOs, who spend a significant amount of time travelling.

Probably the hardest thing for me when I do a [multiple day field trip] is, I rarely get time in the day to sit down on a computer and actually do the inspection report. That’s the hard part, is being able to get that time. Because I’m only [in the area] every four to eight weeks potentially, you have this natural instinct to cram in as many sites as you can.

There are also various internal reporting mechanisms and programs that EPOs must engage with, and a degree of IT competency is required to be effective in the role.

3.3.3 Materials
The practices of an EPO are mediated by an array of tools and technologies, and are also conducted in a material environment (e.g. a site) in which the EPO must engage with the range of materials on hand and assess specific material processes and risks.

EPOs use a range of materials in their daily work, which not only assist in performing practices but also play a role in shaping and directing those practices. For example, digital cameras are thoroughly integrated into the practices EPOs perform onsite: they are used to collect evidence of non-compliance, but also to document inspections of licensed operator sites and to assist EPOs in writing up reports when back at the office (or laptop). Using a digital camera means EPOs can continue talking and walking as they document features and functions of a site, and can focus their attention on the site operators or on what is happening around them, rather than needing to stop and write detailed notes.

Similarly, the introduction of laptops and portable printers has changed the way EPOs manage their workload during multi-day trips:

[During multi-day field trips] my day is so packed that it’s hard to sit down and have that time to do the computer work. But the bonus is that we’ve got the technology now to do it, which is great. So I can sit here [and] basically do it all, and then send it by email while I’m [away from the office], instead of having to go back to the office, plug into the computer system, get it all going and then do my inspection report.

EPOs also engage with materials and technologies on site which provide EPOs with another form of competence, such as helping them understand how the site operates, to gather evidence, and to establish rapport, credibility or authority. For example, this involved informally ‘testing’ information provided by the duty holder on site by engaging with the material environment:

I tapped some of the drums and he said they were empty, but you know, I wouldn’t be doing my job and I’d be in serious trouble if I missed something.

This form of material-based competency is difficult for EPOs to learn through formal training, and is better suited to shadowing and ‘on the job’ training.

EPOs predict that new materials will come on board in the near future, or in some cases advocate for their introduction in order to make their job more efficient and to assist with coordinating between practices (such as assessing compliance and managing the job):
I think we’re going to get some kind of smart phone stuff too, which would be really good. Because that would be a lot easier, to tick boxes and stuff as we’re walking around the site... I think if we get into that realm that will help us a huge amount.

I think there’s going to be a push for us to issue inspection reports on site eventually... because we’ve all just been given laptops and portable printers.

3.3.4 Competencies in conflict

While EPOs are skilled practitioners who employ a diverse range of competencies in the performance of their practices, there are various ways in which these competencies are being challenged or are in conflict. A key issue relates to capacity: strengths and weaknesses vary between EPOs depending on how long they have been in the role, their level of experience with different types of duty holders, their previous jobs, academic background, personal interests, what training they have received, and who they have been mentored by; however, there was a clear consensus that participants feel under-skilled in some areas of their work.

The most common areas of concern relate to technical knowledge, which encompasses knowledge of environmental systems and pollutants as well as industrial processes and systems. While participants felt they had developed some technical skills on the job and through formal training (such as the recent ‘reauthorisation’ process) they consistently called for more training and skills development:

They are talking about more technical training at EPA, and I think that would be very, very valuable to people like myself, who have some level of science background, but probably not to [the necessary] extent.

I would really like a lot more training in landfills, contaminated land and ground water. I really struggle with those sites.

I’ve been saying for years that I’ve needed more technical skilling. Things like odour assessment: that’s a classic example...

There was also consistent support for investigative training:

I want to feel like a regulator, [and] I think the quickest way to hold someone to account would be to sharpen my investigative skills.

[If you’re] in major investigations they’ll take you through a diploma course for conducting investigations; and I know that they offer that to council enforcement officers, and I think that we should have it. I think it’s the serious side of our work that we need more training in.

