

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION
FOR INDIRECT LICENSE TRANSFER AND CONFORMING AMENDMENT,
PROPOSED ACQUISITION OF AEROTEST OPERATIONS, INC., FOR AEROTEST
RADIOGRAPHY AND RESEARCH REACTOR BY X-RAY INDUSTRIES, INC.,
FACILITY OPERATING LICENSE NO. R-98
DOCKET NO. 50-228

1.0 INTRODUCTION

By application dated January 19, 2010, as supplemented on February 2, March 23, April 1, and April 19, 2010, (collectively, the application), Aerotest Operations, Inc., (Aerotest), X-Ray Industries, Inc., (X-Ray), and Autoliv ASP, Inc., (the applicants), requested that the U. S. Nuclear Regulatory Commission (NRC), pursuant to Section 184 of the Atomic Energy Act of 1954, as amended, and Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.80, consent to the proposed indirect transfer of control of Facility Operating License No. R-98 for the Aerotest Radiography and Research Reactor (ARRR), which is a 250 kilowatt thermal (kW(t)) research reactor located in San Ramon, California. The license authorizes Aerotest to possess, use, and operate the ARRR. The application also requested approval of a conforming amendment to the license pursuant to 10 CFR 50.80 and 50.90. No physical changes to the ARRR facility or operational changes were proposed in the application. Notice of the Application was published in the *Federal Register* on May 14, 2010 (75 FR 27368). No written comments or requests for hearing were received from the public in response to the Notice.

2.0 BACKGROUND

Aerotest is the holder of the Facility Operating License for the ARRR under the provisions of 10 CFR 50.21(c) for research and development purposes. Aerotest is currently wholly owned by OEA Aerospace, Inc., which is wholly owned by OEA, Inc. OEA, Inc., was purchased by Autoliv ASP, Inc. (Autoliv), on May 9, 2000. Autoliv is wholly owned by Autoliv, Inc. Autoliv, Inc., is incorporated in Delaware, but the majority of the Board of Directors and the Executive Officers are non-U.S. citizens. Under the May 9, 2000, transfer, and without the consent of the Commission, Autoliv and Autoliv, Inc., became indirect owners of Aerotest.

Autoliv and X-Ray have agreed to consummate a transaction whereby X-Ray will acquire Aerotest in a stock transaction. According to the application, Autoliv intends to transfer the stock in Aerotest to X-Ray; stock in the parent holding companies, OEA Aerospace, Inc., and OEA, Inc., will not be transferred. X-Ray, with corporate offices located in Troy, Michigan, is a privately held "S" corporation, incorporated in the State of Michigan. X-Ray has formed a new single member LLC in Michigan, which is Aerotest Holdings, LLC. The new LLC will, as its sole activity, own all of the stock of Aerotest, a California Corporation. Thus, Aerotest will become a wholly owned indirect subsidiary of X-Ray. Aerotest, as the owner and operator, holding the license to operate the ARRR, will remain unchanged as a result of the transaction. Aerotest will continue in its current legal form.

3.0 REGULATORY EVALUATION

The applicants' request for the approval of the indirect transfer of control of the license for the ARRR, due to the proposed indirect transfer of ownership of Aerotest, is made pursuant to 10 CFR 50.80.

Section 50.80(a) of 10 CFR states that:

No license for a production or utilization facility...or any right thereunder, shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing.

In addition, the requirements of 10 CFR 50.80(b) and (c) apply. Section 50.80(b) states that an application for a license transfer shall include as much information described in 10 CFR 50.33 and 10 CFR 50.34, with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license.

Section 50.80(c) states that:

[T]he Commission will approve an application for the transfer of a license if the Commission determines: (1) [t]hat the proposed transferee is qualified to be the holder of the license; and (2) [t]hat transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

4.0 FINANCIAL QUALIFICATIONS

Section 50.33(f) of 10 CFR provides that each application shall state:

Except for an electric utility applicant for a license to operate a utilization facility of the type described in 10 CFR 50.21(b) or 50.22, information sufficient to

demonstrate to the Commission the financial qualification[s] of the applicant to carry out, in accordance with the regulations in this chapter, the activities for which the permit or license is sought.

