

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

213



**FROM:** Community Health Agency/Department of Environmental Health

**SUBMITTAL DATE:**  
January 5, 2011

**SUBJECT:** Approve the National Pollutant Discharge Elimination System (NPDES) Permit Coalition Monitoring Agreement between Mosquito and Vector Control Association of California (MVCAC) and the Riverside County Community Health Agency/Department of Environmental Health.

**RECOMMENDED MOTION:** That the Board of Supervisors:

- 1) Approve the Agreement with the Mosquito and Vector Control Association of California and the Riverside County Community Health Agency/Department of Environmental Health for the period of April 11, 2011 through June 30, 2016, for approximately \$3,416 per year. (Based on 0.3% of annual operating budget for Vector Control Program); and
- 2) Authorize the Director of the Department of Environmental Health to execute the attached agreement on behalf of the County.

**BACKGROUND:** In response to *National Cotton Council of America v. EPA* (6<sup>th</sup> Cir., 2009) 553F.3d 927, the State Water Resources Control Board will be adopting the Statewide NPDES General Permit for Residual Pesticide Discharges to Waters of the United States from Vector Control Applications to cover the discharge of pesticides for mosquito control.

(Continued on page 2)  
SVS:kj

*Steve Van Stockum*

Steve Van Stockum, Director

|                       |                               |             |                         |       |
|-----------------------|-------------------------------|-------------|-------------------------|-------|
| <b>FINANCIAL DATA</b> | Current F.Y. Total Cost:      | \$ 3,416.00 | In Current Year Budget: | Yes   |
|                       | Current F.Y. Net County Cost: | \$ 0        | Budget Adjustment:      | No    |
|                       | Annual Net County Cost:       | \$ 0        | For Fiscal Year:        | 10/11 |

|   |                                  |                          |
|---|----------------------------------|--------------------------|
| <b>SOURCE OF FUNDS:</b> 100% funded by the Department of Environmental Health Revenue | Positions To Be Deleted Per A-30 | <input type="checkbox"/> |
|   | Requires 4/5 Vote                | <input type="checkbox"/> |

**C.E.O. RECOMMENDATION:**

APPROVE

*Debra Cournoyer*  
BY: Debra Cournoyer  
Debra Cournoyer

**County Executive Office Signature**

**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Stone, seconded by Supervisor Buster and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Stone, Benoit and Ashley  
Nays: None  
Absent: Tavaglione  
Date: January 25, 2011  
xc: CHA-Environmental Health

Kecia Harper-Ihem  
Clerk of the Board  
By: *Kecia Harper-Ihem*  
Deputy

Prev. Agn. Ref.:

District: All

Agenda Number:

ATTACHMENTS FILED  
WITH THE CLERK OF THE BOARD

**3.7**

FORM APPROVED COUNTY COUNSEL  
BY: *Bruce G. Fordon* 1/6/11 DATE

Departmental Concurrence

Consent     Policy  
 Consent     Policy

Dep't Recomm.:  
Per Exec. Ofc.:

**Form 11**

**Subject:** Approve the National Pollutant Discharge Elimination System (NPDES) Permit Coalition Monitoring Agreement between Mosquito and Vector Control Association of California (MVCAC) and the Riverside County Community Health Agency/Department of Environmental Health.

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**BACKGROUND (Continued)**

The new NPDES Permit requirements regarding pesticide application and monitoring are set to take effect April 11, 2011. By joining the Coalition, the Department is relieved of the burden of doing individual monitoring which would be cost prohibitive. The monitoring program is aimed at analyzing and reducing negative impacts on waters and watersheds in California. The Coalition will also act as spokesperson and facilitator for the members to the state and regional water boards regarding the permit and monitoring program. MVCAC will process the Request for Proposal (RFP) for the selection of the Program Manager and Consultant as soon as they receive the approved proposal by the State Water Resources Control Board. The Consultant will provide a more definitive cost to the Department of Environmental Health.



