

## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY **REGION 8** 2017 AUG 17 AM 11: 57

1595 WYNKOOP STREET DENVER, CO 80202-1129

Phone 800-227-8917

EPA REGION VIII http://www.epa.gov/region08 HEARING CLERK

**DOCKET NO.: CWA-08-2017-0015** 

IN THE MATTER OF:	)	
PERRY HOMES UTAH, INC.	)	FINAL ORDER
	)	
RESPONDENT	)	

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective 30 days after the filing of this Consent Agreement and Final Order.

so ordered this 17th Day of August

Regional Judicial Officer



### UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 8 1595 Wynkoop Street Denver, Colorado 80202

2017 JUN 20 PM 3: 31

### EXPEDITED SETTLEMENT AGREEMENT

Docket Number: CWA<sub>08-2017-0015</sub>, UPDES Permit No. UTR3674

The United States Environmental Protection Agency (EPA) and violations and facts alleged in the Form (This Agreement does Perry Homes Utah, Inc., a Utah corporation (Respondent), enter into this Expedited Settlement Agreement (Agreement) to resolve Respondent's civil penalty liability for alleged violations of the Utah Pollutant Discharge Elimination System storm water permit cited above (Permit).

The EPA finds that Respondent failed to comply with the Permit, that the Permit was issued pursuant to section 402 of the Clean Water Act (Act), 33 U.S.C. § 1342, that Respondent is a "person" as defined in section 502(5) of the Act, 33 U.S.C. § 1362(5), and that Respondent is responsible for the deficiencies specified in the attached Expedited Settlement Offer Deficiencies Form (Form). The Form is incorporated into this Agreement by reference.

The EPA also finds, and Respondent admits, that the EPA has jurisdiction over this matter pursuant to section 309(g) of the Act, 33 U.S.C. § 1319(g), and 40 C.F.R. part 22. Respondent neither admits nor denies the deficiencies specified in the Form.

Respondent agrees to pay a penalty of \$4,250. Respondent waives the rights (1) to contest the statements in the Form and (2) to appeal any final order that an EPA Regional Judicial Officer may issue to ratify this Agreement (Final Order).

Respondent certifies, subject to civil and criminal penalties for making a false statement to the United States Government, that any deficiencies identified in the Form have been corrected. No later than the date it signs this Agreement, Respondent shall submit a written report to the EPA detailing the specific actions taken to correct the deficiencies cited in the Form. Respondent also certifies that, no later than ten (10) days after it receives notice from the EPA that the Final Order has been issued, Respondent shall submit a check, with the case name and docket number noted, for the amount specified above, payable to the Treasurer, United States of America, to:

> U.S. Environmental Protection Agency Fines and Penalties / Cincinnati Finance Center P.O. Box 979077 St. Louis, MO 69197-9000 In the Matter of: Perry Homes Utah, Inc. Docket No. CWA-08-2017-0015

This Agreement, upon incorporation into a Final Order and full satisfaction by the parties, shall be a complete and full resolution of Respondent's liability for federal civil penalties for the not affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Nothing in this Agreement shall relieve Respondent of the duty to comply with the Act and any regulation, order, or permit issued pursuant to the Act.

Prior to requesting that an EPA Regional Judicial Officer issue the Final Order, the EPA will provide public notice of this Agreement and a reasonable opportunity for the public to comment on it. The EPA will address any comments on this Agreement consistent with section 309(g)(4) of the Act, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.

#### APPROVED BY EPA:

Date: 6/12/17

Stephanie DeJong, Unit Chief NPDES Enforcement Program Office of Enforcement, Compliance and Environmental Justice

Date: 6/13/

James H. Eppers, Supervisory Attorney

Legal Enforcement Program Office of Enforcement, Compliance and Environmental Justice

APPROVED BY RESPONDENT:

Name (print): WILLIAM O. PERD

Title (print): 9 GENERAL CO

Signature:

Date:

# Expedited Settlement Offer Worksheet Deficiencies Form

Deficiencies Form

Consult instructions regarding eligibility criteria and procedures prior to use

version 10.3.4



	LEGAL NAME AND MAILING ADDRESS OF OPERATOR	Telephone Number	NPDES Pe	rmit Number	r
1	Perry Homes	801-264-8800	UTR36748	3	
	17 East Winchester Street	Inspector Name:	Akash Joh	nson	
	Suite 200	Inspector Agency:	US EPA		
	Murray, Utah 84107	Entrance Interview Co	inducted:	Yes	
		Exit Interview Conduc	ted:	Yes	1
	LOCATION AND ADDRESS OF SITE	Exit Interview given to	Kevin War	dle	
2	Midas Creek (Phases 6a and 6b)	Exit Interview time:	11:10	Date:	03/29/2017
	11700 South 3200 West		100		
	South Jordan, Utah 84605				

