

# 60-DAY NOTICE OF VIOLATION

## California Safe Drinking Water and Toxic Enforcement Act

<b>Date:</b>	April 4, 2015
<b>To:</b>	Kenny Ballard, President – Kelty, Inc. George J. Grabner, President – American Recreation Products, LLC Jerry Stritzke, President – Recreational Equipment, Inc. California Attorney General's Office District Attorney's Office for 58 Counties City Attorneys for San Francisco, San Diego, San Jose, Sacramento and Los Angeles
<b>From:</b>	Michael DiPirro

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, you may contact the Office of Environmental Health Hazard Assessment's ("OEHHA") Proposition 65 Implementation Office at (916) 445-6900. Attached for your reference is a summary, "Proposition 65 In Plain Language," provided by the California Office of Environmental Health Hazard Assessment's ("OEHHA") (copies not provided to public enforcement agencies).

This Notice of Violation is provided by Michael DiPirro. I am a citizen of the State of California acting in the interest of the general public. I am dedicated to protecting the environment, promoting awareness of exposures to toxic chemicals in products sold in California, improving human health and supporting environmentally sound practices.

Identified below are specific examples of products recently purchased and witnessed as being available for purchase or use in California that are within the categories or types of offending products covered by this Notice. I believe and allege that the sale of the offending products also has occurred without the requisite Proposition 65 "clear and reasonable warnings" at one or more location and/or via other means including, but not limited to, transactions made over-the-counter, business-to-business, through the internet and/or via a catalog by the Violator and other retailers and distributors of the manufacturer, including, but not limited to the retailer(s) and/or distributor(s) listed below.

### Description of Violations:

<b>Violator(s):</b>	Recreational Equipment, Inc. (dba "REI"); Kelty, Inc.
<b>Toxic Chemical:</b>	Tris(1,3-dichloro-2-propyl) phosphate ("TDCPP") Exposures to TDCPP occur from use of the products identified in this Notice.
<b>Product Category:</b>	Tents

<b>Non-exclusive Example of Type of Product<sup>1</sup>:</b>	Kelty Discovery 2 Tent (#869-082-0001)
<b>Retailer(s):</b>	Recreational Equipment, Inc. (dba "REI"), Sonoma County, Northern California
<b>Manufacturer(s)/ Distributor(s):</b>	Kelty, Inc.; American Recreation Products, LLC
<b>Types of Harm:</b>	Cancer
<b>Description of Exposure:</b>	These exposures occur in homes, workplaces and everywhere else throughout California where these products are handled or used. As a result of the sales of these products, exposures to the listed chemical have been occurring without clear and reasonable warnings as required by Proposition 65.
<b>Routes of Exposure:</b>	Ingestion, Dermal, Inhalation Reasonably foreseeable use of the products identified in this Notice results in human exposures to TDCPP. The Tents have been treated with TDCPP as a flame retardant. The routes of exposure for the violations are: (1) dermal absorption directly through the skin when consumers touch, use, or handle the products; (2) ingestion via hand to mouth contact after consumers touch, use, or handle the products; (3) direct ingestion when consumers place their hands in their mouths while using the products or otherwise place the products in their mouths; and (4) inhalation when TDCPP from the Products accumulates in ambient airborne particles (e.g., dust) in the air in or around the Products that consumers breathe.
<b>Time Period of Exposure:</b>	The violations have been occurring since at least April 4, 2012, and are continuing to this day.

**Resolution of Noticed Claims:** Based on the allegations set forth in this Notice, I intend to file a citizen enforcement lawsuit against the alleged Violator unless such Violator enters into a binding written agreement to: (1) recall products already sold; (2) take effective measures to prevent unwarned TDCPP exposures from products sold in the future and to ensure that the requisite health hazard warnings are provided to those who have received such products; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249(b). If the alleged Violator is interested in resolving this dispute without resorting to expensive and time-consuming litigation, please feel free to contact me through my counsel identified below. It should be noted that neither my counsel nor I can: (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 this Notice of Violation. Therefore, while reaching an agreement with me will resolve my claims, such agreement may not satisfy the public prosecutors.

