

August 8, 2017

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

SUBJECT: AEROTEST RADIOGRAPHY AND RESEARCH REACTOR—WITHDRAWAL OF
DENIAL OF LICENSE RENEWAL APPLICATION (CAC NO. MF7221)

Dear Dr. Slaughter:

The U.S. Nuclear Regulatory Commission (NRC) staff is issuing this letter in response to the transfer of ownership of Aerotest Operations, Inc. (Aerotest), from Autoliv, Inc., to Nuclear Labyrinth, LLC (Nuclear Labyrinth), on July 17, 2017. This letter withdraws the NRC's July 24, 2013 denial of the license renewal application for the Aerotest Radiography and Research Reactor (ARRR).

Aerotest holds NRC Facility Operating License No. R-98 for the operation of the ARRR. In May 2000, Aerotest, which was wholly owned by OEA Aerospace, Inc., which, in turn, was wholly owned by OEA, Inc., became wholly owned by Autoliv ASP, Inc., when Autoliv ASP, Inc., acquired all the outstanding shares of OEA, Inc. (Agencywide Documents Access and Management System (ADAMS) Accession No. ML040340559). Autoliv ASP, Inc., is wholly owned by Autoliv, Inc. Consequently, Autoliv, Inc., became the ultimate corporate parent of Aerotest. Autoliv, Inc., is incorporated in Delaware, with headquarters in Stockholm, Sweden (ADAMS Accession No. ML16333A449). The majority of the Autoliv, Inc., Board of Directors and Executive Officers are non-U.S. citizens, and the majority of the Autoliv, Inc., outstanding stock is owned by non-U.S. citizens. Although the acquisition of OEA, Inc., by Autoliv ASP, Inc., amounted to an indirect transfer of control of the license for the ARRR, it was not the subject of an application for prior consent of the NRC as is required by Title 10 of the *Code of Federal Regulations* (10 CFR) 50.80, "Transfer of licenses." Therefore, the NRC neither reviewed nor approved the transfer (ADAMS Accession No. ML13158A164).

On October 7, 2003, the NRC staff issued a letter to Aerotest and Autoliv ASP, Inc., following up on a September 11, 2003, telephone conversation (ADAMS Accession No. ML040430495). The NRC staff explained that Aerotest was potentially in violation of Section 104d of the Atomic Energy Act of 1954, as amended (AEA), and 10 CFR 50.38, "Ineligibility of certain applicants," which prohibit foreign corporations from owning NRC licensees. Specifically, the NRC staff had found that Autoliv, Inc., was a foreign corporation for the purposes of the AEA and the Commission's regulations and that, therefore, its ultimate ownership of Aerotest was prohibited. The NRC staff directed Aerotest and Autoliv ASP, Inc., to develop a plan for full or partial divestiture to ensure that the ARRR was no longer wholly owned by Autoliv, Inc.

By letter dated February 28, 2005, as supplemented by letters dated May 5, 2008, and March 9, 2009, Aerotest applied for renewal of the ARRR operating license (ADAMS Accession Nos. ML13120A434, ML103370137, and ML120900629, respectively). On July 9, 2009, the NRC staff informed Aerotest that it had reviewed the license renewal application and

determined that Aerotest had failed to satisfy the requirements of AEA Section 104d and 10 CFR 50.38 regarding foreign ownership, control, or domination (ADAMS Accession No. ML090830578). Specifically, the NRC staff found that Aerotest was controlled or dominated by its ultimate corporate parent, Autoliv, Inc., which the NRC staff found was a foreign corporation for the purposes of the AEA and the Commission's regulations. Therefore, the NRC staff proposed to deny the license renewal application.

