

Tritium Exit Signs: UPDATE

September 8, 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 initiative.

In our January 27, 2009 Energy LawFlash, available at http://www.morganlewis.com/pubs/Energy_TritiumExitSigns_LF_27jan09.pdf, Morgan Lewis alerted companies to the January 16, 2009 NRC Demand for Information (Demand) affecting certain general licensees whose properties use tritium exit signs (TES) pursuant to 10 C.F.R. § 31.5. Recipients of that Demand have likely already submitted responses to the NRC, or requested scheduler relief. We have learned that the NRC believes that many of the Demand responses are inadequate and that significant regulatory concerns remain.

On August 26, the NRC issued a far-reaching inspection report regarding a large retailer, addressing matters such as the designation of a responsible individual (or Radiation Safety Officer), late TES-related reporting, and most important, 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. The inspection report has also been provided to Agreement States, which have their own regulatory programs related to the use of TES, and may take separate actions for any violations found.

Additional areas to be focused on include:

Knew or should have known standard: The NRC clearly believes that with its issuance of a Regulatory Information Summary in 2006 and its Demand for Information in 2009, all users of TES know or should know of applicable regulatory requirements. As such, if an organization is not yet taking aggressive corrective action regarding its TES program, it may well be subject to sanctions, including sanctions for violations involving willfulness.

Delays in corrective action: A TES general licensee may have escaped regulatory scrutiny thus far, but should be aware that delays in taking timely action can eliminate regulatory credit for corrective action. This could result in the NRC issuing the maximum civil penalty allowed by its Enforcement Policy and penalty escalation.

TES program assessments: Morgan Lewis has played a significant role in providing TES users with strategic regulatory counsel on this issue. Our representation has included not only development of a regulatory strategy and programmatic advice and counsel, but onsite investigation of damaged TES to ensure timely completion of investigations and reports, and compliance with all applicable federal and state requirements.

In light of the above, we recommend that affected organizations take the following actions:

1. Promptly perform a TES program assessment, including a review of past, present, and future regulatory vulnerabilities
2. Document all corrective actions in a manner that should result in mitigation of regulatory sanctions

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 the NRC's Demand, and regarding all related efforts your company may initiate concerning your domestic or international operations.

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

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