

## NOTICE OF VIOLATION

### California Safe Drinking Water and Toxic Enforcement Act

#### Tris(1,3-dichloro-2-propyl) Phosphate ("TDCPP") in Foam-Cushioned Pads for Infants and Children to Lie On

December 6, 2012

This Notice of Violation is provided to you pursuant to and in compliance with California Health and Safety Code Section 25249.7(d).

- For general information regarding the California Safe Drinking Water and Toxic Enforcement Act, see the attached summary provided by the California EPA (copies not provided to public enforcement agencies).
- This Notice of Violation is provided by the Center for Environmental Health ("CEH"), 2201 Broadway, Suite 302, Oakland, CA 94612, (510) 655-3900. CEH is a nonprofit corporation dedicated to protecting the environment, improving human health and supporting environmentally sound practices. Charlie Pizarro is the Associate Director of and a responsible individual within CEH.

#### **Description of Violation:**

- Violators: The names and addresses of the violators are listed on the attached Exhibit 1.
- Time Period of Exposure: The violations have been occurring since at least October 28, 2012, and are continuing to this day.
- Provision of Proposition 65: This Notice of Violation covers the "warning provision" of Proposition 65, which is found at California Health and Safety Code Section 25249.6.
- Chemical(s) Involved: The name of the listed chemical involved in these violations is tris(1,3-dichloro-2-propyl) phosphate ("TDCPP"). Exposures to TDCPP occur from use of the products identified in this Notice.
- Type of Products: The specific type of products causing this violation is Foam-Cushioned Pads for Infants and Children to Lie On, such as foam-cushioned pads and mats used for sleeping, resting, and/or changing diapers. Non-exclusive examples of this specific type of products are listed on the attached Exhibit 1.
- Description of Exposure: This Notice addresses consumer exposures to TDCPP. Use of the products identified in this Notice results in human exposures to TDCPP. The products contain TDCPP, particularly in the foam-padded portions that have been treated with TDCPP as a flame retardant. The routes of exposure for the violations include inhalation, ingestion, and/or dermal absorption by consumers (including children). Inhalation occurs when TDCPP is released from the products into the ambient environment. Ingestion occurs when TDCPP from the products accumulates in ambient particles (e.g., dust) that are subsequently touched by consumers (including children) and brought into contact with the mouth. Dermal absorption occurs when children touch the products and

dust containing TDCPP. No clear and reasonable warning is provided with these products regarding the carcinogenic hazards of TDCPP.

**Resolution of Noticed Claims:**

Based on the allegations set forth in this Notice, CEH intends to file a citizen enforcement lawsuit against each of the alleged violators unless such violator agrees in a binding written instrument to: (1) recall products already sold; (2) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the TDCPP exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249.7(b). If any of the alleged violators is interested in resolving this dispute without resort to expensive and time-consuming litigation, please feel free to contact CEH through its counsel identified below. It should be noted that CEH cannot: (1) finalize any settlement until after the 60-day notice period has expired; nor (2) speak for the Attorney General or any District or City Attorney who received CEH's 60-day Notice. Therefore, while reaching an agreement with CEH will resolve its claims, such agreement may not satisfy the public prosecutors.

Please direct any inquiries regarding this Notice to CEH through its counsel Mark N. Todzo (mtodzo at lexlawgroup.com) at Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117, (415) 913-7800.

**EXHIBIT 1**  
**December 6, 2012 Notice of Violation**  
**Tris(1,3-dichloro-2-propyl) Phosphate in**  
**Foam-Cushioned Pads that Infants and Children Lie Down On**

Names and Addresses of Responsible Parties	Non-Exclusive Examples of the Products	Item or SKU # or Further Description
<p style="text-align: center;"><b>A Baby Inc.</b>            1548 56th Street            Brooklyn, NY 11219</p>	<p style="text-align: center;">Baby Doll            Cradle Mattress</p>	<p style="text-align: center;">UPC No.            0-09243-1324-2            Style No. 1853</p>
<p style="text-align: center;"><b>Amazon.com, Inc.</b>            410 Terry Avenue North            Seattle, WA 98109</p>	<p style="text-align: center;">Baby Doll            Cradle Mattress</p>	<p style="text-align: center;">UPC No.            0-09243-1324-2            Style No. 1853</p>
<p style="text-align: center;"><b>Angeles Corporation</b>            9 Capper Drive            Dailey Industrial Park            Pacific, MO 63069</p>	<p style="text-align: center;">Angeles Replacement Compact            Crib Mattress</p>	<p style="text-align: center;">Model ID No.            DC301</p>
<p style="text-align: center;"><b>Baby Doll Bedding, Inc.</b>            300 Monroe Street            Passaic, NJ 07055-5210</p>	<p style="text-align: center;">Baby Doll            Cradle Mattress</p>	<p style="text-align: center;">UPC No.            0-09243-1324-2            Style No. 1853</p>
<p style="text-align: center;"><b>Baby Doll Infants Wear Co., Inc.</b>            300 Monroe Street            Passaic, NJ 07055-5210</p>	<p style="text-align: center;">Baby Doll            Cradle Mattress</p>	<p style="text-align: center;">UPC No.            0-09243-1324-2            Style No. 1853</p>
<p style="text-align: center;"><b>Delta Enterprise Corp.</b>            114 West 26th Street            New York, NY 10001</p>	<p style="text-align: center;">Delta Children's Products            Sweet Beginnings Bassinet</p>	<p style="text-align: center;">UPC No.            0-80213-02000-2            Item No.            25022-110B</p>

