**Federal and State Regulatory Issues**

**Impacting Mosquito and Vector Control Agencies**

* As mosquito-borne diseases continue to threaten public health, regulatory and legislative challenges are becoming increasingly restrictive to providing the most effective public health intervention methods.
* While the intent of new and additional environmental legislation and regulations is to protect and preserve the environment, a few key decisions have had a significant impact on the ability of mosquito and vector control districts to protect public health and implement effective, integrated mosquito management programs.
* **Mosquito and vector control programs in California fully support environmental protection** and employ a comprehensive, balanced approach to protecting the public and the environment.
* Mosquito and vector control districts in California rely on our state legislators and key opinion leaders to know what we do, how our management plans depend on the best available science, ecology, disease surveillance, and conscientious environmental management, and how we have several layers of regulation and oversight from the federal, state, and local levels to ensure that our activities achieve our goal of protecting public health while minimizing any potential impact on the environment.

By having our legislators more knowledgeable about the science and mechanics of mosquito and vector control, many unintended consequences of regulation can be avoided. We ask our legislators to:

* Remain updated on environmental regulations and legislation
* Lend support to MVCAC efforts at the federal level
* Consider the impact of new or existing environmental legislation and regulations on CA mosquito control AND public health

Here are a few key issues that have had an impact on our ability to protect public health:

**National Pollutant Discharge Elimination System (NPDES)**

Issue:

The ongoing resource drain on public health operations of mosquito and vector control districts from duplicative regulations imposed by the NPDES permit.

Discussion:

MVCAC, and many other statewide associations, was disappointed that HR 872 (Reducing Regulatory Burdens Act of 2011), while passing the House and the Senate Agriculture Committee, did not come to a full vote before the expiration of last year’s session. We continue to support federal legislative efforts to address these duplicative regulations to ensure public health intervention methods are not compromised, and would encourage our state legislators to do the same.

We were pleased that the House of Representatives has now reintroduced similar language in HR 935 (Reducing Regulatory Burdens Act of 2013), and we urge a vote on the newly introduced legislation to establish the intent of Congress about how public health pesticides should be regulated. We will continue to support HR 935, which would amend federal law to remove the NPDES requirement.

Moving forward, we anticipate significant difficulties in reconciling the implementation of NPDES permit regulation with ongoing effective mosquito and vector control and therefore expect that the permit process will be unworkable and will ultimately expose our state citizens to more mosquitoes and mosquito-borne diseases.

Impact on CA Mosquito and Vector control:

* Requires the MVCAC coalition (funded by vector control districts) as well as individual districts to spend substantial money, time and staff on permit monitoring, administration and paperwork, instead of controlling mosquitoes and other vectors.
* Requires the coalition and districts to compile and generate data and prepare numerous and substantial logs and monitoring reports that will provide no significant benefit to Waters of the US.
* Potentially exposing vector control districts to fines, penalties and lawsuits for alleged permit non-compliance.
* Detracting from the mission of vector control and adversely affecting public health.

Solution:

Until Congress acts on HR 935, the national permit more fairly and reasonably approaches permit monitoring. Most of the states in the country will be following the national permit as a model. In contrast, California’s permit contains more onerous and expensive monitoring requirements. **MVCAC will be** **preparing a request to amend the monitoring provisions of the California permit**. Our request will be modeled on the federal monitoring requirements. **Your support for our proposed amendments to the permit will help alleviate some of the burdens of California districts.**

**Endangered Species Act**

Issue:

The Endangered Species Act (ESA) decisions can impact the availability of pesticides used to protect the public’s health and welfare. Unfortunately, these decisions are not being developed in a transparent manner based upon sound science, but are increasingly being driven by costly litigation.

Discussion:

The ESA is intended to protect species that are threatened with extinction and maintain their critical habitat. EPA provides its analysis on potential environmental effects from a pesticide, including those on endangered or threatened species, to the Fish and Wildlife Service and National Marine Fisheries Service (the Services), which are charged with administering the ESA. The Services develop and issue Biological Opinions (BiOps) reflecting their conclusions of potential impacts.  In developing a BiOp, the Services are supposed to use the “best available” data to determine potential impacts on species, and where necessary, recommend mitigation measures. In many instances, the “best available data” being relied on by the Services **are not validated**, but are highly unreliable “personal communication.” In short, they fall more into the category of unsubstantiated opinion rather than valid data. This is not an open and transparent peer review process. Further, assumptions in some models used by the Services have been identified by EPA as grossly incorrect.