**Please direct any inquiries regarding this Notice to Michael DiPirro through his counsel Jennifer Henry or David Bush at The Law Offices of David R. Bush, 3270 Mendocino Ave. Suite 2E, Santa Rosa, CA 95403; Telephone: (707) 541-6255; E-mail: DRBush@BushAndHenry.com, JHenry@BushAndHenry.com.**

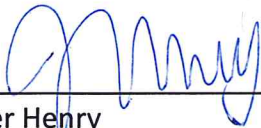
<sup>1</sup> The specifically identified examples of the types of products that are subject to this Notice are for the recipients' benefit to assist in their investigation of, among other things, the magnitude of potential exposure to the listed chemical from other items within the product categories/types listed in Exhibit A. These examples are not meant to be an exhaustive or comprehensive identification of each specific offending product of the types listed under "Product Category." Further, it is this citizen's position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the types or categories described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipients' custody or control) during the relevant period so as to ensure that the requisite toxic warnings were and are provided to California citizens prior to purchase.

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

I, Jennifer Henry, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the party identified in the notice has violated Health & Safety Code § 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney who represents the noticing party.
3. Members of my firm and I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies or other data regarding the alleged exposure to the listed chemical that is the subject of this action.
4. Based on the information obtained through those consultations, and on all 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 Violator(s) 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.

April 4, 2015



---

Jennifer Henry  
Attorney for Michael DiPirro

**PROOF OF SERVICE**

I declare that:

I am employed in Sonoma County, California; my business address is 3270 Mendocino Avenue, Suite 2E, Santa Rosa, CA 95403. I am over the age of 18 years and not a party to the within cause.

On April 4, 2015, I served true copies of the following documents:

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

**PROPOSITION 65 IN PLAIN LANGUAGE (only sent to the Violator(s));**

**CERTIFICATE OF MERIT; and**

**CERTIFICATE OF MERIT ATTACHMENTS (SERVED ONLY ON THE ATTORNEY GENERAL)**

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 as follows:

on the alleged Violator(s) listed below via First Class Certified Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to the entities listed below and providing each envelope to a United States Postal Service Representative:

Jerry Stritzke, President Recreational Equipment, Inc. 6750 South 228 <sup>th</sup> Street Kent, WA 98032	Jerry Stritzke, President Recreational Equipment, Inc. PO Box 1938 Sumner, WA 98390	Kenny Ballard, President Kelty, Inc. 6235 Lookout Road Boulder, CO 80301	George J. Grabner, President American Recreation Products, LLC 6235 Lookout Road Boulder, CO 80301
---	---	--	--

By providing copies to the addressees below electronically as follows:

<i>Electronically via the Attorney General website:</i>		The Attorney General of the State of California;	
<u>Electronically to the following recipients at the following electronic mail addresses:</u>	Birgit Fladager District Attorney Stanislaus County <a href="mailto:Prop65@standa.org">Prop65@standa.org</a>	Assistant District Attorney Santa Clara County <a href="mailto:epu@da.sccgov.org">epu@da.sccgov.org</a>	Gary Lieberstein District Attorney Napa County <a href="mailto:CEPD@countyofnapa.org">CEPD@countyofnapa.org</a>
Dije Ndreu Deputy District Attorney Monterey County <a href="mailto:Prop65DA@co.monterey.ca.us">Prop65DA@co.monterey.ca.us</a>	Paul E. Zellerbach District Attorney Riverside County <a href="mailto:Prop65@rivcoda.org">Prop65@rivcoda.org</a>	Phillip J. Cline District Attorney Tulare County <a href="mailto:Prop65@co.tulare.ca.us">Prop65@co.tulare.ca.us</a>	Gregory D. Totten District Attorney Ventura County <a href="mailto:daspecialops@ventura.org">daspecialops@ventura.org</a>

As well as providing copies to the public enforcers by placing a true and correct copy in a sealed envelope, addressed to each party listed below, and served as follows:

*By placing each envelope in a United States Postal Service mailbox, postage prepaid:*

The District Attorney for Each of the 58 counties in California; and

The City Attorney for Los Angeles, San Diego, San Jose, San Francisco and Sacramento

*A list of addresses for each of these recipients is attached.*

Executed on April 4, 2015, at Santa Rosa, California.



