



COUNTY OF RIVERSIDE
*TRANSPORTATION AND
LAND MANAGEMENT AGENCY*
Transportation Department



*Juan C. Perez, P.E., T.E.
Director of Transportation*

September 7, 2010

Chairman David King and Members of the Board
San Diego Regional Water Quality Control Board
Attn: Executive Director Gibson
9174 Sky Park Court, Suite 100
San Diego CA 92123-4353

RE: Draft Tentative Order No. R9-2010-0016 (NPDES No. CAS0108740) - Proposed Unpaved Road Requirements

Dear Mr. Gibson:

The Riverside County Transportation Department has reviewed the proposed requirements applicable to unpaved roads presented in the Draft Municipal Separate Storm Sewer System Permit (Draft Tentative Order No. R9-2010-0016 (NPDES No. CAS0108740) for the Santa Margarita Region of Riverside County (Draft MS4 Permit) and has identified several major concerns. We appreciated the opportunity to meet recently with you and staff to discuss our concerns. Primarily, they have to do with requirements being imposed through this permit that go well above-and-beyond what is required in the Orange County permit to regulate the operation and maintenance of unpaved roads.

SUMMARY

There are many different categories of unpaved roads within the unincorporated County area. These include County-Maintained unpaved roads, dedicated and accepted public roads (which are not County maintained), roads dedicated but not accepted, private roads, utility access roads, roads through tribal lands, and others. These roads are maintained by numerous entities besides the County, such as Homeowners Associations, Quasi-public entities like County Service Areas, Community Service Districts, public and private utilities, Tribes, and in many cases, individual property owners. The County in fact is prohibited by law from spending general gas tax dollars (our main funding source) for maintenance of roads not in the County Maintained Road System, and is not financially able to take on new unpaved roads into the County Maintained System until they are improved to County Standards.

The proposed permit requirements would therefore impose an undue and substantial regulatory burden on the County and would create a class of potential unwitting “violators” that are not familiar with these requirements, including hundreds if not thousands of property owners that have been maintaining unpaved roads for many decades as needed to access their property. The special requirements for development and maintenance of unpaved roads were proposed by Regional Board staff for inclusion in the draft MS4 Permit very late in the process, after a number of weeks of discussions on the overall permit language and just prior to release for the Santa Margarita Region for public comment. During those discussions, unpaved roads were not raised by Regional Board staff as a source requiring additional regulatory attention.

Given the complexity of these jurisdictional issues, and the number of stakeholders that would be impacted, we respectfully request that the regulation of unpaved roads be removed from this permit. Alternatively, unpaved roads could be considered as part of a separate general permit to allow for proper stakeholder involvement and vetting, at the least within those areas of the permit (see below) that have to do with maintenance provisions. Given the complexity of this issue and the impact on thousands of properties, another option is to achieve a water quality benefit through education programs, not using limited resources on regulation and enforcement. We also note that unpaved road regulation was not included in the recent Orange County permit. Orange County receives approximately 8 times the amount of funding on a per mile basis towards their County-Maintained roads as does Riverside County, so imposing additional requirements on the Riverside County permit magnifies the undue regulatory and financial burden.

The Draft MS4 Permit includes requirements for unpaved roads that are either redundant to existing regulatory requirements or that impose new regulation requirements at a time that the County can ill afford to start new programs. The language proposed needs clarification to avoid potential misinterpretations that may result in operational disruptions to the transportation system and/or compliance costs way out of proportion to the potential impact on receiving water quality. Although the Department supports implementation of erosion and sediment control best management practices (BMPs) as appropriate for development of new unpaved roads, it does not agree that the statements in the Fact Sheet and Findings support identification of unpaved roads as a significant source of pollutants warranting special regulation. The following summarizes the Department’s specific concerns and perspectives.

UNPAVED ROAD DEVELOPMENT REQUIREMENTS

Requirements for the development of unpaved road projects are addressed in section F.1.i. on page 45 of the Draft MS4 Permit. This requirement states:

i. Unpaved Roads Development

The Copermittees must develop, where they do not already exist, and implement or require implementation of erosion and sediment control BMPs after construction of new unpaved roads. At a minimum, the BMPs must include:

- (1) Practices to minimize road related erosion and sediment transport;
- (2) Grading of unpaved roads to slope outward where consistent with road engineering safety standards;
- (3) Installation of water bars as appropriate;
- (4) Unpaved roads and culvert designs that do not impact creek functions and where applicable, that maintain migratory fish passage;

It is our contention that construction of new unpaved roads is already adequately regulated through development regulations. New unpaved roads built through development fall under the definition of a "project", and as such are already required to develop and implement project-specific SUSMPs, which include identification of BMPs in the same manner as required of other development projects. Unpaved road projects are also required to comply with the General Permit-Construction which requires preparation of a SWPPP. These requirements are implemented by the Permittees during the development review process and in issuance of grading permits. We also note that the development process already achieves a gradual "retirement" of unpaved roads, as the County requires in many cases that new development replace unpaved access roads with paved access.

