

U.S. Department of Labor
Occupational Safety and Health Administration
1100 East Campbell Road, Suite 250
Richardson, TX 75081



Citation and Notification of Penalty

To:
Berry Marble Company, Inc., dba U. S. Granite
and its successors
2910 W. Erwin Street
Tyler, TX 75702

Inspection Number: 1288992
Inspection Date(s): 01/18/2018 - 01/19/2018
Issuance Date: 07/16/2018

Inspection Site:
2910 W. Erwin Street
Tyler, TX 75702

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty (this Citation) describes violations of the Occupational Safety and Health Act of 1970. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties proposed, unless within 15 working days (excluding weekends and Federal holidays) from your receipt of this Citation and Notification of Penalty **you either call to schedule an informal conference (see paragraph below) or** you mail a notice of contest to the U.S. Department of Labor Area Office at the address shown above. Please refer to the enclosed booklet (OSHA 3000) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless this Citation is affirmed by the Review Commission or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and Federal holidays), whichever is longer.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Area Director during the 15 working day contest period by calling 972-952-1330. During such an informal conference you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Area Director within 15 working days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Right to Contest – You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest proposed penalties and/or abatement dates without contesting the underlying violations. **Unless you inform the Area Director in writing that you intend to contest the citation(s) and/or proposed penalty(ies) within 15 working days after receipt, the citation(s) and the proposed penalty(ies) will become a final order of the Occupational Safety and Health Review Commission and may not be reviewed by any court or agency.**

Penalty Payment – Penalties are due within 15 working days of receipt of this notification unless contested. (See the enclosed booklet and the additional information provided related to the Debt Collection Act of 1982.) Make your check or money order payable to “DOL-OSHA”. Please indicate the Inspection Number on the remittance. You can also make your payment electronically on www.pay.gov. On the left side of the pay.gov homepage, you will see an option to Search Public Forms. Type “OSHA” and click Go. From the results, click on **OSHA Penalty Payment Form**. The direct link is:

<https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=53090334>.

You will be required to enter your inspection number when making the payment. Payments can be made by credit card or Automated Clearing House (ACH) using your banking information. Payments of \$25,000 or more require a Transaction ID, and also must be paid using ACH. If you require a Transaction ID, please contact the OSHA Debt Collection Team at (202) 693-2170.

OSHA does not agree to any restrictions or conditions or endorsements put on any check, money order, or electronic payment for less than the full amount due, and will process the payments as if these restrictions or conditions do not exist.

Notification of Corrective Action – For each violation which you do not contest, you must provide ***abatement certification*** to the Area Director of the OSHA office issuing the citation and identified above. This abatement certification is to be provided by letter within 10 calendar days after each abatement date. Abatement certification includes the date and method of abatement. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item. The abatement certification letter must be posted at the location where the violation appeared and the corrective action took place or employees must otherwise be effectively informed about abatement activities. A sample abatement certification letter is enclosed with this Citation. In addition, where the citation indicates that ***abatement documentation*** is necessary, evidence of the purchase or repair of equipment, photographs or video, receipts, training records, etc., verifying that abatement has occurred is required to be provided to the Area Director.

Employer Discrimination Unlawful – The law prohibits discrimination by an employer against an

employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 30 days after the discrimination occurred with the U.S. Department of Labor Area Office at the address shown above.

Employer Rights and Responsibilities – The enclosed booklet (OSHA 3000) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Notice to Employees – The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the U.S. Department of Labor Area Office at the address shown above and postmarked within 15 working days (excluding weekends and Federal holidays) of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data – You should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to these alleged violations will be posted when our system indicates that you have received this citation. You are encouraged to review the information concerning your establishment at www.osha.gov. If you have any dispute with the accuracy of the information displayed, please contact this office.



