

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
(503) 229-5696
FAX (503) 229-5100
TTY 711

October 26, 2023

CERTIFIED MAIL: 7016 2710 0000 4221 4261

Vape Game, LLC c/o Oregon Registered Agent LLC 2335 State St, Ste 101 Salem OR 97301

Re:

Notice of Civil Penalty Assessment and Order

Case No. LQ-HW-WR-2022-638

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Vape Game, LLC a civil penalty of \$32,700 for violations of hazardous waste regulations at its facilities in Eugene and Springfield in 2021-2022. DEQ is assessing a penalty in the enclosed Notice of Civil Penalty Assessment and Order (Notice) for transporting hazardous waste without a manifest, failing to determine whether wastes you generated were hazardous, storing hazardous waste for longer than allowed without a permit, and for failing to prepare contingency plans for your facilities. DEQ also cited you, without penalty, for various other hazardous waste management and reporting violations.

DEQ issued this penalty because accurately determining whether wastes you generate are hazardous is the cornerstone of safe management and disposal from "cradle to grave." The nicotine-containing waste you generate is acutely hazardous waste, which is highly-regulated in small amounts.

Included in Section IV of the enclosed Notice is an order requiring you to update your hazardous waste generator reporting to DEQ for the Cleveland Street facility to reflect large quantity generator status in the year 2020.

You may pay the civil penalty as follows:

Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here: https://ydo.oregon.gov. Select Register Account or Login, then select Pay Invoices/Fees on your account dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional charges.

Pay by check or money order: Make checks payable to "Department of Environmental Quality" and mail to the address on the enclosed payment slip. Please make sure to include the payment slip with your check or money order.

Vape Game, LLC Case No. LQ-HW-WR-2022-638 Page 2

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

Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232

Via email – DEQappeals@deq.oregon.gov

Via fax – 503-229-6762

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.

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

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 instead of paying a portion of your penalty. Further information is available by calling the number below or at http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx.

DEQ's rules are available at http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx or by calling the number below.

If you have any questions, please contact Sarah Wheeler at 971-301-0622.

Sincerely,

Kieran O'Donnell, Manager

Office of Compliance and Enforcement

Enclosures

cc:

Chris Bayham, DEQ

Accounting, DEQ

Dalton Baarstad, dalton@vape-game.com

1	BEFORE THE ENVIRONMENTAL QUALITY COMMISSION				
2	OF THE STATE OF OREGON				
3 4 5	IN THE MATTER OF: VAPE GAME, LLC, Respondent.) NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER) CASE NO. LQ-HW-WR-2022-638				
6					
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, ORS 468.126 through 468.140,				
10	ORS Chapters 459, 466, and 183, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011,				
11	012, and 100-103.				
12	II. FINDINGS OF FACT				
13	1. At all material times, Respondent operated a business formulating nicotine vaping liquid, as				
14	well as retail and wholesale distribution of nicotine vaping products, at the following locations:				
15	a. Respondent operated at 120 Cleveland Street, Unit 4, in Eugene, Oregon (the Cleveland				
16	Facility) from approximately July 2015 through October 30, 2020.				
17	b. Respondent operated at 490 Seneca Road, in Eugene, Oregon (the Seneca Facility) on				
18	and about at least October 30, 2020, through March 2022.				
19	c. Since approximately July 2013 to the present, Respondent operates at 2321 Olympic				
20	Street, in Springfield, Oregon (the Olympic Facility).				
21	2. At all material times, the Cleveland and Seneca Facilities generated more than 2.2 pounds of				
22	acute hazardous waste on a monthly basis and stored more than 2.2 pounds of acute hazardous waste at				
23	these Facilities.				
24	3. At all material times, the Cleveland and Seneca Facilities did not have a DEQ-issued permit				
25	to store, treat, or dispose of hazardous waste.				
26	4. At all material times, Respondent did not have a contingency plan for the Cleveland and				
27	Seneca Facility. Respondent created the first contingency plan for the Olympic Facility in late 2022.				

