



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION I**  
475 ALLENDALE ROAD  
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

May 26, 2011

Albert J. Fahey, Ph.D.  
23111 Frederick Road  
Clarksburg, Maryland 20871

**SUBJECT: YOUR LETTER ADDRESSED TO THOMAS O'BRIEN, NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY, GAITHERSBURG RADIATION SAFETY DIVISION, DATED APRIL 23, 2011**

Dear Dr. Fahey,

The Nuclear Regulatory Commission (NRC) received a copy of your April 23 letter to Mr. O'Brien on April 26, 2011. The NRC reviewed your letter on April 27 and concluded that the issues you asserted in your letter, about the posting and legibility of NRC Form 3s at the National Institute of Standards and Technology (NIST) in Gaithersburg, represent an opportunity for NIST to possibly improve their posting of NRC Form 3s but do not, as currently described in your letter, constitute violations of NRC requirements.

NRC regulations in 10 CFR 19.11(e)(1) require, in part, that each licensee prominently post the NRC Form 3, "Notice to Employees." Furthermore, 10 CFR 19.11(f) requires that documents, notices, or forms posted under this section shall appear in a sufficient number of places to permit individuals engaged in NRC-licensed or regulated activities to observe them on the way to or from any particular licensed or regulated activity location to which the document applies, shall be conspicuous, and shall be replaced if defaced or altered.

In your letter, you asserted, and 4 of your colleagues reportedly agreed, that the NRC Form 3s posted at NIST in Gaithersburg were not prominently posted; however, the only example you provided was an 8 ½" by 14" posting you observed above a water fountain in Building 217 on the first floor of the A-corridor. Why this posting is not prominent is not clear. Water fountains are often good locations for postings because of their frequent use by the personnel who work in the area. You also asserted that this posting above the water fountain, in any NIST building, is not on the way to or from any NIST laboratory rooms and that notices must be posted: (1) at the entrance to each NIST building where the regulated activities occur; and (2) outside the laboratory room doors where the activities take place. It is not clear why the NRC Form 3 postings that currently exist at NIST Gaithersburg are considered inadequate.

Occupational Safety and Health Administration regulations at 29 CFR 24.2(d)(1) requires that every employer subject to the Energy Reorganization Act of 1974, as amended, prominently post and keep posted in any place of employment to which the whistleblower provisions of the Act apply, a fully legible copy of the notice prepared by OSHA, printed as appendix A to this

A. Fahey

part, or a notice approved by the Assistant Secretary that contains substantially the same provisions and explains the whistleblower provisions of the Act and the regulations of this part.

As we discussed in earlier email correspondence, I have not been able to confirm that the NRC Form 3 is the form approved by the Assistant Secretary of Labor but NRC Form 3 is required to be posted by NRC licensees and the NRC Form 3 does discuss, in part, the Energy Reorganization Act of 1974 and the whistleblower provisions of the Act.

You asserted that the NRC Form 3s posted by NIST were printed on 8 ½" by 14" paper, rather than the 11" by 17" paper versions printed by the NRC and made available to NRC licensees, and you therefore concluded that the 8 ½" by 14" version is "illegible as a posted notice." We don't believe your conclusion is supported by the statements reportedly made to you by your 4 colleagues when each was asked if they could read the NRC Form 3 posted above a water fountain. Each colleague reportedly said they could read the Notice if they leaned across the water fountain and were approximately 10" from the Notice. The definition of "legible" is "capable of being read or deciphered" and your colleagues reportedly said they were able to read the posted Notice. Certainly there is always room for improving the legibility of documents by posting larger copies of documents, using better lighting, using better quality copies, etc.; however, the situation you and your colleagues describe does not constitute a violation of 29 CFR 24.2(d)(1).

This morning I received a copy of your May 24, 2011 email, sent to Mark Mullen of the NRC Office of Investigations, reporting your resignation from NIST Gaithersburg and the fact that NIST Gaithersburg recently changed their postings in Building 217 to add larger print documents as you requested in your April 23, 2011 letter, to Mr. OBrien of the Gaithersburg Radiation Safety Division. The NRC does not view this as an admission of prior non-compliance with NRC requirements, as you indicated in your email.

A. Fahey

If you have any information describing apparent non-compliance with any requirement at NIST Gaithersburg, I would appreciate discussing this with you.

I appreciate your cooperation.

Sincerely,

***/RA/***

James P. Dwyer, Chief  
Commercial and R&D Branch  
Division of Nuclear Materials Safety  
U.S. Nuclear Regulatory Commission, Region I

cc: R. Urban  
M. Mullen

A. Fahey

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cc: R. Urban  
M. Mullen

**SUNSI Review Complete:     JPD     (Reviewer's Initials)**

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