



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 WYNKOOP STREET  
DENVER, CO 80202-1129

Phone 800-227-8917

<http://www.epa.gov/region08>

2017 AUG 17 AM 11:57

FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: CWA-08-2017-0015

IN THE MATTER OF:

PERRY HOMES UTAH, INC.

RESPONDENT

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FINAL ORDER

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 17<sup>th</sup> DAY OF August, 2017.

Katherin E. Hall  
Regional Judicial Officer



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 8

1595 Wynkoop Street
Denver, Colorado 80202

EXPEDITED SETTLEMENT AGREEMENT

Docket Number: CWA-08-2017-0015, UPDES Permit No. UTR367483

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FILED
EPA REGION VIII
HEARING OFFICE

The United States Environmental Protection Agency (EPA) and 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).

violations and facts alleged in the Form. This Agreement does 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.

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.

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.

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.

APPROVED BY EPA:

Date: 6/12/17

[Signature of Stephanie DeJong]

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

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).

Date: 6/13/17

[Signature of James H. Eppers]

James H. Eppers, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

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:

APPROVED BY RESPONDENT:

Name (print): WILLIAM O. PERRY, IV

Title (print): V.P. & GENERAL COUNSEL

Signature: [Signature]

Date: 5/12/17

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

**Expedited Settlement Offer Worksheet  
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 Permit Number
1	Perry Homes 17 East Winchester Street Suite 200 Murray, Utah 84107	801-264-8800	UTR367483
		Inspector Name:	Akash Johnson
		Inspector Agency:	US EPA
		Entrance Interview Conducted:	Yes
		Exit Interview Conducted:	Yes
		Exit Interview given to:	Kevin Wardle
		Exit Interview time:	11:10
		Date:	03/29/2017
LOCATION AND ADDRESS OF SITE			
2	Midas Creek (Phases 6a and 6b) 11700 South 3200 West South Jordan, Utah 84605		

FACILITY DESCRIPTION / CONTACT NAMES	
	Name of Site Contact (ESO Worksheet recipient): Kevin Wardle / Superintendent / Perry Homes
	Name of Authorized Official (40 CFR 122.22): Marlin Bigler / Project Manager / Perry Homes
	Inspection Date: 03/29/2017
	Start Construction Date: Spring 2015
	Estimated Completion Construction Date: Fall 2017
	If Unpermitted, Number of Months Unpermitted: N/A
	Name of Receiving Water Body (Indicate whether 303(d) listed): Midas Creek
	Acres Currently Disturbed / Acres to be Disturbed in Whole Common Plan: Unknown / 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 Deficiencies	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			\$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 =	
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:					
	A Nature of activity in description	UCGP 7.2.2			\$100.00 =	
	B Intended sequence of major activities	UCGP 7.2.4			\$100.00 =	
	C Total disturbed acreage	UCGP 7.2.2			\$100.00 =	
	D General location map				\$100.00 =	
	E 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 areas, surface waters, discharge points, areas of final stabilization (count each omission under 8F as 1 violation)	UCGP 7.2.5			\$50.00 =	
	G Location/description industrial activities, like concrete or asphalt batch plants	UCGP 7.2.5 a.vii			\$500.00 =	
9	SWPPP does not:					
	A Describe all pollution control measures (e.g. BMPs)	The inlet protection devices observed onsite (Photographs 1217-1219, 1221, 1224, 1225, and 1228) were not detailed in the SWPPP.	UCGP 7.2.9	Yes	1	\$750.00 = \$750
	B Describe sequence for implementation		UCGP 7.2.4			\$250.00 =
	C 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 practices		UCGP 2.2 & 7.2.9.c				\$250.00	=	
11	SWPPP does not describe permanent stabilization practices		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)						\$250.00	=	
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						\$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						\$500.00	=	
17	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				\$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				\$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				\$500.00	=	
20	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				\$500.00	=	
21	SWPPP does not identify/ensure implementation of pollution prevention measures for non-storm water discharges		UCGP 1.3.4, 7.2.7, & 7.2.9.a				\$500.00	=	
22	Endangered Species Act documentation is not in SWPPP						\$500.00	=	
23	Historic Properties (Reserved)								
24	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	The copy of the permit included as Appendix C (Construction General Permit) of the SWPPP is the previous version of the UPDES CGP, UTR300000, which has expired.  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 reference is not applicable to the current UPDES CGP, UTRC00000.	UCGP 7.4.1.e	Yes	2		\$250.00	=	\$500
27	Copies of inspection reports have not been retained as part of the SWPPP for 3 years from date permit coverage terminates		UCGP 4.1.7.c & 5.4.3				\$500.00	=	

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	\$50.00	=	\$150	
29	Copy of SWPPP not retained on site		UCGP 7.1.1 & 7.3			\$500.00	=		
	A SWPPP not made available upon request		UCGP 7.3			\$500.00	=		
30	SWPPP not signed/certified	Section 8 (Certification and Notification) 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."	UCGP 7.2.15	Yes	1	\$500.00	=	\$500	
<b>Subtotal SWPPP Deficiencies</b>								<b>\$2,150</b>	
<b>INSPECTIONS</b>									
31	Inspections not performed and documented at least 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 document as one violation).		UCGP 4.1.2, 4.1.3, 4.1.4, 4.1.7, 7.2.11.b, & 7.2.11.c			\$250.00	=		
	No inspections conducted and documented (if True, then leave elements 32-39 blank)				FALSE	True or False			
	Number of Inspections expected if performed every 7 days:								
	Number of Inspections expected if performed bi-weekly:								
	If known, number of days of rainfall of >0.5"								
32	Inspections not conducted by qualified personnel		UCGP 4.1.1, 6, & 7.2.12			\$50.00	=		
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			\$50.00	=		
34	All pollution control measures not inspected to ensure proper operation		UCGP 4.1.5.b & 4.1.6			\$50.00	=		
35	Discharge locations are not observed and inspected		Part 4.1.5.e			\$50.00	=		
36	For discharge locations that are not accessible, nearby locations are not inspected					\$50.00	=		
37	Entrance/exit not inspected for off-site tracking		UCGP 4.1.5 & 4.1.6			\$50.00	=		
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 including changes/updates to SWPPP and schedule/dates (count each omission under 38 as 1 violation)		UCGP 4.1.7, 4.1.6, & 5.4			\$50.00	=		
39	Inspection reports not properly signed/certified (count each failure to to sign/certify as 1 violation)		UCGP 4.1.7.b			\$50.00	=		
<b>Subtotal Inspections Deficiencies</b>								<b>\$0</b>	



A *small business* is defined by EPA's Small Business Compliance Policy as: "a person, corporation, partnership, or other entity that employs 100 or fewer individuals (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.

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Total Expedited Settlement:

\$4,250

\* Requires Corrective Action

## 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