



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

REGION IV  
612 EAST LAMAR BLVD, SUITE 400  
ARLINGTON, TEXAS 76011-4125

October 28, 2009

EA-09-187

Phyllis Harris  
Vice President, Environmental Compliance  
Wal-Mart Stores, Inc.  
508 SW 8th Street  
Bentonville, Arkansas 72716-0605

SUBJECT: NOTICE OF VIOLATION (NRC SPECIAL INSPECTION  
REPORT 99990001/2008014)

Dear Ms. Harris:

This refers to the special inspection conducted December 9, 2008, through August 17, 2009, at selected Wal-Mart Stores, Inc., (Wal-Mart) facilities in Delaware, Indiana, Michigan, Missouri, New Jersey, North Carolina, Ohio, and Virginia. The purpose of the inspection was to review the circumstances related to Wal-Mart's reports of damaged and missing generally licensed tritium exit signs at Wal-Mart facilities throughout the United States and Puerto Rico. The preliminary inspection findings were discussed with Wal-Mart management, staff, and contractors during a preliminary exit meeting held in Bentonville, Arkansas, on January 13, 2009. A final exit meeting was conducted telephonically on August 17, 2009, with you and other Wal-Mart representatives, including Mr. Richard Dailey, Wal-Mart's Radiation Safety Officer. NRC management and staff, as well as a representative of the Agreement State program management, participated in this exit meeting. The enclosed special inspection report dated August 26, 2009 (ADAMS Accession No. ML092380657), documents the results of the inspection.

The NRC has concluded that Wal-Mart violated regulations applying to the acquisition, possession, use, and transfer of tritium exit signs. In reaching this conclusion, the NRC considered information obtained during our special inspection of Wal-Mart stores; information you provided in your "Tritium Exit Sign Inventory Project Final Report," dated January 29, 2009; your March 9 and May 7, 2009, responses to the NRC's requests for additional information; and additional information you provided on August 11 and September 11, 2009. The violations are cited in the enclosed Notice of Violation and the circumstances surrounding these violations are described in detail in the enclosed inspection report. As explained in the inspection report, Wal-Mart failed to appoint an individual responsible for ensuring compliance with NRC requirements pertaining to tritium exit signs and improperly transferred signs between Wal-Mart stores. Wal-Mart also reported 2,462 exit signs as lost, and the NRC concludes it is more likely than not that a substantial number of these signs were transferred or disposed of improperly.

The NRC considers these violations significant because, at the time of the violations, Wal-Mart had no management oversight of the procedures by which it acquired, possessed, transferred, and disposed of tritium exit signs. No single component of Wal-Mart was responsible for complying with NRC regulations and requirements, and there was no culture of joint accountability across the company that mitigated this deficiency. In addition, Wal-Mart missed multiple opportunities to correct the violations. The NRC is, therefore, categorizing these violations collectively in accordance with the NRC Enforcement Policy as a Severity Level III problem. The NRC Enforcement Policy may be found on the NRC's web site at [www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html](http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html).

Section VII.A.1.(g) of the NRC Enforcement Policy states that for violations involving the loss, abandonment, improper transfer, or improper disposal of a sealed source or device, the NRC normally imposes a civil penalty of at least the base amount. Tables 1A and 1B in Section VI.C.1 of the NRC Enforcement Policy show the base civil penalties for the loss, abandonment, improper transfer, or improper disposal of a sealed source or device. These base civil penalties apply regardless of whether a device is specifically or generally licensed under NRC regulations.

The base civil penalties in the Enforcement Policy are approximately three times the expected average cost of authorized disposal. For a tritium exit sign that is lost, abandoned, transferred, or disposed of in violation of NRC regulations, the base civil penalty for a Severity Level III violation is \$3,500. As explained in footnote 3 to Table 1A, however, the NRC may consider adjusting the civil penalty amount to a more appropriate base amount if a licensee is able to demonstrate that three times the actual cost of disposal would be significantly less than the base amount.

In this case, Wal-Mart has demonstrated that the actual cost of disposal for a tritium exit sign is \$50. Wal-Mart's actual disposal cost for 2,462 generally licensed tritium exit signs would therefore be \$123,100. Three times that amount is \$369,300. Accordingly, the NRC has determined that \$369,300 is the civil penalty that would apply to Wal-Mart's improper transfer or disposal of 2,462 tritium exit signs.

