

## **Tritium Exit Signs: REGULATORY ACTION TAKEN**

**November 2, 2009**



**If you:**

- **Own or operate properties or facilities that contain more than 500 self-luminous tritium exit signs and you have been, or are in future, contacted by the U.S. Nuclear Regulatory Commission (NRC) via a Demand for Information**

**OR**

- **You have any tritium exit signs in any of your properties or facilities**

**please continue reading this Energy LawFlash for additional details concerning this NRC enforcement action.**

In our September 8, 2009 update to our January 27, 2009 Energy LawFlash, available at [http://www.morganlewis.com/pubs/Energy\\_TritiumExitSignsUpdate\\_LF\\_08sept09.pdf](http://www.morganlewis.com/pubs/Energy_TritiumExitSignsUpdate_LF_08sept09.pdf), Morgan Lewis alerted companies to the NRC's issuance of its inspection report regarding the use of tritium exit signs (TES) by a large retailer. In its inspection report, the NRC addressed matters such as the designation of a responsible individual (or Radiation Safety Officer), late TES-related reporting, and most importantly, its treatment of each location at which TES was used as a separate general licensee. In addition, the NRC indicated its intention to follow up with enforcement based on its findings.

On October 28, 2009, the NRC issued a Notice of Violation (NOV) to the large retailer addressed in its earlier inspection report. The NRC determined that the general licensee had failed to timely appoint a responsible individual to oversee its general license program, as required by 10 C.F.R. § 31.5(c)(12); improperly transferred or disposed of TES, in violation of 10 C.F.R. § 31.5(c)(7), (8), and (9); and because of the improper transfers, improperly possessed TES at locations other than those authorized by the general license, in violation of 10 C.F.R. §§ 31.5(c)(5) and 30.3(a). These violations were collectively treated as a Severity Level III problem for which a civil penalty could be imposed. In addition, the NRC found a separate Severity Level IV violation, determining that the licensee had failed to timely submit a number of reports of damaged TES, in violation of 10 C.F.R. § 31.5(c)(5). Although the NRC considered imposing a civil penalty of \$369,300 for the Severity Level III problem, it exercised its discretion and

fully mitigated the civil penalty in recognition of the general licensee’s “prompt, comprehensive, and extraordinary corrective and preventive actions.” The NRC’s action addresses enforcement with respect to matters in non-Agreement States. The NOV and the earlier inspection report were sent to the 37 Agreement States, Guam, Puerto Rico, and the Virgin Islands for their consideration.

It is our understanding, based on discussions with the regulator, that other TES general licensees should not expect similar treatment unless they also have taken similar measures. In its press announcement, the NRC’s Director of Enforcement stated that the agency’s action “should stand as a warning to other organizations and corporations not to be lax in their handling of devices containing radioactive material.”

Our Energy Practice has the relevant knowledge and skills to aid clients regarding federal and state TES requirements. In response to these recent developments, our Energy attorneys have joined with our Litigation, Insurance Recovery, Labor and Employment, and Real Estate Practices to form a TES Team, dedicated to addressing all potential implications of the NRC’s action.

Our TES Team is happy to consult with your company concerning any follow-up action in connection with the NRC’s Demand for Information, as well as all related efforts your company may initiate concerning your domestic or international operations in regard to the use of tritium exit signs.

If you have any questions regarding any of the issues discussed in this LawFlash, please contact any of the following Morgan Lewis attorneys:

**Energy (Lead)**

Thomas C. Poindexter	202.739.5348	<a href="mailto:tpoindexter@morganlewis.com">tpoindexter@morganlewis.com</a>
Lawrence J. Chandler	202.739.5780	<a href="mailto:lchandler@morganlewis.com">lchandler@morganlewis.com</a>

**Labor and Employment**

Anne Marie Estevez	305.415.3330	<a href="mailto:aestevez@morganlewis.com">aestevez@morganlewis.com</a>
--------------------	--------------	------------------------------------------------------------------------

**Litigation**

Christopher C. Loeber	609.919.6672	<a href="mailto:cloeber@morganlewis.com">cloeber@morganlewis.com</a>
-----------------------	--------------	----------------------------------------------------------------------

**Real Estate**

Eric L. Stern	215.963.5178	<a href="mailto:estern@morganlewis.com">estern@morganlewis.com</a>
---------------	--------------	--------------------------------------------------------------------

**About Morgan, Lewis & Bockius LLP**

With 22 offices in the United States, Europe, and Asia, Morgan Lewis provides comprehensive transactional, litigation, labor and employment, and intellectual property legal services to clients of all sizes—from global Fortune 100 companies to just-conceived startups—across all major industries. Our international team of attorneys, patent agents, employee benefits advisors, regulatory scientists, and other specialists—more than 3,000 professionals total—serves clients from locations in Beijing, Boston, Brussels, Chicago, Dallas, Frankfurt, Harrisburg, Houston, Irvine, London, Los Angeles, Miami, Minneapolis, New York, Palo Alto, Paris, Philadelphia, Pittsburgh, Princeton, San Francisco, Tokyo, and Washington, D.C. For more information about Morgan Lewis or its practices, please visit us online at [www.morganlewis.com](http://www.morganlewis.com).

This LawFlash is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered Attorney Advertising in some states. Please note that the prior results discussed in the material do not guarantee similar outcomes.

© 2009 Morgan, Lewis & Bockius LLP. All Rights Reserved.