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with OSHA to discuss the citation(s) issued on 07/16/2018. The conference will be held by telephone or at the OSHA office located at 1100 East Campbell Road, Suite 250, Richardson, TX 75081 on _____ at

_____. Employees and/or representatives of employees have a right to attend an informal conference.

CERTIFICATION OF CORRECTIVE ACTION WORKSHEET

Inspection Number: 1288992

Company Name: Berry Marble Company, Inc., dba U. S. Granite
Inspection Site: 2910 W. Erwin Street, Tyler, TX 75702
Issuance Date: 07/16/2018

List the specific method of correction for each item on this citation in this package that does not read "Corrected During Inspection" and return to: **U.S. Department of Labor – Occupational Safety and Health Administration, 1100 East Campbell Road, Suite 250, Richardson, TX 75081**

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

I certify that the information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement.

Signature

Date

Typed or Printed Name

Title

NOTE: 29 USC 666(g) whoever knowingly makes any false statements, representation or certification in any application, record, plan or other documents filed or required to be maintained pursuant to the Act shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment of not more than 6 months or both.

POSTING: A copy of completed Corrective Action Worksheet should be posted for employee review



Citation and Notification of Penalty

Company Name: Berry Marble Company, Inc., dba U. S. Granite
Inspection Site: 2910 W. Erwin Street, Tyler, TX 75702

Citation 1 Item 1 Type of Violation: **Serious**

OSH ACT of 1970 Section 5(a)(1) of the Occupational Safety and Health Act of 1970: The employer did not furnish to each of his employees employment and a place of employment which were free from the recognized hazards of being struck-by and/or crushed-by suspended load by not ensuring that it inspected, tested and maintained its below the hook devices:

This violation occurred on or about January 18, 2018, at times prior thereto; where employees, who used below-the-hook lifter/clamp to handle and move granite and marble slabs, were exposed to struck-by and/or crushed-by hazards.

Among other methods, one feasible and acceptable means of abatement is to comply with the requirements of ASME Below the Hook Lifting Devices, B30.20-1.3: Inspection, Testing and Maintenance, by a designated person, which requires below-the-hook lifting device to be inspected for damage which constitutes a hazard and that the hazardous condition discovered during the inspection be corrected before normal operations of the lifter resume.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:
Proposed Penalty:

07/26/2018
\$9959.00



Citation and Notification of Penalty

Company Name: Berry Marble Company, Inc., dba U. S. Granite
Inspection Site: 2910 W. Erwin Street, Tyler, TX 75702

Citation 1 Item 2 Type of Violation: **Serious**

29 CFR 1910.147(c)(4)(i): The employer did not ensure that procedures were developed, documented and utilized for the control of potentially hazardous energy when employees are engaged in the activities covered by this section.

This violation occurred on or about January 18, 2018; where employees in the maintenance department were required to perform service and maintenance work on machines and equipment, but the employer's lockout/tagout did not contain how to verify the isolation of hazardous energy. Employees are exposed to electrical hazards.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:
Proposed Penalty:

07/26/2018
\$9959.00



Citation and Notification of Penalty

Company Name: Berry Marble Company, Inc., dba U. S. Granite
Inspection Site: 2910 W. Erwin Street, Tyler, TX 75702

Citation 1 Item 3 Type of Violation: **Serious**

29 CFR 1910.147(d)(6): The employer did not ensure that prior to starting work on machines or equipment that have been locked out or tagged out, the authorized employee verified that isolation and deenergization of the machine or equipment had been accomplished.

This violation occurred on or about January 18, 2018; where employees in the maintenance department were required to perform service and maintenance work on machines and equipment without verifying deenergization of hazardous energy. Employees are exposed to electrical hazards.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:
Proposed Penalty:

07/26/2018
\$9959.00



Citation and Notification of Penalty

Company Name: Berry Marble Company, Inc., dba U. S. Granite
Inspection Site: 2910 W. Erwin Street, Tyler, TX 75702

Citation 1 Item 4 Type of Violation: **Serious**

29 CFR 1910.147(f)(3)(ii)(D): The employer did not ensure that each authorized employee affixed a personal lockout or tagout device to the group lockout device, group lockbox, or comparable mechanism when he or she begins work, and shall remove those devices when he or she stops working on the machine or equipment being serviced or maintained.

