



MOSQUITO AND VECTOR CONTROL
ASSOCIATION OF CALIFORNIA

MVCAC BOARD OF DIRECTORS MEETING
Hyatt Regency San Francisco Airport
1333 Bayshore Highway
Burlingame, CA 94010
January 28, 2009
8:30 a.m. – 12 p.m.

AGENDA

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MOSQUITO AND VECTOR CONTROL ASSOCIATION OF CALIFORNIA
Board of Directors
Meeting of January 28, 2009

AGENDA SUPPORTING DATA
Agenda Item 3. – Approval of the Minutes
October 30, 2008

October 30, 2008 Minutes will be sent under separate cover.

MOSQUITO AND VECTOR CONTROL ASSOCIATION OF CALIFORNIA
Board of Directors
Meeting of January 28, 2009

AGENDA SUPPORTING DATA

Agenda Item 6. – President's Report

- 6.01 Ratification of Committee Chairs for 2009*
- 6.02 MVCAC Board/Officer Members for 2009*
- 6.03 6th Circuit Court of Appeals Decision*
- 6.04 Strategic Planning 2009*

MVCAC Committee Chairs

	2008	2009*
Executive	David Brown	John Rusmiser
Finance	Robert Gay	Robert Gay
Information Technology	Bruce Eldridge	Bruce Eldridge
Integrated Pest Management	Jamie Scott	Jamie Scott
Legislative	Jon Blegen	Don Black
Nominating	Steve West	David Brown
Public Relations	Jared Dever	David Brown
Training and Certification	Ed Lucchesi	Steve Mulligan
Vector & Vectorborne Disease	Branka Lothrop	Susanne Klüh
Vector Control Research	Min-Lee Cheng	Min-Lee Cheng

* Pending Board approval

2009 Committees, Members and Charges (per Yearbook & committee input)

Executive Committee

Chair: President John Rusmiser, Alameda County MAD

Members:

President-Elect Jerry Davis, Turlock MAD

Vice-President Robert Gay, San Mateo County MVCD

Past President David Brown, Sacramento-Yolo MVCD

Trustee Advisory Council Lyndon Hawkins, Sacramento-Yolo MVCD

Committee Charges: Provide policy guidance to the Executive Director on the management of Association affairs. Ensure frequent two-way communication with regional representatives. Review all budgetary expenditures and review and submit a proposed budget for the coming year along with a recommended dues structure. Conduct an annual review of all service providers. Oversee the completion of an annual audit of financial transactions of the Association. Review (or call for a review of) the Administrative Policies and Bylaws of the Association and update those documents, as needed.

Finance Committee

Chair: Robert Gay, San Mateo County MAD

Members:

Michael Alburn, Delta VCD

Dennis Boronda, North Salinas Valley MAD

Michael Cavanaugh, Kings MAD

Min-Lee Cheng, West Valley MVCD

Elizabeth Cline, Fresno Westside MAD

Melissa Dixon, Smith Moore and Associates, Inc.

Gerard Goedhart, Orange County VCD

Gary Goodman, Sacramento-Yolo MVCD

Allan Inman, Merced County MAD

Tony Willert, Smith Moore and Associates, Inc.

Committee Charges:

- 1) Assist in implementing the Performance Based Budget format; determining the need for policies, amendments or other ministerial action with respect to the PBB format.
- 2) Provide time frame to implement the reserve policy to clarify the core functions, emergency requirements and contractual obligations.

- 3) Review dues and "other" non-dues revenue opportunities needed this year and in the future.
- 4) Monitor contractor's fiscal obligations and insure compliance; conduct a fiscal management audit of contractor as determined by the Board of Directors.

Information Technology

Chair: Bruce Eldridge, UC Davis

Members:

Ervic Aquino, California Department of Public Health

Sharon Mead, Alameda County MAD

Chris Canterbury, Marin-Sonoma MVCD

Rhonda Laffey, Sacramento-Yolo MVCD

Bborie Park, UC Davis

Russ Parman, Santa Clara County VCD

Jodi Holeman, Consolidated MAD

Mark Daniel, Greater LA County VCD

John Stroh, San Joaquin County MVCD

Standing Charge: Serve as a resource on developing issues related to information and technology that may be appropriate for individual member agencies as well as for the Association.

Specific charges for 2009.

1. Evaluate the potential for using the Surveillance Gateway to record and report pesticide use by member agencies.
2. Evaluate commercial and open source teleconferencing systems for continuing education programs and inter-agency meetings.
3. Evaluate the development of data collection and reporting systems of pesticide resistance data submitted by member agencies. Forms should be made similar to those used for monthly reports to Agricultural Commissioner.
4. Evaluate the present MVCAC intranets and Affiniscape system for effectiveness, usage, and cost efficiency, and search for alternative programs to the present Webex program.
5. Evaluate commercial and open source programs for management of MVCAC conference proceedings and for management of abstracts for MVCAC annual conferences.
6. Evaluate and recommend to the Public Information Committee possible large data storage solutions for digital media content to be shared with MVCAC and public.

Integrated Pest Management

Chair: Jamesina Scott, Lake County VCD

Members:

Joel Buettner, Placer County MVCD

Bruce Eldridge, UC Davis

Kenn Fujioka, San Gabriel Valley MVCD

Renjie Hu, California Department of Public Health

Michael Kimball, Sutter-Yuba MVCD

Dean Kwasny, California Department of Fish and Game

Branka Lothrop, Coachella Valley MVCD
Yolanda Lourenco, Delta VCD
Ed Lucchesi, San Joaquin County MVCD
Karl Malamud-Roam, Contra Costa MVCD
Marco Metzger, California Department of Public Health
Chindi Peavey, San Mateo County MVCD
Amber Semrow, Orange County VCD
Steven Su, West Valley MVCD
Bill Walton, UC Riverside
Stephanie Whitman, Valent BioSciences Corporation

Standing Charges: Report on environmental issues that may affect the members of the MVCAC. In coordination with the Executive Director, act as liaison between the Association and local, state, and federal agencies responsible for wildlife management and protection. Develop information on the availability, use and impact of biological control organisms. Develop recommendations on pesticides and their use, and on their registration status and related issues. Report on the prevention of vector sources by means of planning, public education and inter agency cooperation. Work with organizations involved with organic farming to establish standards for using bio-rational pesticides.

2009 – CEQA checklist – continue working towards adding vector control to the CEQA checklist.
Monitor State Water Board expanded definition of wetlands.

Legislative

Chair: Don Black, West Side MVCD

Members:

Russ Belleci, Contra Costa MVCD
Michael Churney, Burney Basin MAD
Elizabeth Cline, Fresno Westside MAD
Andrew Cox, Tehama County MVCD
Jerry Davis, Turlock MAD
Robert Gay, San Mateo County MAD
Gary Goodman, Sacramento-Yolo MVCD
Michael Hearst, Orange County VCD
Mark Novak, California Department of Public Health, VBDS, Liaison
John Rusmisl, Alameda County MAD
Mitchell Weinbaum, Compton Creek MAD

Standing Charges: Review pending legislative bills and regulatory changes that may impact vector control activities along with the Executive Director, inform members of the need for grassroots efforts to inform legislators of the potential impact on their agencies. Represent the MVCAC and testify, as appropriate, on bills or regulations of concern and keep the Board of Directors informed. Work with the MVCAC's administrative staff to arrange for legislators or legislative staff to speak at interim meetings and the annual conference as appropriate. The chair, in coordination with the President and Executive Director, will work with the Legislative Advocate on the Association's needs and with appropriate governmental agencies or others to develop or negotiate for such legislation.

2009 Two bills, Summary Abatement amendment to the Health and Safety Code and State of California land acquisition bill stating nothing can be done to increase mosquito production without maintenance funding. Possible third bill on Mosquito Research funding by amending the Canciamilla bill which run through 2011. Legislative Day and a day for visiting local offices in March. Committee to meet quarterly.

Nominating

Chair: Past President, David Brown Sacramento-Yolo MVCD

Members:

?

Standing Charge: Consistent with the Bylaws, this committee will select nominees for the elective offices of the Association.

Public Relations

Chair: David Brown, Sacramento-Yolo MVCD

Members:

Deborah Bass, Contra Costa MVCD

Aaron Devencenzi, San Joaquin MVCD

Jared Dever, Northwest MVCD

Truc Dever, Greater LA County VCD

Claudia Erickson, California Department of Public Health

Katherine Ramirez, Delta VCD

Kelly Middleton, San Gabriel Valley MVCD

Tawnia Pett, Orange County VCD

Brian Reisinger, West Valley MVCD

Luz Maria Rodriguez, Sacramento-Yolo MVCD

Nizza Sequeira, Marin-Sonoma MVCD

Charlie Smith, Consolidated MAD

Dan Wilson, Alameda County VCSD

Standing Charges: Operate as a resource and offer professional assistance, training, and support for MVCAC members in all matters of public relations and communications. Promote mosquito and vector control agencies as vital public health partners illustrating their competence and importance and endeavor to obtain recognition for their services and expertise. Work to promote community partnerships and encourage cooperative ventures to benefit vector control, public health and the environment. Promote MVCAC and assist members and staff with media outreach, educational and informational materials, publications and other outreach methods and communication efforts.

2009 charges: Provide MVCAC office updates on activities throughout the State. Provide articles for the MVCAC Newsletter.

Training and Certification

Chair: Steve Mulligan, Consolidated MAD

Members:

Bruce Bondi, Merced County MAD

Jerry Davis, Turlock MAD

John Fritz, Sacramento-Yolo MVCD

Bruce Kirkpatrick, Alameda County MAD

Jonathan Kwan, California Department of Public Health

Tawnia Pett, Orange County VCD

Charlie Smith, Consolidated MAD

Standing Charges: A Regional Training Coordinator represents each region on the committee and is appointed by the region. The committee coordinates the Association's program of regional continuing education, maintaining the expected standards of training in vector control. The committee reviews

submitted training curricula and recommends approval to the California Department of Public Health representative. The committee also interprets the state regulations on continuing education and modifies those regulations as needed to maintain a quality education program.
2009: Review Guidance documents for MVCAC members.

Vector & Vectorborne Disease

Chair: Susanne Klueh, Greater LA County VCD

Members:

Stacy Bearden, San Joaquin County MVCD

Bruce Eldridge, UC Davis

Kenn Fujioka, San Gabriel Valley MVCD

Stan Husted, California Department of Public Health

Branka Lothrop, Coachella Valley MVCD

Marcia Reed, Sacramento-Yolo MVCD

William Reisen, University of California

Steve Schutz, Contra Costa MVCD

Jamesina Scott, Lake County VCD

Jim Tucker, California Department of Public Health

Steven Su, West Valley MVCD

Jim Wanderscheid, Marin-Sonoma MVCD

Standing Charges: Review and present new information on vectors and vector-borne diseases of interest to the MVCAC and make recommendations for their surveillance and control.