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Olympic Facility

14. On October 6, 2021, DEQ staff inspected the Olympic Facility, and DEQ staff collected samples on November 22, 2021 from three waste streams observed on October 6, 2021 at the Olympic Facility.

15. On October 6, 2021, Respondent stored used nicotine-contaminated green wipes discarded on the floor and on top of a drum, not in containers. Respondent had not labeled or managed the wipes as hazardous waste. DEQ's analysis of samples of these wipes demonstrated they contained nicotine at 1.520 milligrams per gram (mg/g) (1,520 parts per million (ppm)).

III. CONCLUSIONS

Based upon the foregoing Findings of Fact, DEQ has determined that Respondent violated the following provisions of Oregon law, including hazardous waste laws adopted by OAR 340-100-0002¹.

- 1. On and about October 27, 2020, and November 23, 2021, Respondent violated 40 CFR 263.20(a)(1) by offering hazardous waste for transport without a manifest, as described in Paragraphs 1-3, 7, and 12 in Section II. The nicotine-containing wastes were solid wastes according to 40 CFR 261.2(a)(1), 261.2(a)(2)(i)(A), and 261.2(b)(1) and (3), because they were stored before or in lieu of disposal, and they were ultimately disposed of. The nicotine-containing wastes were hazardous waste identified by EPA Hazardous Waste Number P075, pursuant to 40 CFR 261.33(a) or (b) and (e). These are Class I violations according to OAR 340-012-0068(1)(e). DEQ hereby assesses a \$15,600 civil penalty for these violations.
- 2. Respondent violated ORS 466.095(1)(a) by storing hazardous waste without a permit at the Seneca Facility, as described in Paragraphs 1.b, 2-3, 7, and 11 of Section II. Specifically, Respondent stored 75 gallons of acute hazardous waste transported from the Cleveland Facility, at the Seneca Facility from October 27, 2020, until November 23, 2021. This is a Class II violation, according to OAR 340-012-0068(2)(d). DEQ hereby assesses a \$9,000 civil penalty for this violation.

Page 3 of 6

¹ On November 17, 2021, the Environmental Quality Commission adopted new hazardous waste regulations, which became effective in Oregon as of January 1, 2022. This Notice cites the CFRs that were in effect at the time the violations occurred, enacted through June 30, 2015.

NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER

CASE NO. LQ/HW-WR-2022-638

3. Respondent violated OAR 340-102-0011(2) by failing to completely and accurately determine
if Respondent's residues (as defined in OAR 340-100-0010(2)(hh) and 40 CFR 261.2) at the Seneca and
Olympic Facilities were hazardous wastes upon generation, as described in Paragraphs 1, 10-12, and 14-15
in Section II above. These are Class I violations, according to OAR 340-012-0068(1)(a). DEQ hereby
assesses a \$4,800 civil penalty for these violations.
4 Demonstrated 40 OPP 205 51()

- 4. Respondent violated 40 CFR 265.51(a), as referenced by 262.34(a)(4), by failing to maintain a written contingency plan at the Cleveland and Seneca Facilities, as described in Paragraphs 1-4 of Section II. These are Class II violations, according to OAR 340-012-0068(2)(i). DEQ hereby assesses a \$3,300
- 5. Respondent violated 40 CFR 265.16, as referenced by 40 CFR 262.34(a)(4), by failing to properly train employees responsible for managing hazardous waste at the Cleveland and Seneca Facilities, as described in Paragraphs 1-3 and 5 of Section II. These are Class II violations, according to OAR 340-
- 6. Respondent violated OAR 340-102-0041(2) by failing to submit timely annual hazardous waste generator reports for the Cleveland and Seneca Facilities, as described in Paragraphs 1-3, 8, 12, and 15 in Section II. These are Class II violations, according to OAR 340-012-0068(2)(t). DEQ has not

Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is

1. Pay a total civil penalty of \$32,700. The determination of the civil penalty is attached as

If you do not file a request for hearing as set forth in Section V below, please pay the penalty as

Pay online with e-check (ACH) or Credit Card: Go to Your DEQ Online at https://ydo.oregon.gov. Select Register Account or Login, then select Pay Invoices/Fees on your account dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US

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Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional charges.