4.1 Aerotest Operations, Inc.

The ARRR is licensed under Section 104c of the Atomic Energy Act of 1954, as amended, as a utilization facility useful in the conduct of research and development activities. As such, the applicable regulation is 10 CFR 50.21(c). The NRC staff has determined that Aerotest must meet the financial qualifications requirements for a non-electric utility pursuant to 10 CFR 50.33(f). Accordingly, Aerotest must provide information that demonstrates that Aerotest, notwithstanding the proposed indirect license transfer, possesses or has reasonable assurance of obtaining the necessary funds to cover estimated operation costs for the period of the license. In this regard, Aerotest shall submit estimates for the total annual operating costs for each of the first five years of the facility operations following the proposed license transfer and indicate the source(s) of funds to cover these costs.

Also, 10 CFR 50.33(k)(1) requires that Aerotest provide information described in 10 CFR 50.75 indicating reasonable assurance that funds will be available to decommission the facility.

The following is a summary of the projected income statement for Aerotest submitted in the application.

AEROTEST OPERATIONS, INC.
Summary of
PROJECTED INCOME STATEMENT
(In \$[])

	<u>FY2010</u>	<u>FY2011</u>	<u>FY2012</u>	<u>FY2013</u>	<u>FY2014</u>
TOTAL REVENUE:	\$[]	\$[]	\$[]	\$[]	\$[]
Total Operating Expense:	\$[]	\$[]	\$[]	\$[]	\$[]
Operating Income:	\$[]	\$[]	\$[]	\$[]	\$[]
Other Income & Taxes	\$[]	\$[]	\$[]	\$[]	\$[]
NET INCOME	\$[]	\$[]	\$[]	\$[]	\$[]

The application indicates that the source of funds to cover operating costs is from fees for radiography services rendered at the facility. According to the application, Aerotest has a long

stable history as the single largest source for Neutron Radiography inspection of safety critical flight hardware for both the commercial and military markets, as well as for NASA.

The NRC staff finds that Aerotest's Projected Income Statement shows that anticipated revenues for the ARRR provides reasonable assurance of adequate sources of funds to meet the anticipated expenses during the five year period covered by the projections. The NRC staff finds that no further financial qualifications analysis or review of Aerotest is necessary.

4.2 X-Ray Industries, Inc.

Because X-Ray will be providing a portion of the decommissioning funding assurance for Aerotest and will be entering into a support agreement with Aerotest, the NRC staff analyzed the financial qualifications of X-Ray, in order to determine whether the indirect transfer of control to X-Ray will adversely affect the financial or technical qualifications of Aerotest

X-Ray is a U.S. based "S" corporation located in Troy, Michigan and incorporated in the State of Michigan. According to the financial statements submitted with the application, [

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According to X-Ray, []. Based on financial statements dated as of December 31, 2009, X-Ray had total assets of \$[] and [] net earnings of \$[] in 2009.

The NRC staff has reviewed the information in the application regarding Aerotest's financial qualifications and considers a support agreement between X-Ray and Aerotest as a significant factor in assessing Aerotest's financial qualifications following the proposed transaction. The NRC staff had a teleconference with X-Ray and Aerotest in March 2009, regarding additional financial support for operations in the form of a support agreement to cover operations and maintenance costs for a period of 6 months. The NRC staff notes that support agreements are typically provided between parent companies and subsidiaries of commercial entities. X-ray and Aerotest agreed to enter into a support agreement, whereby X-ray would provide up to \$850,000 in funding, if necessary, for Aerotest, to cover continued operation and maintenance costs for the ARRR. Accordingly, the Order approving the indirect transfer of the license shall include the following condition:

X-Ray Industries, Inc., shall enter into an \$850,000 support agreement with Aerotest Operations, Inc., no later than the time the proposed transaction and indirect license transfer occur. Aerotest Operations, Inc., shall take no action to cause X-Ray Industries, Inc., or its successors and assigns, to void, cancel, or modify the support agreement or cause it to fail to perform, or impair its performance under the support agreement, without the prior written consent of the NRC. The support agreement may not be amended or modified without 30 days prior written notice to the Director of the Office of Nuclear Reactor Regulation or his designee. An executed copy of the support agreement shall be submitted to the NRC no later than 30 days after the completion of the

proposed transaction and the indirect license transfer. Aerotest Operations, Inc., shall inform the NRC in writing anytime it draws upon the support agreement.