	FACILITY DESCRIPTION / CONTACT NAMES	
	Name of Site Contact (ESO Worksheet recipient): Kev	vin Wardle / Superintendent / Perry Homes
	Name of Authorized Official (40 CFR 122.22): Mart	rlin Bigler / Project Manager / Perry Homes
	Inspection Date: 03/2	29/2017
	Start Construction Date: Spri	
İ	Estimated Completion Construction Date: Fall	2017
İ	If Unpermitted, Number of Months Unpermitted: N/A	
	Name of Receiving Water Body (Indicate whether 303(d) listed): Mida	las Creek
	Acres Currently Disturbed / Acres to be Disturbed in Whole Common Plan: Unk	known / 20 acres
	Has Operator Requested Rainfall Erosivity or TMDL Waiver per 44 CFR 122.26(b)(15)?	No

		PERMIT COVERAGE	Findings	Citation Reference**	R C A*	No. of Deficien- cies	Dollar Amount	Total
3		Operator unpermitted for one month (# months unpermitted equals number of violations). Discharge without a permit.		CWA 301			\$500.00	
		SWPPP REVIEW						
4		SWPPP not prepared (If no SWPPP, leave elements 5 - 30 blank)		UCGP 7.1.1			\$5,000.00	
5		SWPPP prepared but prepared after construction start (# of months = # of violations)		UCGP 7.1.1	3-3		\$75.00 =	
6		SWPPP does not identify all potential sources of pollution to include: porta-pottys, fuel tanks, staging areas, waste containers, chemical storage areas, concrete cure, paints, solvents, etc		UCGP 7.2.6.a			\$250.00 =	The state of the s
7		SWPPP does not identify all operators for the project site and the areas of the site over which each operator has control		UCGP 7.1.1			\$500.00 =	:
8		SWPPP does not have site description, as follows:	1					
	Α	Nature of activity in description		UCGP 7.2.2			\$100.00 =	
	В	Intended sequence of major activities		UCGP 7.2.4			\$100.00 =	
		Total disturbed acreage		UCGP 7.2.2			\$100.00 =	
		General location map	. :				\$100.00 =	
		Site map is not included in SWPPP.		UCGP 7.2.5			\$500.00 =	
	F	Site map does not show drainage patterns, slopes, areas of disturbance, locations of major controls, structural practices shown, stabilization practices, offsite materials, waste, borrow or equipment storage ageas, surface waters, discharge points,		UCGP 7.2.5			\$50.00	
		areas of final stabilization (count each omission under 8F as 1 violation)				in the second		
	G	Location/description industrial activities, like concrete or asphalt batch plants		UCGP 7.2.5.a.vii			\$500.00 =	
9		SWPPP does not:	The inlet protection devices observed	and the second of				
	Α	Describe all pollution control measures (e.g. BMPs)	onsite (Photographs 1217-1219, 1221, 1224, 1225, and 1228) were not detailed	UCGP 7.2.9	Yes	1	\$750.00 =	\$750
	В	Describe sequence for implementation	in the SWPPP.	UCGP 7.2.4			\$250.00 =	:
	С	Detail operator(s) responsible for implementation	The SWPPP did not identify the stormwater team or personnel responsible for conducting inspections.	UCGP 7.2.1	Yes	1	\$250.00 =	\$250