Pay by check or money order: Make checks payable to "Department of Environmental Quality" and mail to the address on the enclosed payment slip. Please make sure to include the payment slip with your check or money order.

2. Within 30 days of this order becoming final by operation of law or on appeal, submit a hazardous waste generator report and site identification report for 2020 reflecting large quantity generator status at the Cleveland Facility in 2020 to DEQ. Submit the report through Your DEQ Online, at https://www.oregon.gov/deq/Hazards-and-Cleanup/hw/Pages/HW-Reporting.aspx, by responding to the 2020 reporting obligation forms for the Facility in the Upcoming Obligations Module.

V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ must receive your request for hearing within 20 calendar days from the date you receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached exhibits, you must do so in your request for hearing, as factual matters not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests for hearing.) You must send your request to: DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232, fax it to 503-229-5100 or email it to DEQappeals@deq.oregon.gov. An administrative law judge employed by the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, however you are not required to be. If you are an individual, you may represent yourself. If you are a corporation, partnership, limited liability company, unincorporated association, trust or government body, you must be represented by an attorney or a duly authorized representative, as set forth in OAR 137-003-0555.

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	Active-duty Service members have a right to stay proceedings under the federal Service				
2	Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-				
3	452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed				
1	Forces Legal Assistance Office through http://legalassistance.law.af.mil . The Oregon Military				
5	Department does not have a toll-free telephone number.				
5	If you fail to file a timely request for hearing, the Notice will become a final order by default				
7	without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later				
3	withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the				
7	hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates				
10	the relevant portions of its files, including information submitted by you, as the record for purposes o				
11	proving a prima facie case.				
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14	Date Kieran O'Donnell, Manager				
15	Date Kieran O'Donnell, Mahager Office of Compliance and Enforcement				
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EXHIBIT NO. 1

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

<u>VIOLATION 1</u>: Offering hazardous waste for transport without a uniform hazardous

waste manifest, in violation of 40 CFR 263.20(a)(1).

CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0068(1)(e).

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-

0135(4)(c)(A)(ii) because Respondent offered at least one quart or 2.2 pounds of acutely hazardous waste for unmanifested transport.

<u>CIVIL PENALTY FORMULA</u>: 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 \$12,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(2)(a)(M)(i) because at the time of the hazardous waste rule violations, Respondent was a large quantity generator of hazardous waste.
- "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 2 according to OAR 340-012-0145(4)(b) because there were two occurrences of the violation. Respondent offered two shipments of hazardous waste without manifests, on or about October 27, 2020, and again on November 23, 2021.
- "M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. Respondent is a highly-regulated business, and DEQ had instructed Respondent in hazardous waste requirements prior to both shipments. By shipping acutely hazardous waste for disposal without a manifest on two occasions, Respondent failed to take reasonable care to avoid the foreseeable risk that a violation would occur.
- "C" is Respondent's efforts to correct or mitigate the violation and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent made reasonable efforts to minimize the effects of the violation by, in 2021, arranging to ship the hazardous waste from

its interim location to a permitted disposal facility as hazardous waste, on a hazardous waste manifest.

"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 \$0 because there is insufficient information to make an estimate of the economic benefit, if any, received by Respondent from this violation.

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<u>PENALTY CALCULATION</u>: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB

= $12,000 + [(0.1 x $12,000) x (0 + 0 + 2 + 4 + (-3)] + $0

= $12,000 + [$1,200 x 3] + $0

= $12,000 + $3,600 + $0

= $15,600
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EXHIBIT NO. 2

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

<u>VIOLATION 2:</u> Storing hazardous waste without a permit at the Seneca Facility, in

violation of ORS 466.095(1)(a).

<u>CLASSIFICATION</u>: This is a Class II violation pursuant to OAR 340-012-0068(2)(d).