Some EPOs also wanted to formalise and improve their communication skills, including cross-cultural communication:

Communication skills are the toughest part of the job. I want know how to incorporate my own personality into my communications: how do I be assertive but not aggressive? ...

There’s a certain type of person you have to be as an EPO and we need to learn how to be that type of person – we need some communications training. Lots of us struggle with that.

There has been some training around communicating as a regulator. But it didn’t really cover various cultures and how to deal with people who don’t speak English very well.

I think the biggest issue [among duty holders] is different understandings of what they can and can’t do [between] different cultures.
While all participants appeared broadly familiar and comfortable with the regulations and policies relating to their work, most wanted to improve their knowledge of particular areas of the Environment Protection Act and the State Environment Protection policies:

It’s quite complicated, environmental stuff – I’m still learning. You look at the Act and you go, “Oh, well I could do it under that, or I could do it under this.” It’s not an easy Act to follow, the EP Act...

I think there could be some further clarity within our legislation to improve the powers that we have. I’d like to be able to get some better guidance on how we can use our powers more effectively. A lot of it’s around compellability of getting information to EPA – I think that should be strengthened.

Participants described feeling constrained by limited opportunities for meaningful intervention, particularly with ‘unwilling and unable’ or ‘willing but unable’ duty holders:

I’m not sure what caveats actually we could put on someone who is unable to pay... It may be that the courts provide an alternative avenue for sentencing [but] I don’t know what that may be. It’s not really my area.

I understand it’s a big organisational issue as well at the moment, how we deal with those cases – people who just aren’t able to comply because of financial reasons.

If they’re not able [to comply], then that makes it really tricky doesn’t it. But we try to provide them with as many alternatives as possible [to] give them that sort of outcome-based scenario; and then off they go and – it’s hard. It’s really hard.

You’d hope that if there’s been an offence under the Act, you could follow it up and get an outcome for that offence. But it just doesn’t always happen. So regardless of what work you do with the duty holder – it’s hard, because if you know it’s a small [issue] you don’t want to leave it, but you know that it’s not going to go anywhere. So what do you do with that? If you pawn it off to council, they are probably just going to ignore you anyway. How are you meant to resolve this when you know it’s not going to go anywhere?

There’s one I deal with that I reckon they just budget every year for an EPA fine. We’ve tried for years and years and years and different officers have tried, different managers have tried, they just sort of look at EPA as “oh, that’s that stuff, that stuff that we’ve got to deal with”.

Participants also felt restricted by regulations and policies that are unclear or hard to implement:

PARTICIPANT: Regulations are written by boffins.

INTERVIEWER: So they’re not necessarily practical on the ground?

PARTICIPANT: No, not particularly. We used to have prescribed waste regulations [that defined] what a prescribed waste was... [but now] it’s gone the other way. To me, prescribed waste means “these are prescribed, these are listed: a, b, c, d, e, f, g”. That’s what it should be. Everyone really clearly understands that... It shouldn’t be difficult but whoever wrote them, in their wisdom, thought “let’s make this more difficult than it has to be”.

The ‘maximum extent achievable’ reduction [requirement] is not actually listed on their licence; so we’re reverting to a policy, and there’s not a lot of guidance or will to pursue those particular issues. It’s very complex.

The Act is weak on certain things, I believe, and waste tyres is one of those areas... you sit in that realm as an EPO [of] “how do I actually deal with this?”... What we need is some

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clear-cut legislation that says, “You can only stockpile tyres if they’re used for beneficial reuse”, for example; which would be, say, holding down silage... But that’s all in the guidelines, and they are not enforceable...

I struggle a lot with the state environmental protection policies. Some parts are very easy to understand, but there are sections where it’s very mathematical. And if you’re not that way inclined it’s pretty hard to understand what it’s trying to say. They are pretty hard to enforce against – certainly all the feedback I’ve had off the local officers in councils who can enforce under those policies [is that they] don’t, because they struggle to understand them.