Specific Charges:

- 1) With MVCAC President, develop long term plans and agreements among DPH, UC Davis and MVCAC to ensure continuation of statewide surveillance program and appropriate diagnostics.
- 2) Monitor West Nile Virus activity in California.
- 3) Develop protocols to expand surveillance diagnostics to detect and assess the health impact of newly emerging mosquito-borne pathogens.
- 4) Cost/Benefit analysis of control versus medical costs of West Nile Virus.

Vector Control Research

Chair: Min-Lee Cheng, West Valley MVCD

Members:

Stacy Bearden, San Joaquin County MVCD

Paula Macedo, Sacramento-Yolo MVCD

Steve Mulligan, Consolidated MAD

Kerry Padgett, California Department of Public Health, VBDS, (Liaison)

Bill Reisen, University of California (Liaison)

John Rusmisl, Alameda County MAD

Noor Tietze, Santa Clara County VCD

Bill Walton, University of California (Liaison)

Standing Charges: Review and determine the research needs of the Association. Evaluate the relevance of UC research proposals to mosquito control programs. The Chair serves as a Director of the CMVCA Research Foundation and also serves as a member of the University of California Public Advisory Committee on Mosquito Research.

2009 – Review funding possibilities for research projects including the use of grant writers.

Committee composition should be of sufficient balance of the Association to address regional concerns, but also of individuals that will get the charges addressed. The over-all membership of any committee should not be influenced by regionalism, but what is the best interest of the Association as a whole.

REF

File Name: 09a0004p.06

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

THE NATIONAL COTTON COUNCIL OF
AMERICA, et al.,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

Nos. 06-4630; 07-3180/
3181/3182/3183/3184/3185/
3186/3187/3191/3236

On Petition for Review of Final Action of the
United States Environmental Protection Agency.
Nos. OW-2003-0063; 40 CFR Part 122.

Argued: April 29, 2008

Decided and Filed: January 7, 2009

Before: GUY, SUHRHEINRICH, and COLE, Circuit Judges.

COUNSEL

ARGUED: Charles Tebbutt, WEST ENVIRONMENTAL LAW CENTER, Eugene, Oregon, for Petitioners. Alan D. Greenberg, UNITED STATES DEPARTMENT OF JUSTICE, Denver, Colorado, for Respondent. Claudia M. O'Brien, LATHAM & WATKINS, Washington, D.C., Kirsten L. Nathanson, CROWELL & MORING, Washington, D.C., for Intervenors. **ON BRIEF:** Charles Tebbutt, WEST ENVIRONMENTAL LAW CENTER, Eugene, Oregon, Lauren E. Brown, WATERKEEPER ALLIANCE, Irvington, New York, Daniel E. Estrin, PACE ENVIRONMENTAL LITIGATION CLINIC, White Plains, New York, Reed W. Super, MORNINGSIDE HEIGHTS LEGAL SERVICES, INC., COLUMBIA UNIVERSITY SCHOOL OF LAW, New York, New York, Steven Schatzow, LAW OFFICES OF STEVEN SCHATZOW, Washington, D.C., for Petitioners. Alan D. Greenberg, UNITED

STATES DEPARTMENT OF JUSTICE, Denver, Colorado, for Respondent. Claudia M. O'Brien, Kenneth W. Weinstein, Davis B. Tyner, LATHAM & WATKINS, Washington, D.C., Kirsten L. Nathanson, Ellen Steen, CROWELL & MORING, Washington, D.C., for Intervenor. Elliot Silverman, McDORMOTT WILL & EMERY LLP, Irvine, California, for Amicus Curiae.

OPINION

COLE, Circuit Judge. These proceedings involve a final regulation issued by the Environmental Protection Agency (the "EPA") under the Clean Water Act, 33 U.S.C. § 1251 et seq. The Clean Water Act regulates the discharge of "pollutants" into the nation's waters by, among other things, requiring entities that emit "pollutants" to obtain a National Pollutant Discharge Elimination System ("NPDES") permit. *Id.* §§ 1311(a), 1342. On November 27, 2007, the EPA issued a Final Rule concluding that pesticides applied in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (the "FIFRA") are exempt from the Clean Water Act's permitting requirements. *See* 71 Fed. Reg. 68,483 (Nov. 27, 2006) (the "Final Rule"). Two different groups of Petitioners—one representing environmental interest groups and the other representing industry interest groups—oppose the EPA's Final Rule as exceeding the EPA's interpretive authority. The EPA defends the Final Rule by arguing that the terms of the Clean Water Act are ambiguous and that the Final Rule is a reasonable construction of the Clean Water Act entitled to deference from this Court. We cannot agree. The Clean Water Act is not ambiguous. Further, it is a fundamental precept of this Court that we interpret unambiguous expressions of Congressional will as written. *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984). Therefore, we hold that the EPA's Final Rule is not a reasonable interpretation of the Act and **VACATE** the Final Rule.

I. BACKGROUND

A. The Regulatory Background

1. *The Clean Water Act*

Congress enacted the Clean Water Act “to restore and maintain the chemical, physical and biological integrity of the Nation’s waters.” *Nat’l Wildlife Fed’n v. Consumers Power Co.*, 862 F.2d 580, 582 (6th Cir. 1988) (quoting 33 U.S.C. § 1251(a)). The goal of the Clean Water Act is to achieve “water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water.” 33 U.S.C. § 1251(a)(2). Thus, the Act provides that “the discharge of any pollutant by any person shall be unlawful.” *Id.* § 1311(a). “Pollutant” is a statutorily defined term that includes, at least, “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.” *Id.* § 1362(6). The Supreme Court has held that this list is not exhaustive and that “pollutant” should be interpreted broadly. *Rapanos v. United States*, 547 U.S. 715, 724 (2006).

The Clean Water Act prohibits the discharge of any “pollutant” into navigable waters from any “point source” unless the EPA issues a permit under the NPDES permitting program, 33 U.S.C. §§ 1311(a), 1342, where a “point source” is “any discernible, confined, and discrete conveyance . . . from which pollutants are or may be discharged.” *Id.* § 1362(14). The permitting program constitutes an exception to the Clean Water Act’s prohibition on pollutant discharges into the Nation’s waters. *Id.* §§ 1311(a), 1342; 40 C.F.R. § 122.3. Thus, if a party obtains a permit, the discharge of pollutants in accordance with that permit is not unlawful. *Id.*

Before a permit is issued, the EPA, or a state agency that has been approved by the EPA, evaluates the permit application to ensure that the discharge of a pollutant under the proposed circumstances will not cause undue harm to the quality of the water. *See* 33 U.S.C. § 1342. In addition to granting permits for specific discharges, the EPA and state authorities may also grant general permits that allow for the discharge of a specific pollutant or type of

pollutant across an entire region. *Id.* For example, prior to the EPA's adoption of the Final Rule, the State of Washington had issued a general permit to allow for the application of all aquatic pesticides in the State. *See Acquatechnex v. Washington Dep't of Ecology*, PCHB No. 02-090, 2002 WA ENV LEXIS 87, *2-5 (Pollution Control Hr'gs Bd. Dec. 24, 2002).¹ As a result, users of aquatic pesticides in Washington could discharge those pesticides covered by the rule without obtaining a permit. These general permits "greatly reduce [the] administrative burden by authorizing discharges from a category of point sources within a specified geographic area." *S. Florida Water Mgmt. Dist. v. Miccosukee Tribe of Indians*, 541 U.S. 95, 108 n.* (2004) (citing 40 C.F.R. § 122.28(b)(2)(v)). "Once [the] EPA or a state agency issues such a [general] permit, covered entities, in some cases, need take no further action to achieve compliance with the NPDES besides adhering to the permit conditions." *Id.*

2. *The Federal Insecticide, Fungicide, and Rodenticide Act*

The EPA also regulates the labeling and sale of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act. Under the FIFRA, all pesticides sold in the United States must be registered with the EPA. *See* 7 U.S.C. § 136 et seq. The EPA approves an insecticide for registration only when it finds that the chemical, "when used in accordance with widespread and commonly recognized practice . . . [.] will not generally cause unreasonably adverse effects on the environment." *No Spray Coalition v. City of New York*, 351 F.3d 602, 604-05 (2d Cir. 2003) (quoting 7 U.S.C. § 136a(c)(5)(D)). Under the FIFRA, the EPA issues a "label" for each registered pesticide, indicating the manner in which it may be used; the statute makes it unlawful "to use any pesticide in a manner inconsistent with its labeling." *Id.* (quoting 7 U.S.C. § 136j(a)(2)(6)).

¹The State of California's State Water Resources Control Board (the "Board") also issued a general permit that covered all aquatic pesticide discharges, as long as the discharger certified that alternative options had been evaluated and that any impact the pesticide application had on the water quality would be reported to the Board. General Permit No. CAG990003, 2001 Cal. ENV LEXIS 12, at *1, 3-4, 19-21 (July 19, 2001).

For nearly thirty years prior to the adoption of the Final Rule, pesticide labels issued under the FIFRA were required to contain a notice stating that the pesticide could not be “discharge[d] into lakes, streams, ponds, or public waters unless in accordance with an NPDES permit.” EPA’s Policy and Criteria Notice 2180.1 (1977). Despite amendments made to the FIFRA’s labeling requirements over the years, pesticide labels have always included a notice about the necessity of obtaining an NPDES permit. *See* EPA’s Policy and Criteria Notice 2180.1 (1984); Pesticide Registration (“PR”) Notice 93-10 (July 29, 1993); PR Notice 95-1 (May 1, 1995); *see also* EPA-738-7-96-007 (Feb. 1996), *available at* <http://www.epa.gov/oppsrrd1/REDS/factsheets/3095fact.pdf>, (Pesticide Reregistration notification for 4, 4- Dimethyloxazolidine) (referring to the labeling requirement described in the PR Notice).

3. *The Regulatory Framework Under the Final Rule*

Under the Clean Water Act, pollutants may only be discharged according to a permit unless they fit into one of the exceptions listed in the federal regulations at 40 C.F.R. § 122.3. The Final Rule revises the regulations by adding pesticides to these exceptions as long as they are used in accordance with the FIFRA’s requirements. 71 Fed. Reg. at 68,485, 68,492. Specifically, the Final Rule states that pesticides applied consistently with the FIFRA do not require an NPDES permit in the following two circumstances:

(1) The application of pesticides directly to waters of the United States in order to control pests. Examples of such applications include applications to control mosquito larvae, aquatic weeds, or other pests that are present in waters of the United States.

(2) The application of pesticides to control pests that are present over waters of the United States, including near such waters, where a portion of the pesticides will unavoidably be deposited to waters of the United States in order to target the pests effectively; for example, when insecticides are aerially applied to a forest canopy where waters of the United States may be present below the

canopy or where pesticides are applied over or near water
for control of adult mosquitoes or other pests.

