

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	*	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No _____

Budget Account No.: Fund _____ Department _____ Unit _____

Object _____

Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

*There is no fiscal impact associated with this item.

Petroleum cleanup activities are currently funded through yearly task assignment issued under DEP Contract No. SO485.

C. Department Fiscal Review:

JP

III. REVIEW COMMENTS

A. OFMB Fiscal and /or Contract Dev. and Control Comments:

<p><i>[Signature]</i> OFMB <i>KW</i> <i>AK</i> <i>1/9</i> <i>1/12/15</i></p>	<p><i>[Signature]</i> Contract Development and Control <i>1-13-15 BFO Keller</i> <i>1/13/15</i></p>
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B. Legal Sufficiency:

[Signature]

 Assistant County Attorney

C. Other Department Review:

 Department Director

1 **WHEREAS**, due to the sensitive nature of the drinking water supply, it is in the best
2 interest of Palm Beach County to monitor petroleum contaminated sites and sites with the
3 potential to produce petroleum contamination; and

4 **WHEREAS**, the Palm Beach County Board of County Commissioners finds that it is in
5 the best interest of the citizens of Palm Beach County to amend it countywide ordinance
6 providing for local enforcement of petroleum cleanup standards and procedures; and

7 **WHEREAS**, the Palm Beach County Board of County Commissioners intends to adopt
8 and incorporate by reference certain provisions of the Florida Statutes and Florida
9 Administrative Code pertaining to petroleum contamination site cleanup.

10 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**
11 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

12

13 **SECTION 1. SECTION 11-294 IS HEREBY AMENDED TO READ AS FOLLOWS:**

14 Section 11-294. Ordinance supplemental to federal and state law.

15

16 (a) The provisions of this Ordinance are not intended to and shall not be construed as
17 changing, modifying, amending, repealing, superseding, conflicting with, or substituting any
18 provisions or sections of the Florida Statutes or Florida Administrative Code related to
19 petroleum contamination site cleanup but shall be construed as supplemental and additional
20 thereto. This Ordinance shall not be construed as impairing the jurisdiction of any court within
21 the County. This Ordinance shall be deemed to be an alternative or additional method for the
22 County, its officers and agents, to effect the purposes of each of the state statutes and rules
23 adopted by reference in ~~section 5 of~~ this Ordinance.

24 (b) Persons or entities subject to this Ordinance must comply with applicable state and
25 federal regulations. Approvals received under this Ordinance do not qualify as local approval
26 as may be required under state and/or federal rules unless the approval is expressly designated
27 as approval for both this Ordinance and another applicable state or federal rule or regulation.

28

29 **SECTION 2. SECTION 11-295 IS HEREBY AMENDED TO READ AS FOLLOWS:**

30 Section 11-295. Definitions.

31 The following terms when used in this Ordinance shall have the meanings ascribed to
32 them in this section. In addition, the definitions and terms contained in Section 376.301,

1 Florida Statutes, and Section 62-780.200 ~~62-770.200~~, Florida Administrative Code, ~~as amended~~
2 ~~from time to time~~, are hereby adopted and incorporated herein by reference. When not
3 inconsistent with the context, words used in the present tense include the future, words in the
4 plural number include the singular number, words in the singular number include the plural
5 number, and the use of any gender shall be applicable to all genders whenever the sense
6 requires. The words "shall" and "will" are mandatory, and the word "may" is permissive.
7 Words not defined shall be given their common and ordinary meaning.

8 "County" means Palm Beach County.

9 "Director" means the director of the Palm Beach County Department of Environmental
10 Resources Management.

11 "ERM" means the Palm Beach County Department of Environmental Resources
12 Management.

13 "FDEP local program" means the Palm Beach County program established pursuant to
14 a contract pursuant to Section 376.3073, Florida Statutes, to assist the Florida Department of
15 Environmental Protection in the administration of the petroleum contamination site cleanup.

16

17 **SECTION 3. SECTION 11-296 IS HEREBY AMENDED TO READ AS FOLLOWS:**

18 Section 11.296. Adoption of Florida Administrative Code by reference.

19 The following portions of the Florida Administrative Code, ~~in their current form and as~~
20 ~~subsequently amended~~, are hereby adopted and incorporated by reference and shall be part of
21 this Ordinance as if they were set out in their entirety:

22 ~~(1) Chapter 62-770, Florida Administrative Code, as may be amended.~~

23 ~~(2)(1) Chapter 62-777, Florida Administrative Code, as may be amended.~~

24 (2) Chapter 62-780, Florida Administrative Code.

