

# **BED BATH & BEYOND**

Beyond any store of its kind.

**Corporate Office**  
650 Liberty Avenue  
Union, NJ 07083  
908/688-0888

Sent via Fedex #7967 8187 3348

July 16, 2009

Office of Federal and State Materials  
and Environmental Management Programs  
Mail Stop T8-E24  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Attn: Angela R. McIntosh

Re: Bed Bath & Beyond Response to NRC  
Demand for Information Regarding Tritium Exit Signs

Dear Ms. McIntosh:

This letter provides the response of Bed Bath & Beyond Inc., and its subsidiaries, Harmon Stores, Inc., Christmas Tree Shops, Inc., and Buy Buy Baby Inc. (collectively, "BBB") to the Nuclear Regulatory Commission's ("NRC") January 16, 2009, Demand for Information ("DFI") regarding tritium exit signs ("TES"). The DFI required that recipients respond to the NRC by March 16, 2009. However, as provided in the DFI, BBB contacted the designated NRC representative and obtained an extension of time for submitting BBB's response. By email dated March 13, 2009, the NRC granted BBB's extension request until July 17, 2009.

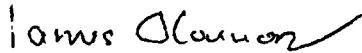
The discussion provided at Attachment 1 addresses each DFI request. BBB prefaces the enclosed responses to the DFI by noting that, prior to receiving the DFI, the regulatory requirements regarding TES were not widely publicized and so BBB did not have a robust understanding of regulatory requirements associated with TES. This limited knowledge was further complicated, as explained more thoroughly in the response, by the fact that BBB is almost always the lessee of its retail and other facilities, that BBB does not, in the vast majority of situations (at least approximately 80% of the time), perform any tenant improvement work in the stores which it leases and, as such, that BBB does not own and did not procure the TES installed at its facilities. Accordingly, any information included in TES shipping paperwork or otherwise conveyed to the purchaser of TES (i.e., the landlord or a contractor) would not necessarily have been received by BBB. BBB personnel involved in the limited interactions that BBB had with vendors do not recall any discussions of the regulatory or radiological requirements associated with these devices. Each of these factors influences BBB's responses to the DFI.

BBB takes the NRC DFI very seriously and has greatly increased its knowledge of TES and TES-related regulatory requirements. BBB also has expended significant efforts to identify all TES in its possession, institute procedures for handling TES, train its personnel to ensure compliance with regulatory requirements surrounding TES, and respond to the DFI. These efforts are described further within BBB's responses at Attachment 1. The results of its physical inventory are provided in Attachment 2.

BBB has an ongoing TES inventory program and as such, anticipates providing the NRC with further updates in the event that it identifies significant errors to the initial response.

Please contact me at (908) 855-4294 should you have any questions regarding this letter or its attachments.

Sincerely,



James O'Connor  
Vice President - Loss Prevention and Safety  
Bed Bath & Beyond Inc.

cc: Thomas C. Poindexter, Morgan Lewis & Bockius LLP

Attachments

I, James O'Connor, do declare under penalty of perjury that the information provided herein is true and correct to the best of my knowledge.



James O'Connor

7/12/09

Date

## ATTACHMENT 1: DFI Response

### Background

Before responding to the individual questions presented in the DFI, BBB believes it will be helpful to provide a background of its involvement in the acquisition of TES.

In summary, BBB typically leases its retail locations from a landlord who constructs or remodels a location to meet BBB's retail layout specifications. In the alternative, in less than 20% of transactions, BBB may lease its retail location from a landlord, and engage its own general contractor to construct or remodel the location to meet BBB's specifications. In either scenario, once the landlord or construction company completes its construction or build-out efforts, it provides BBB with the keys to the store and BBB moves in its store shelving and merchandise for retail sale. It is important to note that while BBB does have its own staff of maintenance personnel (who supervise outside companies in HVAC repair, roof maintenance, etc.) and its own staff of architects (who assist landlord architects in understanding BBB's building requirements), BBB has never had its own personnel construct any store or other facility, instead relying upon landlord's construction company or upon an outside construction company hired by BBB.

When a new store is being built for BBB by a third party, BBB provides a drawing of a prototype with certain specifications, but otherwise its direct involvement in the process is minimal, especially regarding a fixture such as a TES. BBB historically (from January 2, 2000 to March 23, 2008) specified the use of TES in the prototype because of the long-term cost effectiveness of the devices—they do not require electric wiring and are long-lived. Before the turnover of a newly constructed store to BBB occurs, the landlord or contractor independently orders, purchases, receives, and installs TES and other fixtures as it deems appropriate. BBB's limited role in this type of turnover does not result in BBB interacting with the vendors specifically on the topic of TES and does not result in the vendors transmitting to BBB any regulatory guidance that may have accompanied TES. Consequently, BBB does not have any detailed TES shipping or purchasing records from the vendors regarding TES.

