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29 September 2014

Ms Heather Crighton
Acting Research Director
Agriculture, Resources and Environment Committee
Parliament House
BRISBANE QLD 4000

Email: AREC@parliament.qld.gov.au

Dear Ms Crighton

Thank you for the opportunity to comment on the provisions of the *Environmental Protection and Other Legislation Amendment Bill 2014* ("the Bill").

Council has prepared a submission (attached), incorporating a summary and a detailed table, highlighting areas that are of concern to Council.

In particular, the consequences of reporting requirements which are tied to the happening of an (undefined) "event" in the City of Brisbane are potentially onerous, as are those tied to the very wide concept of "a change in the condition of the contaminated land".

Additionally, the removal of soil disposal certificates from the waste management regime, although an attempt to reduce regulatory duplication, creates unintended consequences.

Further, cost recovery of court proceedings should be payable to the entity bringing the proceedings.

Should you require further information in relation to Council's submission, please contact Mr John Jordan, Manager, Natural and Environment, Water and Sustainability Branch, on 3403 4720 or via email at john.jordan@brisbane.qld.gov.au.

Yours sincerely

Colin Jensen
CHIEF EXECUTIVE OFFICER

Att.

**Submission to the Agriculture, Resources and Environment Committee on the *Environmental Protection and Other Legislation Amendment Bill 2014*
(EPOLA)**

Brisbane City Council submits the following:

1. The expanded notification duties of local government should only relate to contaminated land under the control of local government.
2. The ambit of “event” should be limited (and possibly exclude certain everyday events).
3. Clarification as to what constitutes “a change in condition of contaminated land” is needed. Thresholds or guidelines would be beneficial.
4. Clarification as to the time period in which “a change in condition” must be assessed.
5. If thresholds for determining a “change in condition” are low, then clarification is needed as to the length of time a “notification” is current.
6. The monetary component of the “material environmental harm” definition should be amended in keeping with modern expectations.
7. Soil disposal certificates should be retained.
8. Costs for proceedings associated with ensuring compliance with enforceable undertakings should be payable to the entity that brought the proceedings.
9. Confirmation is needed about the sections referenced in s320DB, that is, should it read “320A(3)(a) and 320A(3)(b)?”

EPOLA Provision	Content	Comment
<p>Clause 123 – Amendment of <i>Environmental Protection Act</i> (EP Act)</p> <p>Amendment of s.320A new section 3201B (will become section 320A(3)) – application of Chapter 7 Part 1 Division 2 (Duty to Notify of environmental harm) to Local Governments</p> <p>And</p> <p>Clause 125 – new Chapter 7 Part 1 Division 2 including new section 320DB – Duty of Local Government to notify administering authority</p>	<p>New s.320A(3) states that the duty to notify applies to a local government that becomes aware —</p> <p>(a) That a notifiable activity has been or is being carried out on land in its area; or</p> <p>(b) Of</p> <p>I. <u>The happening of an event in the local government area</u>; or</p> <p>II. A change in the condition of contaminated land in the local</p>	<p><u>Application of the extended duty to notify to Local Governments</u></p> <p><u>Section 320A(1B)(b) (to be renumbered, we think as 320A(3)(b)(i))</u> imposes a duty on local governments to report in respect of any event in the local government area which is causing, or is reasonably likely to cause, serious or material environmental harm. The Act does not limit either the nature of events to which this duty applies, nor where the harm is caused or likely to be caused.</p> <p>❖ <u>The meaning and ambit of “event”.</u></p>

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	<p>government area;</p> <p><u>That is causing, or is reasonably likely to cause, serious or material environmental harm.</u></p> <p>The notification times for local governments is set out in section 320DB. For notifiable activities it is 20 business days (similar to the current s.372(1)). However for the happening of events or changes in the condition of contaminated land the notification time in section 320DB is only 24 hours.</p>	<p>“Event” in the EP Act is not defined but is used elsewhere in the Act to apply to natural occurrences (see s. 357A). Therefore an event could be—</p> <ul style="list-style-type: none"> • a flood; • a heatwave; • an electrical storm; • a bushfire; • high winds causing damage; or • even heavy rainfall. <p>Any one of these events is reasonably likely to cause environmental harm somewhere in the local government area – there is no indication of how this duty is intended to be contained.</p> <p>Unlike the current duty to notify, the extended duty of local governments to notify about any potentially harm-causing event is not linked to an activity whereby the person required to notify is generally on-site and in a position whereby they can appropriately gauge the possible consequences of their act or omission. The proposed changes do not link the “event” to an activity, storage of chemicals, fuels, use or type of land. The awareness is linked only to the “event” that is reasonably likely to cause material or serious environmental harm.</p>