25

26

27 **SECTION 4. 11-297 IS HEREBY AMENDED TO READ AS FOLLOWS:**

28 Section 11-297. Violations, enforcement; penalties.

29 (a) Failure to comply with any requirement of this Ordinance shall constitute a
30 violation of this Ordinance punishable as provided herein.

1 (b) Each day a violation of the provisions of this Ordinance continues is a separate
2 violation.

3 (c) If a person or entity causing or responsible for any prohibited discharge fails to
4 immediately contain, remove, or abate the discharge to the satisfaction of the County, the
5 County may contain, remove, or abate the discharge and said responsible person or entity shall
6 be liable for all costs incurred by the County.

7 (d) If the owner of property that is subject to a violation of this Ordinance transfers the
8 ownership of such property between the time a notice of violation is served and the time of a
9 hearing involving a violation of this Ordinance and the alleged violator fails to disclose said
10 violation to the purchaser, the transfer creates a rebuttable presumption of fraud.

11 (e) Violations of the provisions of this Ordinance may be punished pursuant to ss.
12 403.121, 403.141, 403.161, Florida Statutes.

13 (f) Violations of the provisions of this Ordinance may be punished pursuant to Chapter
14 162, Florida Statutes, as a civil infraction with a maximum penalty as provided by law.

15 (g) The County may avail itself of any other legal or equitable remedy available to it,
16 including without limitation, injunctive relief and ~~or~~ revocation of any permit involved, in the
17 enforcement of any provision of this Ordinance.

18 (h) Any person violating this Ordinance shall be liable for all costs incurred by the
19 County in connection with enforcing this Ordinance, including without limitation, attorneys'
20 fees and investigative and court costs.

21 (i) Violations of this Ordinance may be referred by ERM to the Groundwater and
22 Natural Resources Protection Board (GNRPB) for corrective actions and civil penalties. Any
23 person who is party to the proceeding before the GNRPB may appeal the Board's Order to the
24 Circuit Court of Palm Beach County in accordance with Florida Appellate Rules of Procedure.
25 Funds collected pursuant to administrative penalties levied by the GNRPB for violations of this
26 Ordinance shall be deposited in the Palm Beach County Pollution Recovery Trust Fund, or
27 such other place as may be designated by Resolution of the Board of County Commissioners.

28 (j) In order to provide an expeditious settlement that would be beneficial to the
29 enforcement of this Ordinance and be in the best interest of the citizens of the County, the
30 Director of ERM is authorized to enter into voluntary consent (settlement) agreements with

1 alleged violators. Any such agreement shall be a formal written consent agreement between
2 ERM on behalf of Palm Beach County, by and through its Director, and any such alleged
3 violators, and shall be approved as to form and legal sufficiency by the County Attorney's
4 Office. The agreement can be entered into at any time prior to the hearing before the GNRPB.

5 (1) Conditions. Such consent agreements may be conditioned upon a promise
6 by the alleged violator to:

7 (i) Bring the parcel into compliance with this Ordinance and maintain it
8 in that condition;

9 (ii) Remit payment of a monetary settlement amount not to exceed the
10 maximum amount allowed per violation, as set forth in this Ordinance;

11 (iii) Remit payment for costs and expenses of the County for
12 investigation and enforcement; and

13 (iv) Any other remedies and corrective action deemed necessary and
14 appropriate by the Director of ERM to ensure compliance with this
15 Ordinance.

16 (2) The consent agreement shall not serve as evidence of a violation of this
17 Ordinance and shall expressly state that the alleged violator neither admits nor
18 denies culpability for the alleged violations by entering into such agreement. In
19 addition, prior to entering into any such consent agreement, each alleged
20 violator shall be apprised of the right to have the matter heard by the GNRPB in
21 accordance with the provisions of this Ordinance and that execution of the
22 agreement is not required.