40 C.F.R. § 122.3(h).

Although the EPA, through its Final Rule, takes the position that pesticides are not generally pollutants, it makes an exception for “pesticide residuals,” which “include[] excess amounts of pesticide.” 71 Fed. Reg. at 68,487. “Pesticide residuals” are those portions of the pesticide that “remain in the water after the application and its intended purpose (elimination of targeted pests) have been completed” *Id.* The EPA concedes that pesticide residue (unlike pesticides generally) *is* a pollutant under the Clean Water Act because it is “waste[] of the pesticide application.” *Id.* Nonetheless, the EPA contends that pesticide residue is not subject to the NPDES permitting program because “at the time of discharge to a water of the United States, the material in the discharge must be both a pollutant, and from a point source.” *Id.* According to the EPA, the residue cannot be subject to the permitting program because by the time it becomes a pollutant it is no longer from a “point source.” Since no “point source” is at play, the EPA reasons, pesticide residue is a “nonpoint source pollutant” and therefore not subject to the permitting requirements. *Id.*

B. Procedural Background

Timely petitions for review of the Final Rule were filed in the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and D.C. Circuits by either the “Industry Petitioners”² or the “Environmental Petitioners.”³ The petitions for review were consolidated in this circuit by an order of the Judicial Panel on Multidistrict

² Agribusiness Association of Iowa, BASF Corporation, Bayer CropScience LP, CropLife America, Delta Council, Eldon C. Stutsman, Inc., FMC Corporation, Illinois Fertilizer & Chemical Association, The National Cotton Council of America, Responsible Industry for a Sound Environment, Southern Crop Production Association, and Syngenta Crop Protection, Inc., LP.

³ Baykeeper, Californians for Alternatives to Toxics, California Sportfishing Protection Alliance, National Center for Conservation Science and Policy, Oregon Wild, Saint John’s Organic Farm, Waterkeeper Alliance, Inc., Peconic Baykeeper, Inc., Soundkeeper, Inc., Environmental Maine, and Toxics Action Center.

Litigation, under 28 U.S.C. §§ 1407 and 2112(a)(3). The self-titled “Industry Intervenors”⁴ filed a motion to intervene in support of the Final Rule.⁵

Environmental Petitioners filed a timely motion to dismiss the petitions because of lack of subject matter jurisdiction or, alternatively, to transfer the cases to the Ninth Circuit. Industry Petitioners, the EPA, and Industry Intervenors opposed this motion. The Environmental Petitioners have also filed a complaint challenging the Final Rule in the Northern District of California in order to preserve review of the Final Rule in the event this Court grants their motion to dismiss. On July 24, 2007, we denied the motion to transfer and deferred the decision on the question of subject matter jurisdiction.

II. JURISDICTION

Environmental Petitioners contend that this dispute should be dismissed for lack of subject matter jurisdiction, arguing that original review of the Final Rule by the courts of appeals is not covered by the grant of original jurisdiction set forth in the Clean Water Act, 33 U.S.C. § 1369(b)(1). Environmental Petitioners are correct that “Congress did not intend court of appeals jurisdiction over all EPA actions taken pursuant to the Act.” *Lake Cumberland Trust, Inc. v. EPA*, 954 F.2d 1218, 1222 (6th Cir. 1992) (quoting *Boise Cascade Corp. v. EPA*, 942 F.2d 1427, 1431 (9th Cir. 1991)). However, we conclude that, at a minimum, §1369(b)(1)(F) encompasses the action before us.

Under 33 U.S.C. § 1369(b)(1)(F), a party may challenge EPA actions “issuing or denying any permit under [33 U.S.C.] section 1342 . . .” in the appropriate circuit court. The Clean Water Act’s permitting program is set forth in § 1342. The jurisdictional grant of § 1369(b)(1)(F) authorizes the courts of appeals “to review the regulations governing the issuance of permits under section 402, 33 U.S.C. § 1342, as well as the issuance or denial of a particular permit.” *Am. Mining Cong. v. EPA*, 965 F.2d 759, 763 (9th Cir. 1992). Thus, in *Natural Resources Defense Council, Inc. v. EPA*,

⁴Industry Intervenors include each of the Industry Petitioners listed above as well as American Farm Bureau Federation and American Forest & Paper Association.

⁵American Mosquito Association submitted a brief as amicus curiae in support of the Final Rule.

966 F.2d 1292, 1296-97 (9th Cir. 1992), the court held that it had jurisdiction to review an EPA rule exempting uncontaminated storm-water discharge from the permitting regulations. The *Natural Resources* court concluded that it had “the power to review rules that regulate the underlying permit procedures.” *Id.* at 1297 (citing *NRDC v. EPA*, 656 F.2d 768, 775 (D.C. Cir. 1981) and *E.I. du Pont de Nemours & Co. v. Train*, 430 U.S. 112, 136 (1976)). The Final Rule before us today likewise regulates the permitting procedures, and we therefore conclude that jurisdiction is proper under § 1369(b)(1)(F).

III. DISCUSSION

A. Standard of Review

Our review of agency decisions has two components. First, we determine whether the agency’s chosen action complies with *Chevron*. 467 U.S. at 842-45; *see United States v. Mead Corp.*, 533 U.S. 218, 227 (2001); *Riverkeeper, Inc. v. EPA* (“*Riverkeeper II*”), 475 F.3d 83, 95 (2d Cir. 2007). When conducting *Chevron* review of the Final Rule, we “examine the [Final Rule] against the statute that contains the EPA’s charge.” *Riverkeeper, Inc. v. EPA* (“*Riverkeeper I*”), 358 F.3d 174, 183 (2d Cir. 2004). Here, we must determine whether “the intent of Congress is clear as to the precise question at issue.” *Nations Bank of N.C., N.A. v. Variable Annuity Life Ins. Co.*, 513 U.S. 251, 257 (1995); *Chevron*, 467 U.S. at 842. “In making [this] threshold determination under *Chevron*, a reviewing court should not confine itself to examining a particular statutory provision in isolation. Rather, the meaning—or ambiguity—of certain words or phrases may only become evident when placed in context.” *Nat’l Ass’n of Home Builders v. Defenders of Wildlife*, 127 S. Ct. 2518, 2534 (2007). If the intent of Congress is clear, “that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.” *Chevron*, 467 U.S. at 842-43. If, and only if, the statute is silent or ambiguous regarding the question at issue, we then move to step two of *Chevron* review and ask whether “the agency’s answer is based on a permissible construction of the statute.” *Id.* at 843. If the agency’s

“interpretation is reasonable, we must defer to its construction of the statute.” *Wachovia Bank, N.A. v. Watters*, 431 F.3d 556, 562 (6th Cir. 2005).

The second part of our review would require us to consider the Final Rule under the standards set forth by the Administrative Procedure Act section 10(2)(e), 5 U.S.C. § 706(2) (the “APA”), under which we are required to “hold unlawful and set aside agency action, findings, and conclusions” that, among other criteria, are found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). Agency action is arbitrary and capricious where

the agency has relied on factors that Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency experience.

Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983); see also *Citizens Coal Council*, 447 F.3d at 890. When conducting this form of review, we ensure that the agency “examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a rational connection between the facts and the choice made.” *Motor Vehicle Mfrs.*, 463 U.S. at 43. “The court is required to make a ‘searching and careful review’ in its assessment of the agency action, but ‘the ultimate standard of review is a narrow one.’” *Citizens Coal Council*, 447 F.3d at 890 (quoting *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971)).

B. The Parties' Positions

I. The Petitioners

Environmental Petitioners argue: (1) that the EPA exceeded its authority under the Clean Water Act in issuing a rule that excludes pesticides from the definition of “pollutant” under 33 U.S.C. § 1362(6); (2) that the EPA exceeded its authority under the Clean Water Act when it determined that, while pesticides are discharged by point sources, the residue of these pesticides is nonetheless a “nonpoint source pollutant”; and (3) that the EPA may not exempt FIFRA-compliant applications of pesticides from the

requirements of the Clean Water Act. Industry Petitioners, on the other hand, argue that the Final Rule is arbitrary and capricious because it treats pesticides applied in violation of the FIFRA as pollutants, while it treats the very same pesticides used in compliance with the FIFRA as non-pollutants. In other words, the Industry Petitioners complain that whether something constitutes a pollutant should not hinge upon compliance with the FIFRA.

2. *The EPA*

As described above, the EPA's Final Rule exempts from the NPDES permitting program pesticides that are applied directly to the Nation's waters, or near such waters, in order to control pests. 40 C.F.R. § 122.3(h). The EPA says that its Final Rule exempts both pesticides generally and "pesticide residue," which includes "excess pesticide." 71 Fed. Reg. at 68,487.

The EPA provides two reasons that its Final Rule is reasonable. First, the EPA argues that the Clean Water Act as it applies to pesticides is ambiguous. The EPA contends that it reasonably determined that pesticides applied according to the FIFRA requirements are not pollutants and therefore are not subject to the NPDES permitting program. The EPA reasons that "Congress defined the term 'pollutant' in the Clean Water Act to mean one of 16 specific items." (EPA Br. at 22.) Of these sixteen, the EPA states that pesticides, which are either chemical or biological in nature, may only be considered to be "chemical wastes" or "biological materials." 71 Fed. Reg. at 68,486. The EPA argues that pesticides are not "chemical wastes" in the ordinary dictionary definition of the word "waste," because waste is that which is "eliminated or discarded as no longer useful or required after the completion of a process." *Id.* (quoting *The New Oxford American Dictionary* 1905 (Elizabeth J. Jewell & Frank Abate eds., 2001)). Rather than being wastes, the EPA reasons that pesticides applied according to the FIFRA's labeling requirements "are products that the EPA has evaluated and registered for the purpose of controlling target organisms, and are designed, purchased, and applied to perform that purpose." *Id.* The EPA next concludes that pesticides applied in

accordance with the FIFRA are not “biological materials” because to find otherwise would lead to the anomalous result “that biological pesticides are pollutants, while chemical pesticides used in the same circumstances are not.” *Id.*

The EPA’s second argument attempts to justify its Final Rule as applied to pesticide residue. In contrast to pesticides generally, which the EPA contends are *not* pollutants, the EPA concedes that pesticide residue and excess pesticide *are* pollutants within the meaning of the Clean Water Act because “they are wastes of the pesticide application.” 71 Fed. Reg. at 68,487. The EPA also concedes that pesticides are discharged from a point source. *Id.* at 68,487-88. Nonetheless, the EPA concludes that no permit is required for pesticide applications that result in excess or residue pesticide because it interprets the Clean Water Act as requiring permits only for discharges that are “both a pollutant, and from a point source” at the time of discharge. *Id.* at 68,487.

C. Analysis

I. *Are Pesticides Unambiguously “Pollutants” Within the Meaning of the Act?*

The first question under *Chevron* is whether the Clean Water Act unambiguously includes pesticides within its definition of “pollutant.” Under this first step, this Court determines “whether Congress has directly spoken to the precise question at issue.” 467 U.S. at 842. This is determined by “employing traditional tools of statutory construction.” *Id.* The meaning of a statute “is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.” *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997); *see also Dole v. United Steelworkers of Am.*, 494 U.S. 26, 35 (1990) (“Our ‘starting point is the language of the statute,’ . . . but ‘in expounding a statute, we are not guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.’”) (citations omitted). If Congress’s intent is clear from the statutory language, then “that intent must be given effect.” *Chevron*, 467 U.S. at 842-43.