Finally, BBB does not own the TES devices in its stores. When BBB moves into a location and begins retail operation, it does not own the TES or other fixtures because the structure does not belong to BBB. When BBB vacates a facility, it leaves the TES, much like all other fixtures, behind. BBB notes that its records to date do not indicate that the landlord or contractor has formally transferred the TES to BBB when it begins to occupy a store. Nor did the store lease itself (until recently) address the regulatory responsibilities associated with the TES. Despite these facts, BBB understands that a regulator may consider BBB, as the lessee of the space, to be responsible for the TES (and thus, be the general licensee).

BBB did not rest on the fact that it had limited records in preparation of this response. BBB collected TES-related records it had obtained as a result of unrelated litigation with a TES vendor, and has otherwise obtained a number of TES-related purchase records in order to understand how many TES it should expect to have been installed at its facilities. However, BBB does not believe and cannot verify that these collected records

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comprehensively document all TES that may have been procured for its stores by third parties such as landlords or outside construction companies.

BBB cannot verify or attest to the accuracy of these records for several reasons. First, because it was not the receiving entity, BBB did not inventory TES delivered by the specific licensee, just as it does not take inventory of other fixture deliveries located in a facility that it does not own. Second, the records may not accurately reflect the number of TES that were actually installed in the BBB location. Contractors who order TES may have ordered more TES than are necessary for a facility, either in order to have extra signs on hand, for example, to respond to a fire marshall's last-minute request, or for use at an unrelated, non-BBB location. For these reasons, the records obtained by BBB are not considered to be a totally reliable baseline for understanding the number of TES in BBB's possession, or for attempting to reconcile the number of TES found during BBB's physical inventory, discussed below, with those that may have been reported to the NRC by TES vendors.

1. **Explain how you ensure compliance with the NRC requirements applying to the possession, transfer and disposal of tritium exit signs you have acquired. Identify and provide contact information for the individual you have appointed who is responsible for ensuring day to day compliance with these requirements.**

### **BBB Response:**

The contact information for the person who is responsible for ensuring day-to-day compliance with TES-related requirements is:

James O'Connor  
Vice President - Loss Prevention and Safety  
Bed Bath & Beyond Inc.  
(908) 855-4294

### BBB's Determination of the Number of TES In Its Control

As described above, BBB's status as a lessee of its facilities complicates its ability to understand how many TES it can expect to have been installed at a location, and to account for all TES that may have, at any time, been present at that location. Upon receipt of the DFI, BBB (at its own considerable expense in terms of both dollars and store personnel effort) conducted a physical inventory of its stores containing TES. BBB has a total of 1032 stores, including its affiliates. BBB has determined that, as of July 15, 2009, 644 of its domestic facilities currently use TES. These facilities are located in 49 states (including all 36 Agreement States), as well as in Puerto Rico and the District of Columbia. BBB derived the number of TES-containing stores from its scoping assessments conducted at all of its stores, which it used to create a "TES list" of stores likely to have TES. BBB then conducted surveys/inventories at stores on the TES list. BBB also sampled stores that it had excluded from the TES list to confirm its belief that these stores did not contain TES. BBB has revised its lease agreement to

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prohibit the use of TES in its facilities, thus it expects that this number of TES-containing stores will not increase. Attachment 2 provides a detailed tally of how many TES BBB currently possesses as of July 15, 2009, based on the results of this physical inventory. Although this level of detail is not provided in Attachment 2, BBB also collected in its physical inventory the serial numbers and model numbers for each TES, where that information was available.

Also upon receipt of the DFI, BBB sought to obtain and review TES-related purchasing records to understand the number of TES it should expect to have been installed at its facilities. As a result of the construction and leasing process described above, and the fact that BBB does not receive purchase records or invoices for fixtures such as TES, which are obtained by the landlord or general contractor, the records obtained are incomplete at best, and do not provide meaningful information regarding how many TES were initially obtained for its past or presently occupied stores.

Still, BBB performed a sampling review of all available TES-related purchase records, including invoices, shipping records, records related to a contract dispute between a TES vendor and BBB, and other TES-related documents. In addition to concerns about the completeness and accuracy of these documents, many records did not contain key information such as serial number. As the NRC is aware, having a serial number is key to performing a document forensics and development of an initial baseline inventory for the number of TES that BBB may have acquired throughout the past two-plus decades. In sum, given the incompleteness of its records, BBB cannot provide the NRC with a verifiable baseline total number of TES it would expect to have (but, as discussed above and below, BBB has considerable detail on the TES which BBB actually possess currently).

In addition, because it does not have comprehensive historic inventory records, BBB also queried each store manager to determine whether that manager recalled either damaging, losing, shipping or otherwise disposing of a TES. The results of that query did not suggest that any TES were inappropriately disposed of or transferred.