Several participants spoke about feeling limited in their ability to achieve positive outcomes with those duty holders who were ‘unwilling’ and/or ‘unable’ to comply: despite having the theoretical power to revoke a licence, for example, most EPOs seemed to feel this was not an acceptable outcome in practice.

In addition, EPOs reported spending a significant amount of time on the road; particularly for those based in regional offices this includes dirt roads and difficult driving conditions, and some wanted driver training:

Driver training is very important for me. I feel that if I could go to an instruction course, be taught how to drive on the dirt, especially when it’s wet, then I’m going to feel a lot more confident on the road...

**Workload management**

Participants spoke about the challenges of having large workloads with lots of paperwork:

I think the stressful part is just trying to get everything written up and sent out [within] the timelines. That’s probably the most stressful part at the moment.

[The job] does have its down sides, of course. All the paperwork. Goodness me, there’s lots of paperwork.

The hardest thing I would say in this role is also having a lot of cases; because we are inundated... it just doesn’t stop. You have different things coming in all the time. And so a good day is being able to close some of those large pieces off and move on to the next thing, because it is constantly rolling in and you have to keep on top of your workload. Otherwise things can get out of control...

EPOs sometimes resort to working in the car in order to keep up with their workload, even though this is understood to be an occupational health and safety issue:

Before I know it, my day is so packed that it’s hard to sit down and have that time to do the computer work. But the bonus is we’ve got the technology now to do it, which is great. So I can sit here with a – well, you’re not supposed to do it in the car, you’re supposed to be at an appropriate kind of desk [and] sitting properly and all that stuff...

This issue appeared to be exacerbated by a trend towards increasing codification of EPO practices, which some felt was restricting their ability to employ the range of skills they have developed over time as needed in each unique site visit:

[EPOs] don’t really have as much autonomy in our decision making as we used to. Everything is very structured and rigid and I think that’s largely designed to ensure that the young’uns coming into the place have a basic understanding of what to do, when to do it and how to do it; whereas if you’ve been at the place for a long time, it’s kind of like they’re telling you to suck eggs.

In summary, the key points arising from this section are:
1. EPOs are skilled practitioners who employ a wide range of skills, knowledge and materials to perform their practices effectively.
2. Their ability to achieve the best compliance outcomes is hindered by skills and knowledge gaps, particularly in technical, communications and investigative competency.

3.4 Complexities of Practice Performance

Section 3.2 explained EPOs’ understandings about their role and how they don’t always match the expectations that EPA, duty holders and the wider community have of them. Section 3.3 then discussed the competencies and materials required to perform the practices of an EPO, and the issues that bring those elements into contention. It is clear from the above discussion that these understandings, competencies and materials are not rigid or fixed, but are dynamically deployed in each situation as an EPO encounters a site and the people and practices being performed within it.

Here we use case studies from site visits to focus on how the three elements come together in the performance of practices. This section highlights the complexities involved in performing practices. It is important to note that social practice theory understands complexity as inherent within, and fundamental to, the performance of practices – that is, complexity is not something we should aim to stamp out, but rather something we must seek to understand as part of the full suite of EPO practices.

3.4.1 Case Study 1

A BBC researcher accompanied EPO X to an annual licence check. The operator had recently begun conducting a new activity on the site, which had the potential to impact on groundwater quality.

EPO X asked a series of questions about the activity and then verbally outlined the possible risks. The company’s Environment Officer was present, and challenged the idea that the activity would pose a risk to groundwater. EPO X explained that the onus was on the duty holder to prove there was no contamination or risk of such, but when asked was unable to specify which kinds of tests would provide such proof.

A circular conversation followed in which the Environment Officer repeatedly tried to ascertain which tests they would need to arrange, and the EPO appeared to avoid giving a direct answer. The researcher’s interpretation of the interchange was that while EPO X could foresee a risk, he/she did not have sufficient specialised knowledge of the environmental systems, pollutants or industrial processes involved to ascertain how significant that risk was, or what tests were required to investigate it. He/she could therefore only advise that proof needed to be established and that it was up to the duty holder to figure out how and what to provide.