As noted above, the Clean Water Act defines “pollutant” as “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6). This Court has previously concluded that the “broad generic terms” included in the definition of “pollutant” demonstrate Congress’s intent to capture more than just the items expressly enumerated. *United States v. Hamel*, 551 F.2d 107, 110 (6th Cir. 1977) (concluding that the Clean Water Act covers, at a minimum, those pollutants covered under the Refuse Act, which applies to “all foreign substances” not explicitly exempted from coverage); *see also, e.g., Cedar Point Oil Co.*, 73 F.3d at 565 (“[T]he breadth of many of the items in the list of ‘pollutants’ tends to eviscerate any restrictive effect.”); *No Spray Coalition, Inc.*, 2005 U.S. Dist. LEXIS 11097, at *17 (citing S. Rep. No. 92-414 at 76 (1972), reprinted in 1972 U.S.C.C.A.N. 3668, 3742). However, we need not consider the term’s breadth today. Rather, we find the plain language of “chemical waste” and “biological materials” in § 1362(b) to be unambiguous as to pesticides. This Court must, therefore, give effect to the Congress’s expressed intent. *See Chevron*, 467 U.S. at 842-43.

a. Chemical Waste

Generally, a court should give a word in a statute its “ordinary, contemporary, common meaning, absent an indication Congress intended [it] to bear some different import.” *Grand Traverse Band of Ottawa & Chippewa Indians v. Office of U.S. Attorney*, 369 F.3d 960, 967 (6th Cir. 2004) (quoting *Williams v. Taylor*, 529 U.S. 420, 431-32 (2000)). The EPA refers the Court to *The New Oxford American Dictionary* (Jewell & Abate eds. 2001), which defines waste as “eliminated or discarded as no longer useful or required after the completion of a process.” *Id.* at 1905. Industry Petitioners point the Court to *Black’s Law Dictionary* (8th ed. 2004), which defines waste as “[r]efuse or superfluous material, esp. that after a manufacturing or chemical process.” *Id.* at 1621. Similarly, the Ninth Circuit has accepted the American Heritage Dictionary’s definition of waste as “any useless or worthless byproduct of a process or

the like; refuse or excess material.” *N. Plains Res. Council v. Fidelity Exploration & Dev. Co.*, 325 F.3d 1155, 1161 (9th Cir. 2003); *Fairhurst v. Hagener*, 422 F.3d 1146, 1149 (2005).

Under any of these definitions of “waste,” “chemical waste” for the purposes of the Clean Water Act would include “discarded” chemicals, “superfluous” chemicals, or “refuse or excess” chemicals. As such, under a plain-meaning analysis of the term, we cannot conclude that all chemical pesticides require NPDES permits. Rather, like our sister circuit in *Fairhurst*, we conclude that: so long as the chemical pesticide “is intentionally applied to the water [to perform a particular useful purpose] and leaves no excess portions after performing its intended purpose[] it is not a ‘chemical waste,’” 422 F.3d at 1149, and does not require an NPDES permit. *Id.*

On the other hand, as Environmental Petitioners argue and the EPA concedes, excess pesticide and pesticide residue meet the common definition of waste. To this extent, the EPA’s Final Rule is in line with the expressed intent of Congress, as the Rule defines these pesticide residues as pollutants “because they are wastes of the pesticide application.” 71 Fed. Reg. at 68,487. The EPA aptly states:

[P]esticides applied to land but later contained in a waste stream, including storm water regulated under the Clean Water Act, could trigger the requirement of obtaining an NPDES permit In addition, if there are residual materials resulting from pesticides that remain in the water after the application and its intended purpose has been completed, the residual materials are pollutants because they are substances that are no longer useful or required after the completion of a process.

(EPA Br. 29-30.) This Court agrees.

Therefore, at least two easily defined sets of circumstances arise whereby chemical pesticides qualify as pollutants under the Clean Water Act. In the first circumstance, a chemical pesticide is initially applied to land or dispersed in the air—these pesticides are sometimes referred to as either “terrestrial pesticides” or “aerial pesticides” and include applications “above” or “near” waterways. At some point following application, excess pesticide or residual pesticide finds its way into the

navigable waters of the United States. Pesticides applied in this way and later affecting the water are necessarily “discarded,” “superfluous,” or “excess” chemical. Such chemical pesticide residuals meet the Clean Water Act’s definition of “chemical waste.”

In the second circumstance, a chemical pesticide is applied directly and purposefully to navigable waters to serve a beneficial purpose—such pesticides are often referred to as “aqueous” or “aquatic” pesticides. As contemplated by the EPA, if residual aquatic pesticide “remain[s] in the water after the application and [the pesticide’s] intended purpose has been completed,” then the residue would likewise qualify as a “chemical waste.” (EPA Br. 29-30.) As such, these chemical wastes would unambiguously fall within the ambit of the Clean Water Act.

This second scenario, of course, leads to the inevitable quandary that both non-waste aqueous pesticide and pesticide residual are applied to water at the same moment, which then gives rise to the question of how the EPA can regulate and permit the residual. However, this problem is more theoretical than practical. In reality, whether or not a particular chemical pesticide needs to be regulated can be easily answered by both the EPA’s and industry’s experience with that pesticide. If, as was the case in *Fairhurst*, a chemical such as antimycin leaves no excess portions after performing its intended purpose, then that chemical’s use need not be regulated. *See Fairhurst*, 422 F.3d at 1149. If, on the other hand, a chemical pesticide is known to have lasting effects beyond the pesticide’s intended object, then its use must be regulated under the Clean Water Act. *See also Headwaters, Inc. v. Talent Irrigation Dist.*, 243 F.3d 526, 532-33 (9th Cir. 2001).

b. Biological Materials

Continuing our review under *Chevron*, we must examine the “ordinary, contemporary, [and] common meaning” of “biological materials.” *Grand Traverse Band*, 369 F.3d at 967. Environmental Petitioners point out that *Webster’s Third New International Dictionary* (Gove ed. 1993) defines “material” as “of, relating to, or consisting of matter” and “the basic matter from which the whole or the great part of

something is made.” *Id.* at 1392. The *Oxford English Dictionary* provides that “material” is “that which constitutes the substance of a thing (physical or non-physical); a physical substance; a material thing.” OED Online, available at http://dictionary.oed.com/cgi/entry/00303279?query_type=word&queryword=material&first=1&max_to_show=10&sort_type=alpha&result_place=1&search_id=VoPI-cVwRjA-12823&hilite=00303279. The plain, unambiguous nature of this language compels this Court to find that matter of a biological nature, such as biological pesticides, qualifies as a biological material and falls under the Clean Water Act if it is “discharged into water.” 33 U.S.C. § 1362(6).

The EPA points to Ninth Circuit case law that holds that “mussel shells and mussel byproduct are not pollutants” under the Clean Water Act. *Ass’n to Protect Hammersley, Eld & Totten Inlets v. Taylor*, 299 F.3d 1007, 1016 (9th Cir. 2002). The *Hammersley* court found the Clean Water Act to be “ambiguous on whether ‘biological materials’ means *all* biological matter regardless of quantum and nature.” *Id.* While that case is distinguishable, we choose a more limited analysis.⁶ We see our obligation not as defining the outermost bounds of “biological materials,” but rather simply as deciding whether biological pesticides fit into the ordinary meaning of “biological materials.”

The term “biological materials” cannot be read to exclude biological pesticides or their residuals. The EPA’s Final Rule treats biological pesticides no differently from chemical pesticides, exempting both from NPDES permitting requirements in certain circumstances. *See* 71 Fed. Reg. at 68,492. We find this interpretation to be contrary to the plain meaning of the Clean Water Act. In 33 U.S.C. § 1362, Congress purposefully included the term “biological materials,” rather than a more limited term such as “biological wastes.” Congress could easily have drafted the list of pollutants in the Clean Water Act to include “chemical wastes” and “biological wastes.” But, here, the word “waste” does not accompany “biological materials.” Thus, if we are to give

⁶The *Hammersley* court based its conclusion on the fact that shells and shell byproduct of shellfish-farming facilities are the result of natural biological processes, not the result of a transforming human process. *See Hammersley*, 299 F.3d at 1016-17.

meaning to the word “waste” in “chemical waste,” we must recognize Congress’s intent to treat biological and chemical pesticides differently.

This interpretation is consistent with the precedent of this Court and others. In *National Wildlife Federation v. Consumer Power Co.*, 862 F.2d 580 (6th Cir. 1988), we determined that “[m]illions of pounds of live fish, dead fish and fish remains annually discharged in Lake Michigan by [a] facility are pollutants within the meaning of the [Clean Water Act], since they are “biological materials.” Likewise, the District Court of Maine determined that “salmon feces and urine that exit the net pens and enter the waters are pollutants as they constitute ‘biological materials’ or ‘agricultural wastes.’” *United States Pub. Interest Research Group v. Atl. Salmon of Maine*, 215 F. Supp. 2d 239, 247 (D. Me. 2002) (citing *Higbee v. Starr*, 598 F. Supp. 323, 330-31 (D. Ark. 1984) *aff’d*, 782 F.2d 1048 (8th Cir. 1985)). Biological pesticides similarly must be considered “biological materials.” Biological pesticides consist of artificial concentrations of viruses, bacteria, fungi, plant materials, and/or other biological materials. See Pesticides: Glossary, U.S. EPA, available at <http://www.epa.gov/pesticides/glossary>. Congress defined “pollution” as “the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.” 33 U.S.C. § 1362(19). Adding biological pesticides to water undeniably alters its biological integrity. Therefore, we find biological pesticides to be “biological materials” under the Clean Water Act.

2. *Are Chemical Pesticide Residuals Added to the Water by “Point Sources?”*⁷

The EPA further defends its Final Rule by arguing that excess pesticide and residue pesticide are not discharged from a “point source.” In other words, though excess and residue pesticides have exactly the same chemical composition and are discharged from the same point source at exactly the same time as the original pesticide, and though excess and residue pesticides would not enter the Nation’s waterways but for

⁷This analysis is not necessary for biological pesticides because, as discussed above, both biological pesticides and their residuals are pollutants under the Clean Water Act. Because biological pesticides are discharged from a “point source” they must be regulated under the Act.

the discharge of the original pesticide, the EPA concludes that excess and residue pesticides are not discharged from a “point source” because at the moment of discharge there is only pesticide. This is so, according to the EPA, because excess and residue pesticides do not exist until after the discharge is complete, and therefore “should be treated as a nonpoint source pollutant.” 71 Fed. Reg. at 65,847.