Michael Hader

# SERVICE LIST

- The Honorable Nancy O'Malley  
Alameda County District Attorney  
1225 Fallon Street, Room 900  
Oakland, CA 94612
- The Honorable Terese Drabec  
Alpine County District Attorney  
270 Laramie Street, PO BOX 248  
Markleeville, CA 96120
- The Honorable Todd Riebe  
Amador County District Attorney  
708 Court Street  
Jackson, CA 95642
- The Honorable Michael Ramsey  
Butte County District Attorney  
25 County Center Drive  
Oroville, CA 95965
- The Honorable Barbara Yook  
Calaveras County District Attorney  
891 Mountain Ranch Road  
San Andreas, CA 95249
- The Honorable John Poyner  
Colusa County District Attorney  
346 Fifth Street  
Colusa, CA 95932
- The Honorable Mark Peterson  
Contra Costa County District Attorney  
900 Ward Street  
Martinez, CA 94553
- The Honorable Dale Trigg  
Del Norte County District Attorney  
450 H Street, Room 171  
Crescent City, CA 95531
- The Honorable Vern Pierson  
El Dorado County District Attorney  
515 Main Street  
Placerville, CA 95667
- The Honorable Lisa Smittcamp  
Fresno County District Attorney  
2220 Tulare Street, #1000  
Fresno, CA 93721
- The Honorable Dwayne Stewart  
Glenn County District Attorney  
P.O. Box 430  
Willows, CA 95988
- The Honorable Maggie Fleming  
Humboldt County District Attorney  
825 5th Street, Fourth Floor  
Eureka, CA 95501
- The Honorable Gilbert Otero  
Imperial County District Attorney  
940 West Main Street, Suite 102  
El Centro, CA 92243
- The Honorable Thomas Hardy  
Inyo County District Attorney  
168 North Edwards Street  
Independence, CA 93526
- The Honorable Lisa Green  
Kern County District Attorney  
1215 Truxtun Avenue  
Bakersfield, CA 93301
- The Honorable Keith Fagundas  
Kings County District Attorney  
1400 West Lacey Boulevard  
Hanford, CA 93230
- The Honorable Donald Anderson  
Lake County District Attorney  
255 North Forbes Street  
Lakeport, CA 95453
- The Honorable Stacey Montgomery  
Lassen County District Attorney  
220 South Lassen Street, Ste. 8  
Susanville, CA 96130
- The Honorable Jackie Lacey  
Los Angeles County District Attorney  
210 West Temple Street, Suite 18000  
Los Angeles, CA 90012
- The Honorable David Linn  
Madera County District Attorney  
209 West Yosemite Avenue  
Madera, CA 93637
- The Honorable Edward Berberian  
Marin County District Attorney  
3501 Civic Center Drive, Room 130  
San Rafael, CA 94903
- The Honorable Thomas Cooke  
Mariposa County District Attorney  
5101 Jones Street, P.O. Box 730  
Mariposa, CA 95338
- The Honorable C. David Eyster  
Mendocino County District Attorney  
100 North State Street, P.O. Box 1000  
Ukiah, CA 95482
- The Honorable Larry Morse II  
Merced County District Attorney  
550 W. Main Street  
Merced, CA 95340
- The Honorable Jordan Funk  
Modoc County District Attorney  
204 S. Court Street, Suite 202  
Alturas, CA 96101
- The Honorable Tim Kendall  
Mono County District Attorney  
P.O. Box 617  
Bridgeport, CA 93517
- The Honorable Dean Flippo  
Monterey County District Attorney  
P.O. Box 1131  
Salinas, CA 93902
- The Honorable Gary Lieberstein  
Napa County District Attorney  
P.O. Box 720  
Napa, CA 94559
- The Honorable Clifford Newell  
Nevada County District Attorney  
201 Commercial Street  
Nevada City, CA 95959
- The Honorable Tony Rackauckas  
Orange County District Attorney  
401 Civic Center Drive West  
Santa Ana, CA 92701
- The Honorable R. Scott Owens  
Placer County District Attorney  
10810 Justice Center Drive, Suite 240  
Roseville, CA 95678
- The Honorable David Hollister  
Plumas County District Attorney  
520 Main Street, Room 404  
Quincy, CA 95971
- The Honorable Michael Hestrin  
Riverside County District Attorney  
3960 Orange Street  
Riverside, CA 92501