A further complication was that because there was no baseline data about the groundwater at the site, it would be very hard to establish whether any change had occurred as a result of the site activity; and yet, the EPO’s interpretation of the regulations was that the duty holder would be required to prove that there had been no contamination.

The Environment Officer became noticeably frustrated during the exchange, which ultimately ended without a clear resolution.

This example highlights several issues that potentially result in non-compliance:

1. There was a conflict between EPA’s (perceived) expectation that EPOs function as generalists who focus on enforcing regulations rather than providing technical instructions, and the duty holder’s expectation that the EPO be able to provide technical advice to help them meet their regulated requirements.
2. There was a difficulty in enforcing regulations that may appear black and white on paper, but are much more subjective and/or difficult to apply in practice.
3. Although the duty holder in question was essentially considered ‘willing and able’ to comply, the conflicting expectations of the EPO’s role and the difficulty of applying the regulations meant that compliance was much more difficult to achieve.

3.4.2 Case Study 2
A BBC researcher accompanied EPO Y to serve a notice on a duty holder who had repeatedly failed to comply with orders to clean up a stockpile of waste from his residential property. This case has been active for several years and the duty holder now faces a possible prison sentence. The duty holder falls in the category of ‘unwilling and (relatively) unable’ to comply: having the waste removed and disposed of properly would be a costly task, and the duty holder is understood to have a low income and few assets.

The costs associated with certain types of waste are considerable in this region (and others) because there are no facilities able to accept Category A waste. The nearest facility that can legally do so is located several hundred kilometres away in the metropolitan area, and the costs of transporting large quantities of waste across that distance are significant. Consequently, EPOs who work in this region say they are constantly dealing with waste dumping issues including criminal outfits that shift their operations to a new area each time they are caught, as well as farmers and smaller businesses who are unwilling and/or unable to dispose of their waste properly.

In this particular case, EPO Y has exhausted the tools at their disposal. Initially they tried to encourage and motivate the duty holder to comply, and be flexible with compliance deadlines; however, the only remaining tool is prosecution, and there is little evidence to suggest that will yield a good outcome for the environment (particularly as the duty holder has explicitly stated he is willing to serve a prison sentence rather than pay the cost of clean-up).

This case highlights several issues potentially leading to a non-compliance outcome:

1. ‘Unwilling and unable’ duty holders present a difficult and resource-intensive challenge for EPA. Officers have a very limited range of tools at their disposal to deal with this group, and some see those tools they do have (i.e. prosecution) as a last resort.

2. Many of the understandings, competencies and materials that constitute a duty holder’s practices, and thereby their willingness and ability to comply, fall well outside an EPO’s control or ability to influence.

3.4.3 Case study 3
The researcher accompanied EPO Z to an annual licence check at a medium sized facility. Following a comprehensive inspection of the site, which included a tour and inspection of the facilities and several in depth discussions encompassing standard operating procedures, past breaches and issues at the site and plans for the future, EPO Z explained they needed to conduct a Licensed Operator Risk Assessment (LORA) as part of the inspection. We found a space to sit down in a small building on site, and then EPO Z proceeded to work through the LORA questionnaire. This involved EPO Z reading questions aloud from the sheet, which often appeared only somewhat relevant to the site itself, and then writing down answers given by the site operators. Occasionally EPO Z answered the questions immediately without waiting for a response from the site operators – sometimes this was because the answer was obvious; or because there was no clear answer and EPO Z made a ‘best guess’; or because the question was not particularly relevant for that site. Several times during the assessment the EPO apologised for the questions while asking them.