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		<p>A significant rain event, even a one in two year event, is reasonably likely to cause material environmental harm somewhere in the City of Brisbane. Sections 320A(3)(b)(i) (as renumbered) and 320DB(2) as drafted would require Council to notify The Department of Environment and Heritage Protection (DEHP) within 24 hours of every significant rain event on the basis that Council is aware that an event has happened that is reasonably likely to cause or have caused material environmental harm somewhere in the Brisbane local government area.</p> <p>In this respect, it also should be noted that the definition of “material environmental harm” has not been amended since the commencement of the Act, almost 20 years ago. The monetary threshold of material environmental harm is low.</p> <ul style="list-style-type: none"> ❖ <u>The place or land where the harm has occurred or is likely to occur.</u> <p>The extended local government duty to notify as drafted in section 320A(3)(b)(i) also requires local governments to notify in respect of events which are causing, or are reasonably likely to cause serious or material environmental harm anywhere in the local government area – not just land under local government ownership or control. No person other than a local government is subject to such a duty.</p> <ul style="list-style-type: none"> ❖ <u>“Events” and Contaminated Land</u> <p>For persons other than local governments the</p>

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		<p>extended duty to notify is limited to events connected to contaminated land— see the amendment to s.320A(1).</p> <p>For local governments, however, section 320(3)(B)(i) as drafted does not limit the duty to notify to events connected to contaminated land.</p> <p>The drafting of the local government duty is at odds with the explanatory notes (p.65) which imply that the duty relates to contaminated land.</p> <p>Even if the duty only applied to events connected to contaminated land it should only apply to <u>contaminated land under the local government's ownership or control</u>. The responsibility for notification of events or changes of condition of contaminated land should rest with the owner/occupier of the land, and not be extended to the local government for all contaminated land in its area.</p> <p>Section 320A(3)(b)(i) should be amended to provide that it applies only to events affecting contaminated land under local government ownership or control.</p> <p>❖ <u>Section 320A(3)(b)(ii) – changes in the condition of contaminated land.</u></p> <p>What constitutes “a change of condition of contaminated land” requires clarification. For example, if “change in condition of contaminated land” captures chemical changes, then a threshold should be nominated and guidance as</p>

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		<p>to what might be a “trigger” for such change. It should be noted that the chemical composition in, say, a legacy landfill may significantly change throughout EACH day depending upon:</p> <ul style="list-style-type: none"> • the temperature of the day (on hot days, landfill gas may significantly expand and during a heatwave further increase); • the barometric pressure; • the season; and • the rainfall. <p>Further, the chemical composition in legacy landfills will change over time because of natural degradation. Over what time period is the “change” to be assessed?</p> <p>The length of time a notification lasts should also be specified. Using the landfill legacy matter as an example again, does DEHP wish to be notified daily of significant fluctuations in landfill gas emissions or leachate discharge?</p>
<p>Clause 102 - Insertion of new ch10, pt 5 – s510 (Enforceable undertakings)</p>	<p>The court may make any other order that the court considers appropriate in the circumstances, including an order directing the person <u>to pay to the State</u> –</p> <p>(a) the costs of the proceedings; and</p> <p>(b) an order discharging the undertaking.</p>	<p>Costs of any proceedings should be payable to the entity that brought the proceedings.</p>
<p>Clause 736 provides that any application on foot</p>	<p>Soil disposal certificates are no longer part of the</p>	<p>Despite the Explanatory Notes suggesting that</p>

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<p>relating to, amongst other things, soil disposal permits will lapse on commencement of the Bill.</p> <p>Further, clause 142 removes the definition of disposal permit.</p>	<p>waste management regime.</p>	<p>soil disposal certificates duplicate waste tracking processes, practically this is not the case. Local governments use soil disposal when dealing with contaminated land listed on either the EMR or CLR. This is in accordance with Departmental guidelines and documents.</p> <p>Should Council be dependent on the 5 part waste tracking system, this will result in an excessive administrative burden across generators, Transporters and waste management facilities with little or no environmental benefit. It is common for tens of truckloads (40 is not unusual) to transport contaminated soil from EMR or CLR listed sites per day during the course of remediation works or major site improvement works. Rather than issuing each driver and the receiver with a copy of the soil disposal certificate, each person must under the proposed arrangements complete separate documentation for each load and be licensed to transport and accept the waste material.</p> <p>Further, regulated waste is categorised by reference to the process by which the waste is generated or by the type of contaminant within the waste matrix. Both Transports and Receivers are required to be licensed to transport and accept specific types of regulated waste.</p> <p>A landfill may accept contaminated soil from EMR or CLR listed sites having regard to its contamination criteria. Should the soil disposal certificates be removed from the operation of the</p>

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		<p>Act, then there may be circumstances where a landfill will be unable to accept contaminated soil when expressed as a particular regulated waste type that it was able to accept in the past. This may have flow-on effects in that regulated waste disposal costs are typically higher than contaminated soil disposal. Entities that are licensed to accept "unusual" regulated waste are able to charge a premium.</p>