This violation occurred on or about January 18, 2018; where employees worked on the same equipment and did not utilize group lockout/tagout. Employees are exposed to electrical hazards.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:
Proposed Penalty:

07/26/2018
\$9959.00



Citation and Notification of Penalty

Company Name: Berry Marble Company, Inc., dba U. S. Granite
Inspection Site: 2910 W. Erwin Street, Tyler, TX 75702

Citation 1 Item 5 Type of Violation: **Serious**

29 CFR 1910.1200(h)(3)(ii): The employer did not provide training on the physical and health hazards of the chemicals in the work area:

This violation occurred on or about January 18, 2018, and at times prior to, in the sanding, polishing and sealing area; where the employer did not ensure that employees, who worked with hazardous chemicals, including but not limited to Pro Sealer were not trained on the physical and health hazards.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:
Proposed Penalty:

07/26/2018
\$9959.00



Citation and Notification of Penalty

Company Name: Berry Marble Company, Inc., dba U. S. Granite
Inspection Site: 2910 W. Erwin Street, Tyler, TX 75702

The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury or illness.

Citation 2 Item 1 a Type of Violation: **Willful**

29 CFR 1910.132(d)(1): The employer did not assess the workplace to determine if hazards were present, or were likely to be present, which necessitated the use of personal protective equipment (PPE):

This violation occurred on or about January 18, 2018, in the production area; where the employer did not conduct a hazard assessment to determine if employees who worked with hazardous chemicals, including but not limited to Pro Sealer, needed personal protective equipment.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:
Proposed Penalty:

07/26/2018
\$99589.00



Citation and Notification of Penalty

Company Name: Berry Marble Company, Inc., dba U. S. Granite
Inspection Site: 2910 W. Erwin Street, Tyler, TX 75702

Citation 2 Item 1 b Type of Violation: **Willful**

29 CFR 1910.138(b): Selection. the employer did not ensure that it based the selection of the appropriate hand protection on an evaluation of the performance characteristics of the hand protection relative to the task(s) to be performed, conditions present, duration of use, and the hazards and potential hazards identified.

This violation occurred on or about January 18, 2018, and at times prior to, in the production area; where the employer did not ensure that employees, who worked with hazardous chemicals, including but not limited to Pro Sealer, were provided and used protective equipment.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:

07/26/2018



Citation and Notification of Penalty

Company Name: Berry Marble Company, Inc., dba U. S. Granite
Inspection Site: 2910 W. Erwin Street, Tyler, TX 75702

The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury or illness.

Citation 2 Item 2 a Type of Violation: **Willful**

29 CFR 1910.184(c)(1): The employer did not ensure that slings that were damaged or defective were not in use:

This violation occurred on or about January 18, 2018, at times prior to and at times thereafter; where employees were using damaged slings, and were exposed to the hazards of being struck-by and/or crushed-by multiple granite slabs weighing more than 4,000 pounds.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:	07/26/2018
Proposed Penalty:	\$99589.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Berry Marble Company, Inc., dba U. S. Granite
Inspection Site: 2910 W. Erwin Street, Tyler, TX 75702

Citation 2 Item 2 b Type of Violation: **Willful**

29 CFR 1910.184(i)(1): Each sling was not marked or coded to show the rated capacities for each type of hitch and type of synthetic web material:

This violation occurred on or about January 18, 2018, where the slings employees used to lift, move and load granite slabs were not marked to show the rated capacity. Employees were exposed to the hazards of being struck-by and/or crushed-by loads of granite weighing more than 4,000 pounds.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:

07/26/2018

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Berry Marble Company, Inc., dba U. S. Granite
Inspection Site: 2910 W. Erwin Street, Tyler, TX 75702

Citation 3 Item 1 Type of Violation: **Repeat**

29 CFR 1910.147(c)(6)(i)(C): Where lockout was used for energy control, the periodic inspection did not include a review, between the inspector and each authorized employee, of that employee's responsibilities under the energy control procedure being inspected:

This violation occurred on or about January 18, 2018; where employees in the maintenance department were required to perform service and maintenance work on machines and equipment, but the employer did not periodically review the energy control procedures to determine their effectiveness.