Although the NRC will not typically decrease a civil penalty below the three times actual disposal amount, in this case the NRC has decided to exercise discretion and not impose a civil penalty. The NRC is exercising discretion based on Wal-Mart's prompt, comprehensive, and extraordinary corrective and preventive actions. Wal-Mart applied considerable resources to addressing problems relating to tritium exit signs. In particular, Wal-Mart involved high-level management in addressing these problems, retained qualified consultants, and expended considerable funds. The NRC's decision to exercise discretion is consistent with Section VII.B.6 of the NRC Enforcement Policy.

Wal-Mart's corrective and preventive actions included naming a Corporate Radiation Safety Officer; hiring a health physics contractor to assist in resolving the tritium exit sign issues; and developing a long-term management strategy for any lost tritium exit signs that may be found in the future. Additional comprehensive and preventive corrective actions taken by Wal-Mart included: (1) conducting an inventory of all tritium exit signs possessed under the general license; (2) as an initial response, improving control over tritium exit signs found in Wal-Mart facilities nationwide; (3) conducting an assessment of the radiological condition of tritium exit

signs found in Wal-Mart facilities; (4) remediating contamination resulting from damaged tritium exit signs at several stores; (5) evaluating potential exposures to Wal-Mart employees, contractors, and members of the public from exposure to damaged tritium exit signs; and (6) subsequently removing all tritium exit signs found in Wal-Mart facilities and replacing them with signs not containing radioactive material.

In recognition of Wal-Mart's corrective and preventive actions, and because Wal-Mart has not previously been subject to escalated enforcement action, I have been authorized, after consultation with the Director, Office of Enforcement, to not propose a civil penalty for Wal-Mart's Severity Level III problem.

The NRC has also determined that Wal-Mart committed a Severity Level IV violation of NRC requirements. This violation involved Wal-Mart's failure to submit written reports of damaged tritium exit signs to the NRC within 30 days. The NRC has evaluated this violation in accordance with the Enforcement Policy, and the circumstances surrounding the violation are described in detail in the enclosed inspection report. The NRC is citing Wal-Mart for this violation because, rather than being identified by Wal-Mart, the violation was identified by the NRC. Consistent with the Enforcement Policy, there is no civil penalty for this Severity Level IV violation.

The NRC has concluded that information regarding the reason for these violations, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved is already adequately addressed on the docket in NRC Inspection Report No. 99990001/2008014. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC's Web site at <http://www.nrc.gov/reading-rm/pdr.html> or [www.nrc.gov/reading-rm/adams.html](http://www.nrc.gov/reading-rm/adams.html). To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such information, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information).

Wal-Mart Stores, Inc.  
EA-09-187

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The NRC also includes significant enforcement actions on its Web site at [www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html](http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html).

Should you have any questions concerning this letter or the enclosed Notice of Violation, please contact D. Blair Spitzberg, Ph.D., at (817) 860-8191.

Sincerely,

/RA/

Elmo E. Collins  
Regional Administrator

Docket No. 999-90001  
General License Pursuant to  
10 CFR 31.5(a)

Enclosures:

1. Notice of Violation
2. NRC Special Inspection  
Report 99990001/2008014

cc w/enclosure 1:  
Richard Dailey, Radiation Safety Officer  
Wal-Mart Stores, Inc.  
508 SW 8th Street  
Bentonville, Arkansas 72716-0605

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Agreement States  
Guam  
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<a href="mailto:James.Lueman@nrc.gov">James.Lueman@nrc.gov</a> ;	<a href="mailto:John.Kinneman@nrc.gov">John.Kinneman@nrc.gov</a> ;	<a href="mailto:Anthony.Gaines@nrc.gov">Anthony.Gaines@nrc.gov</a>

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10/14/09	10/13/09	10/14/09		10/28/09			

## NOTICE OF VIOLATION

Wal-Mart Stores, Inc.  
Bentonville, Arkansas

Docket No 999-90001  
General License pursuant  
to 10 CFR 31.5  
EA-09-187

During an NRC inspection conducted December 9, 2008, through August 17, 2009, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 31.5(c)(12) states that any person who acquires, receives, possesses, uses, or transfers byproduct material in a device pursuant to the general license in 10 CFR 31.5(a) shall appoint an individual responsible for having knowledge of the appropriate regulations and requirements and the authority for taking required actions to comply with appropriate regulations and requirements.