The Clean Water Act defines “point source” as “any discernible, confined, and discrete conveyance,” including a variety of mechanisms such as “container,” “rolling stock,” or “vessel or other floating craft.” 33 U.S.C. § 1362(14). The EPA and the courts agree that pesticides are applied by point sources. *See* 71 Fed. Reg. at 65,847; *League of Wilderness Defenders v. Forsgren*, 309 F.3d 1181, 1185 (9th Cir. 2002); *Headwaters*, 243 F.3d at 528. The EPA argues that, at the time of discharge, the pesticide is a nonpollutant, and the excess pesticide and pesticide residues are not created until later, presumably after they are already in the water. Therefore, according to the EPA, pesticides at the time of discharge do not require permits because they are not yet excess pesticides or residue pesticides. But there is no requirement that the discharged chemical, or other substance, immediately cause harm to be considered as coming from a “point source.” Rather, the requirement is that the discharge come from a “discernible, confined, and discrete conveyance,” 33 U.S.C. § 1362(14), which is the case for pesticide applications.

The EPA offers no direct support for its assertion that a pesticide must be “excess” or “residue” at the *time of discharge* if it is to be considered as discharged *from a “point source.”* This omission of authority is understandable, as none exists. The Clean Water Act does not create such a requirement. Instead, it defines “discharge of a pollutant” as “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12). The EPA’s attempt at temporally tying the “addition” (or “discharge”) of the pollutant to the “point source” does not follow the plain language of the Clean Water Act. Injecting a temporal requirement to the “discharge of a pollutant” is not only unsupported by the Act, but it is also contrary to the purpose of the permitting program, which is “to prevent harmful discharges into the Nation’s waters.”

Defenders of Wildlife, 127 S. Ct. at 2525. If the EPA's interpretation were allowed to stand, discharges that are innocuous at the time they are made but extremely harmful at a later point would not be subject to the permitting program. Further, the EPA's interpretation ignores the directive given to it by Congress in the Clean Water Act, which is to protect water quality. As the EPA itself recognizes, "Congress generally intended that pollutants be controlled at the source whenever possible." 73 Fed. Reg. at 33,702 (citing S. Rep. No. 92-414, p. 77 (1972)). Here, it is certainly possible for pesticide residue to be controlled at its source because the discharge of the pesticide introduces such residue into the water.

The EPA's newly asserted temporal element also runs contrary to its own recent interpretation of the Clean Water Act's term "addition." *See* 73 Fed. Reg. 33,697 (June 13, 2008). The EPA determined that transfers of water from one body of water to another do not constitute the "addition" of a pollutant to the new body of water, and in doing so clarified its understanding of the term "addition." 73 Fed. Reg. 33,697. The EPA explained:

Given the broad definition of "pollutant," transferred (and receiving) water will always contain intrinsic pollutants, but the pollutants in transferred water are already *in* "the waters of the United States" before, during, and after the water transfer. Thus, there is no "addition"; nothing is being added "to" "the waters of the United States" by virtue of the water transfer, because the pollutant at issue is already part of "the waters of the United States" to begin with.

....

As noted above, EPA's longstanding position is that an NPDES pollutant is "added" when it is introduced into a water from the "outside world" by a point source. *Gorsuch*, 693 F.2d at 174-75.

Id. at 33,701. Given the EPA's understanding of "addition" of a pollutant as stated above, it is clear that under the meaning of the Clean Water Act, pesticide residue or excess pesticide—even if treated as distinct from pesticide—is a pollutant discharged from a point source because the pollutant is "introduced into a water from the 'outside world' by" the pesticide applicator from a "point source." *See id.* This interpretation

coincides with the method of determining whether a discharge is from a “point source” that the Supreme Court recently cited with approval: “For an addition of pollutants to be from a point source, the relevant inquiry is whether—but for the point source—the pollutants would have been added to the receiving body of water.” *Miccosukee*, 541 U.S. at 103 (quoting *Florida Water Mgmt. Dist. v. Miccosukee Tribe of Indians*, 280 F.3d 1364, 1368 (11th Cir. 2002)). It is clear that but for the application of the pesticide, the pesticide residue and excess pesticide would not be added to the water; therefore, the pesticide residue and excess pesticide are from a “point source.”

3. *May the Final Rule Stand?*

For all of these reasons, we conclude that the statutory text of the Clean Water Act forecloses the EPA’s Final Rule. The EPA properly argues that excess chemical pesticides and chemical pesticide residues, rather than all chemical pesticides, are pollutants. However, the Final Rule does not account for the differences between chemical and biological pesticides under the language of the Clean Water Act. Further, because the Act provides that residual and excess chemical pesticides are added to the water by a “point source” there is no room for the EPA’s argument that residual and excess pesticides do not require an NPDES permit. The “point source” from which the residue originates is easily discernable and necessarily must “be controlled at the source.” *See* 73 Fed. Reg. at 33,702. Given all of the above in combination with the EPA’s interpretation that “[p]oint sources need only convey pollutants into navigable waters to be subject to the Act,” *id.* at 33,703, dischargers of pesticide pollutants are subject to the NPDES permitting program in the Clean Water Act. As such, the EPA’s Final Rule cannot stand. Because the Clean Water Act’s text bars the Final Rule we make no determination regarding the validity of the issuance of the Final Rule under the APA, nor do we analyze the relationship between the Clean Water Act and the FIFRA.

CONCLUSION

For the foregoing reasons, Environmental Petitioners' petitions are **GRANTED** in part and **DENIED** in part, and Industry Petitioners' petitions are **DENIED** in whole. We **VACATE** the Final Rule.

DRAFT FOR BOARD DISCUSSION
Mosquito and Vector Control Association of California
Planning Session
West Valley MVD
December 4, 2008

The meeting started at 10:00 a.m.

Attendees

John Rusmisel	Jerry Davis	Ken Fujioka
Steve West	Lloyd Douglass	Allen Inman
Chuck Balch	Mike Alburn	Becky Cline
Lyn Hawkins	Susanne Klueh	Dave Brown
Bill Walton	Mike Kimball	Ralph Heim
Catherine Smith	Simone Smith	Min-Lee Cheng
Tony Stinwell	Don Black	Paul Binding
John Stroh	Dino Candito	Gerard Goedhart

Dave Brown reviews the planning goals from the 2007 Board Workshop.

President Dave Brown opened the floor to comments and discussion. John Rusmisel reviewed MVCAC organizational changes that occurred this year. The most significant change was transitioning the association management responsibilities to Smith Moore and Associates. President Brown's biggest concern was representation from the southern region which he hopes has improved over the year.

Financial Planning

Treasurer Becky Cline announced to attendees that the Finance Committee is in the process of creating a reserve policy and will have the complete details at the January 2009 Board Meeting.

The Finance Committee held a lengthy discussion on adjusting the dues for MVCAC. Now that MVCAC significantly reduced the cost of the management company there could be some flexibility in the dues. Director Mike Alburn suggests that there be a three year period before the Association addresses the dues change. President-Elect John Rusmisel suggests that MVCAC keep the dues the way they are so the association can build its reserves. Adequate reserves would allow MVCAC to fund future special projects. Treasurer Cline recommended that MVCAC develop a methodology for being transparent with members on our reserve policy. The Finance Committee is charged with that task.

Action Item- A financial review of MVCAC's year-end financials needs to be completed. Treasurer Cline will work with staff to complete the review as

quickly as possible. A report on the status of the review will be given to the Board in January. The Board recommends a two-year contract with the firm which is selected this year to ensure consistency in the process.

The payment process for both the mosquito pool and chicken testing was discussed in detail and some issues associated with the programs such as pre-order and billing. DHS currently requires 80% upfront for the chicken tests. .

Action Item: Approved procedures need to be developed for all of the programs associated with this activity. Staff will work with Treasurer Cline to draft for Board consideration in January. The procedure will promote consistency and clarity for the participants. Executive Director Smith will meet with DHS prior to the January board meeting to discuss the issues.

Action Item: President Dave Brown, Legislative Advocate Ralph Heim and IT Committee Chair Bruce Eldridge will have a conference call to discuss outstanding funds in the UC Davis research program which may have not been allocated appropriately in the past.

With the recent transfer of the Mosquito Research Program (MRP) away from a standalone program at UC Davis to part of the Integrated Pest Management (IPM) program there is significant concern about the continued viability of the program. There will be no funding of the MRP this year. The participants concluded that the need for research funding remains and MVCAC needs to seek out all possible opportunities to secure research dollars. The idea of a grant writer was discussed which could be contracted through the CMVCA.

President Brown stressed that we need to look to the CMVCA as the mechanism for funding future research. MVCAC leaders have been working to strengthen the Foundation but there is a long way to go. Discussions on the CMVCA raised the following issues:

- 1) CMVCA needs to have a separate governing body – not the MVCAC Board of Directors.
- 2) A separate CMVCA Board should include outside stakeholders who would benefit from continued mosquito research such as California Association of Sanitation Agencies, League of California Cities, Nature Conservancy, Farm Bureau, Ducks Unlimited, etc.
- 3) Representatives from both the southern and northern areas need to be engaged because research needs may differ between areas (catch basins vs. rice fields). CMVCA should identify a list of research projects needed so grants could be matched.

Action Item: A CMVCA Governance Committee was established which includes: President Brown, Past President Steve West and John Stroh with

staff support of Executive Director Smith. The Committee will look at both governance structure and funding options.

MVCAC Committees for 2009

Treasurer Cine can no longer be on the Finance Committee but as treasurer will serve as the liaison between the Board and the committee. The IT Committee will continue to evaluate Affiniscape. This committee has a number of other items for this year including:

- 1) Evaluate the potential for using the Surveillance Gateway to record and report pesticide use by member agencies.
- 2) Evaluate commercial and open source teleconferencing systems for continuing education programs and inter-agency meetings.
- 3) Evaluate the development of data collection and reporting system of pesticide resistance data submitted by member agencies.

Action Item: Director Mike Kimball will be the Board liaison to the IPM Committee.

Action Item: President Brown will be moving into the chair of the Nominating Committee. He will work on identifying other committee members.

Action Item: President Brown will be appointed as the chair of the Public Relations Committee to help assist in focusing the activities of the committee.

Action Item: Steve Mulligan will move to the chair of the Training and Certification Committee due to Ed Lucchesi's retirement. Bruce Bondi will be replacing Lloyd Douglass on the committee. Director Jim Wanderscheid was nominated to be the chair liaison. Suzanne Kuhl was selected as the chair of the Vector and Vector-borne Disease Committee.

Vector Control Research Committee established its priorities:

- 1) Wintering mechanisms of West Nile virus in California.
- 2) Efficacy of adulticiding (ground and aerial) and the fate of adulticides in the environment.
- 3) Development of alternative/novel agents for mosquito control and re-formulate the existing active ingredients, e.g. non-PBO based adulticides.
- 4) Pesticide resistance detection diagnostics.

