

1
2 **ORDINANCE NO. 2009- 018**
3

4 **A COUNTYWIDE ORDINANCE OF THE BOARD OF**
5 **COUNTY COMMISSIONERS OF PALM BEACH COUNTY,**
6 **FLORIDA TO BE KNOWN AS THE PETROLEUM**
7 **CONTAMINATION CLEANUP CRITERIA ORDINANCE;**
8 **REPEALING PALM BEACH COUNTY CODE, SECTIONS**
9 **11-291 THROUGH 11-311 (ORDINANCE NO. 2003-021);**
10 **PROVIDING FOR A SHORT TITLE AND APPLICABILITY;**
11 **PROVIDING FOR AUTHORITY; PROVIDING FOR A**
12 **PURPOSE; PROVIDING A SUPPLEMENT TO FEDERAL**
13 **AND STATE LAW; PROVIDING FOR DEFINITIONS;**
14 **PROVIDING FOR ADOPTION OF FLORIDA**
15 **ADMINISTRATIVE CODE BY REFERENCE; PROVIDING**
16 **FOR VIOLATIONS, ENFORCEMENT, PENALTIES;**
17 **PROVIDING FOR REPEAL OF LAWS IN CONFLICT;**
18 **PROVIDING FOR SAVINGS CLAUSE; PROVIDING FOR**
19 **SEVERABILITY; PROVIDING FOR INCLUSION IN THE**
20 **CODE OF LAWS AND ORDINANCES; PROVIDING FOR**
21 **CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.**

22
23 **WHEREAS,** Chapter 125, Florida Statutes, authorizes the Board of County Commissioners
24 to enact ordinances and regulations necessary for the health, safety and welfare of the citizens and
25 visitors of Palm Beach County; and

26 **WHEREAS,** the Legislature of the State of Florida has declared in Chapter 376, Florida
27 Statutes, that the preservation of surface and ground water is a matter of the highest urgency and
28 priority and that the storage, transportation, and disposal of petroleum products is a hazardous
29 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 ability
35 to carefully monitor and quickly respond to petroleum contamination at the local level; and

36 **WHEREAS,** it is the intent and policy of the Palm Beach County Board of County
37 Commissioners to ensure the continued health, safety, welfare, and quality of life for the existing
38 and future residents of Palm Beach County by protecting its valuable and critical water resources;
39 and

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 potential
3 to produce petroleum contamination; and

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

7 **WHEREAS**, the Palm Beach County Board of County Commissioners intends to repeal
8 Ordinance 2003-012 and to replace it with this Ordinance.

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

11
12 **Section 1. Short title and applicability.**

13 (a) This Ordinance is referred to as the "Palm Beach County Petroleum Contamination
14 Cleanup Criteria Ordinance."

15 (b) The provisions of this Ordinance shall be effective within the unincorporated and
16 incorporated areas of the County.

17
18 **Section 2. Authority.**

19 This Ordinance is adopted under the authority of Chapter 125, Florida Statutes, and Chapter
20 376, Florida Statutes.

21
22 **Section 3. Purpose.**

23 The purpose of this Ordinance is to provide standards for assessment and remediation of
24 soil and/or groundwater contaminated with petroleum or petroleum products in order to provide
25 protection to the County's groundwater resources.

26
27 **Section 4. Ordinance supplemental to federal and state law.**

28 (a) The provisions of this Ordinance are not intended to and shall not be construed as
29 changing, modifying, amending, repealing, superseding, conflicting with, or substituting any
30 provisions or sections of the Florida Statutes or Florida Administrative Code related to petroleum
31 contamination site cleanup but shall be construed as supplemental and additional thereto. This
32 Ordinance shall not be construed as impairing the jurisdiction of any court within the County. This

1 Ordinance shall be deemed to be an alternative or additional method for the County, its officers and
2 agents, to effect the purposes of each of the state statutes and rules adopted by reference in section
3 5 of this Ordinance.

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

8
9 **Section 5. Definitions.**

10 The following terms when used in this Ordinance shall have the meanings ascribed to them
11 in this section. In addition, the definitions and terms contained in Section 376.301, Florida
12 Statutes, and Section 62-770.200, Florida Administrative Code, as amended from time to time, are
13 hereby adopted and incorporated herein by reference. When not inconsistent with the context,
14 words used in the present tense include the future, words in the plural number include the singular
15 number, words in the singular number include the plural number, and the use of any gender shall be
16 applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory,
17 and the word "may" is permissive. Words not defined shall be given their common and ordinary
18 meaning.