The NRC staff reviewed Aerotest's submitted proformas for Projected Financial Statements (Projected Net Income Statement and the Projected Balance Sheet), and also evaluated the financial condition of X-Ray, which will be the indirect, ultimate owner of Aerotest following the proposed transaction, as it relates to its obligations and the support agreement. Based on the foregoing analysis, the NRC staff has determined that Aerotest has met the financial qualifications requirements under 10 CFR 50.33(f).

5.0 DECOMMISSIONING FUNDING

The NRC has determined that the requirements to provide reasonable assurance of decommissioning funding are necessary to ensure adequate protection of public health and safety. Regulation 10 CFR 50.33(k) requires that an application for an operating license for a production or utilization facility include information to demonstrate how reasonable assurance will be provided that funds will be available to decommission the facility. Regulation 10 CFR 50.75(d) requires that each nonpower reactor applicant for or holder of an operating license shall submit a decommissioning report which contains a cost estimate for decommissioning the facility, an indication of the funding method(s) to be used to provide funding assurance for decommissioning, and a description of the means of adjusting the cost estimate and associated funding level periodically over the life of the facility. The acceptable methods for providing financial assurance for decommissioning are specified in 10 CFR 50.75(e)(1).

The application included a decommissioning estimate, developed by Energy Solutions for the ARRR for \$2.3 million in 2009 dollars, which assumed that the decommissioning method to be used is DECON. According to the application, the cost estimate was determined by comparing the ARRR facility size and complexity against cost estimates for other non-power reactor facilities. The decommissioning cost estimate summarized costs by labor, waste disposal, other (i.e. energy, equipment, and supplies, etc.) and included a 25% contingency factor. The NRC staff notes that the contingency factor is required to address unforeseeable elements of cost within the defined scope. In reviewing the decommissioning cost estimate submitted by Aerotest (\$2.3 million), the NRC staff took into consideration experience at other facilities with similar construction and operational history, and concludes that the decommissioning cost estimate for the ARRR facility is reasonable. Following the proposed transaction, Aerotest will provide decommissioning through a combination of financial assurance mechanisms, as stated below, as allowed under 10 CFR 50.75(e)(1)(vi).

As stated in the application, at the closing of the stock transaction, Aerotest will obtain \$2 million in cash from Autoliv, which will be immediately contributed to the nuclear decommissioning trust. The \$2 million in assets will be used to establish a trust fund as allowed by 10 CFR 50.75(e)(1)(ii), which states that:

prepayment may be in the form of a trust, escrow account, or Government fund with payment by, certificate of deposit, deposit of government or other securities or other method acceptable to the NRC.

Aerotest will provide an additional \$300,000 of financial assurance in the form of a letter of credit, allowed by 10 CFR 50.75(e)(1)(iii)(A), which states that "[a] surety method may be in the form of a surety bond, letter of credit or line of credit."

The NRC staff reviewed Aerotest's information on decommissioning funding assurance as described above and finds that the combination of mechanisms, pursuant to 10 CFR 50.75(e)(1)(vi), via the prepayment method and letter of credit is acceptable. The NRC staff also finds that the decommissioning cost estimate for the DECON option is reasonable. Thus, the minimum decommissioning funding amount required by 10 CFR 50.75 that Aerotest shall be required to provide, is \$2.3 million. Since the amount of the decommissioning trust funds to be deposited (\$2 million), and the financial assurance in the form of a letter of credit (\$300,000) will be no less than \$2.3 million, the NRC staff finds that there is reasonable assurance that funds will be available for decommissioning pursuant to 10 CFR 50.75.

In order to ensure decommissioning financial assurance, the following conditions should be included in the Order approving the indirect license transfers for Aerotest, essentially as follows:

- A. By no later than the time the proposed transaction and indirect license transfer occur, \$2 million in decommissioning trust funds will be deposited in a Decommissioning Trust established and maintained by Aerotest Operations, Inc., The funds will be segregated from other assets of Aerotest Operations, Inc., and will be outside of the administrative control of Aerotest Operations, Inc.
- B. No later than the date of the transaction, the licensee will provide to the Director of the Office of Nuclear Reactor Regulation, a copy of the letter of credit for \$300,000 in a form acceptable to the NRC.