A very similar scenario was played out every time the researcher observed a LORA being conducted, by different EPOs and at different types of sites. This is despite the fact that when asked about the LORA during interviews, many participants said they understood why it had been introduced and felt there was potential for it to have valuable outcomes. Others, meanwhile, were sceptical about the LORA’s usefulness, with some citing concerns about its ability to capture meaningful information.
As EPA seeks to ensure and demonstrate that its decision making processes are transparent, consistent and cost effective, it increasingly requires EPOs to follow prescriptive, codified procedures. While we cannot comment on the overall effectiveness of the LORA or its outcomes for EPA’s risk prioritisation process, we can identify the following issues for achieving compliance outcomes based on our observations:

1. The ways in which the LORA is applied in the field may impact the quality and accuracy of data collected.
2. The ‘one-size-fits-all’ approach of the LORA is at odds with the subjective and highly variant nature of EPO field work.
3. Prescriptive tools appear to restrict EPOs’ ability to employ the full range of competencies they have developed, and to apply discretion within their enforcement practices.

4. IMPLICATIONS FOR THE SEGMENTATION FRAMEWORK

During interviews the researcher showed the segmentation framework to participants (see Figure 1) and asked if they thought they could easily situate duty holders within the quadrants. Most felt that while the categories did have general relevance to the duty holders they dealt with – that is, they could usually speak in terms of how willing and able a duty holder was to comply – they would often only be able to situate them within the framework retrospectively. They therefore concluded that the framework would have limited value in assisting EPOs to achieve compliance outcomes in its current form.

There are several implications for the segmentation framework that emerge from the findings discussed throughout this report. The relevant findings can be summarised as follows:

1. There are a number of conflicts between the shared understandings EPOs have about their role, and the expectations they believe others have of them. This creates tension and confusion in the performance of enforcement practices.
2. No two practice performances are the same, and EPOs employ a very diverse range of skills, competencies and materials in order to achieve what they perceive as a suitable outcome in each case. However, EPOs feel they would be able to perform their roles more effectively and achieve better outcomes if they had stronger technical, investigative and communications skills and knowledge.
3. Discretion and the ability to negotiate are important components of EPO enforcement practices, yet they are undervalued within the current focus on risk-based regulation.
4. Duty holders’ willingness and ability to comply is constituted by their own practices (of making, managing and disposing of products and materials), and many of these sit beyond the scope of EPOs’ influence.

These themes have some clear implications for the introduction of a segmentation framework. First, if a segmentation framework were introduced as a procedural tool for EPOs to incorporate into their daily work, it may be seen as further codifying the role and restricting EPOs’ ability to perform practices in a dynamic and contingent manner, while failing to address the challenges EPOs already face. This is because the segmentation framework in its current form:

a) Is unlikely to increase EPOs’ technical, investigative and communications skills and knowledge;
b) May undermine or sideline the role of discretion and negotiation in enforcement practices;
c) Is unlikely to address duty holders’ practices which inform their willingness and ability to comply;
d) Is unlikely to make regulations and policies any less difficult to implement; and,
e) May serve to highlight the lack of options for dealing with ‘unable’ duty holders without providing any new options.

Further, from our observations it is difficult to see how an EPO could make sufficiently accurate predictions about the willingness and ability of a duty holder to comply before having engaged with them on site.

5. **Recommendations**

Our research suggests EPA has a unique opportunity to position itself as a leading enforcement agency by focusing on its compliance staff as a primary asset. To achieve this objective, we find that EPA needs to move away from the increasing codification and prescription of the EPO role to focus instead on resolving the conflicts that make it difficult for EPOs to perform their role efficiently and accurately.

EPA maintains a commitment to be a risk-based, responsive regulator that is targeted, proportionate, transparent, consistent, accountable, inclusive, authoritative and effective. Our research finds that this commitment can be met while simultaneously meeting the expectations and needs of EPOs. Crucially, the task then becomes one of facilitating the effective and appropriate use of discretion in EPO practices rather than attempting to eliminate it through prescriptive tools and frameworks.