# MVCAC

MOSQUITO AND VECTOR CONTROL  
ASSOCIATION OF CALIFORNIA

## NPDES PERMIT COALITION MONITORING Application and Agreement to Participate in Monitoring Program

Corporate Member: Riverside County Dept. of Environmental Health

The MVCAC corporate member named above has applied or intends to apply for coverage under the Statewide NPDES General Permit for Residual Pesticide Discharges to Waters of the United States from Vector Control Applications (General Permit) and it requests and agrees to enroll and participate in the Association NPDES Permit Coalition Monitoring Program. By approving, signing and submitting this Application and Agreement, the corporate member acknowledges, agrees and commits as follows:

1. The participating corporate member agrees to comply with and be subject to the Association Rules and Policies Governing NPDES Permit Coalition Monitoring Program, as the same may be amended from time to time (Rules and Policies).
2. The participating corporate member authorizes the Association to perform the statewide coalition Monitoring Services as described in the Rules and Policies on its behalf and on behalf of the other participating corporate members. Upon acceptance of this Application and Agreement, the Association agrees to provide such services.
3. The participating corporate member agrees to cooperate with the Association in its performance of the Monitoring Services, including the prompt submittal of such documents and information that may be reasonably requested by Association.
4. The participating corporate member agrees to pay its share of the Association's NPDES Permit Coalition Monitoring Program costs as determined and billed by the Association in accordance with the Rules and Policies.
5. The participating corporate member commits to participate in the NPDES Permit Coalition Monitoring Program until June 30, 2016, including the commitment and agreement to pay its share of the program costs until that date.

6. The member acknowledges that if is expelled from the program pursuant to the Rules and Policies due to nonpayment or other default, then the member no longer shall be covered under the General Permit statewide coalition monitoring program.
7. The participating corporate member agrees to indemnify the Association in accordance with the indemnification provision of the Rules and Policies.
8. Except for the statewide coalition Monitoring Services undertaken by the Association, the participating corporate member agrees to comply with all other requirements and limitations of the General Permit and the participating corporate member's Pesticide Application Plan for the discharge of pesticides to waters of the United States resulting from adult and larval mosquito control.

I certify that this Application and Agreement has been approved by the above-named corporate member and that I am authorized to sign this Application and Agreement on behalf of the corporate member.

Date: \_\_\_\_\_ [signature]  
 \_\_\_\_\_ [name]  
 \_\_\_\_\_ [title]

\_\_\_\_\_  
 Approved and accepted.

Date: \_\_\_\_\_  
 \_\_\_\_\_  
 Association Executive Director

FORM APPROVED COUNTY COUNSEL  
 BY: Bruce G. Fordon 1/6/11  
 BRUCE G. FORDON DATE



# MVCAC

MOSQUITO AND VECTOR CONTROL  
ASSOCIATION OF CALIFORNIA

## **ASSOCIATION RULES AND POLICIES GOVERNING NPDES PERMIT COALITION MONITORING PROGRAM**

### **1. Background**

In response to *National Cotton Council of America v. EPA* (6th Cir., 2009) 553 F.3d 927, the State Water Resources Control Board (State Board) will be adopting the Statewide NPDES General Permit for Residual Pesticide Discharges to Waters of the United States from Vector Control Applications (General Permit) to cover the discharge of pesticides to waters of the United States resulting from adult and larval mosquito control. The General Permit will cover both adulticide and larvicide applications.<sup>1</sup> The Mosquito and Vector Control Association of California (Association) has determined that all or most corporate members will be applying to the regional water quality control boards for coverage under the General Permit.

The General Permit will require permittees to undertake specified monitoring and reporting in accordance with the General Permit's monitoring and reporting program and related requirements. The General Permit will allow the permittee to choose between individual monitoring and reporting by the permittee or participation in a statewide coalition monitoring and reporting program.

The Association has determined that it will implement, manage and administer the statewide coalition monitoring and reporting program under the General Permit. The Association monitoring and reporting will cover monitoring and reporting related to the discharge of residual pesticides to waters of the United States resulting from both adulticide and larvicide vector control applications.

The Association has adopted these Rules and Policies to govern the implementation, management and administration of the Association statewide coalition monitoring program.

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<sup>1</sup> An adulticide is a pesticide applied to air for adult mosquito control. A larvicide is a pesticide applied to water for larval mosquito control.

