



# Oregon

Kate Brown, Governor

## Department of Environmental Quality

Office of the Director  
811 SW Sixth Avenue  
Portland, OR 97204-1390  
(503) 229-5343  
FAX (503) 229-5100  
TTY: 711

July 13, 2016

CERTIFIED MAIL: 7104 2870 0001 3378 2658

Keystone Granite, Inc.  
c/o Lawrence W. Andrews, Registered Agent  
494 State St., Suite 230  
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/I-WR-2016-106

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$75,710 for discharging wastes into Rickreall Creek, waters of the state, from your facility located at 4592 Salem Dallas Highway NW in Salem, Oregon. DEQ has also cited you, without penalty assessment, for placing wastes where they are likely to escape or be carried into waters of the state by any means.

DEQ issued this penalty because the unpermitted discharge of turbid waters or any industrial wastes or other liquid or solid substances which may cause pollution is prohibited. Rickreall Creek is habitat for fish and aquatic organisms. Turbidity in the water column degrades water quality and may harm aquatic life by covering up food sources, abrading fish gills, and smothering fish eggs and invertebrate organisms living in the water.

\$63,110 of the civil penalty represents the economic benefit you gained by failing to install a new wastewater treatment system to contain your wastewater. If you install the new system, DEQ will consider recalculating the costs as delayed rather than avoided and will reduce the civil penalty accordingly. Also included in Section IV of the Notice is a Department Order that you immediately cease discharges to the ground surface of the Facility and submit documentation demonstrating your corrective action to DEQ. Placing wastes where they are likely to enter waters of the state, including groundwater, or escape by any means is against Oregon law.

If you wish to appeal this matter, DEQ must receive a request for a contested case hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your hearing request to DEQ Office of Compliance and Enforcement – Appeals:

Via mail - 811 S.W. 6<sup>th</sup> Ave., Portland, OR 97204

Via fax - 503-229-5100

Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a timely written hearing request, the penalty will become due. Alternatively, you can pay the penalty by sending a check or money order to the above address.

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review it and refer to it when discussing this case with DEQ.



DEQ may allow you to resolve part of your penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that you sponsor in lieu of paying your penalty. Enclosed is more detail on how to pursue a SEP. SEP documents are available on the internet at <http://www.deq.state.or.us/programs/enforcement/SEP.htm>, or by calling the number below to request a paper copy.

DEQ's rules are available on the internet at <http://www.deq.state.or.us/regulations/rules.htm>, or by calling the number below to request a paper copy.

If you have any questions, please contact DEQ Environmental Law Specialist Courtney Brown, at (503) 229-6839. You may call toll-free within Oregon at 1-800-452-4011, extension 6839.

Sincerely,



Leah K. Feldon, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Nancy Gramlich, DEQ, Salem  
John Koestler, WQ, HQ  
James Gulick, Keystone Granite Inc., 1170 Willow Creek Dr. NW, Salem, OR 97304

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
2 OF THE STATE OF OREGON

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 KEYSTONE GRANITE INC., ) ASSESSMENT AND ORDER  
5 an Oregon corporation, )  
6 Respondent. ) CASE NO. WQ/I-WR-2016-106

7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment  
9 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140,  
10 ORS Chapter 183, ORS Chapter 468B, and Oregon Administrative Rules (OAR) Chapter 340, Divisions  
11 011 and 012.

12 II. FINDINGS OF FACT

13 1. Respondent operates the industrial and commercial facility located at 4592 Salem Dallas  
14 Highway NW, in Salem, Oregon (the "Facility").

15 2. At the Facility Respondent wet cuts and grinds granite and other stone materials producing a  
16 milky white process wastewater.

17 3. On or about June 1, 2016, through June 10, 2016, Respondent discharged the process  
18 wastewater referred to in paragraph 2, above, to a stormwater catchbasin which discharges to Rickreall  
19 Creek, waters of the state.

20 4. On or about June 10, 2016, through the present, Respondent has pumped process wastewater  
21 referred to in paragraph 3, above, to a hole in the ground.

22 5. Respondent is not permitted to discharge to the ground surface or waters of the state.

23 III. CONCLUSIONS

24 1. The milky white process wastewater referred to in Section II, paragraph 2, above is a "waste"  
25 according to ORS 468B.005(9) because it will result in increased turbidity of waters of the state when  
26 discharged and cause pollution.

27 ///



1 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request  
2 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**  
3 **Portland, Oregon 97204,** or fax it to **503-229-5100.** An administrative law judge employed by the  
4 Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR  
5 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an  
6 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or  
7 association.

8 Active duty service-members have a right to stay proceedings under the federal Service  
9 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-  
10 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found  
11 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website  
12 <http://legalassistance.law.af.mil/content/locator.php>.

13 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the  
14 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR  
15 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing  
16 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default  
17 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including  
18 information submitted by you, as the record for purposes of proving a prima facie case.  
19  
20  
21

22 July 13, 2016  
23 Date

22 Sarah Muehle  
23 Leah K. Feldon, Manager  
24 Office of Compliance and Enforcement  
25  
26  
27

## EXHIBIT 1

### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION 1: Discharging wastes into waters of the state from any industrial or commercial establishment, without a permit, in violation of ORS 468B.050(1)(a).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(c).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(D).

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is no prior history.

"O" is whether the violation was repeated or ongoing and receives a value of 3 according to OAR 340-012-0145(4)(c), because there were from 7 to 28 occurrences of the violation. According to OAR 340-012-0145(4), each day of violation is a separate occurrence. According to Respondent, the wastewater treatment system in use at the Facility broke on or about June 1, 2016, and as a result they diverted wastewater to the storm drains, which discharge to the creek, until June 10, 2016. In addition, Respondent also discharged the milky white process wastewater to Rickreall creek in the spring of 2016.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent's conduct was reckless. By pumping and discharging process wastewater directly into catch basins, Respondent consciously disregarded a substantial and unjustifiable risk that those catch basins would ultimately drain to waters of the state and that it would violate Oregon water quality laws.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f), because there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$63,110. This is the amount Respondent gained by avoiding since June 1, 2016 spending \$91,000 to install a water re-use system that would prevent the Facility from discharging its wastewater. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 3 + 8 + 0)] + \$63,110 \\ &= \$6,000 + [\$600 \times 11] + \$63,110 \\ &= \$6,000 + \$6,600 + \$63,110 \\ &= \$75,710 \end{aligned}$$