We make the following recommendations about how to commence this task:

1. Consolidate and clarify the EPO identity by discussing, promoting or reinforcing shared understandings of the role, and addressing conflicts between shared understandings and stakeholder and internal expectations.

2. Recognise the extensive competencies EPOs already employ, and focus on strengthening capacity (particularly technical, communications and investigative skills and knowledge). As peer-to-peer learning and EPA’s mentoring program are highly valued among EPOs, these should be retained and extended where possible; there may also be opportunities to offer internal secondments or work-shadowing programs, and even to develop external secondments or training programs with other agencies.

3. Reconsider how the segmentation framework can be used as a tool for EPOs to better achieve compliance outcomes. Our research suggests that this tool in its current form may hinder EPOs’ ability to perform their professional practices in a discretionary and dynamic fashion, as required on a case-by-case basis.

6. **Further research**

The findings from this pilot research are drawn from a small sample of highly skilled EPOs and may not represent broader trends of EPO practices within the EPA. As such, we recommend further research with EPOs to confirm and further develop the insights discussed in this report. Additionally, we recommend further research with duty holders, whose practices necessarily intersect with those of EPOs. This research suggests that complications with duty holders’ practices, such as their inability to access appropriate waste dumping sites, are the cause of their non-compliance. More research is needed to understand duty holders’ practices and to identify points of potential intervention where EPA and EPOs could achieve compliance outcomes. With a larger study, including action research
over time, appropriate training and other interventions can be delivered and evaluated so as to improve outcomes and in so doing, strengthen EPA’s position as a leading enforcement agency.

7. REFERENCES


**APPENDIX 1: INTERVIEW QUESTIONS**

**Introduction**
How long have you been an Authorised Officer?
What work had you done before you became an Authorised Officer?
Why did you become an Authorised Officer?
  - What did you hope to achieve?

**The profession**
What do you see as the role of Authorised Officers generally?
Why is it important to have Authorised Officers?
What do you think Authorised Officers need to be good at to do their jobs well?
  - Or, what kinds of people make good EPOs?
Is it a stressful profession? In what ways?
Has the profession changed since you first became an EPO? How?

**Your role**
What do you think your manager or the EPA expects of you?
What do you think the businesses you work with expect of you?
What do you think the wider community expects of you?
Is there a difference between what is expected of you and what you can achieve?
  - How do you manage that difference?
What are the worst parts of your job? Or, describe a ‘bad day’ on the job
What do you do to make those parts of your job more bearable, or reduce their occurrence?
What are the best parts of your job? Or, describe a ‘good day’ on the job

**Knowledge and skills**
What training did you do to become an Authorised Officer?
What training have you done since you became an Authorised Officer?
Have you had any training in behaviour change [may need to explain]?
  - What did you think about that training? Would it be easy to apply it in your job?
What kinds of things have you learnt ‘on the job’?
  - How did you learn them?
  - Would it be possible to ‘teach’ those parts of your job to someone else?

I understand Authorised Officers need to deal with all types of businesses and pollution. Is it hard to be a generalist?
  - Is there a specific type of business or pollution you’d prefer to focus on?
  - Do you end up being specialised in some ways – do you get assigned to the types of jobs you’re good at, or deal mostly with small or large businesses, for example?
Do you think Authorised Officers have enough knowledge to help businesses comply with regulations?
   - What about going beyond regulations?

**On the job**
Which type/s of inspections do you prefer to do – strategic, maintenance or pollution response? Why?

When do you make most of your decisions – i.e. at the site, in the car, back at the office?
   - Does this change for different businesses or different types of inspections?

Is there any pressure to make decisions on site?

How do you feel about making decisions on site?
   - Do you ever have to make decisions you’re not confident about?
   - How do you deal with the decisions you are less confident about?

**Rules and regulations**
Do the regulations always make sense in the field, when you have to apply them?
   - What do you do when they don’t?

Do you think Authorised Officers have enough power to enforce the regulations effectively?