Action Item: Vector Control Research Committee and the CMVCA should have a joint meeting in the spring to discuss research priorities and grant funding.

MVCAC Executive Committee has been conducting conference calls the second Tuesday of every month and distributing minutes to the full Board.

Website/Publications

Executive Director Smith shared new website designs and received input from the participants. The new website design should be up and running prior to the January conference. Smith told the board that Smith Moore and Associates has hired two new staff members Fiona Young and Ashley Paul both will be working with MVCAC in some manner.

The group discussed the annual salary survey with both positive and negative comments on the publication.

Action Item: Staff was directed to return to the MVCAC Board with some ideas on how to improve the salary survey participation and product.

Staff gave an update on the 2008 proceedings. Headquarters is working with Dr. Dick Myers. The process is slower this year due to a number of factors which the Board will address in the future with other editors. In the future MVCAC needs to have a requirement that all submitted documents be in the same format.

Action: The deadline for all revised information for the 2009 MVCAC Yearbook needs to be in the MVCAC office no later than February 1, 2009. Staff will be sending out a document to all members asking for updated information. The yearbook needs to be finalized prior to the Visalia meeting.

Don Black announced that the archives were delivered to his district and he is fine with holding them until Dr. Eldridge can work out the details with the library.

Director Jerry Davis brought up the idea of having a committee responsible for letting districts know of new laws and regulations by listing it on the website. Dave Brown suggested that the training and certification committee be in charge of the task. The board is not sure how the committee will be able to handle the project.

Action Item: Develop an email list for trustees allowing them to assist with legislative efforts.

MVCAC - Planning Session December 5, 2008

The meeting started at 9:02 a.m.

Review of yesterday's planning session discussion:

1) Finance Committee to finalize investment/reserve policies and how to implement.

- 2) Finance Committee to discuss any possible contribution of MVCAC funds to CMVCA – one time or ongoing.
- 3) Staff to work with Finance Committee on completion of annual fiscal review.
- 4) Staff to meet with DHS on up-front funding for program.
- 5) Finance Committee will update Performance Based Budget (PBB) based on session discussions.
- 6) MRP funding – Committee established and will report back to Board (Heim, Eldridge, Brown).
- 7) Ad Hoc CMVCA Governance Structure Committee established.
- 8) Staff to send out request for contributions by members to CMVCA.
- 9) MVCAC Legislative Day set for March 3, 2009.
- 10) Staff to identify date for MVCAC Day in the District
- 11) Staff to develop talking points for both Legislative Day and Day in the District for members to use
- 12) Staff to send out updated ERAF information.
- 13) Heim will work with staff to send out a “How well do you know your legislators’ questionnaire?”
- 14) Three proactive legislative issues in 2009 – summary abatement, state owned lands and MRP.
- 15) Executive Committee Conference calls – continue with distribution of minutes.
- 16) Nominations Chair Dave Brown will be added two additional committee members.
- 17) IT Committee – established priorities.
- 18) Complete and distribute 2009 Committees chairs/members/charges.
- 19) Salary survey – Staff and board will continue discussion and review options.
- 20) Execute new MVCAC website design.
- 21) Public Relations Committee will work with staff on MVCAC News content.
- 22) 2009 Yearbook timeline established.
- 23) Review proceedings process for 2009.
- 24) Staff to ensure all past minutes and board materials on are the new website.

President Elect Rusmisl suggested that Jerry Davis be the Training and Certification Committee board liaison and Jim Wanderschied move to Vector and Vector Borne Diseases if he remains the regional representative.

President Brown will oversee the evaluation process for Smith Moore and Associates. He and President Elect Rusmisl will meet with Catherine Smith (SMA) at the January conference.

John Stroh is in charge of the January MVCAC golf tournament. President Elect Rusmisl reviewed the January program and the low participation in the Reeves Award. Unless there is an increase in participation or other strong reasons, the competition may be cancelled this year.

With no further business to discuss the meeting was at 11:05 a.m.

MOSQUITO AND VECTOR CONTROL ASSOCIATION OF CALIFORNIA
Board of Directors
Meeting of January 28, 2009

AGENDA SUPPORTING DATA

Agenda Item 8. – Executive Director's Report

8.01 Meeting/Conference Dates for 2009*

2009 BOARD MEETING SCHEDULE

SPRING MEETING: May 7 - 8, 2009 at the Marriott Visalia.

SUMMER MEETING: Date T.B.D. in Orange County.

FALL MEETING: October 22 – 23, 2009 at the Embassy Suites Lake Tahoe.

2009 & 2010 CONFERENCE SCHEDULE

77TH ANNUAL CONFERENCE: January 25 – 28 at the Hyatt Regency San Francisco Airport in Burlingame.

78TH ANNUAL CONFERENCE: February 7 – 10 in Sacramento.

2009 LEGISLATIVE DAY: March 3 at the CSAC Conference center in Sacramento.

2009 DAY IN THE DISTRICT: May 29 in each district.

MOSQUITO AND VECTOR CONTROL ASSOCIATION OF CALIFORNIA
Board of Directors
Meeting of January 28, 2009

AGENDA SUPPORTING DATA

Agenda Item 9. – Treasurer's Report

Included are the December 31, 2008 financials although due to the date of arrival of the MVCAC bank statements these financials are unreconciled.

Copies of the November 2008 reconciled financials are available at the meeting.

MVCAC
Balance Sheet
As of December 31, 2008

	<u>Dec 31, 08</u>
ASSETS	
Current Assets	
Checking/Savings	
1000 Bank of America Checking	333,789.42
UBS Financial Services Inc CD'S	100,000.00
UBS Financial Services, Inc MM	<u>253,174.85</u>
Total Checking/Savings	686,964.27
Accounts Receivable	
1100 Accounts Receivable	<u>10,127.45</u>
Total Accounts Receivable	10,127.45
Other Current Assets	
1201 GUF	15,010.00
Pre Paid Expenses	12,200.00
1200 Undeposited Funds	<u>8,000.00</u>
Total Other Current Assets	<u>35,210.00</u>
Total Current Assets	732,301.72
Other Assets	
1101 GAR	<u>39,157.00</u>
Total Other Assets	<u>39,157.00</u>
TOTAL ASSETS	<u><u>771,458.72</u></u>
LIABILITIES & EQUITY	
Equity	
Opening Bal Equity	383,568.08
Retained Earnings	56,427.48
Net Income	<u>331,463.16</u>
Total Equity	<u>771,458.72</u>
TOTAL LIABILITIES & EQUITY	<u><u>771,458.72</u></u>

MVCAC
Budget vs. Actual
July through December 2008

	<u>Jul - Dec 08</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>% of Budget</u>
Income				
110.00 Annual Meeting				
110.01 Registrations	0.00	75,000.00	-75,000.00	0.0%
110.02 Sponsorships	0.00	27,500.00	-27,500.00	0.0%
110.03 Exhibitors	-50.00	12,000.00	-12,050.00	-0.42%
110.04 Miscellaneous	0.00	1,000.00	-1,000.00	0.0%
110.05 Annual Mtg Advertising	0.00	1,500.00	-1,500.00	0.0%
110.00 Annual Meeting - Other	78,139.00			
Total 110.00 Annual Meeting	<u>78,089.00</u>	<u>117,000.00</u>	<u>-38,911.00</u>	<u>66.74%</u>
120.00 Publications				
120.01 Pamphlets, Guides, Misc	1,323.55	6,000.00	-4,676.45	22.06%
120.03 Postage	145.06	600.00	-454.94	24.18%
120.04 Sales Tax	98.64	350.00	-251.36	28.18%
120.05 Proceedings	0.00	300.00	-300.00	0.0%
120.06 Yearbook	150.00	250.00	-100.00	60.0%
120.00 Publications - Other	0.00			
Total 120.00 Publications	<u>1,717.25</u>	<u>7,500.00</u>	<u>-5,782.75</u>	<u>22.9%</u>
130.00 Dues				
130.01 Corporate Members	334,267.07	345,000.00	-10,732.93	96.89%
130.02 Sustaining Members	19,500.00	25,000.00	-5,500.00	78.0%
130.03 Associate Members	1,650.00	1,500.00	150.00	110.0%
130.04 Affiliate Members	1,100.00	1,500.00	-400.00	73.33%
Total 130.00 Dues	<u>356,517.07</u>	<u>373,000.00</u>	<u>-16,482.93</u>	<u>95.58%</u>
140.00 Advertising Income				
140.01 Yearbook Advertising	550.00	500.00	50.00	110.0%
Total 140.00 Advertising Income	<u>550.00</u>	<u>500.00</u>	<u>50.00</u>	<u>110.0%</u>
150.00 Miscellaneous				
150.01 Interest	1,953.44	12,600.00	-10,646.56	15.5%
150.02 HB Munns Fund	0.00	2,500.00	-2,500.00	0.0%
150.00 Miscellaneous - Other	0.00			
Total 150.00 Miscellaneous	<u>1,953.44</u>	<u>15,100.00</u>	<u>-13,146.56</u>	<u>12.94%</u>
Total Income	<u>438,826.76</u>	<u>513,100.00</u>	<u>-74,273.24</u>	<u>85.53%</u>
Gross Profit	438,826.76	513,100.00	-74,273.24	85.53%
Expense				
210.00 Annual Meeting				
210.01 Hotel Expenses	0.00	60,000.00	-60,000.00	0.0%
210.02 Supplies,shipping,printi	1,690.69	6,000.00	-4,309.31	28.18%
210.03 Reeves Award	0.00	2,000.00	-2,000.00	0.0%