Additional separate requirements for development of unpaved roads are redundant to these requirements and may only complicate compliance. However, if the Board wishes to include permit language to further clarify what is already required through these permits, we would be pleased to work with the Board to help craft appropriate language.

UNPAVED ROAD MAINTENANCE

This is our primary issue of major concern, particularly since the proposed language would appear to impose regulatory requirements on roads that are not part of the County Maintained Road System that we operate.

Requirements for the maintenance of unpaved road projects are addressed in section F.3.a.(10) on page 56 of the Draft MS4 Permit. This requirement states:

(10) Unpaved Roads Maintenance

- (a) The Copermittees must develop, where they do not already exist, and implement or require implementation of BMPs for erosion and sediment control

measures during maintenance activities on unpaved roads, particularly in or adjacent to receiving waters.

(b) The Copermitees must develop and implement or require implementation of appropriate BMPs to minimize impacts on streams and wetlands during unpaved road maintenance activities.

(c) The Copermitees must regularly maintain their unpaved roads adjacent to streams and riparian habitat to reduce erosion and sediment transport;

(d) Re-grading of unpaved roads during maintenance must be sloped outward where consistent with road engineering safety standards;

(e) Through their regular maintenance of unpaved roads, the Copermitees must examine the feasibility of replacing existing culverts or design of new culverts or bridge crossings to reduce erosion and maintain natural stream geomorphology.

As we have stated, this issue should be addressed through a broad general permit or an education program. However, if the Board finds it necessary to impose additional permit requirements on maintenance activities, which go well beyond the Board's previous definitions of a "project", we respectfully request that this language be re-written to make it clear that it applies to those roads within the County (or City) Maintained Road System.

UNPAVED ROADS ARE NOT A SIGNIFICANT SOURCE OF WATER QUALITY IMPAIRMENT

Findings D.1.C, pg 57-59, states:

"During the previous permit period, the San Diego Water Board identified, through investigations and complaints, sediment discharges from unpaved roads as a significant source of water quality problems in the Riverside County portion of the San Diego Region. Enforcement and inspection activities conducted by the San Diego Water Board during the previous permit term have found a lack of source control for many unpaved roads within the jurisdiction of the Copermitees".

The Department supports the continued application of development and construction requirements and maintenance of temporary post-maintenance erosion and sediment control BMPs as specified in existing permits. However, we do not believe that sufficient justification has been presented to support the identification of unpaved roads as a significant source of water quality problems in the Santa Margarita Region. In these days of uncertain state funding and dwindling local funding sources, every dollar spent on additional regulatory requirements needs to be weighed against the benefit of otherwise using funding on basic public health-and-safety needs such as road maintenance and safety improvements.

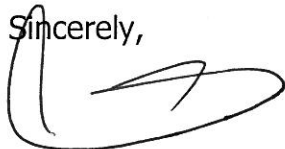
The discussion of Finding D.1.c. states that the inclusion of unpaved road requirements were based on findings by the San Diego Regional Board during typical compliance assurance activities, audits, or receipt of complaints. However no feedback from these activities were reported to the Permittees at the MS4 Permit discussions prior to the proposal of the unpaved road requirements just before the draft permit was released.

The Department has reviewed the documents cited by Regional Board staff in the discussion of Finding D.1.c. and the conditions in the Santa Margarita River are vastly different from those in Pennsylvania and Northern California cited in those documents. Nevertheless, these documents do not suggest that unpaved roads are a significant source requiring special attention in MS4 permits. Further, neither the Permittee's monitoring data nor our observations support a conclusion that unpaved roads are a significant source of pollutants warranting special regulatory attention and we request that this finding be deleted unless significant data specific to the Santa Margarita Region can be produced. In particular, the Department requests a copy of the investigations and complaints along with the data that supports a significant source of water quality problems on unpaved roads, including a listing of roadways where water quality problems have been identified.

Thank you for the opportunity to review and comment on the Draft MS4 Permit. The County of Riverside Transportation Department is committed to managing the roads and highways within our County Maintained Road System in a manner that protects water quality. Our goal is to work constructively with the Regional Board staff to improve the effectiveness with which we address water quality issues, and put limited public and private dollars into those programs that provide the best return. We would be pleased to meet with you to discuss regulation of unpaved roads further and to explain our unpaved road development, construction, and maintenance practices.

Please feel free to contact me or Ward Maxwell at 951-955-6740 if you have any questions regarding our comments on the proposed unpaved road requirements or our requests for modification of the draft Santa Margarita Region MS4 Permit.

Sincerely,



Juan C. Perez
Director of Transportation

CC: George A. Johnson, TLMA Director
Mike Shelter, Executive Office
Patty Romo, Deputy Director of Transportation
Ward Maxwell, Engineering Project Manager
Jason Uhley, Flood Control