10		SWPPP does not describe interim stabilization		UCGP 2.2 &			\$250	.00	=	
11		practices SWPPP does not describe permanent stabilization practices		7.2.9.c UCGP 2.2 & 7.2.9	;		\$250	.00	=	
12		SWPPP does not describe a schedule to implement stabilization practices		UCGP 7.2.4.d			\$250	.00	=	
13		Following dates are not recorded: major grading activities; construction temporarily or permanently ceased; stabilization measures initiated (count each omission under 13 as 1 violation)					\$250			
14		SWPPP does not have description of structural practices to divert flows from exposed soils, retain flows, or limit runoff from exposed areas		UCGP 2.1.3a-b & 7.2.9.a			\$500	.00	=	
15		SWPPP does not have a description of measures that will be installed during the construction process to control pollutants in storm water discharges that will occur AFTER construction operations have been completed			N 13	No. 18	\$500	.00	=	
16		SWPPP does not describe measures to prevent discharge of solid materials to waters of the US, except as authorized by 404 permit					\$500			
17	Esta N	SWPPP does not describe measures to minimize off- site vehicle tracking and generation of dust		UCGP 2.1.2.c, 2.1.2.e, & 7.2.9.a.iii	ger d	n de si ya Distanta	\$500	.00	=	
18		SWPPP does not include description of construction or waste materials expected to be stored on site w/updates re: controls used to reduce pollutants from these materials		UCGP 7.2.6.b, 7.2.10.b, & 2.3.3.c		474	\$250	.00	=	_
19		SWPPP does not have description of pollutant sources from areas other than construction (asphalt or concrete plants) w/ updates re: controls to reduce pollutants from these materials		UCGP 1.3.3 & 7.2.6.a		Logical Control	\$500	.00	=	_
20	V 3.4 1	SWPPP does not identify allowable sources of non- storm water discharges listed in subpart 1.3.B of the CGP		UCGP 1.3.4 & 7.2.7		. <u> </u>	\$500			_
21		SWPPP does not identify/ensure implementation of pollution prevention measures for non-storm water discharges	<b>.</b>	UCGP 1.3.4, 7.2.7, & 7.2.9.a	100 7 1		\$500	.00	=	
22		Endangered Species Act documentation is not in SWPPP			. 500		\$500	.00	=	
23 24	_	Historic Properties (Reserved)  Copy of permit and/or NOI not in SWPPP (count each omission under 24 as 1 violation)		UCGP 7.2.1 & 7.2.16			\$250	.00	=	
25		SWPPP is not consistent with requirements specified in applicable sediment and erosion site plans or site permits, or storm water management plans or site permits approved by State, Tribal or local officials (e.g., MS4 requirements)				*	\$750	.00	=	
26		SWPPP has not been updated to remain consistent with changes applicable to protecting surface waters in State, Tribal or local erosion plans		UCGP 7.4.1.e	Yes	2	\$250	.00	=	
			The maps included as Appendix B (Erosion Control Plan) of the SWPPP indicate the sequence of BMP installation to be, "as new drainage elements are completed, contractor shall implement the use of proper BMP's [sic] as outlined in Section 3.5.1.b in the UPDES permit regulations." This permit							ŧ
27		Copies of inspection reports have not been retained as part of the SWPPP. for 3 years from date permit	reference is not applicable to the current UPDES CGP, UTRC00000.	UCGP 4.1.7.c & 5.4.3			\$500	.00	=	
	,	coverage terminates			<u> </u>					