Contrary to the above, between October 2000 and January 2008, Wal-Mart did not appoint an individual responsible for having knowledge of the appropriate regulations and requirements and the authority for taking required actions to comply with appropriate regulations and requirements. Specifically, Wal-Mart first acquired tritium exit signs in October 2000 and subsequently possessed tritium exit signs at 244 Wal-Mart stores in NRC jurisdiction. Wal-Mart did not appoint a radiation safety officer or other responsible individual to manage its general license program relative to tritium exit signs until January 2008.

- B. 10 CFR 31.5(c)(8) states that any person who acquires, receives, possesses, uses, or transfers byproduct material in a device pursuant to the general license in 10 CFR 31.5(a) shall transfer or dispose of the device containing byproduct material only by export as provided by paragraph (c)(7) of 10 CFR 31.5, by transfer to another general licensee as authorized in paragraph (c)(9), or to a person authorized to receive the device by a specific license, or as otherwise approved under paragraph (c)(8)(iii).

Contrary to the above, between October 2000 and January 2008, Wal-Mart improperly transferred or disposed of up to 2,462 tritium exit signs. These signs were neither exported in accordance with paragraph (c)(7), transferred to an authorized specific licensee in accordance with paragraph (c)(8), nor transferred to a general licensee in accordance with paragraph (c)(9).

- C. (1) 10 CFR 31.5(c)(9) states that any person who acquires, receives, possesses, uses, or transfers byproduct material in a device pursuant to the general license in 10 CFR 31.5(a) shall transfer the device to another general licensee only if the device remains in use at a particular location.

Contrary to the above, between October 2000 and January 2008, Wal-Mart transferred devices to another general licensee where the devices did not remain in use at a particular location. Specifically Wal-Mart transferred 517 tritium exit signs from various Wal-Mart facilities to other Wal-Mart facilities.

- (2) 10 CFR 30.3(a) states that no person shall receive, acquire, own, possess, or use byproduct material except as authorized in a specific or general license. 10 CFR 31.5(b)(2) states that for the general license in 10 CFR 31.5 to apply the devices must have been received from one of the specific licensees described in paragraph (b)(1) of 10 CFR 31.5 or through a transfer made under paragraph (c)(9) of 10 CFR 31.5.

Contrary to the above, at the stores to which Wal-Mart transferred 517 tritium exit signs in violation of 31.5(c)(9), Wal-Mart possessed tritium exit signs outside the scope of the general license issued under 10 CFR 31.5. Accordingly, Wal-Mart possessed those 517 signs in violation of 30.3(a), which prohibits the possession of byproduct material except as authorized in a specific or general license.

Violations A, B, and C are collectively categorized as a Severity Level III problem (Supplement VI).

- D. 10 CFR 31.5(c)(5) states that any person who acquires, receives, possesses, uses, or transfers byproduct material in a device pursuant to the general license in 10 CFR 31.5(a) shall submit a report, within 30 days, containing a brief description of any event in which operation of a device is suspended because of a failure of, or damage to, the shielding of the radioactive material or the on-off mechanism.

Contrary to the above, between August 14, 2007, and October 15, 2008, Wal-Mart did not submit within 30 days a report containing a brief description of an event in which operation of the device was suspended because of a failure of, or damage to, the shielding of the radioactive material or the on-off mechanism. Specifically, Wal-Mart Stores, Inc., failed to submit reports of damaged tritium exit signs at stores in Elkins and Barboursville, West Virginia; Kendallville, Indiana; Waterbury, Connecticut; St. Johns, Michigan; and Pineville, Missouri, within 30 days of events in which an exit sign was taken out of service.

This is a Severity Level IV violation (Supplement VI).

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to be taken to correct the violations and prevent recurrence, and the date when full compliance will be (was) achieved, is already adequately addressed on the docket in Special Inspection Report 99990001/2008014. However, you are required to submit a

written statement or explanation pursuant to 10 CFR 2.201 if the description herein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation; EA-09-187," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Regional Administrator, Region IV, within 30 days of the date of the letter transmitting this Notice.

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC's web site at [www.nrc.gov/reading-rm/pdr.html](http://www.nrc.gov/reading-rm/pdr.html) or [www.nrc.gov/reading-rm/adams.html](http://www.nrc.gov/reading-rm/adams.html). Therefore, to the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction.

Dated this 28<sup>th</sup> day of October 2009