6.0 TECHNICAL QUALIFICATIONS

According to the application, the proposed indirect transfer of the ownership interest in Aerotest Operations, Inc., will not result in any significant change to the management and technical personnel at the San Ramon site, including individuals responsible for licensed activities reactor safety. Personnel working at the San Ramon site will be offered employment by X-Ray on terms and conditions comparable to those enjoyed prior to the transfer, according to the application. Thus, NRC concludes that Aerotest, and its parent owner, Aerotest Holdings, LLC, owned by X-Ray is technically qualified to hold the subject license.

7.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

Section 104d of the Atomic Energy Act, as amended (AEA), prohibits the NRC from issuing a license under Section 104 of the AEA to "any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government." The NRC regulation 10 CFR 50.38, "Ineligibility of Certain Applicants," contains language to implement this prohibition. Following the proposed transaction, Aerotest, the licensee, will be indirectly owned by the parent company, X-Ray. X-Ray is a privately held "S" corporation, incorporated in the State of Michigan. X-Ray will form a new Michigan, single-member LLC, with X-Ray as the sole member.

The applicant provided the names, addresses and citizenship of the owners (who are officers and directors) of X-Ray, the parent company of the licensee. The applicant also stated that the officers and directors of Aerotest Holdings, LLC and Aerotest will be the same as those of X-Ray. According to the application, X-Ray, Aerotest Holdings, LLC and Aerotest are not owned, controlled or dominated by an alien, a foreign corporation, or a foreign government. The NRC staff does not know or have reason to believe otherwise.

8.0 NUCLEAR INSURANCE AND INDEMNITY

The provisions of the Price-Anderson Act (Section 170 of the AEA) and the Commission's regulations at 10 CFR Part 140 require that a licensee provide insurance for the facility. Since the proposed indirect license transfer will not result in any direct license transfers or change in licensee, the current indemnity agreements will remain unchanged. All insurance requirements will continue to apply to the current licensee.

9.0 SUMMARY

The Commission has concluded, based on the considerations discussed above, that: (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) the activities at the licensed facility will be conducted in compliance with the Commission's regulations, and (3) the issuance of the conforming amendments will not be inimical to the common defense and security, or to the health and safety of the public.

10.0 CONFORMING AMENDMENT

The applicants requested approval of proposed conforming amendments to the license and the technical specifications. Supplemental information received following the Federal Register notice of the application did not affect the applicability of the Commission's generic no significant hazards consideration determination set forth in 10 CFR 2.1315. No physical or operating changes to the facility, or its adjacent lands, are requested. The changes to be made to the license are indicated in the conforming amendment in an enclosure to the letter

transmitting this safety evaluation. The changes reflect the approved transfer action. The amendments involve no safety questions and are administrative in nature. The Commission has concluded, based on considerations discussed above, that: (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) activities at the licensed facility will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendment will not be inimical to the common defense and security, or the health and safety of the public. Accordingly, the amendment is acceptable.

11.0 STATE CONSULTATION

On May 6, 2010, NRC staff contacted the representative from the State of California's Radiologic Health Branch, and the representative from the California Energy Commission to inform them about the licensee's application and forthcoming Federal Register Notice on the application. The NRC staff mentioned that no changes in the personnel or management are proposed and that the financial and technical qualifications of the transferee have been reviewed. None of the state representatives had any comments.

12.0 ENVIRONMENTAL CONSIDERATION

The subject application is for approval of a transfer of the license issued by the NRC and approval of conforming amendments. Accordingly, the actions involved meet the eligibility criteria for a categorical exclusion set forth in 10 CFR 51.22(c)(21). Pursuant to 10 CFR 51.22(b), no environmental assessment or environmental impact statement needs to be prepared in connection with the approval of the application.

13.0 CONCLUSION

In view of the foregoing, the NRC staff finds that, subject to the conditions discussed herein, the proposed indirect transfer of control of the license for the ARRR, as a result of the stock transaction between Autoliv and X-Ray for Aerotest as described herein, will not affect the qualifications of Aerotest as holder of the ARRR license, and that the indirect transfer of control of ownership, to the extent effected by the proposed transaction described in the application, is otherwise consistent with the applicable provisions of laws, regulations, and orders issued by the NRC pursuant thereto, subject to the conditions described herein.

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Date: July 7, 2010