28	SWPPP has not been updated/modified to reflect change at site effecting discharge, or where inspections identify SWPPP/BMPs as ineffective, updates to SWPPP regarding modifications to BMPs not made within 7 days of such inspection (count each omission under under 28 as 1 violation)	Neither the SWPPP maps or site plans (Photographs 1226 and 1227) had not been updated to reflect the location of the concrete washout in the northeastern portion of the site, the stockpiles located at the southern terminus of Waterbrook Court (Photographs 1229 and 1230), or the vehicle tracking control pad on Lot 644.	UCGP 5.4.2.b & 7.4.1	Yes	3	\$50	0.00	<b>=</b> \$150
29	Copy of SWPPP not retained on site		UCGP 7.1.1 & 7.3			\$500	0.00 =	
30	A SWPPP not made available upon request SWPPP not signed/certified	Section 8 (Certification and Notification)	UCGP 7.3 UCGP 7.2.15	Yes	1		0.00 = 0.00 =	
		of the SWPPP was not signed.  Additionally, the Delegation of Authority Form, included as Appendix K of the SWPPP, did not indicate Kevin Wardle, the observed official responsible for overseeing permit compliance, as the "duly authorized representative."	,	10010				
			, A	Sub	total SWF	PP Deficie	ncies	s \$2,150
	INSPECTIONS	;		<del> </del>		++	$\dashv$	<del> </del>
31	INSPECTIONS Inspections not performed and documented at least	,	UCGP 4.1.2.		<b></b>	\$250	0.00 =	=
	once every 14 days and within 24 hours after storm event greater than 0.5 inches or greater (not required if: temp stabilization; runoff unlikely due to winter conditions; construction during arid periods in arid areas) (Count each failure to inspect and		4.1.3, 4.1.4, 4.1.7, 7.2.11.b, & 7.2.11.c			,	7.00	
	document as one violation).				r ; ,			
		the state of the s						
	No inspections conducted and documented (if				FALSE	Tru	e or	
	True, then leave elements 32-39 blank)	-		4		F	alse	
	Number of Inspections expected if performed every 7 days:							
	Number of Inspections expected if performed bi- weekly:			1				
	If known, number of days of rainfall of >0.5"						1	
32	Inspections not conducted by qualified personnel		UCGP 4.1.1, 6, & 7.2.12			\$50	0.00 =	=
33	All areas disturbed by construction activity or used for storage of materials and which exposed to precipitation not inspected		UCGP 4.1.5.a & 4.1.5.c		in in the transfer	\$50	0.00 =	=
34	All pollution control measures not inspected to		UCGP 4.1.5.b &			\$50	0.00 =	=
35	ensure proper operation  Discharge locations are not observed and inspected		4.1.6 Part 4.1.5.e		Companya da	\$50	0.00 =	=
36	For discharge locations that are not accessible,				Pro-s	\$50	0.00 =	=
37	nearby locations are not inspected  Entrance/exit not inspected for off-site tracking		UCGP 4.1.5 & 4.1.6			\$50	0.00 =	=
38	Site inspection report does not include: date, name and qualifications of inspector, weather information, location of sediment/pollutant discharge, BMP(s) requiring maintenance, BMP(s) that have failed, BMP(s) that are needed, corrective action required		UCGP 4.1.7, 4.1.6, & 5.4			\$50	0.00 =	=
	including changes/updates to SWPPP and schedule/dates (count each omission under 38 as 1 violation)	and the second s	new ( )					
	MOIGHOU	L		1000				<del>                                      </del>
39	Inspection reports not properly signed/certified (count each failure to to sign/certify as 1 violation)		UCGP 4.1.7.b		. 15.7	\$50	0.00 =	= ]