19 "County" means Palm Beach County.

20 "Director" means the director of the Palm Beach County Department of Environmental
21 Resources Management.

22 "ERM" means the Palm Beach County Department of Environmental Resources
23 Management.

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

27

28 **Section 6. Adoption of Florida Administrative Code by reference.**

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

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

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

3

4 **Section 7. Violations, enforcement; penalties.**

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

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

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

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

17 (e) Violations of the provisions of this Ordinance may be punished pursuant to ss. 403.121,
18 403.141, 403.161, Florida Statutes.

19 (f) Violations of the provisions of this Ordinance may be punished pursuant to Chapter
20 162, Florida Statutes, as a civil infraction with a maximum penalty as provided by law.

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

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

27 (i) Violations of this Ordinance may be referred by ERM to the Groundwater and Natural
28 Resources Protection Board (GMRPB) for corrective actions and civil penalties. Any person who is
29 party to the proceeding before the GMRPB may appeal the Board's Order to the Circuit Court of
30 Palm Beach County in accordance with Florida Appellate Rules of Procedure. Funds collected
31 pursuant to administrative penalties levied by the GMRPB for violations of this Ordinance shall be

1 deposited in the Palm Beach County Pollution Recovery Trust Fund, or such other place as may be
2 designated by Resolution of the Board of County Commissioners.

3 (j) In order to provide an expeditious settlement that would be beneficial to the
4 enforcement of this Ordinance and be in the best interest of the citizens of the County, the Director
5 of ERM is authorized to enter into voluntary consent (settlement) agreements with alleged
6 violators. Any such agreement shall be a formal written consent agreement between ERM on
7 behalf of Palm Beach County, by and through its Director, and any such alleged violators, and shall
8 be approved as to form and legal sufficiency by the County Attorney's Office. The agreement can
9 be entered into at any time prior to the hearing before the GNRPB.

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

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

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

16 (iii) Remit payment for costs and expenses of the County for
17 investigation and enforcement; and

18 (iv) Any other remedies and corrective action deemed necessary and
19 appropriate by the Director of ERM to ensure compliance with this

20 Ordinance.

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

28 (3) The consent agreement shall be valid and enforceable in a court of competent
29 jurisdiction in Palm Beach County and shall abate any enforcement proceedings
30 available to ERM for so long as the terms and conditions of such agreement are

1 complied with. In the event the alleged violator fails to comply with the terms and
2 conditions set forth in the executed agreement, the Director of ERM may either:

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

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

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

11
12 **Section 8. Repeal of laws in conflict:**

13 Ordinance 2003-021 is hereby repealed as of the effective date of this Ordinance, and all
14 local laws and ordinances in conflict with any provisions of this Ordinance are hereby repealed to
15 the extent of such conflict.

16
17 **Section 9. Savings clause:**

18 Notwithstanding anything to the contrary, all provisions of Palm Beach County Code
19 Section 11-291 through 11-311, codifying Palm Beach County Ordinance No. 2003-021, as
20 amended, are specifically preserved and remain in full force and effect for the limited purpose of
21 enforcing any alleged violations of said Code which occurred prior to its repeal or amendment.

22
23 **Section 10. Severability:**

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

27
28 **Section 11. Inclusion in the code of laws and ordinances and 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 such,
31 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 may
2 be authorized by the County Administrator or his designee without the need of a public hearing by
3 filing a corrected or recodified copy of the same with the Clerk of Circuit Court.
4

5 **Section 12. CAPTIONS:**

6 The captions, section headings, and section designations used in this Ordinance are for
7 convenience only and shall have no effect on the interpretation of the provisions of this Ordinance.
8

9 **Section 13. EFFECTIVE DATE:**

10 The provisions of this Ordinance shall become effective upon filing with the Department of
11 State.
12

13 APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach
14 County, Florida, on this the 21st day of July, 2009.

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:  _____
John F. Koons, Chairperson

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 27th day of
32 July, 2009.
33