Do you have any ‘dos and don’ts’ that you personally abide by?
   - Do you think these are common among Authorised Officers?

Have you ever had to defend your decisions or judgements in court?

**Dealing with businesses**
Is confrontation common in your job?
   - How do you feel about that?

Do you categorise the different types of businesses you deal with, either formally or in your head?
   - If yes, could you jot them down? [Provide pen and paper]

For each category:
   - Could you talk us through a typical experience with this type of operator?
   - What do you think this type of operator would say about you?
   - How do you feel when you deal with this type of operator – during the experience? After?
   - Do you do anything to prepare for an experience with this type of operator?

**Quadrant**
[Show quadrant to interviewee and explain the concept]

Do you think it would be possible to place businesses in these categories?

Can you immediately think of particular types of businesses or business owners that would fall into each category?

What do you think would influence where you placed businesses?

**Final questions**
What needs to happen to improve the profession, or make your job better?
## APPENDIX 2: SITE VISIT GUIDE

<table>
<thead>
<tr>
<th>Discussion</th>
<th>Observation</th>
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</thead>
<tbody>
<tr>
<td><strong>On the way</strong></td>
<td></td>
</tr>
<tr>
<td>What is the history with this business?</td>
<td>What kind of language does the EPO use at this point to describe the business?</td>
</tr>
<tr>
<td>• Why are we visiting them – i.e. is it a strategic, maintenance, or pollution response inspection?</td>
<td>How does the EPO seem emotionally (i.e. tense, excited, confident…)</td>
</tr>
<tr>
<td>• Do they know we’re coming today, and why?</td>
<td></td>
</tr>
<tr>
<td>• If there has been previous contact with this business, how would you describe it – has the owner/site contact been cooperative, hostile, etc?</td>
<td></td>
</tr>
<tr>
<td>What do you expect to happen during today’s site visit?</td>
<td></td>
</tr>
<tr>
<td>• How do you think the owner/site contact will respond?</td>
<td></td>
</tr>
<tr>
<td>• What do you expect to see/discover on site?</td>
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<tr>
<td>What do you think the outcome of the visit will be?</td>
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</tbody>
</table>

*Where in the segmentation framework do you think this business would sit?*

| **Arrival** | | |
|------------|-------------|
| Where does the EPO park in relation to the business? | |
| Does the EPO do anything to prepare before stepping out of the car/entering the site? | |
| How does the EPO greet the business owner/site contact, and vice versa? | |
| • Verbal language | |
| • Body language | |

<p>| <strong>During the inspection</strong> | | |
|--------------------------|-------------|
| What kind of body language does the EPO use? Does it change throughout the visit? | |</p>
<table>
<thead>
<tr>
<th>After the inspection</th>
<th>What is the EPO’s style of interaction (negotiating/authoritative, etc.)?</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>What kinds of physical inspection does the EPO do, and what does the site contact do while these take place?</td>
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<tr>
<td></td>
<td>What materials does the EPO use (e.g. clipboard, testing equipment, badge)</td>
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<tr>
<td></td>
<td>Did the inspection turn out as you’d expected?</td>
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<td></td>
<td>Were you confident about the accuracy of the information/advice/directions you gave?</td>
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<tr>
<td></td>
<td>Do you think the business owner/operator will comply with any directions given?</td>
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<td></td>
<td>What will you do next with regards to this business?</td>
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<tr>
<td></td>
<td>What kind of language does the EPO use at this point to describe the business? Note any changes since pre-inspection.</td>
</tr>
<tr>
<td></td>
<td>How does the EPO seem emotionally (i.e. tense, excited, confident…)? Note any changes since pre-inspection.</td>
</tr>
<tr>
<td></td>
<td>If you could do this inspection over again, would you do anything differently?</td>
</tr>
<tr>
<td></td>
<td>*Where in the segmentation framework do you think this business would sit?</td>
</tr>
</tbody>
</table>

*Depending on whether or not the segmentation framework has already been introduced*