



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 15, 2019

Dr. David M. Slaughter
President and Reactor Administrator
Aerotest Operations, Inc.
3455 Fostoria Way
San Ramon, CA 94583

SUBJECT: AEROTEST OPERATIONS, INC. – IRREVOCABLE STANDBY LETTER OF
CREDIT FOR THE AEROTEST RADIOGRAPHY AND RESEARCH REACTOR
(EPID NO. L-2017-PMP-0014)

Dear Dr. Slaughter:

Aerotest Operations, Inc. (Aerotest) holds U.S. Nuclear Regulatory Commission (NRC) Facility Operating License No. R-98 for the operation of the Aerotest Radiography and Research Reactor (ARRR). On February 28, 2017, the NRC issued an order and safety evaluation consenting to the indirect transfer of the ARRR license to Nuclear Labyrinth, LLC (Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML16333A446, ML16333A448, and ML16333A449). The order (ADAMS Accession No. ML16333A448) stated that the approval of the transfer was subject to certain conditions, including a requirement that "[a] cash secured irrevocable standby letter of credit from a federally insured bank in the amount of \$300,000 that conforms to the guidance provided in NRC Regulatory Guide 1.159 must be executed at the time of, or before, the transfer." NRC Regulatory Guide 1.159, "Assuring the Availability of Funds for Decommissioning Nuclear Reactors," Revision 2, dated October 2011 (RG 1.159), may be found at ADAMS Accession No. ML112160012.

On July 14, 2017, an irrevocable standby letter of credit from Bank of the West, in the amount of \$300,000 (ADAMS Accession No. ML18030A742), was executed for the account of Aerotest, and an originally signed letter of credit was sent to the NRC by Bank of the West. The license transfer was subsequently consummated on July 17, 2017 (ADAMS Accession No. ML17138A310).

The NRC staff reviewed the letter of credit against the guidance in RG 1.159. RG 1.159 provides guidance to applicants and licensees of nuclear power, research, and test reactors concerning methods acceptable to the NRC staff for complying with requirements in the rules regarding the amount of funds for decommissioning, and also provides guidance on the content and form of the financial assurance mechanisms. RG 1.159, Section 2.3.1, states that a licensee may use the sample wording for an irrevocable standby letter of credit for a nuclear reactor licensee provided in RG 1.159, Appendix A-5. Although not specifically applicable to nuclear reactor licensees, NUREG-1757, "Consolidated Decommissioning Guidance," Volume 3, "Financial Assurance, Recordkeeping, and Timeliness," Revision 1, dated February 2012 (ADAMS Accession No. ML12048A683), was also consulted by the NRC staff to help inform its review, because NUREG-1757 provides additional guidance regarding decommissioning letters of credit, including letters of credit which deviate from standard wording. NUREG-1757,

Section A.6.4, provides example wording for an irrevocable standby letter of credit for NRC licensees other than nuclear reactor licensees that is similar to the example wording in RG 1.159, and NUREG-1757, Appendix A, Checklist 6-B, provides a list of terms and conditions needed in decommissioning letters of credit that deviate from the example wording provided in NUREG-1757, Section A.6.4.

During its review, the NRC staff noted that Aerotest's letter of credit, dated July 14, 2017, did not appear to adequately conform to certain guidance provided in RG 1.159. Therefore, by letter dated March 8, 2018 (ADAMS Accession No. ML18054A077), the NRC staff requested that Aerotest explain how it complies, or plans on complying, with the license transfer condition that the irrevocable standby letter of credit "conforms to the guidance provided in NRC Regulatory Guide 1.159."

By letter dated July 18, 2018 (ADAMS Accession No. ML18206A726), Aerotest responded to the NRC staff's March 8, 2018, letter stating that Aerotest "formally compl[ie]d with the NRC [l]etter ... by modifying the ARRR's letter of credit." On July 17, 2018, an amendment to Aerotest's July 14, 2017, letter of credit was executed (ADAMS Accession No. ML18277A196) and an originally signed letter of credit amendment was sent to the NRC by Bank of the West.