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-

0135(4)(c)(A)(ii) because Respondent illegally stored at least one

quart or 2.2 pounds of acutely hazardous waste.

<u>CIVIL PENALTY FORMULA</u>: 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 \$3,000 for a Class II, major magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(B)(i) and applicable pursuant to OAR 340-012-0140(2)(a)(M)(i) because at the time of the hazardous waste statute violation, Respondent was a large quantity generator of hazardous waste.

"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 4 according to OAR 340-012-0145(4)(d) because the violation was ongoing for more than 28 days. Each day of a violation with a duration of more than one day is a separate occurrence when determining the O factor, according to OAR 340-012-0145(4). Respondent stored the waste at the Seneca Facility from approximately the end of October 2020 until November 23, 2021. As a large quantity generator, Respondent can store hazardous waste for 90 days without a permit. Therefore, Respondent illegally stored the waste for approximately ten months from at least approximately the end of January 2021 (90 days after the waste arrived at the Seneca Facility, although it was generated earlier) through November 23, 2021.
- "M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent as defined by OAR 340-012-0030(15). Respondent received hazardous waste technical assistance from DEQ in 2020. By failing to apply the knowledge from hazardous waste technical assistance to determine when

this hazardous waste must be disposed, Respondent failed to take reasonable care to avoid the foreseeable risk of committing this violation.

- "C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent made reasonable efforts to minimize the effects of the violation by properly characterizing and disposing of the waste after DEQ's site visits in October and November 2021.
- "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 \$0 because DEQ has insufficient information on which to base a finding of the economic benefit associated with this violation.

<u>PENALTY CALCULATION</u>: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB= \$6,000 + [(0.1 x \$6,000) x (0 + 0 + 4 + 4 + (-3)] + \$0

 $= $6,000 + ($600 \times 5) + 0

= \$6,000 + \$3,000 + \$0

=\$9.000

Oregon Department of Environmental Quality 700 NE Multnomah Street, Suite 600 Portland, OR 97232-4100



Phone: 503-229-5437 Fax: 503-229-5850

CIVIL PENALTY - ORS 468.135(2)

DATE:	October 26, 2023
RESPONSE DATE:	January 4, 2024
TOTAL PENALTY:	\$32,700.00

Account Name:			
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2400015
SubSystem ID:	200251	FIMS Acct, ID;	2082

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 32,700.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 32,700.00

Payment of this penalty is subject to the exercise of your options or right to appeal as described in the enclosed enforcement documents.

To Pay Online with ACH or Credit Card Visit https://ydo.oregon.gov and select 'Register Account'



PLEASE RETURN THIS PORTION WITH YOUR PAYMENT



REFERENCE NO.	CPGFD2400015		
PAYCODE;	00401 7400 10	040 74001 0500 000000 00	
FEE PROGRAM ID:	950	RESPONSE DATE:	January 4, 2024
FIMS ACCT. ID:	2082	TOTAL PENALTY DUE:	\$32700.00

AMOUNT ENCLOSED:

MAKE CHECK PAYABLE TO: Department of Environmental Quality

DEQ FINANCIAL SERVICES - LBX4244 PO BOX 4244 PORTLAND OR 97208-4244

Check this box if updated address information has been provided on the back of the form.



Environmental Quality

State of Oregon Department of Environmental Quality

CIVIL PENALTY - ORS 468.135(2)

700 NE Multnomah Street, Suite 600 Portland, OR 97232-4100

Phone: 503-229-5437 Fax: 503-229-5850

Penalty Detail

Transaction Date	Description	Amount
10/25/2023	2022-638 LQ-HW-WR-2022-638	\$32,700.00
		402,100.00

SFMS Agencies Use:

Trans Code Treasury Fund	SFMS	Index	PCA (5)	Agency Object	Project#	Phase
	7400	10040	74001	0500		00

Address Changes

Please visit https://ydo.oregon.gov to update your mailing address online or provide the following information:

Name	
Address	
City, State, Zip	