Berry Marble Company dba U. S. Granite was previously cited for a violation of this occupational safety and health standard 29 CFR 1910.147(c)(6)(i)(C), which was contained in OSHA inspection number 978402, citation number 1, item number 6 and was affirmed as a final order on September 3, 2015, with respect to a workplace located at 2910 W. Erwin Street, Tyler, Texas 75702.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:	07/26/2018
Proposed Penalty:	\$19918.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Berry Marble Company, Inc., dba U. S. Granite
Inspection Site: 2910 W. Erwin Street, Tyler, TX 75702

The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury or illness.

Citation 3 Item 2 a Type of Violation: **Repeat**

29 CFR 1910.147(c)(7)(i)(A): Each authorized employee did not receive training in the recognition of applicable hazardous energy sources, the type and magnitude of the energy available in the workplace, and the methods and means necessary for energy isolation and control:

This violation was discovered on or about January 18, 2018; where employees that were deemed to be authorized to perform lockout/tagout by the employer were not trained in the recognition of applicable hazardous energy sources, the type and magnitude of the energy available in the workplace, and the methods and means necessary for energy isolation and control, and were exposed to the unexpected release of stored energy.

Berry Marble Company dba U. S. Granite was previously cited for a violation of this occupational safety and health standard or its equivalent standard 29 CFR 1910.147(c)(7)(I)(A), which was contained in OSHA inspection number 978402, citation number 3, item number 2 and was affirmed as a final order on September 3, 2015, with respect to a workplace located at 2910 W. Erwin Street, Tyler, Texas 75702.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:
Proposed Penalty:

07/26/2018
\$49796.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Berry Marble Company, Inc., dba U. S. Granite
Inspection Site: 2910 W. Erwin Street, Tyler, TX 75702

Citation 3 Item 2 b Type of Violation: **Repeat**

29 CFR 1910.147(c)(7)(i)(B): Each affected employee was not instructed in the purpose and use of the energy control procedure:

This violation occurred on or about January 18, 2014; where affected employees, who were not trained on the company's lockout/tagout program and energy control procedures, were exposed to the unexpected release of stored energy.

Berry Marble Company dba U. S. Granite was previously cited for a violation of this occupational safety and health standard 29 CFR 1910.147(c)(7)(i)(B), which was contained in OSHA inspection number 978402, citation number 1, item number 7 and was affirmed as a final order on September 3, 2015, with respect to a workplace located at 2910 W. Erwin Street, Tyler, Texas 75702.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:

07/26/2018

A handwritten signature in black ink, appearing to read "Basil Singh". The signature is stylized and cursive.

Basil Singh
Area Director

U.S. Department of Labor
Occupational Safety and Health Administration
1100 East Campbell Road, Suite 250
Richardson, TX 75081



INVOICE / DEBT COLLECTION NOTICE

Company Name: Berry Marble Company, Inc., dba U. S. Granite
Inspection Site: 2910 W. Erwin Street, Tyler, TX 75702
Issuance Date: 07/16/2018

Summary of Penalties for Inspection Number	1288992
Citation 1, Serious	\$49795.00
Citation 2, Willful	\$199178.00
Citation 3, Repeat	\$69714.00
TOTAL PROPOSED PENALTIES	\$318687.00

To avoid additional charges, please remit payment promptly to this Area Office for the total amount of the uncontested penalties summarized above. Make your check or money order payable to: "DOL-OSHA". Please indicate OSHA's Inspection Number (indicated above) on the remittance. You can also make your payment electronically on www.pay.gov. On the left side of the pay.gov homepage, you will see an option to Search Public Forms. Type "OSHA" and click Go. From the results, click on **OSHA Penalty Payment Form**. The direct link is <https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=53090334>. You will be required to enter your inspection number when making the payment. Payments can be made by credit card or Automated Clearing House (ACH) using your banking information. Payments of \$25,000 or more require a Transaction ID, and also must be paid using ACH. If you require a Transaction ID, please contact the OSHA Debt Collection Team at (202) 693-2170.