Impact on CA Mosquito and Vector control:

These BiOps form the basis of Service-recommended Reasonable Prudent Alternatives and Reasonable Prudent Measures sent to the EPA for implementation. Even though, in some cases, the basis for the proposed mitigation measures may not be well founded, the EPA is left with implementing them. These **can include significant label restrictions that preclude use of pesticide products to protect public health and welfare.** Fortunately, in a recent 4th Circuit Court of Appeals decision, the Court concluded that a BiOp before them was not the product of reasoned decision making in that the Fisheries Service failed to explain or support several assumptions critical to its opinion. To enable a renewed agency process, the Court vacated the BiOp and remanded the case to the district court with instructions to remand it to the Fisheries Service for further proceedings consistent with this opinion <http://www.ca4.uscourts.gov/Opinions/Published/112337.P.pdf>.

**Solutions:**

Congress should direct the Services to implement measures to ensure that ESA decisions are based upon reliable sound science, transparency, and the rule of law. The determination of the potential impacts of public health pesticides on endangered and threatened species should be heavily dependent on the expert review performed by the EPA Office of Pesticide Programs as part of the registration review processes. Peer review needs to be established and the Services and Agency need to be allotted the appropriate resources to successfully implement the ESA.

**CALIFORNIA ENVIRONMENTAL QUALITY ACT**

*Reform to Include Public Health Vector-Borne Disease Prevention Language*

Issue:

Current CEQA Statutes and Guidelines neglect to specifically address public health pests and provide protections from mosquitoes and other important public health vectors. This is a costly mistake that has led to an avoidable proliferation of project sites that breed mosquitoes and expose Californians, domestic animals, pets and wildlife to risk of diseases including West Nile virus. Some sites also provide harborage for other vectors and nuisance pests, including flies and rodents. This oversight has resulted in projects that fail to meet the design or land use objectives necessary for compliance with Section §2000 of the California Health and Safety Code (HSC). As a result, these non-compliant projects needlessly put the public, sensitive wildlife, water quality, and other resources at greater risk, increase pesticide use and frequency, increase liability of project proponents, necessitating costly retrofits, interventions and fines to property owners, and disproportionately burden taxpayers.

Discussion:

Inclusion of appropriate language and considerations in the CEQA Statutes and Guidelines will assist project planners to minimize or avoid mosquito and vector production in CEQA-approved projects. This is increasingly essential in light of tightened pesticide regulations, the encroachment of development into wetlands and wild lands, on-site water retention required by Low Impact Development standards (LID) and grey water recycling and water conservation efforts. It is also recognized that climate change will further enhance the spread of vectors and increase the number of outbreaks of vector-borne diseases.

Impact on CA Mosquito and Vector Control:

* Unintended creation of mosquito habitat
* Increases the need for pesticide use and increased strain on existing resources for surveillance and inspections

Solution:

Including mosquito and vector control considerations as a preventive planning measure in the CEQA Statutes and Guidelines will address the aforementioned problems with state-wide consistency and help to synchronize multiple state resource agency objectives, better protect the Californians from vectors and vector-borne diseases, reduce costs for project proponents and property owners, and save tax-payer resources.

**CALIFORNIA ENVIRONMENTAL QUALITY ACT**

*TOTAL MAXIMUM DAILY LOAD (TMDL) Language*

Issue:

Of the 126 Priority Pollutants listed for California, none are mosquito control pesticides. Priority Pollutants are selected after a multidisciplinary group of scientists conduct extensive and scientifically rigorous evaluation of a chemical’s effects on the aquatic environment; priority pollutants have been determined to be seriously toxic even at low levels. Pyrethroids, commonly used for adult mosquito control, are not included on the Priority Pollutant list.

Solution:

Any CEQA document examining the potential environmental impacts from limiting the use of pyrethroids via a TMDL should include a thorough examination of the following:

* The potential for conflicts with mosquito control plans of local districts.
* The potential to impact public services necessary to protect public health.
* The potential impacts to water quality from increased and unregulated homeowner use of store-bought pesticides resulting from limits the TMDL places on local government agencies that apply public health pesticides.