## **2. Monitoring Related Services**

The Association will undertake, perform and implement the statewide coalition monitoring and reporting pursuant to and in accordance with the monitoring and reporting requirements of the General Permit and the statewide coalition monitoring plan to be adopted by the Association (the Monitoring Services). The Association and its staff, contractors and consultants will perform the required monitoring and will file the appropriate reports with the State Board. The Monitoring Services will commence upon the effective date of the General Permit; however, Monitoring Services related administration and start-up tasks and costs will commence before that date. The Association will perform the Monitoring Services for and on behalf of those participating corporate members that have completed, signed and submitted the Association Application and Agreement to Participate in Monitoring Program (see section 3).

Subject to adequate funding from the participating corporate members, the Association will perform the Monitoring Services for the five-year term of the General Permit that is expected to be approved by the State Board in early 2011. The Association Board of Directors will decide whether to continue providing the Monitoring Services for the next General Permit (expected to be approved by the State Board in or around 2016) prior to the State Board's approval of that General Permit.

## **3. Participating Corporate Members**

a. General. The Association will provide the Monitoring Services for and on behalf of the participating corporate members. In order to participate in the Association's statewide coalition monitoring under the General Permit, the General Permit permittee must (1) be a corporate member of the Association in good standing (e.g., Association dues are paid current), (2) have applied and been approved by the state for coverage under the General Permit by filing the Notice of Intent, approving and submitting a Pesticide Application Plan, submitting other required paperwork, and paying applicable State Board fees, (3) complete, sign and submit the Association Application and Agreement to Participate in Monitoring Program in the form as provided by the Association, and (4) comply with the requirements of the General Permit, approved Pesticide Application Plan, Application and Agreement to Participate in Monitoring Program, and these Rules and Policies (as the same may be amended from time to time by the Association Board of Directors). The Association will not perform the Monitoring Services or report to the State Board on behalf of any permittee that is not in compliance with these requirements. The Application and Agreement to Participate in Monitoring Program shall require the participating corporate member to participate in the program until June 30, 2016 and to pay the member's share of the program costs for that term. The Executive Director is authorized to prepare the Application and Agreement to Participate in Monitoring Program form and to approve and accept submitted Applications and Agreements to Participate, so long as consistent with these Rules and Policies.

b. Existing Corporate Members. If an existing corporate member (as of July 1, 2010) desires to participate in the Association statewide coalition monitoring program

under the General Permit, then it must complete, sign and submit the Association Application and Agreement to Participate in Monitoring Program in the form as provided by the Association no later than December 31, 2010 and comply with the other requirements of these Rules and Policies. If an existing corporate member does not timely submit the Application and Agreement to Participate in Monitoring Program by this deadline and thereafter seeks to participate in the monitoring program, then it shall be treated as new corporate member under subsection (c) below.

c. **New Corporate Members.** An eligible agency may join the Association as a corporate member in order to participate in the General Permit statewide coalition monitoring program. Any new corporate member (joining after July 1, 2010) that desires to participate in the program must complete, sign and submit the Association Application and Agreement to Participate in Monitoring Program in the form as provided by the Association and comply with the other requirements of these Rules and Policies. A new participating corporate member shall be obligated to pay to the Association the new member's pro rata share of the Association's costs and expenses of providing the Monitoring Services beginning upon the date of the Association's approval of the Application and Agreement. The new member's pro rata share shall be determined by the Association Executive Director in accordance with the cost sharing principles of section 4 and based on the new participating corporate member's latest approved audited financial statements.

#### **4. Financial and Dues**

The Association Executive Director shall keep and maintain the expenses (including all administrative, contractor, consultant, legal, research and other expenses, costs and fees) and revenue associated with the Association's performance of the Monitoring Services as a stand-alone program for budgeting and bookkeeping purposes. The anticipated Monitoring Services annual expenses and revenue to support those expenses shall be included as a separate program in the annual Association budget.