OSHA does not agree to any restrictions or conditions or endorsements put on any check, money order, or electronic payment for less than the full amount due, and will cash the check or money order as if these restrictions or conditions do not exist.

If a personal check is issued, it will be converted into an electronic fund transfer (EFT). This means that our bank will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will then usually occur within 24 hours and will be shown on your regular account statement. You will not receive your original check back. The bank will destroy your

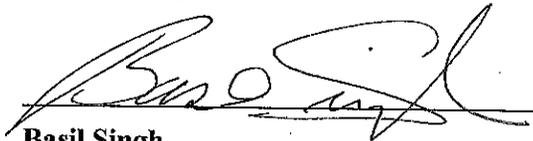
original check, but will keep a copy of it. If the EFT cannot be completed because of insufficient funds or closed account, the bank will attempt to make the transfer up to 2 times.

Pursuant to the Debt Collection Act of 1982 (Public Law 97-365) and regulations of the U.S. Department of Labor (29 CFR Part 20), the Occupational Safety and Health Administration is required to assess interest, delinquent charges, and administrative costs for the collection of delinquent penalty debts for violations of the Occupational Safety and Health Act.

Interest: Interest charges will be assessed at an annual rate determined by the Secretary of the Treasury on all penalty debt amounts not paid within one month (30 calendar days) of the date on which the debt amount becomes due and payable (penalty due date). The current interest rate is one percent (1%). Interest will accrue from the date on which the penalty amounts (as proposed or adjusted) become a final order of the Occupational Safety and Health Review Commission (that is, 15 working days from your receipt of the Citation and Notification of Penalty), unless you file a notice of contest. Interest charges will be waived if the full amount owed is paid within 30 calendar days of the final order.

Delinquent Charges: A debt is considered delinquent if it has not been paid within one month (30 calendar days) of the penalty due date or if a satisfactory payment arrangement has not been made. If the debt remains delinquent for more than 90 calendar days, a delinquent charge of six percent (6%) per annum will be assessed accruing from the date that the debt became delinquent.

Administrative Costs: Agencies of the Department of Labor are required to assess additional charges for the recovery of delinquent debts. These additional charges are administrative costs incurred by the Agency in its attempt to collect an unpaid debt. Administrative costs will be assessed for demand letters sent in an attempt to collect the unpaid debt.



Basil Singh

Area Director

07-16-2018

Date



Dear Employer:

Under a law passed by Congress in 1996, the Small Business Administration (SBA) has established the SBA Ombudsman and SBA Regional Fairness Boards to investigate small business complaints pertaining to federal agency enforcement actions.

If you are a small business and believe you have been treated unfairly by the Occupational Safety and Health Administration (OSHA), you may file a written, signed complaint with the SBA Ombudsman at:

Small Business Administration
Office of the National Ombudsman
409 Third Street, S. W., MC2 120
Washington, DC 20024 -2417
Telephone No.: (202) 205-2417
Fax No.: (202) 481-5719

You can also access and download the Complaint/Comment form by visiting their website at:

<http://www.sba.gov/aboutsba/sbaprograms/ombudsman/index.html>

Or, call Toll Free. 1-888-REGFAIR

NOTE: Filing a complaint with the SBA Ombudsman does not affect any obligation you have to comply with an OSHA citation or other enforcement action, nor, does it mean you need not take other available legal steps to protect your interest.

Your support in worker occupational health and safety is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Basil Singh". The signature is stylized and fluid.

BASIL SINGH
Area Director
Dallas Area Office