Names and Addresses of Responsible Parties	Non-Exclusive Examples of the Products	Item or SKU # or Further Description
<p><b>Dex Products, Inc.</b>  P.O. Box 2027  Antioch, CA 94531</p>	<p>Dexbaby Safety Changing Pad</p>	<p>UPC No.  7-54637-00555-5</p>
	<p>Dexbaby Safe Lift  Universal Crib Wedge</p>	<p>UPC No.  7-54637-00012-3</p>
<p><b>Foundations Worldwide, Inc.</b>  7001 Wooster Pike  Medina, OH 44256</p>	<p>Foundations Professional  Series Compact Crib Mattress</p>	<p>Model ID No.  6433012</p>
<p><b>Hayneedle, Inc.</b>  9394 West Dodge Road,  Suite 300  Omaha, NE 68114-3319</p>	<p>Foundations Professional  Series Compact Crib Mattress</p>	<p>Model ID No.  6433012</p>
<p><b>Kmart Corporation</b>  3333 Beverly Road  Hoffman Estates, IL 60179</p>	<p>Delta Children's Products  Sweet Beginnings Bassinet</p>	<p>UPC No.  0-80213-02000-2  Item No.  25022-110B</p>
<p><b>Venture Products LLC</b>  376 Hollywood Avenue,  Suite 209  Fairfield, NJ 07004</p>	<p>Safety 1st Nap Mat</p>	<p>UPC No.  8-99530-03156-7  Item No. SF247H</p>
<p><b>Wal-Mart Stores, Inc.</b>  702 SW 8th Street  Bentonville AR 72716</p>	<p>Foundations Professional  Series Compact Crib Mattress</p>	<p>Model ID No.  6433012</p>
	<p>Dexbaby Safety Changing Pad</p>	<p>UPC No.  7-54637-00555-5</p>

<b>Names and Addresses of Responsible Parties</b>	<b>Non-Exclusive Examples of the Products</b>	<b>Item or SKU # or Further Description</b>
<b>Walmart.com USA LLC</b> 7000 Marina Blvd. Brisbane, CA 94005-1815	Foundations Professional Series Compact Crib Mattress	Model ID No. 6433012
<b>Wayfair LLC</b> 177 Huntington Avenue, Suite 6000 Boston, MA 02115	Angeles Replacement Compact Crib Mattress	Model ID No. DC301

**CERTIFICATE OF MERIT**  
**Health & Safety Code § 25249.7(d)**

I, Mark N. Todzo, hereby declare:

1.This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the parties identified in the notice have violated Health & Safety Code § 25249.6 by failing to provide clear and reasonable warnings.

2.I am an attorney with the Lexington Law Group, and I represent the noticing party, the Center for Environmental Health.

3.Members of my firm and I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposures to the listed chemical that is the subject of the action.

4.Based on the information obtained through those consultations, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiff’s case can be established and the information did not prove that the alleged violators will be able to establish any of the affirmative defenses set forth in the statute.

5.The copy of the Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code § 25249.7(h)(2), i.e. (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

November 20, 2012\_\_\_\_\_

Mark N. Todzo  
Attorney for CENTER FOR  
ENVIRONMENTAL HEALTH

**PROOF OF SERVICE BY MAIL AND ELECTRONIC MAIL**

[Casey to update w/ correct TCDPP info & updated e-service recipients]

I declare that:

I am employed in San Francisco County, California; my business address is 503 Divisadero Street, San Francisco, California 94117. I am over the age of 18 years and not a party to the within cause and my electronic notification address is jbanister@lexlawgroup.com.

On November 7, 2012, I served true copies of the following documents:

**NOTICE OF VIOLATION OF CALIFORNIA SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT;**

**CERTIFICATE OF MERIT;** and

**THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65):** A SUMMARY (only sent to those on service list marked with an asterisk).