By letter dated January 7, 2010, as supplemented by letters dated January 19, 2010, February 2, 2010, March 23, 2010, and April 1, 2010, Aerotest, Autoliv ASP, Inc., and X-Ray Industries, Inc., submitted a license transfer application to the NRC requesting that the NRC consent to the proposed sale of all of the stock in Aerotest from Autoliv ASP, Inc., to X-Ray Industries, Inc. (ADAMS Accession Nos. ML100140375, ML100490068, ML100880295, ML100880338, and ML100980153, respectively). On July 6, 2010, the NRC consented to the proposed transfer and provided until September 13, 2010, for the transfer to be consummated (ADAMS Accession No. ML101380380). That deadline was subsequently extended to October 15, 2010 (ADAMS Accession No. ML102460245). However, the transfer was never consummated.

By letter dated May 30, 2012 (ADAMS Accession Nos. ML12152A233 and ML12180A384), as supplemented by letters dated July 19, 2012, October 15, 2012, and January 10, 2013 (ADAMS Accession Nos. ML122021201, ML12291A508, and ML13015A395, respectively), Aerotest and Nuclear Labyrinth (collectively, the Applicants) submitted to the NRC an application for NRC consent to the indirect transfer of Facility Operating License No. R-98 for the ARRR to Nuclear Labyrinth. The proposed indirect license transfer would make Nuclear Labyrinth, rather than Autoliv, Inc., the ultimate corporate parent of Aerotest.

On July 24, 2013, the NRC staff denied the Applicants' indirect license transfer application, finding that neither Aerotest nor Nuclear Labyrinth had demonstrated possession or reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the license and to cover the annual cost of fuel storage once the ARRR permanently ceases operations until the U.S. Department of Energy accepts the fuel (ADAMS Accession Nos. ML13120A598 and ML13129A001). Consequently, Autoliv, Inc., remained the ultimate corporate parent of Aerotest. Therefore, also on July 24, 2013, the NRC staff denied Aerotest's application for the renewal of the ARRR license (ADAMS Accession No. ML13120A598) and issued Order EA-13-097, which prohibited Aerotest from operating the ARRR and required Aerotest to begin the process of decommissioning the ARRR (ADAMS Accession No. ML13158A164). In these documents, the NRC staff stated that Autoliv, Inc., was a foreign corporation for the purposes of the AEA and the Commission's regulations and, as such, its continued ownership of Aerotest was in violation of AEA Section 104d and 10 CFR 50.38.

On August 13, 2013, the Applicants jointly demanded a hearing on the denial of the indirect license transfer application and the denial of the license renewal application (ADAMS Accession No. ML13226A407) and jointly answered and demanded a hearing on Order EA-13-097 (ADAMS Accession No. ML13226A412).

On April 10, 2014, the Commission granted the Applicants' hearing demand on the denial of the indirect license transfer application and deferred consideration of the Applicants' hearing demands on the denial of the license renewal application and on Order EA-13-097 pending the completion of the license transfer matter (ADAMS Accession No. ML14100A094). The Commission stated that the reason for this sequencing was, in part, that the resolution of the license transfer matter may render moot some, or even all, of the issues in the license renewal

and Order EA-13-097 matters. The Commission directed the appointment of a presiding officer to the license transfer matter. The presiding officer accepted briefings, held an evidentiary hearing, and, on September 5, 2014, certified to the Commission the record that had been developed (ADAMS Accession No. ML14248A614).

On December 23, 2015, the Commission remanded the license transfer matter to the NRC staff, finding that the Applicants had submitted potentially significant additional information at the evidentiary hearing (ADAMS Accession No. ML15357A201).

Subsequently, the Applicants submitted to the NRC supplements to their license transfer application by letters dated April 21, 2016, June 16, 2016, August 22, 2016, and October 10, 2016 (ADAMS Accession Nos. ML16117A259, ML16176A221, ML16245A230, and ML16294A250, respectively).

On September 23, 2016, the NRC staff published in the *Federal Register* (FR) a notice of opportunity to comment and request a hearing on the indirect license transfer application, as supplemented (81 FR 65677; ADAMS Accession No. ML16214A121). The NRC did not receive any comments or hearing requests in response to this publication.

