PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS



## AGENDA ITEM SUMMARY

**Meeting Date:** 

February 3, 2015

) Consent ) Workshop

(X) Regular( ) Public Hearing

Department Submitted By: Submitted For:

Environmental Resources Management Environmental Resources Management

## **I. EXECUTIVE BRIEF**

Motion and Title: Staff recommends motion to approve on preliminary reading and advertise for public hearing on March 10, 2015 at 9:30 a.m.: an Ordinance of the Board of County Commissioners of Palm Beach County, Florida, to be known as the Palm Beach County Petroleum Contamination Cleanup Criteria Ordinance; amending Section 11-294 (ordinance supplemental to federal and state law); amending Section 11-295 (Definitions); amending Section 11-296 (adoption of Florida Administrative Code by reference); amending Section 11-297 (Violations, Enforcement; Penalties); providing for Repeal of Laws in Conflict; providing for Savings Clause; providing for Severability; providing for Inclusion in the Code of Laws and Ordinances; providing for Captions and providing for an Effective Date.

**Summary:** This Ordinance revises Countywide Ordinance No. 2009-018 which was approved by the Board of County Commissioners (BCC) on July 21, 2009. The Ordinance is revised to replace reference to Chapter 62-770, Florida Administrative Code (F.A.C.) which was repealed by the Florida Legislature on June 12, 2013, with reference to Chapter 62-780, F.A.C., which was adopted by the Florida Department of Environmental Protection on February 4, 2014. Other than amendments to correctly reference revised state rule nomenclature, there are no material changes to the Ordinance.

In accordance with PPM No. CW-O-041 (Countywide Ordinances: Applicability and Notification to Municipalities), the amended Ordinance was presented to the Palm Beach County League of Cities on June 25, 2014 and approved by the League's General Membership on June 25, 2014. <u>Countywide</u> (SF)

**Background and Policy Issues:** Presently, the County implements and provides enforcement through Ordinance No. 2009-018 and under contract with the State of Florida Department of Environmental Protection (DEP). This Revised Ordinance replaces Ordinance No. 2009-018.

## Attachments:

- 1. Amended Ordinance
- 2. PBC League of Cities Approval Letter

Recommended by:	Alt elle	121/15
Approved by:	Department Director	Date ([u](/
	<b>County Administrator</b>	Date

# **II. FISCAL IMPACT ANALYSIS**

## A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures			<b></b>		
<b>Operating Costs</b>				·	<u></u>
External Revenues					
<b>Program Income (County)</b>					
In-Kind Match (County)					
NET FISCAL IMPACT	*				
# ADDITIONAL FTE					
POSITIONS (Cumulative)					
Is Item Included in Current	t Budget?	Yes _		No	
Budget Account No.:	Fund				
2	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:

H

**III. REVIEW COMMENTS** 

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

OFMB / 415

В. Legal Sufficiency:

Assistant County Attorney

C. Other Department Review:

**Department Director** 

3115 Contract Development and Contr 1.3 15

1 2	ORDINANCE NO 2015-
3 4 5 6 7 8 9 10 11 12	ORDINANCE NO. 2015- A COUNTYWIDE ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA AMENDING CHAPTER 11 OF THE PALM BEACH COUNTY CODE (ORDINANCE 2009-018) KNOWN AS THE PETROLEUM CONTAMINATION CLEANUP CRITERIA ORDINANCE; AMENDING SECTION 11-294 (ORDINANCE SUPPLEMENTAL TO FEDERAL AND STATE LAW); AMENDING SECTION 11- 295 (DEFINITIONS); AMENDING SECTION 11-296
13 14 15 16 17 18 19 20 21 22	(ADOPTION OF FLORIDA ADMINISTRATIVE CODE BY REFERENCE); AMENDING SECTION 11-297 (VIOLATIONS, ENFORCEMENT; PENALTIES); PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR CAPTIONS AND PROVIDING FOR AN EFFECTIVE DATE.
22	WHEREAS, Chapter 125, Florida Statutes, authorizes the Board of County
24	Commissioners to enact ordinances and regulations necessary for the health, safety and welfare
25	of the citizens and visitors of Palm Beach County; and
26	WHEREAS, the Legislature of the State of Florida has declared in Chapter 376,
27	Florida Statutes, that the preservation of surface and ground water is a matter of the highest
28	urgency and priority and that the storage, transportation, and disposal of petroleum products is
29	a hazardous undertaking that poses a threat to the environment and water resources; and
30	WHEREAS, the Florida Department of Environmental Protection ("FDEP") adopted
31	Petroleum Contamination Site Cleanup Criteria in 1986; and
32	WHEREAS, Palm Beach County has enforced State petroleum cleanup rules under
33	contract with FDEP since 1988; and
34	WHEREAS, Palm Beach County, through its local enforcement procedures, has the
35	ability to carefully monitor and quickly respond to petroleum contamination at the local level;
36	and
37	WHEREAS, it is the intent and policy of the Palm Beach County Board of County
38	Commissioners to ensure the continued health, safety, welfare, and quality of life for the
39	existing and future residents of Palm Beach County by protecting its valuable and critical water
40	resources; and

