

Community Environmental Justice Forums Questions and Answers

1. What are Community Environmental Justice Forums?

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 Ministry of Environment and Climate Change Strategy legislation. Restorative justice interprets crime as a violation of people, relationship and community values and seeks to repair harm through discussion and negotiation between offenders and the community impacted by the offence. The outcome of a CEJF is an agreement between participants on appropriate restitution for the offence. In developing CEJFs, the ministry has adapted traditional restorative justice to create a unique process that is more suitable to deal with regulated companies and complex environmental files.

2. What are the goals of a CEJF?

The successful conclusion of a CEJF is expected to:

- 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.

3. Do other government agency regulators use restorative justice to deal with environmental violators?

Restorative justice is used broadly by police agencies in B.C. to deal with minor Criminal Code offences committed by individuals but environmental agencies are just starting to catch on to the opportunities and benefits restorative justice offers. The Ministry is breaking new ground with its use of CEJFs to deal with companies who break environmental laws. Fisheries and Oceans Canada has used restorative justice on a number of habitat-degradation files. Other natural resource agencies in BC are actively exploring how they can use restorative justice.

4. Why would a company want to participate in a CEJF?

CEJFs offer a company who unintentionally commits non-compliance the opportunity to make reparation to the community in which they operate and live. In the case of a significant offence, the company can avoid an adversarial court process and potential conviction. Working with the community to repair or compensate for the harm it caused helps the company restore its 'social licence' and identify and fix problems in its operations that might not otherwise surface. The CEJF provides the company with insight into community values and expectations, offers an opportunity to educate the community on its operations, and can result in positive relationships with both the community and ministry staff. Additionally, while companies per se don't have 'feelings', the individuals who lead or work in them do. The CEJF allows the company representatives in the forum to talk about how the incident affected them personally, as individuals who work and live in the community.

5. Why would a community want to participate in a CEJF?

CEJFs offer communities the opportunity to participate in administering justice to those companies who breach community values and expectations, and create negative impacts through their actions. Unlike other enforcement processes, CEJFs give community members a chance to be heard directly. Additionally, all of the identified actions and financial payments required of the offender must stay in the community. CEJFs also offer community members the opportunity to learn about environmental issues in the community and to build positive relationships with both the company and ministry staff.

6. Do any of the benefits of a CEJF extend beyond the affected community?

Yes, they can. Because the forum is designed to be restorative rather than adversarial, with a focus on problem-solving, the company may be more inclined to explore the root causes of what went wrong and to fix systemic problems. This is less likely the outcome in a court of law where legal arguments about guilt or due diligence take precedence. Additionally, where the company has similar operations in other locations in B.C., it is an expected outcome of a CEJF that the company will apply improved business practices or plant upgrades that result from the CEJF to those other operations.

7. Aren't CEJFs and restorative justice 'light' on punishment?

Restorative justice can have a much greater impact on an offender and an affected community than other enforcement actions such as a traditional court process. To participate in a CEJF, the offender must take responsibility for the incident by sitting in an intimate circle setting explaining their actions, articulating their remorse and hearing first-hand the impact on their community peers. The agreed upon restitution for the offence can include both actions and financial penalties, the latter being as high as or higher than what the company would receive in court. The CEJF process requires the company to issue a press release about the incident, their role in it and the commitments they've made as restitution. These details are also reported publicly by the ministry in the Quarterly Environmental Enforcement Summaries.

8. Are CEJFs replacing the ministry's use of more traditional enforcement tools?

No. A CEJF is one among the spectrum of tools in the enforcement officer's tool kit to be used in appropriate circumstances. The ministry's Compliance and Enforcement Policy and Procedure continues to guide all staff in selecting the most appropriate tool to address non-compliance, and when required, to promote general deterrence. Procedural guidelines require conversation between enforcement and program staff as to the suitability of one enforcement response over another. Ministry staff will continue to issue orders, advisories, warnings, violation ticket, administrative penalties, administrative sanctions, and recommend formal charges when appropriate.

9. Are CEJFs suitable for all environmental offences committed by regulated parties?

No. There are a number of criteria that must be met in order for a CEJF to be an appropriate and effective way to address non-compliance. The company must be remorseful and demonstrate sincere interest in 'repairing the wrong'. The regulatory history of the company may be a good indicator of how successful the approach will be.

10. How are participants for CEJFs selected?

Participants are selected by the CEJF facilitator. Company participants would include employees directly involved in the incident as well as high-level managers and executives. Community participants are chosen to represent community interests, and specifically for their ability to speak about the harm caused by the offence. Ideally there are an equal number of company representatives and community members. The investigating officer attends as a neutral observer to answer questions on the facts of the offence or the investigation. A ministry program expert may also attend to address technical questions about the impact to the environment.

11. How is restitution determined?

It is the responsibility of the facilitator to research and propose appropriate restitution, which may include financial and non-financial components. The objective is to identify restitution that satisfies the community (repairs the harm) and the enforcement officer (reflects the severity of the offence), and is within the company's willingness and ability to pay. Because a CEJF is a voluntary process, participants need a reasonable expectation of what the outcome will be before they can make an informed decision about whether to participate. The forum itself is then used to rebuild trust and relationships through discussion about the event and feelings associated with it, and to confirm all are satisfied with the proposed restitution. Often the community may identify additional outcomes during the course of discussion.

12. Does the ministry have policy on CEJFs?

Yes. The ministry's Compliance and Enforcement Policy and Procedure guides staff in assessing and responding to non-compliance; most specifically, it prescribes the circumstances under which a CEJF can or should be considered.

13. Does the ministry also use restorative justice to address offences committed by individuals?

Yes, although the process is somewhat different than a CEJF, more similar to traditional restorative justice. The investigating officer would assess whether restorative justice is an appropriate way to respond to the non-compliance, taking into consideration ministry policy and the circumstances and facts of the case. If it is a viable option, the officer would then discuss the option with the offender.