The required revenue associated with the Monitoring Services as shown on the Association budget shall be allocated among the participating corporate members. The allocation shall be based on the relative total annual expenses of all participating members. The total expenses shall include expenses for all services and programs (i.e., all vector control services) but exclude capital expenses. However, if the participating corporate member is a general purpose local government agency (e.g., city, county, public utility district), then the allocation shall be based on the agency's total expenses relating to mosquito and vector control services (excluding capital expenses). In order to calculate the allocation among participating corporate members, each participating corporate member shall submit its approved audited financial statements to the Association. They shall be submitted to the Association on an annual basis as the member approves its annual financial statements.

Each participating corporate member shall agree to pay its share of the Monitoring Services expenses as determined in accordance with these Rules and

Policies. As part of the annual budget process, the Executive Director shall calculate each participating member's share of the Monitoring Services expenses for the year by (a) determining each participating member's total annual expenses (less capital expenses) based on the most recent year's audited financial statement provided by the member, and (b) multiplying the Monitoring Services expenses for the year (from the Association budget) times a fraction that shall be the member's total expense figure from (a) (numerator) over the total annual expenses (less capital expenses) of all participating corporate members (denominator). The participating corporate member's share of the Monitoring Services expenses for the year shall be included in the annual Association dues statement and each participating member shall pay its share at the same time and in the same manner as payment of the regular Association dues. For the start-up of Monitoring Services beginning in the 2010-11 fiscal year, the Association may prepare and distribute and the participating corporate members agree to pay a mid-year statement to fund the Monitoring Services expenses for that fiscal year.

## **5. Default**

If a participating corporate member has failed to timely pay its share of the Monitoring Services expenses or has otherwise defaulted on the requirements of the Application and Agreement to Participate in Monitoring Program or these Rules and Policies, then the Association will provide notice of default to the member. If the participating corporate member has not cured the default within 20 days from the date of the notice of default, then (a) the corporate member shall no longer be a participant in the Association statewide coalition monitoring program, (b) the Association shall notify the State Board that the defaulting corporate member is no longer participating in the Association's statewide coalition monitoring program, and (c) if the default relates to nonpayment, interest shall accrue on the past-due amount at the rate of ten percent per annum. These remedies are in addition to such breach of contract and other remedies that may be available under applicable law.

## **6. Indemnification**

The Association agrees to provide the Monitoring Services as an accommodation to its corporate members. While the Association will perform the Monitoring Services under the General Permit, it will not be a permittee under the General Permit and it does not apply pesticides. There may be litigation relating to alleged non-compliance with the Clean Water Act and/or General Permit. The General Permit permittee(s) would be the primary target of any such litigation. However, because the Association will be involved with the General Permit through the Monitoring Services, it is possible that the Association also may be named in Clean Water Act and/or General Permit related lawsuits. It also is possible that the Association may be named in a lawsuit alleging that the Monitoring Services failed to comply with the Clean Water Act and/or General Permit without any participating corporate member also named in the lawsuit. The Association Board of Directors has determined that, in such scenarios, it is appropriate for the corporate members to indemnify the Association.



If a participating corporate member and the Association are both named in a lawsuit alleging non-compliance with the Clean Water Act and/or General Permit, then the named corporate member or members shall protect, indemnify, defend and hold harmless the Association and its officers, employees and agents from and against any and all liability, loss, cost or expense arising out of or related to that lawsuit.

If the Association is named in a lawsuit alleging non-compliance with the Clean Water Act and/or General Permit and no participating corporate member is also named, then all participating corporate members shall protect, indemnify, defend and hold harmless the Association and its officers, employees and agents from and against any and all liability, loss, cost or expense arising out of or related to that lawsuit. The participating corporate members shall be jointly and severally liable for any such liability, loss, cost or expense. If under this indemnity obligation a participating corporate member is held liable for any such liability, loss, cost or expense and pays in excess of its pro rata share, then such participating corporate member is entitled to contribution from each of the other participating corporate members and each other participating corporate member shall be liable for its pro rata share of the payment. A participating corporate member's pro rata share shall be determined based on the cost sharing principles of section 4.

#### **7. Amendment.**

These Rules and Regulations may be amended from time to time by the Association Board of Directors.

Adopted by the Association Board of Directors on November 4, 2010