

Community Environmental Justice Forums Policy



Ministry of Environment

June 2012

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Applicability

This policy applies to non-compliance with environmental legislation that is enforced by the Conservation Officer Service (COS).

What is a Community Environmental Justice Forum (CEJF)?

A Community Environmental Justice Forum (CEJF) is an enforcement tool that applies the principles of restorative justice to the resolution of non-compliance committed by regulated parties under environmental legislation. Restorative Justice interprets crime as a violation of people, relationship and community values and therefore seeks to repair harm through discussion and negotiation between offenders and victims of crime.

Led by trained facilitators, the 2 – 2.5 hour forum brings together the responsible party (“the offender”), community members impacted by the offence (“the community”), and the enforcement agency to discuss what happened and why and to collectively agree on appropriate restitution for the offence. After verbal consensus is reached on the actions and/or financial payments required of the offender they are recorded in a written agreement that is signed by all forum participants.

The successful conclusion of a CEJF is expected to result in the following outcomes:

- restore or compensate for harm done to the environment
- promote a sense of responsibility in the offender
- acknowledge and repair harm done to a community
- improve long term compliance (reduce the likelihood of recidivism)
- build positive relationships between the offender, the community and regulators
- promote general deterrence.

Relationship to Ministry of Environment C&E Policy:

The ministry’s Compliance & Enforcement Policy (“C&E Policy”) provides guidance to staff in considering the most appropriate tool to address non-compliance, and when required, to promote general deterrence. A CEJF is one among the spectrum of tools and approaches available. Enforcement officers and program staff (as applicable) will continue to issue orders, warnings, tickets, administrative sanctions and recommend formal charges when appropriate. When considering the use of a CEJF, enforcement and program staff consult on the facts of the case, the magnitude of the harm done and the capacity and willingness of the offender to participate. These discussions may take place during the pre and post-investigation review processes required by the C&E Policy.

Policy

A Community Environmental Justice Forum **should** be considered for any case of non-compliance where all of the following conditions are met:

- the offender did not intend to commit the offence - it resulted from an accident or lack of due-diligence (no mens rea);
- the offender admits fault and takes responsibility for the offence;
- harm has been done, or potentially could have been done, to a community and appropriate community representatives can be identified to speak to the harm;
- the offender is remorseful and demonstrates a sincere desire to repair the harm caused by the offence;
- the offender, community representatives and the investigating officer freely and fully consent to participate; and
- in the opinion of the investigating officer, there is enough prima facie evidence to pursue charges against the company if the forum does not proceed. A CEJF is not an option to be considered only to truncate an investigation or in cases of insufficient evidence.

A CEJF **may** still be considered to deal with an offender alleged to have knowingly committed an offence if:

- the offender is remorseful and demonstrates a sincere desire to repair harm caused by the offence and to address the underlying causes of the offence; and
- in the opinion of the investigating officer and/or ministry program staff, the offender has the demonstrated capacity and willingness to comply with a CEJF agreement.

A CEJF **would not** be a suitable choice to deal with non-compliance when:

- the offence was committed with intent, posing significant actual or potential risk to the environmental or human health and safety ; or
- the offender takes no responsibility for the offence; or
- the scope and scale of the non-compliance is such that the environmental impacts extend far beyond a single community and become a matter of provincial concern; or
- a community forum may be expected to do more harm than good; or
- it is felt that a more public forum (courts) would provide better deterrence than a closed forum, even if the prosecution is not successful.

Additional Considerations

In addition to meeting the conditions outlined above, when considering the suitability of a CEJF, staff must consider:

1. The regulatory history of the offender:

If an offender has a history of non-compliance or has an otherwise contentious regulatory relationship with the ministry, careful consideration must be given to whether they are a suitable candidate for a CEJF.

2. The public interest:

Even when all the pre-conditions for a CEJF have been met, staff must consider whether it is the best tool to achieve the desired outcomes or whether the matter is more appropriately addressed using another approach. For example, the public interest may be better served by an immediate cancellation or curtailing of an offender's operating permit or by a court prosecution that more effectively promotes general deterrence in a specific industry.

3. Implications for other operations:

Where the offence does not extend beyond a single community, but where the offending company has similar operations in other locations in BC, the expectation is that the company will apply improved business practices and/or new technology identified via the CEJF to those other operations.