MVCAC
Budget vs. Actual
July through December 2008

	<u>Jul - Dec 08</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>% of Budget</u>
210.04 Program Printing	-257.40	4,000.00	-4,257.40	-6.44%
210.05 Awards and Raffle Prizes	1,725.00	1,500.00	225.00	115.0%
210.06 Entertainment	0.00	1,500.00	-1,500.00	0.0%
210.08 Speaker Expenses	0.00	1,500.00	-1,500.00	0.0%
210.09 Conference Tournament	120.00			
210.11 Exhibit Hall Set Up	0.00	6,045.00	-6,045.00	0.0%
210.13 Staff Travel	139.30	1,500.00	-1,360.70	9.29%
210.00 Annual Meeting - Other	1,464.18			
Total 210.00 Annual Meeting	4,881.77	84,045.00	-79,163.23	5.81%
220.00 Continuing Education				
220.01 Video Tape Production	0.00	4,000.00	-4,000.00	0.0%
220.02 Intranets Website Maint	1,199.70	2,400.00	-1,200.30	49.99%
220.03 Shipping	0.00	500.00	-500.00	0.0%
Total 220.00 Continuing Education	1,199.70	6,900.00	-5,700.30	17.39%
300.00 Legal				
300.01 Legal Advice and Service	5,359.67	11,500.00	-6,140.33	46.61%
Total 300.00 Legal	5,359.67	11,500.00	-6,140.33	46.61%
400.00 Legislative Program				
400.01 Advocate Contract	30,614.45	61,500.00	-30,885.55	49.78%
400.04 Legislative Pocket Direc	602.30	1,200.00	-597.70	50.19%
400.05 Printing, Awards, Misc	197.33	1,000.00	-802.67	19.73%
400.06 Capital Advantage	0.00	1,875.00	-1,875.00	0.0%
400.00 Legislative Program - Other	200.75			
Total 400.00 Legislative Program	31,614.83	65,575.00	-33,960.17	48.21%
600.00 Mgmt Services & Admin				
600.01 Management Contract	7,200.00	86,400.00	-79,200.00	8.33%
600.02 D&O Liability Insurance	2,200.00	4,500.00	-2,300.00	48.89%
600.03 CC Trans./Bank Fees	100.59	3,700.00	-3,599.41	2.72%
600.04 Audit/Financial Review	850.00	7,000.00	-6,150.00	12.14%
600.05 Telephone,Fax,& Internet	374.00	1,000.00	-626.00	37.4%
600.06 Photocopies	0.00	3,000.00	-3,000.00	0.0%
600.07 AMCA Annual Mt	0.00	2,000.00	-2,000.00	0.0%
600.08 AMCA Leg Day DC	0.00	2,000.00	-2,000.00	0.0%
600.09 Spec Dist Leadership Fdn	0.00	1,000.00	-1,000.00	0.0%
600.10 AMCA Sustaining Membersh	100.00	1,000.00	-900.00	10.0%
600.11 CDEH Annual Conference	0.00	1,000.00	-1,000.00	0.0%
600.14 Staff Travel	16.44	2,500.00	-2,483.56	0.66%
600.15 Membership/Website	5,125.00	6,000.00	-875.00	85.42%
600.16 Postage	613.18	1,000.00	-386.82	61.32%
600.17 Office Supplies	100.00	500.00	-400.00	20.0%
600.18 Transition Expenses	2,527.56			
600.20 Miscellaneous	840.50	8,000.00	-7,159.50	10.51%

MVCAC
Budget vs. Actual
July through December 2008

	<u>Jul - Dec 08</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>% of Budget</u>
600.00 Mgmt Services & Admin - Other	36,000.00			
Total 600.00 Mgmt Services & Admin	56,047.27	130,600.00	-74,552.73	42.92%
700.00 Publications				
700.01 Annual Conf Proceedings	0.00	5,000.00	-5,000.00	0.0%
700.02 Annual Yearbook	0.00	3,500.00	-3,500.00	0.0%
700.03 Pamphlets, Guides, Misc	0.00	14,000.00	-14,000.00	0.0%
700.04 Quarterly Newsletter	975.00	1,800.00	-825.00	54.17%
700.05 Sales Tax	0.00	600.00	-600.00	0.0%
700.06 Salary Survey	0.00	600.00	-600.00	0.0%
700.07 Postage	18.25	600.00	-581.75	3.04%
Total 700.00 Publications	993.25	26,100.00	-25,106.75	3.81%
800.00 Board Meeting&Workshop				
800.01 Summer Mtg-Ontario	130.34	2,500.00	-2,369.66	5.21%
800.02 Fall Mtg- Lake Tahoe	6,666.72	6,000.00	666.72	111.11%
800.04 Spring Mtg-Monterey	0.00	4,000.00	-4,000.00	0.0%
800.05 Board Planning - Sac	470.03	2,500.00	-2,029.97	18.8%
Total 800.00 Board Meeting&Workshop	7,267.09	15,000.00	-7,732.91	48.45%
900.00 Transfer to Reserves	0.00	75,000.00	-75,000.00	0.0%
Reconciliation Discrepancies	0.02			
Total Expense	107,363.60	414,720.00	-307,356.40	25.89%
Net Income	331,463.16	98,380.00	233,083.16	336.92%

MVCAC
Profit & Loss - Monthly
July through December 2008

	Jul 08	Aug 08	Sep 08	Oct 08	Nov 08	Dec 08	TOTAL
Income							
110.00 Annual Meeting							
110.03 Exhibitors	0.00	0.00	0.00	0.00	0.00	-50.00	-50.00
110.00 Annual Meeting - Other	0.00	0.00	0.00	0.00	4,710.00	73,429.00	78,139.00
Total 110.00 Annual Meeting	0.00	0.00	0.00	0.00	4,710.00	73,379.00	78,089.00
120.00 Publications							
120.01 Pamphlets, Guides, Misc	252.50	83.00	270.00	679.05	0.00	39.00	1,323.55
120.03 Postage	28.24	9.60	24.20	67.59	0.00	15.43	145.06
120.04 Sales Tax	16.47	6.44	20.94	52.67	0.00	2.12	98.64
120.06 Yearbook	0.00	0.00	0.00	0.00	0.00	150.00	150.00
120.00 Publications - Other	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total 120.00 Publications	297.21	99.04	315.14	799.31	0.00	206.55	1,717.25
130.00 Dues							
130.01 Corporate Members	131,469.55	194,161.32	636.20	0.00	0.00	8,000.00	334,267.07
130.02 Sustaining Members	0.00	0.00	0.00	0.00	0.00	19,500.00	19,500.00
130.03 Associate Members	0.00	0.00	0.00	0.00	0.00	1,650.00	1,650.00
130.04 Affiliate Members	0.00	0.00	0.00	0.00	0.00	1,100.00	1,100.00
Total 130.00 Dues	131,469.55	194,161.32	636.20	0.00	0.00	30,250.00	356,517.07
140.00 Advertising Income							
140.01 Yearbook Advertising	0.00	0.00	0.00	0.00	0.00	550.00	550.00
Total 140.00 Advertising Income	0.00	0.00	0.00	0.00	0.00	550.00	550.00
150.00 Miscellaneous							
150.01 Interest	329.11	318.50	329.11	329.11	318.50	329.11	1,953.44
150.00 Miscellaneous - Other	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total 150.00 Miscellaneous	329.11	318.50	329.11	329.11	318.50	329.11	1,953.44
Total Income	132,095.87	194,578.86	1,280.45	1,128.42	5,028.50	104,714.66	438,826.76
Gross Profit							
132,095.87	194,578.86	1,280.45	1,128.42	5,028.50	104,714.66	438,826.76	
Expense							
210.00 Annual Meeting							
210.02 Supplies,shipping,print	0.00	0.00	0.00	0.00	90.31	1,600.38	1,690.69
210.04 Program Printing	0.00	0.00	0.00	967.60	0.00	-1,225.00	-257.40
210.05 Awards and Raffle Prizes	0.00	0.00	0.00	1,750.00	0.00	-25.00	1,725.00
210.09 Conference Tournament	0.00	0.00	0.00	0.00	0.00	120.00	120.00

MVCAC
Profit & Loss - Monthly
July through December 2008

	Jul 08	Aug 08	Sep 08	Oct 08	Nov 08	Dec 08	TOTAL
210.13 Staff Travel	0.00	0.00	0.00	0.00	0.00	139.30	139.30
210.00 Annual Meeting - Other	0.00	0.00	0.00	0.00	0.00	1,464.18	1,464.18
Total 210.00 Annual Meeting	0.00	0.00	0.00	2,717.60	90.31	2,073.86	4,881.77
220.00 Continuing Education							
220.02 Intranets-Website Maint	0.00	399.90	199.95	199.95	199.95	199.95	1,199.70
Total 220.00 Continuing Education	0.00	399.90	199.95	199.95	199.95	199.95	1,199.70
300.00 Legal							
300.01 Legal Advice and Service	315.00	0.00	4,714.28	63.30	54.80	212.29	5,359.67
Total 300.00 Legal	315.00	0.00	4,714.28	63.30	54.80	212.29	5,359.67
400.00 Legislative Program							
400.01 Advocate Contract	5,000.00	0.00	10,003.82	5,000.00	0.00	10,610.63	30,614.45
400.04 Legislative Pocket Direc	602.30	0.00	0.00	0.00	0.00	0.00	602.30
400.05 Printing, Awards, Misc	0.00	0.00	0.00	197.33	0.00	0.00	197.33
400.00 Legislative Program - Other	200.53	0.00	0.22	0.00	0.00	0.00	200.75
Total 400.00 Legislative Program	5,802.83	0.00	10,004.04	5,197.33	0.00	10,610.63	31,614.83
600.00 Mgmt Services & Admin							
600.01 Management Contract	0.00	0.00	0.00	0.00	0.00	7,200.00	7,200.00
600.02 D&O Liability Insurance	0.00	0.00	0.00	0.00	0.00	2,200.00	2,200.00
600.03 CC Trans./Bank Fees	41.95	58.95	-17.00	16.69	0.00	0.00	100.59
600.04 Audit/Financial Review	0.00	0.00	0.00	0.00	0.00	850.00	850.00
600.05 Telephone,Fax,& Internet	47.80	5.10	48.99	119.08	0.00	153.03	374.00
600.10 AMCA Sustaining Membersh	0.00	0.00	100.00	0.00	0.00	0.00	100.00
600.14 Staff Travel	0.00	0.00	0.00	16.44	0.00	0.00	16.44
600.15 Membership/Website	0.00	0.00	0.00	5,125.00	0.00	0.00	5,125.00
600.16 Postage	0.00	229.04	0.00	128.53	0.00	255.61	613.18
600.17 Office Supplies	0.00	20.00	20.00	20.00	20.00	20.00	100.00
600.18 Transition Expenses	418.81	0.00	0.00	0.00	0.00	2,108.75	2,527.56
600.20 Miscellaneous	0.00	270.00	500.00	70.50	0.00	0.00	840.50
600.00 Mgmt Services & Admin - Other	7,200.00	7,200.00	7,200.00	7,200.00	7,200.00	0.00	36,000.00
Total 600.00 Mgmt Services & Admin	7,708.56	7,783.09	7,851.99	12,696.24	7,220.00	12,787.39	56,047.27
700.00 Publications							
700.04 Quarterly Newsletter	0.00	0.00	0.00	975.00	0.00	0.00	975.00
700.07 Postage	0.00	18.25	0.00	0.00	0.00	0.00	18.25
Total 700.00 Publications	0.00	18.25	0.00	975.00	0.00	0.00	993.25

MVCAC
Profit & Loss - Monthly
July through December 2008

	Jul 08	Aug 08	Sep 08	Oct 08	Nov 08	Dec 08	TOTAL
800.00 Board Meeting&Workshop							
800.01 Summer Mtg-Ontario	0.00	130.34	0.00	0.00	0.00	0.00	130.34
800.02 Fall Mtg- Lake Tahoe	0.00	0.00	0.00	0.00	5,304.43	1,362.29	6,666.72
800.05 Board Planning - Sac	0.00	0.00	0.00	0.00	0.00	470.03	470.03
Total 800.00 Board Meeting&Workshop	0.00	130.34	0.00	0.00	5,304.43	1,832.32	7,267.09
Reconciliation Discrepancies	0.00	0.02	0.00	0.00	0.00	0.00	0.02
Total Expense	13,826.39	8,331.60	22,770.26	21,849.42	12,869.49	27,716.44	107,363.60
Net Income	118,269.48	186,247.26	-21,489.81	-20,721.00	-7,840.99	76,998.22	331,463.16