- 1		·				1			1 1	
+	-	AVAILABILITY OF RECORDS			1	<u> </u>	1			
0	_	Sign/notice not posted	The SWPPP signage (Photograph 1235)	UCGP 1.5	1		1	\$250.00	=	
		Does not contain copy of complete NOI		UCGP 1.5	Yes	1	1	\$50.00	=	
-	습	Location of SWPPP or contact person for	the information required by Part 1.5 of	UCGP 1.5	Yes		1	\$50.00	-	
	٦	scheduling viewing times where on-site location for	the permit.							
İ		SWPPP unavailable not noted on sign								
		SVVI FF dilavallable not floted oil sign			Subf	otal Reco	rds	Deficienci	es	\$
_	_				I	Tan recou	T		Ħ	
╁	-	BEST MANAGEMENT PRACTICES			<del> </del>		+-		H	
+		No velocity dissipation devices located at discharge	×-	UCGP 2.1.3.a &	-		+-	\$500.00	ᆸ	
'	-	locations or outfall channels to ensure non-erosive		2.1.3.b.3				4000.00		
1		flow to receiving water		2. 1.0.0.0						
2		Control measures are not properly:	Along Rolling Creek Way, control							
		Selected, installed and maintained	measures were not installed between	UCGP 2.1.1.c.	Yes	4	T	\$500.00	=	\$2.
	( )	Solotton, instanton arta mantanton	disturbed areas and the paved roadway	2.1.1.d, 2.1.3.a,			1			
			(Photographs 1220, 1222, and 1223).	2.1.3.b, 2.2, &						
1		·	(,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	2.3.2						
1		•	At the eastern terminus of Rolling Creek							
		,	Way, control measures were not		1					
1			installed between disturbed Lot 641 and		1					
			the northern adjacent walkway, which		ł					
			led and drained to the stormwater	i ·						
-	ager.		overflow basins (Photograph 1234).	,			1.	1		
1	4.		Section promote introduction	Liga la como	348	Park No.		1 - 2 - 2		
1	:		In the Waterbrook Court cul-de-sac, no	1 11 1	1000	Y	1			
			vehicle tracking controls were installed	'	1		1			
1			at the point where vehicles were moving		,					
			between disturbed and paved areas of		54					
			the site (Photograph 1228).						1	
1		•	The site (Filotograph 1220).						Н	
1		•	In the Waterbrook Court cul-de-sac.				1	ł		
		•	control measures were not installed						1	
F	В	Maintenance not performed prior to next anticipated	around the stockpiles located along the	UCGP 2.1.1.d.ii			1	\$250.00	=	
		storm event	southern perimeter of the site,	& 2.1.1.iii				'		
H		(count each failure to select, install, maintain each	immediately upgradient and adjacent to						338	
ļ		BMP as one violation)	the Midas Creek easement							
		Divir as one violation),	(Photographs 1229 and 1230).							
3	-	When sediment escapes the site, it is not removed	(timolographia 1220 dila 1200).	UCGP 2.1.2.c.iv	H SHIEDHE	46551684K053895590		\$500.00	=	2000-200-000-00-00-00-00-00-
~		at a frequency necessary to minimize off-site	·							
1		impacts	<u> </u>							
4		Litter, construction debris, and construction		UCGP 2.3.3			Τ	\$500.00	=	
1		chemicals exposed to storm water are not								
		prevented from becoming a pollutant source (e.g.						1		
		screening outfalls, pickup daily, etc.)				:				
5		Stabilization measures are not initiated as soon as	1	UCGP 2.2			Т	\$500.00	=	
		practible on portions of the site where construction								
1.	9.5	activities have temporarily or permanently ceased			1					
	Y	within 14 days after such cessation	•							
-		*Exceptions:								
T		(a) Snow or frozen ground conditions								
T	1.3	(b) Activities will be resumed within 14 days	3							
Γ	- 44	(c) Arid or Semi-arid areas (<20 inches per year)								
3		Common Drainage of 10+ acres does not have a	100	UCGP 2.1.3.b.i.1			T	\$1,000.00	[=f	
		sedimentation basin for the 2 year, 24 hour storm,	•				1			
		or 3600 cubic ft. storage per acre drained	•				1	1		
		Where sedimentation basin not attainable, smaller						\$1,000.00	=	
Τ		sediment basins, sediment traps, or erosion controls	100		1					
		not implemented for downslope boundaries	$M_{\rm eff} = 10^{-3}$				1	1		
		•			Γ.				LI	
	В	Sediment not removed from sediment basin or traps	ià i	UCGP 2,1,3,b,ii				\$500.00	=	
T	- 1	when design capacity reduced by 50% or more	<u> </u>		[	1		1		. w
$\perp$	1970.						<u> </u>		Ш	
7		Common Drainage less than 10 acres does not	<u> </u>	UCGP 2.1.1.b,			1	\$500.00	=[	
		have sediment traps, silt fences, vegetative buffer		2.1.1.c, & 2.1.2	1	1	İ	1		
-		strips, or equivalent sediment controls for all down					1	]		
		slope boundaries (not required if sedimentation								
	-	sediment basin meeting criteria in 46 above)								
Г	Α	Sediment not removed from sediment trap when		UCGP 2.1.1.d &			Γ	\$500.00	[=]	
	_	design capacity reduced by 50% or more		2.3.2	L	-		L	$L^{I}$	
						ubtotal B	MF	Deficienci	es	\$2,
						· · · · · · · · · · · · · · · · · · ·				
		the state of the s							;	
		SMALL BUSINESS EVALUATION								
		SMALL BUSINESS EVALUATION Is the Owner/Operator a Small Business?			, .		Г	<u> </u>	Т	

* Requires Corrective Action	Total Expedited Settlement:	\$4,250
corporation, partnership, or other entity that employs 100 or fewer indiviudals (across all facilities and operations owned by the small business)." The number of employees should be considered as full-time equivalents on an annual basis, including contract employees (see 40 CFR 372.3). A full time employee unit is 2000 hours worked per year.		\$4.0F0
A small business is defined by EPA's Small Business Compliance Policy as: "a person,		

1.

### **CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT** in the matter of **PERRY HOMES UTAH, INC.; DOCKET NO.: CWA-08-2017-0015** was filed with the Regional Hearing Clerk on June 20, 2017; and the **FINAL ORDER** was filed on August 17, 2017.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Peggy Livingston, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on August 17, 2017, to:

# Respondent

William O. Perry, IV Vice President & General Counsel Perry Homes Utah, Inc. 17 East Winchester Street, Suite 200 Murray, Utah 84107

### And emailed to:

Jessica Chalifoux U. S. Environmental Protection Agency Cincinnati Finance Center 26 W. Martin Luther King Drive (MS-0002) Cincinnati, Ohio 45268

August 17, 2017

Melissa Haniewicz

Regional Hearing Clerk