On this date, I deposited fully prepaid and sealed envelopes containing the above-mentioned documents with the United States Postal Service, addressed to the following individuals:

*Please see attached service list.*

Also on this date, I transmitted via electronic mail the documents listed above to the electronic mail addresses set forth below at \_\_\_\_:\_\_\_\_ .m. on November 7, 2012:

Lon Wixson, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
[lwixson@contracostada.org](mailto:lwixson@contracostada.org)

Birgit Fladager, District Attorney  
Stanislaus County  
832 12<sup>th</sup> Street, Ste. 300  
Modesto, CA 95354  
[Prop65@standa.org](mailto:Prop65@standa.org)

Dije Ndreu, Deputy District Attorney  
Monterey County  
230 Church Street, Bldg. 2  
Salinas, CA 93901  
[Prop65DA@co.monterey.ca.us](mailto:Prop65DA@co.monterey.ca.us)

Karyn Sinunu-Towery,  
Assistant District Attorney  
Santa Clara County  
70 West Hedding Street, West Wing  
San Jose, CA 95110  
[epu@da.sccgov.org](mailto:epu@da.sccgov.org)

Gary Lieberstein, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
[CEPD@countyofnapa.org](mailto:CEPD@countyofnapa.org)

Stephan R. Passalacqua, District Attorney  
Sonoma County  
600 Administration Drive, Rm. 212J  
Santa Rosa, CA 95403  
[jbarnes@sonoma-county.org](mailto:jbarnes@sonoma-county.org)

Phillip J. Cline, District Attorney  
Tulare County  
221 S. Mooney Avenue, Rm. 224  
Visalia, CA 93291  
[Prop65@co.tulare.ca.us](mailto:Prop65@co.tulare.ca.us)

Gregory D. Totten, District Attorney Ventura  
County  
800 South Victoria Avenue  
Ventura, CA 93009  
[daspecialops@ventura.org](mailto:daspecialops@ventura.org)

Rod Pacheco, District Attorney  
Riverside County  
4075 Main Street  
Riverside, CA 92501  
[Prop65@rivcoda.org](mailto:Prop65@rivcoda.org)

The transmission was reported as complete and without error.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on November 7, 2012, at San Francisco, California.

Signed: \_\_\_\_\_  
John Banister



## SERVICE LIST

[Casey to add snail-mail agency recipients]

9394 West Dodge Road, Suite 300  
Omaha, NE 68114-3319

Isaac Greenfield, President \*  
A Baby Inc.  
1548 56th St.  
Brooklyn, NY 11219

Louis J. D'Ambrosi, CEO \*  
Kmart Corporation  
3333 Beverly Rd.  
Hoffman Estates, IL 60179

Isaac Greenfield, President \*  
A Baby Inc.  
1958 59th St.  
Brooklyn, NY 11204

David Fischer, Partner \*  
Venture Products LLC  
376 Hollywood Ave., Ste. 209  
Fairfield, NJ 07004

Jeffrey P. Bezos, CEO \*  
Amazon.com, Inc.  
410 Terry Avenue North  
Seattle, WA 98109

Mike Duke, CEO \*  
Wal-Mart Stores, Inc.  
702 SW 8th Street  
Bentonville AR 72716

David Curry, General Manager \*  
Angeles Corporation  
9 Capper Drive  
Dailey Industrial Park  
Pacific, MO 63069

Joel D. Anderson, CEO \*  
Walmart.com USA LLC  
7000 Marina Blvd  
Brisbane, CA 94005-1815

Jack Berkowitz, President \*  
Baby Doll Bedding, Inc.  
300 Monroe Street  
Passaic, NJ 07055-5210

Niraj Shah, CEO \*  
Wayfair LLC  
177 Huntington Avenue, Ste. 6000  
Boston, MA 02115

Jack Berkowitz, President \*  
Baby Doll Infants Wear Co., Inc.  
300 Monroe Street  
Passaic, NJ 07055-5210

Joseph Shamie, President \*  
Delta Enterprise Corp.  
114 West 26th Street  
New York, NY 10001

L. Jason Clute, President \*  
Dex Products, Inc.  
P.O. Box 2027  
Antioch, CA 94531

L. Jason Clute, President \*  
Dex Products, Inc.  
840 Eubanks Drive, Suite A  
Vacaville, CA 95688

Joseph A. Lawlor, President \*  
Foundations Worldwide, Inc.  
7001 Wooster Pike  
Medina, OH 44256

Douglas S. Nielsen, President \*  
Hayneedle, Inc.