Text that is stricken notes text to be deleted. Text that is underlined notes text to be added. Page 1 of 7 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 providing for local enforcement of petroleum cleanup standards and procedures; and 6

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.

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

12

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

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 provisions or sections of the Florida Statutes or Florida Administrative Code related to 18 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 County, its officers and agents, to effect the purposes of each of the state statutes and rules 22 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 as may be required under state and/or federal rules unless the approval is expressly designated 26 as approval for both this Ordinance and another applicable state or federal rule or regulation. 27

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,

Text that is stricken notes text to be deleted. Text that is underlined notes text to be added. Page 2 of 7

Florida Statutes, and Section 62-780.200 62-770.200, Florida Administrative Code, as amended 1 from time to time, are hereby adopted and incorporated herein by reference. When not 2 inconsistent with the context, words used in the present tense include the future, words in the 3 plural number include the singular number, words in the singular number include the plural 4 number, and the use of any gender shall be applicable to all genders whenever the sense 5 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. "FDEP local program" means the Palm Beach County program established pursuant to 13 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. (2)(1) Chapter 62-777, Florida Administrative Code, as may be amended. 23 24 (2) Chapter 62-780, Florida Administrative Code. 25 26 SECTION 4. 11-297 IS HEREBY AMENDED TO READ AS FOLLOWS: 27 28 Section 11-297. Violations, enforcement; penalties. 29 (a) Failure to comply with any requirement of this Ordinance shall constitute a violation of this Ordinance punishable as provided herein. 30

Text that is stricken notes text to be deleted. Text that is underlined notes text to be added. Page 3 of 7 1

2 violation.

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

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.

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

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 Natural Resources Protection Board (GNRPB) for corrective actions and civil penalties. Any 22 person who is party to the proceeding before the GNRPB may appeal the Board's Order to the 23 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 Ordinance shall be deposited in the Palm Beach County Pollution Recovery Trust Fund, or 26 such other place as may be designated by Resolution of the Board of County Commissioners. 27