On February 28, 2017, giving full consideration to the additional information submitted by the Applicants at and after the evidentiary hearing, the NRC staff issued an order consenting, subject to certain conditions, to the indirect transfer of the ARRR license (ADAMS Accession Nos. ML16333A446 and ML16333A448). In its supporting safety evaluation (ADAMS Accession No. ML16333A449), the NRC staff found, in part, that as a result of the indirect license transfer, Aerotest's ultimate corporate parent would be Nuclear Labyrinth instead of Autoliv, Inc. Nuclear Labyrinth is incorporated in the State of Utah, headquartered in Sandy, Utah, and managed by its chief executive officer and sole owner, Dr. David M. Slaughter, who is a U.S. citizen. Based on this information, the NRC staff determined that Nuclear Labyrinth was not a foreign corporation for the purposes of the AEA and the Commission's regulations. The NRC staff also stated that the indirect license transfer application had provided the names and addresses of the members of Aerotest's board of directors and its principal officers and that all were U.S. citizens. Therefore, the NRC staff concluded that, upon the consummation of the indirect license transfer, Aerotest would not be in violation of AEA Section 104d and 10 CFR 50.38.

On July 17, 2017, the Applicants consummated the transfer of the ultimate ownership of Aerotest from Autoliv, Inc., to Nuclear Labyrinth (ADAMS Accession No. ML17138A310).

As explained above, the basis for the NRC staff's July 24, 2013, denial of Aerotest's license renewal application for the ARRR and July 24, 2013, issuance of Order EA-13-097 was that (1) AEA Section 104d and 10 CFR 50.38 prohibit foreign corporations from owning NRC licensees, (2) Autoliv, Inc., ultimately owned Aerotest, the holder of the operating license for the ARRR, and (3) the NRC staff had determined that Autoliv, Inc., was a foreign corporation for the purposes of the AEA and the Commission's regulations. However, since these NRC staff actions, the ultimate ownership of Aerotest has changed, with the NRC's consent, from Autoliv, Inc., to Nuclear Labyrinth. The NRC staff has found that Nuclear Labyrinth is not a foreign corporation for the purposes of the AEA and the Commission's regulations. Additionally, the NRC staff has no reason to believe that Aerotest, as owned by Nuclear Labyrinth, is otherwise owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. As a result of this transfer of ultimate ownership, Aerotest is no longer in violation of AEA Section 104d and 10 CFR 50.38. Therefore, the circumstances warranting the NRC

staff's July 24, 2013, denial of Aerotest's license renewal application for the ARRR and July 24, 2013, issuance of Order EA-13-097, which prohibited Aerotest from operating the ARRR and required Aerotest to begin the process of decommissioning the ARRR, are no longer present.

Accordingly, the NRC is withdrawing its July 24, 2013, denial of Aerotest's application for the renewal of the ARRR license. All regulatory requirements remain applicable and are not affected by this withdrawal. Consequently, the ARRR license renewal application is no longer denied, and the NRC staff will resume its review of the license renewal application as it existed on July 24, 2013. Because the ARRR license renewal application was filed at least 30 days before the expiration of the existing ARRR license and because the NRC is withdrawing its July 24, 2013, denial of this application, under 10 CFR 2.109, "Effect of timely renewal application," the NRC will not deem the existing license to have expired until the license renewal application has been finally determined. Consistent with its normal process, the NRC staff will request additional information about the license renewal application, as necessary, and will make a final determination on the license renewal application.

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

Sincerely,

/RA/

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cc: See next page

Aerotest Operations, Inc.

Docket No. 50-228

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SUBJECT: AEROTEST RADIOGRAPHY AND RESEARCH REACTOR – WITHDRAWAL OF
 DENIAL OF LICENSE RENEWAL APPLICATION (CAC NO. MF7221)
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