MVCAC
Check Detail
December 2008

Type	Num	Date	Name	Item	Account	Paid Amount	Original Amount
Bill Pmt -Check	5231	12/01/2008	Rossman MacDonald & Benetti, Inc.		1000 Bank of America Checking		-850.00
Bill		12/01/2008			600.04 Audit/Financial Review	-850.00	850.00
TOTAL						-850.00	850.00
Bill Pmt -Check	5232	12/09/2008	Webexone, Inc.		1000 Bank of America Checking		-399.90
Bill	1067078	11/30/2008			220.02 Intranets Website Maint	-199.95	199.95
Bill	1073732	12/01/2008			220.02 Intranets Website Maint	-199.95	199.95
TOTAL						-399.90	399.90
Check	5233	12/08/2008	Follett Storo # 0150		1000 Bank of America Checking		-80.81
Credit Memo	3611	12/08/2008		120.00 Publications:120.01 Pamphlets, Guides, Misc 120.00 Publications:120.04 Sales Tax:Sacramento : 120.04 Sales Tax		-75.00 -5.81	75.00 5.81
TOTAL						-80.81	80.81
Bill Pmt -Check	5234	12/18/2008	The Crystal Springs Golf Course		1000 Bank of America Checking		-120.00
Bill		12/18/2008			210.09 Conference Tournament	-120.00	120.00
TOTAL						-120.00	120.00
Bill Pmt -Check	5235	12/18/2008	Affiniscape, Inc.		1000 Bank of America Checking		-468.75
Bill	10262	12/18/2008			600.18 Transition Expenses	-468.75	468.75
TOTAL						-468.75	468.75
Bill Pmt -Check	5236	12/18/2008	Public Policy Advocates		1000 Bank of America Checking		-5,153.14
Bill	01-058-3317	12/18/2008			400.01 Advocate Contract 400.01 Advocate Contract 400.01 Advocate Contract 400.01 Advocate Contract	-5,000.00 -145.19 -4.95 -3.00	5,000.00 145.19 4.95 3.00
TOTAL						-5,153.14	5,153.14
Bill Pmt -Check	5237	12/18/2008	West Valley MVCD - V		1000 Bank of America Checking		-470.03
Bill		12/18/2008			800.05 Board Planning - Sac	-470.03	470.03
TOTAL						-470.03	470.03
Bill Pmt -Check	5238	12/18/2008	Bartkiewicz, Kronick & Shanahan		1000 Bank of America Checking		-212.29
Bill		12/18/2008			300.01 Legal Advice and Service 300.01 Legal Advice and Service 300.01 Legal Advice and Service 300.01 Legal Advice and Service	-52.50 -157.50 -1.80 -0.49	52.50 157.50 1.80 0.49
TOTAL						-212.29	212.29
Bill Pmt -Check	5239	12/18/2008	Coastal Web Online		1000 Bank of America Checking		-47.80
Bill	2008-11-18	12/18/2008			600.05 Telephone,Fax.& Internet 600.05 Telephone,Fax.& Internet 600.05 Telephone,Fax.& Internet 600.05 Telephone,Fax.& Internet	-15.95 -5.95 -5.95 -19.95	15.95 5.95 5.95 19.95
TOTAL						-47.80	47.80
Bill Pmt -Check	5240	12/18/2008	Smith Moore & Associates		1000 Bank of America Checking		-12,091.01
Bill	20080568	12/18/2008			600.16 Postage 600.18 Transition Expenses 210.13 Staff Travel 600.05 Telephone,Fax.& Internet 210.00 Annual Meeting 800.02 Fall Mtg- Lake Tahoe	-255.61 -1,640.00 -139.30 -9.63 -1,464.18 -1,362.29	255.61 1,640.00 139.30 9.63 1,464.18 1,362.29
Bill	20080579	12/18/2008			600.01 Management Contract 600.17 Office Supplies	-7,200.00 -20.00	7,200.00 20.00
TOTAL						-12,091.01	12,091.01

MOSQUITO AND VECTOR CONTROL ASSOCIATION OF CALIFORNIA
Board of Directors
Meeting of January 28, 2009

AGENDA SUPPORTING DATA
Agenda Item 11. – Committee Reports

MVCAC IT Committee
Report to Board of Directors
January, 28, 2009

1. The MVCAC IT Committee met at the fall meeting in South Lake Tahoe on October 30, 2008. We submitted a preliminary report to the Board at the time of their meeting earlier in the day and sent a final report to the Board following the IT Committee meeting. This report concerns items that have progressed since the October 30, 2008 report.
2. Since that report was prepared and submitted to the Board those of us who are members of the Entomological Society of America were notified of a new on-line member service called ESA Networks. Chairperson Eldridge attended by annual meeting of ESA in Sparks and spoke with several persons from the ESA management office. No one from that office knew any of the details concerning ESA Networks. There has been no further investigation of this program.
3. Bborie Park has been working hard on the upgrade of the CalSurv Surveillance Gateway to version 2. He does not have an estimated date for its release at this time.
4. Chris Canterbury is continuing his investigation of Video Conferencing systems. By the time of the annual conference he should have put together a small conference on a trial basis using a Microsoft system
5. Bruce Eldridge has contacted John Skarstad, UCD Archivist concerning the possibility of storing the MVCAC Archives at the UC Archives building. This will be discussed at the January MVCAC Board meeting.

Report submitted by Bruce Eldridge
Chairperson, MVCAC IT Committee.

Dear Committee members:

Please find below the standing charges of this committee. I have outlined a few ideas I would like to explore and potentially accomplish this coming year. We all will likely face challenges, whether it is due to increased pathogen activity and/or the means and resources to deal with whatever problem arises.

With that in mind (as well as some things I am sure I forgot) please review these areas and let me know your interest in getting them done. I will likely assign projects as well, but I find it best to have jobs performed by those interested in them

Let me know what you think. I intend to pass this on to the Board for review, editing, and concurrence.

Standing charges of Public Relations Committee

1) Operate as a resource and offer professional assistance, training, and support for MVCAC members in all matters of public relations and communications

This is pretty self-explanatory...I think we can best accomplish this by have the committee send out an e-mail to the Board/members on a monthly basis asking of any assistance that is needed on any area of public outreach.

2) Promote mosquito and vector control agencies as vital public health partners illustrating their competence and importance and endeavor to obtain recognition for their services and expertise

I would like to explore having four (4) media releases submitted this year by the PR committee. While I am not sure exactly what they would say at this time, I think potential headlines would be

a) lack of local resources (related to revenue and tax dollars) a concern to abate WNV activity

b) Issues that are affecting mosquito control (backyard swimming pools, wetlands, catch basins, etc....)

c) WNV activity and what is being done about it (State plan guidelines, larviciding, adulticiding, etc....)

d) success/challenges we had in the previous year.

All of these would be designed to promote our members and the work they do, so they should have a "state-wide" flavor.

In addition, we need to promote the “Day in the District” with our Legislators. Coming up with a template for local Districts to use would be very helpful to maintain some consistency of message.

Work to promote community partnerships and encourage cooperative ventures to benefit vector control, public health and the environment.

I think we need to explore getting a column in some of our “resource publications”...for example, California Waterfowl Association, DU, Public Health publications (“Web MD”?) on what we do and how working together can go a long ways at reducing mosquito issues

Promote MVCAC and assist members and staff with media outreach, educational and informational materials, publications, and other outreach methods and communication efforts.

We need to help staff with the newsletters....this might be easy if we can accomplish some of the above (It would be great to brag about our accomplishments in the newsletters!). I am not aware of any Benefit Assessments being done at this time, but we may be able to coordinate outreach efforts with the district(s) doing those to help get them passed.

Abstract ideas derived from self-induced adult beverage consumption

- 1) I would like to better explore the you-tube phenomenon...can we put together a video that we can distribute to legislators/staff that would explain what we do in 2-3 minutes or less?
- 2) Languages....Is there such a thing as “THE” hispanic paper or media outlet, or Russian outlet, or Asian outlet? If so, we ought to try and identify that piece of information and get our message out.
- 3) We should put together something that shows “how not to do outreach”...and I think using the LBAM example is a good one. While several pieces of legislation were introduced that had a potential affect on aerial spraying, mosquito control was exempted out of those that passed.....we still have a public health responsibility that I believe is recognized by the legislature....let’s make sure we don’t goof it up by sending out the wrong message. The “LBAM-way” was the wrong message.

Please share this with your districts and regions...let me know of concerns and how we can potentially address them

I look forward to a good 2009!

Dave

MOSQUITO AND VECTOR CONTROL ASSOCIATION OF CALIFORNIA
Board of Directors
Meeting of January 28, 2009

AGENDA SUPPORTING DATA

Agenda Item 13. – Reports from Other Agencies

JAN 06 2009

January 5, 2009

Catherine Smith
MVCAC
1215 K Street, Suite 2290
Sacramento, CA 95814

Dear Catherine:

The Special District Leadership Foundation would like to thank MVCAC and you for being a partner and contributing to the success of the Foundation in 2008. SDLF grew by leaps and bounds last year and that is due to the great partners and the generous contributions.

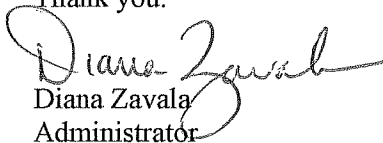
In 2008, there were 17 new recognized individuals, 12 new Special District Administrators and 2 new Districts of Distinction. I believe the program will grow even more in 2009. In 2007, a new quarterly report began going out to all partners. I hope this publication is keeping you more informed of the activities of SDLF throughout the year and you are sharing them with your board members. I have also been working much more closely with SDLF partners on media attention, awards being presented at their respective conferences and displaying as an exhibitor at the conferences (if they have exhibitors).

I wanted to let all partners know that I am happy to work individually with each respective partnering organization to get more information out to their members on all three programs. If you would like my services in this regard, please call me at (916) 231-2939 or send me an email at info@sdlf.org.

Attached is an invoice for your organization's annual contribution to SDLF. Your support helps us further good governance in the special districts we serve. If you have any questions or would like to discuss your contribution, please do not hesitate to contact me.

SDLF would like to thank you in advance for your contribution and remind you that I am always available to help send out mailings, draft media articles or publication articles for your newsletters, or anything else as it pertains to SDLF.

Thank you.


Diana Zavala
Administrator

INVOICE

January 5, 2009

TO: MVCAC
1215 K Street, Suite 2290
Sacramento, CA 95814

FROM: Special District Leadership Foundation
1112 I Street, Suite 200
Sacramento, CA 95814

For	Amount
SDLF Contribution for 2009	\$1,000.00
TOTAL	\$1,000.00