23 (3) The consent agreement shall be valid and enforceable in a court of
24 competent jurisdiction in Palm Beach County and shall abate any enforcement
25 proceedings available to ERM for so long as the terms and conditions of such
26 agreement are complied with. In the event the alleged violator fails to comply
27 with the terms and conditions set forth in the executed agreement, the Director
28 of ERM may either:

- 1 (i) Consider the consent agreement void and pursue any remedies
2 available for enforcement of the applicable provisions of the Ordinance;
3 or
4 (ii) Initiate legal proceedings for specific performance of the consent
5 agreement.

6 Funds collected pursuant to a consent agreement shall be deposited in the Palm Beach
7 County Pollution Recovery Trust Fund or such other place designated by Resolution of
8 the Board of County Commissioners.

9 (k) All remedies and penalties in this Ordinance are alternative and mutually exclusive.

10

11 **SECTION 5. REPEAL OF LAWS IN CONFLICT.**

12 All local laws and ordinances in conflict with any provisions of this Ordinance are
13 hereby repealed to the extent of conflict.

14

15 **SECTION 6. SAVINGS CLAUSE.**

16 Notwithstanding anything to the contrary, all provisions of Palm Beach County Code
17 Section 11-291 through 11-311, codifying Palm Beach County Ordinance No. 2009-018 are
18 specifically preserved and remain in full force and effect for the limited purpose of enforcing
19 any alleged violations, warning letters, notices of violation, consent agreements, or
20 enforcement orders issued pursuant to said Code which occurred prior to its amendment.

21

22 **SECTION 7. SEVERABILITY.**

23 If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any
24 reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void,
25 such holding shall not affect the remainder of this Ordinance.

26

27 **SECTION 8. INCLUSION IN THE CODE OF LAWS AND ORDINANCES AND**
28 **SCRIVENER'S ERRORS.**

29 The provisions of this Ordinance shall become and be made a part of the Palm Beach
30 County Code. The sections of this Ordinance may be renumbered or relettered to accomplish
31 such, and the word Ordinance may be changed to section, article, or other appropriate word.

1 Correction of typographical errors that do not change the intent and meaning of the Ordinance
2 may be authorized by the County Administrator or his designee without the need of a public
3 hearing by filing a corrected or recodified copy of the same with the Clerk of Circuit Court.

4

5 **SECTION 9. CAPTIONS.**

6 The captions, section headings, and section designations used in this Ordinance are for
7 convenience only and have no effect on the interpretation of the provisions of this Ordinance.

8

9 **SECTION 10. EFFECTIVE DATE.**

10 The provisions of this Ordinance shall become effective upon filing with the
11 Department of State.

12

13 APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach
14 County, Florida, on this the ____ day of _____, 20__.

15 **SHARON R. BOCK, CLERK**
16 **AND COMPTROLLER**

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

17

18

19
20 **By: _____**
21 **Deputy Clerk**

By: _____
Shelley Vana, Mayor

22

23 **APPROVED AS TO FORM AND**
24 **LEGAL SUFFICIENCY**

25

26

27 **By: _____**
28 **County Attorney**

29

30

31 **EFFECTIVE DATE: Filed with the Department of State on the ____ day of**
32 **_____, 20__.**

33

34



**Palm Beach County
LEAGUE of CITIES, Inc.**

July 1, 2014

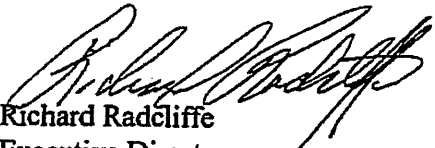
Honorable Priscilla Taylor
Mayor, Board of County Commissioners
Palm Beach County
301 N. Olive Avenue
West Palm Beach, FL 33401

Re: Petroleum Contamination Ordinance

Dear Mayor Taylor,

At its June 25, 2014 meetings, the League of Cities Board of Directors and membership voted 'no objection' to the proposed changes to the ordinance pertaining to the pollutant storage tank system ordinance, which were presented to the board by ERM SR. Hydro Geologist Dave Gibson.

Respectfully,


Richard Radcliffe
Executive Director

cc: Palm Beach County Board of County Commissioners
Bonnie Finneran, Environmental Director - Environmental Resource Management

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Richard Radcliffe, Executive Director
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ENVIRONMENTAL RESOURCES MANAGEMENT



Florida League of Cities
SUPPORTING PARTNER



National League of Cities
Associate Members