- The Honorable Anne Marie Schubert  
Sacramento County District Attorney  
901 G Street  
Sacramento, CA 95814
- The Honorable Candice Hooper  
San Benito County District Attorney  
419 4th Street, Second Floor  
Hollister, CA 95203
- The Honorable Michael Ramos  
San Bernardino County District Attorney  
303 West 3rd Street, 6th Floor  
San Bernardino, CA 92415-0502
- The Honorable Bonnie Dumanis  
San Diego County District Attorney  
330 W. Broadway Street  
San Diego, CA 92101
- The Honorable George Gascon  
San Francisco County District Attorney  
850 Bryant Street, Room 322  
San Francisco, CA 94103
- The Honorable Tori Verber Salazar  
San Joaquin County District Attorney  
222 East Weber Avenue, Room 202  
Stockton, CA 95201
- The Honorable Dan Dow  
San Luis Obispo County District Attorney  
1035 Palm Street, 4th Floor  
San Luis Obispo, CA 93408
- The Honorable Stephen Wagstaffe  
Santa Mateo County District Attorney  
400 County Center, Third Floor  
Redwood City, CA 94063
- The Honorable Joyce Dudley  
Santa Barbara County District Attorney  
1112 Santa Barbara Street  
Santa Barbara, CA 93101
- The Honorable Jeffrey Rosen  
Santa Clara County District Attorney  
70 West Hedding Street, West Wing  
San Jose, CA 95110
- The Honorable Jeff Rosell  
Santa Cruz County District Attorney  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060
- The Honorable Stephen Carlton  
Shasta County District Attorney  
1355 West Street  
Redding, CA 96001
- The Honorable Lawrence Allen  
Sierra County District Attorney  
100 Courthouse Square  
Downieville, CA 95936
- The Honorable James Kirk Andrus  
Siskiyou County District Attorney  
P.O. Box 986  
Yreka, CA 96097
- The Honorable Krishna Abrams  
Solano County District Attorney  
675 Texas Street, Suite 4500  
Fairfield, CA 94533
- The Honorable Jill Ravitch  
Sonoma County District Attorney  
600 Administration Drive, Room 212J  
Santa Rosa, CA 95403
- The Honorable Birgit Fladager  
Stanislaus County District Attorney  
832 12th Street, Suite 300  
Modesto, CA 95354
- The Honorable Amanda Hopper  
Sutter County District Attorney  
463 Second Street, Suite 102  
Yuba City, CA 95991
- The Honorable Gregg Cohen  
Tehama County District Attorney  
444 Oak Street, Room L  
Red Bluff, CA 96080
- The Honorable Eric Heryford  
Trinity County District Attorney  
P.O. Box 310  
Weaverville, CA 96093
- The Honorable Tim Ward  
Tulare County District Attorney  
221 South Mooney Boulevard,  
Rm 224  
Visalia, CA 93291-4593
- The Honorable Laura Krieg  
Tuolumne County District Attorney  
423 North Washington Street  
Sonora, CA 95370
- The Honorable Gregory Totten  
Ventura County District Attorney  
800 South Victoria Avenue  
Ventura, CA 93009
- The Honorable Jeff Reisig  
Yolo County District Attorney  
301 Second Street  
Woodland, CA 95695
- The Honorable Patrick McGrath  
Yuba County District Attorney  
215 Fifth Street  
Marysville, CA 95901
- The Honorable Mike Feuer  
Office of the City Attorney, Los Angeles  
800 City Hall East  
200 North Main Street  
Los Angeles, CA 90012
- The Honorable James Sanchez  
Office of the City Attorney, Sacramento  
915 I Street, 4th Floor  
Sacramento, CA 95814
- The Honorable Jan Goldsmith  
Office of the City Attorney, San Diego  
1200 Third Avenue, Suite 1620  
San Diego, CA 92101
- The Honorable Dennis Herrera  
Office of the City Attorney, San Francisco  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102
- The Honorable Richard Doyle  
Office of the City Attorney, San Jose  
200 East Santa Clara Street, 16th Floor  
San Jose, CA 95113
- Office of the California Attorney General  
Proposition 65 Enforcement Reporting  
ATTN: Prop 65 Coordinator  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-0550