### BBB Guidance Regarding TES Use

BBB has developed an internal guidance document that is intended to better ensure compliance with associated NRC requirements. Specifically, the document contains instructions regarding handling (of both intact and damaged TES), storage, inventory, loss, and disposal of TES, as well as record retention. Checklists attached to the guidance provide additional direction for someone involved with TES inventory, a damaged TES (including clean up policies and notification requirements), or packaging TES for shipment. In order to ensure that handlers of TES are aware of associated requirements, the guidance is available via the BBB intranet and periodic distribution of paper reminders.

Going forward, BBB has also modified its lessor/lessee agreements and its electrical specifications to prohibit the use of TES in its facilities leased after March 18, 2009.

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Accordingly, it believes that the number of TES that are currently in its stores will not increase. Thus, the physical inventory done in connection with this DFI will serve as a useful baseline of the number of TES in BBB's possession, and will facilitate future reporting of lost, transferred, or damaged TES.

### Transfer of TES

BBB's status as a lessee of its facilities complicates the matter of possession and transfer of TES. As described above, BBB's records do not show that TES were formally transferred, or that the transfer was reported, to BBB when BBB took possession of a facility. BBB has made the conservative decision to begin formally notifying its landlords that, upon BBB's vacating a location, the landlord would again assume the status of general licensee regarding the TES. BBB has labeled this correspondence as a transfer of the TES (as allowed by NRC and Agreement State regulations if the device remains in use at a particular location), and has begun reporting such transfers to the appropriate regulators.

### Packaging and Return of TES

BBB has retained a TES-knowledgeable contractor to package its TES at the end of life, if damaged, or as a result of BBB's TES-minimization efforts. The contractor arranges for transport of the TES to a specific licensee, e.g., Isolite. The contractor's duties include:

- 1) Conducting glow-tests on all signs prior to packaging to determine if the signs are critically damaged.
- 2) Recording the serial number, manufacturer, model number, expiration date and curie amount for all packaged TES.
- 3) Wrapping all removed TES in bubble-wrap and packaging the TES according to the U.S. Department of Transportation's ("DOT's") shipping requirements for radioactive material.
- 4) Obtaining a Return Merchandise Authorization ("RMA") number from the specific licensee. (BBB designates one of its personnel to monitor the status of the package until shipped and received by the specific licensee.)
- 5) Tracking the receipt of the TES to the specific licensee.

### Response to Critically Damaged TES

In addition, the TES-knowledgeable contractor hired by BBB will respond to a critically damaged TES. The contractor's duties include:

- 1) Responding to a critically damaged TES and coordinating with the store and with James O'Connor, the Corporate Radiation Safety Officer ("RSO").
- 2) Removing any critically damaged TES and replacing the TES with a non-tritium exit sign.

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- 3) Collecting smear samples for each critically damaged sign.
  - 4) Analyzing initial smear samples at the contractor's screening laboratory in Knoxville, Tennessee.
  - 5) Sending any additional smear samples for analysis by a certified laboratory.
2. **State the number of tritium exit signs you currently possess and the number of signs that, according to your records, should be in your possession.**

### **BBB Response:**

Attachment 2 summarizes the results of BBB's physical inventory efforts. As Attachment 2 shows, based on the results of its physical survey of locations occupied by BBB, BBB concludes that as of July 15, 2009, it has 9,799 TES in 644 domestic facilities. As explained above, based on information obtained from store managers and because of the unreliability and unavailability of purchasing records, BBB reasonably concludes that this total of 9,799 represents the total number of TES that it should have in its possession at this time.

3. **Explain the reasons for any discrepancy between the number of tritium exit signs you currently possess and the number of signs that should be in your possession.**

### **BBB Response:**

BBB is not reporting any discrepancies at this time regarding the number of TES it currently possesses and the number of TES that should be in its possession. As previously noted in this attachment, BBB was not able to perform a forensic review of its TES records in a manner that would provide reliable original-inventory information.

4. **Describe the actions you have taken, or plan to take, to locate tritium exit signs that should be, but are not, in your possession.**

### **BBB Response:**

BBB has not identified, to date, any TES that should be in its possession, but are not at this time.

5. **Describe any actions you have taken, or plan to take, to prevent future losses of tritium exit signs.**

### **BBB Response:**

As an initial matter, and as discussed above, BBB is no longer requesting that TES be installed in its stores as part of its new store specifications. We are confident that our existing and planned actions described above, including distribution of BBB's internal

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guidance document, will enable us to maintain accountability for all existing and acquired TES, as well as assure their proper handling and disposal in accordance with NRC regulations. In this regard, it is possible that as a result of BBB's ongoing actions, BBB may discover additional TES. In the event that a significant number of additional TES are discovered, BBB will notify the NRC.