



MAR 30 2016

The Honorable Lamar Smith
Chairman
Committee on Science, Space, and Technology
United States House of Representatives
Washington, DC 20515

The Honorable Barry Loudermilk
Chairman
Subcommittee on Oversight
Committee on Science, Space, and Technology
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman Smith and Mr. Chairman Loudermilk:

This is in response to your letter of March 16, 2016 regarding incidents involving radioactive materials that occurred at the National Institute of Standards and Technology (NIST) and about the July 18, 2015 explosion in Building 236 on NIST's Gaithersburg campus. NIST takes very seriously the security of its campus and the safety of its employees. I appreciate the opportunity to provide additional information to the Committee and to answer any concerns the Committee and the Subcommittee have.

The Committee's letter suggests that I appeared to give the Committee an incomplete or misleading answer as to significant radiological incidents that occurred at NIST. The letter also suggests that NIST has not provided the Committee with all of the information it has requested in its inquiry following the July 18, 2015 explosion. Let me assure you that neither I nor anyone else at NIST has misled or withheld information from the Committee. We have provided the Committee with the information the Committee has requested and will continue to work with the Committee to provide materials it requires for its oversight responsibilities. Regarding the explosion, we have provided the Committee with well over 1000 pages of documents responsive to two separate written requests, as well as to other requests made by the Committee's staff by telephone. These materials include building access records,¹ a record of our investigation into alleged time and attendance abuse that found those allegations were unsubstantiated, and documents showing that we have accounted for all police equipment in inventory. Moreover, we have offered more than once to have the NIST officials who investigated the allegations of employee misconduct brief the Committee, and remain willing to do so.

¹ As we indicated in our October 22, 2015, letter to the Committee, the building records were used in the criminal prosecution of former officer Bartley, but were made available to the Committee in October 2015.

In addition, the Committee's letter quotes a July 21, 2015 email chain between NIST's Office of Financial Resource Management and NIST's Chief of Staff concerning the appropriate level of communication about the July 2015 explosion in Building 236 with our external financial auditors, KPMG. The March 16 letter implies that NIST's Chief of Staff and Chief Financial Officer (CFO) sought to mislead or to keep information about the explosion from the KPMG auditors. The full email chain shows that the NIST CFO sought advice on the protocol for what information could be shared with the financial auditors at that juncture, less than three days after the explosion. Rather than suggesting information be withheld, the CFO was advised that not only should NIST share with KPMG the same information provided to employees, but that NIST should provide a briefing or phone conversation to the auditors as well.²

Further, the Committee's letter also references a 2008 plutonium incident and a 2015 Notice of Violation (NOV) from the Nuclear Regulatory Commission (NRC). NIST fully addressed the 2008 incident to the NRC's satisfaction several years ago, and as I indicated during the hearing, the then-acting Director of NIST testified before this Committee concerning the 2008 incident.³ The question addressed to me at the hearing was whether there had been any other incidents the Committee should know about that, like the 2008 incident, could be characterized as "1,000" or "100" times "worse" than the attempt to manufacture a substance containing methamphetamine. I answered accurately that I was not aware of any. The personnel and facility contamination from the 2008 plutonium incident resulted in NIST undertaking a significant number of NRC-mandated corrective actions to strengthen its radiation safety programs in Gaithersburg and Boulder. Since then, NIST has had no similar incidents at either its Boulder or Gaithersburg campuses.

The June 2015 NOV issued to NIST and referenced in the Committee's letter stated that NIST failed to keep records of all special nuclear material in its possession. In fact, NIST itself discovered this issue, and while not required to do so, promptly self-reported it to the NRC and took corrective actions.⁴ The NRC reviewed these corrective actions during an inspection of NIST and confirmed that NIST had adequately addressed the record-keeping violation.⁵ This violation was assessed by the NRC as a Level 4 violation, the least significant of the four severity levels established in the NRC Enforcement Policy. The NRC's June 2015 inspection report⁶ further noted that according to the two Certified Health Physicists who performed the assessment of the Gaithersburg radiation safety program, NIST's program "is effective and protects worker safety and health, the safety of the public and the environment."

Attached are materials responsive to the Committee's March 16 letter. These materials consist of NIST's policies and procedures for responding to "incidents" involving "plutonium or other radioactive or nuclear materials." We note that based on an agreement with the Committee's

² NIST conducted both a phone conversation and a briefing with KPMG shortly after this email exchange.

³ H. Comm. On Science, Space, & Technology, Subcommittee on Tech. and Innovation. *Oversight: Low-Level Plutonium Spill at NIST Boulder; Contamination of Lab and Personnel*, 110th Cong. (July 18, 2008).

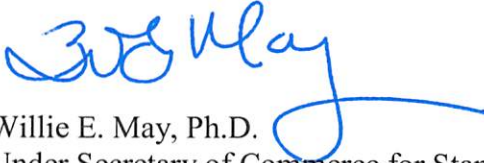
⁴ The records gap cited in the June 2015 NOV did not apply to any plutonium materials in NIST's possession.

⁵ See NRC Notice of Violation, Docket No. 07000398 ("The NRC has concluded that the information regarding the reason for the violations, *the corrective actions taken and planned to address the violation and prevent recurrence, and the date when full compliance will be achieved is already adequately addressed on the docket.*") (emphasis added).

⁶ See NRC Inspection Report No. 07000398/2014001.

staff reached during conversations on March 18, we are using the definition for the term “radiological incident” as specified in NIST’s internal radiation safety program procedures. We continue to search our files for materials responsive to the Committee’s request and will provide additional responsive documents on an ongoing basis.

Sincerely,



Willie E. May, Ph.D.
Under Secretary of Commerce for Standards and Technology &
Director, National Institute of Standards and Technology

cc: The Honorable Eddie Bernice Johnson, Ranking Minority Member, House Committee on
Science, Space and Technology
The Honorable Don Beyer, Ranking Minority Member, Subcommittee on Oversight