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

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
16 17	(2) The consent agreement shall not serve as evidence of a violation of this Ordinance and shall expressly state that the alleged violator neither admits nor
17	Ordinance and shall expressly state that the alleged violator neither admits nor
17 18	Ordinance and shall expressly state that the alleged violator neither admits nor denies culpability for the alleged violations by entering into such agreement. In
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17 18 19 20 21	Ordinance and shall expressly state that the alleged violator neither admits nor denies culpability for the alleged violations by entering into such agreement. In addition, prior to entering into any such consent agreement, each alleged violator shall be apprised of the right to have the matter heard by the GNRPB in accordance with the provisions of this Ordinance and that execution of the
<ol> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> </ol>	Ordinance and shall expressly state that the alleged violator neither admits nor denies culpability for the alleged violations by entering into such agreement. In addition, prior to entering into any such consent agreement, each alleged violator shall be apprised of the right to have the matter heard by the GNRPB in accordance with the provisions of this Ordinance and that execution of the agreement is not required.
<ol> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> </ol>	Ordinance and shall expressly state that the alleged violator neither admits nor denies culpability for the alleged violations by entering into such agreement. In addition, prior to entering into any such consent agreement, each alleged violator shall be apprised of the right to have the matter heard by the GNRPB in accordance with the provisions of this Ordinance and that execution of the agreement is not required. (3) The consent agreement shall be valid and enforceable in a court of
<ol> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> </ol>	Ordinance and shall expressly state that the alleged violator neither admits nor denies culpability for the alleged violations by entering into such agreement. In addition, prior to entering into any such consent agreement, each alleged violator shall be apprised of the right to have the matter heard by the GNRPB in accordance with the provisions of this Ordinance and that execution of the agreement is not required. (3) The consent agreement shall be valid and enforceable in a court of competent jurisdiction in Palm Beach County and shall abate any enforcement
<ol> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> </ol>	Ordinance and shall expressly state that the alleged violator neither admits nor denies culpability for the alleged violations by entering into such agreement. In addition, prior to entering into any such consent agreement, each alleged violator shall be apprised of the right to have the matter heard by the GNRPB in accordance with the provisions of this Ordinance and that execution of the agreement is not required. (3) The consent agreement shall be valid and enforceable in a court of competent jurisdiction in Palm Beach County and shall abate any enforcement proceedings available to ERM for so long as the terms and conditions of such
<ol> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> </ol>	Ordinance and shall expressly state that the alleged violator neither admits nor denies culpability for the alleged violations by entering into such agreement. In addition, prior to entering into any such consent agreement, each alleged violator shall be apprised of the right to have the matter heard by the GNRPB in accordance with the provisions of this Ordinance and that execution of the agreement is not required. (3) The consent agreement shall be valid and enforceable in a court of competent jurisdiction in Palm Beach County and shall abate any enforcement proceedings available to ERM for so long as the terms and conditions of such agreement are complied with. In the event the alleged violator fails to comply

- 1(i) Consider the consent agreement void and pursue any remedies2available for enforcement of the applicable provisions of the Ordinance;3or
- 4 (ii) Initiate legal proceedings for specific performance of the consent
  5 agreement.
- Funds collected pursuant to a consent agreement shall be deposited in the Palm Beach
  County Pollution Recovery Trust Fund or such other place designated by Resolution of
  the Board of County Commissioners.
- 9 (k) All remedies and penalties in this Ordinance are alternative and mutually exclusive.

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

All local laws and ordinances in conflict with any provisions of this Ordinance are
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.

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## 22 SECTION 7. SEVERABILITY.

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

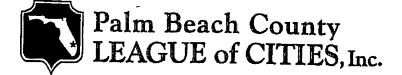
26

# 27SECTION 8. INCLUSION IN THE CODE OF LAWS AND ORDINANCES AND28SCRIVENER'S ERRORS.

The provisions of this Ordinance shall become and be made a part of the Palm Beach County Code. The sections of this Ordinance may be renumbered or relettered to accomplish 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 16 17 18	SHARON R. BOCK, CLERKAND COMPTROLLERPALM BEACH COUNTY, FLORIDA, BY ITSBOARD OF COUNTY COMMISSIONERS
19 20	By: By:
21 22	By:     By:       Deputy Clerk     Shelley Vana, Mayor
23 24	APPROVED AS TO FORM AND LEGAL SUFFICIENCY
25 26	
27 28	By: County Attorney
28 29	County Attorney
30	
31	EFFECTIVE DATE: Filed with the Department of State on the day of
32	, 20
33	
34	

ATTACHMENT 2



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,

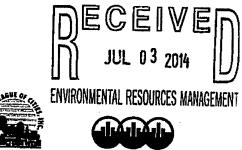
At its June 25, 2014 meetings, the League of Cities Board of Directors and membership voted 'no objection' to the proposed changes to the ordinance pertaining to the pollutant storage tank system ordinance, which were presented to the board by ERM SR. Hydro Geologist Dave Gibson.

Respectfully,

**Richard Radcliffe Executive Director** 

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

www.leagueofcities.org | rradcliffe@pbcgov.org Richard Radcliffe, Executive Director (561) 355-4484 [ (Fax) 355-6545 P.O. Box 1989, Gov. Center, West Palm Beach, FL 33402 Office: 301 North Olive Ave., Suite 1002.17 West Palm Beach, FL 33401



Florida League of Cities SUPPORTING PARTNER

Associate Members