The NRC staff reviewed Aerotest's July 14, 2017, letter of credit, as amended on July 17, 2018, against the guidance in RG 1.159. As discussed above, the NRC staff used NUREG-1757, including NUREG-1757, Appendix A, Checklist 6-B, to inform its review of the letter of credit's conformance with RG 1.159. The NRC staff noted that Aerotest's amended letter of credit does not conform exactly with the NUREG-1757, Appendix A, Checklist 6-B, criterion that states "[t]he letter of credit must be automatically renewed at each expiration date unless notification by certified mail is received by the NRC and the licensee at least 90 days prior to nonrenewal," because Aerotest's amended letter of credit states that Bank of the West must "at least ninety (90) days prior to the expiry date ... send written notice [of nonrenewal] by certified mail or courier service to both the beneficiary [(i.e., the NRC)] and applicant [(i.e., Aerotest)]...." However, as noted above, NUREG-1757 is not applicable to nuclear reactor licensees. In addition, RG 1.159, Appendix A, states that licensees may add, delete, or modify sample provisions of the example wording for letters of credit and other instruments in RG 1.159, Appendix A, as their circumstances warrant, although licensees should ensure that the financial instruments comply with the NRC's decommissioning regulations. The relevant regulation in Title 10 of the *Code of Federal Regulations* (10 CFR) 50.75€(1)(iii)(A)(1) states, in part, that a surety method (e.g., letter of credit) for decommissioning funding "must be open-ended, or, if written for a specified term, such as 5 years, must be renewed automatically, unless 90 days or more prior to the renewal day the issuer notifies the NRC, the beneficiary, and the licensee of its intention not to renew." The NRC staff finds that, because it contains the condition that the bank must send notices of nonrenewal to the NRC and Aerotest by certified mail or courier service at least 90 days prior to the nonrenewal date, Aerotest's letter of credit, as amended, complies with the relevant part of 10 CFR 50.75€(1)(iii)(A)(1).

The NRC staff also finds that Aerotest's letter of credit, as amended, adequately conforms to the other criteria listed in NUREG-1757, Appendix A, Checklist 6-B. Additionally, the NRC staff verified with the California Department of Business Oversight that Bank of the West is an entity that has the authority to issue a letter of credit, and whose letter of credit operations are regulated and examined by a State agency, as discussed in RG 1.159, Section 2.3.3(2). Because Aerotest's amended letter of credit conforms to the criteria in NUREG-1757, Appendix A, Checklist 6-B, or otherwise complies with relevant NRC regulations, and because the amended letter of credit is issued by an institution that conforms to the guidance in RG 1.159,

Section 2.3.3(2), the NRC staff finds that Aerotest's July 14, 2017, letter of credit, as amended on July 17, 2018, adequately conforms to the guidance provided in RG 1.159.

The NRC staff notes that Aerotest's amended letter of credit lists the address for the NRC (i.e., the letter of credit beneficiary) as recommended in the example letter of credit in RG 1.159, Appendix A-5. However, the NRC staff further recommends that any documents or notifications related to Aerotest, but submitted directly from a bank to the NRC (i.e., not submitted by Aerotest pursuant to 10 CFR 50.4, "Written communications") be sent to the attention of the NRC project manager for Aerotest. In addition, the NRC staff recommends that any submissions to the NRC include the related facility docket and license numbers.

The regulation in 10 CFR 50.75€(1)(iii)(A)(2) requires that a decommissioning letter of credit be payable to a trust established for decommissioning costs, and the trustee and trust must be acceptable to the NRC. Aerotest's amended letter of credit specifies that whenever the letter of credit is drawn on, the amount of the draft will be deposited directly into the standby trust fund of Aerotest. The NRC staff notes that, as discussed in RG 1.159, Section 2.3.2, documentation of such standby trust fund (in addition to an originally signed duplicate or conformed copy of the letter of credit) should be maintained in Aerotest's records and be available for inspection by the NRC.

If you have any questions, please contact Edward Helvenston at 301-415-4067, or by electronic mail at Edward.Helvenston@nrc.gov.

Sincerely,

R/A

William Kennedy, Acting Chief
Research and Test Reactors Licensing Branch
Division of Licensing Projects
Office of Nuclear Reactor Regulation

Docket No. 50-228
License No. R-98

cc: See next page

Aerotest Operations, Inc.

Docket No. 50-228

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DATED: FEBRUARY 15, 2019

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ADAMS Accession No. ML19015A352

*concurred via email

NRR-106

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