

February 2, 2018

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

SUBJECT: AEROTEST RADIOGRAPHY AND RESEARCH REACTOR - REQUEST FOR
WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE
(CAC/DOCKET/EPID NO. 000955/05000228/L-2017-RNW-0027)

Dear Dr. Slaughter:

By letter dated December 20, 2017 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML17363A303), Aerotest Operations, Inc. (Aerotest) submitted a response to the U.S. Nuclear Regulatory Commission (NRC) staff's letter dated October 24, 2017 (ADAMS Accession No. ML17277B261), which requested additional information regarding Aerotest's application for license renewal dated February 28, 2005 (ADAMS Accession No. ML13120A434). Aerotest's December 20, 2017, response included an affidavit, executed by you, which requested that proprietary financial information included in the response be considered confidential information submitted under Title 10 of the *Code of Federal Regulations* (10 CFR) 9.17, "Agency records exempt from public disclosure," Section 9.17(a)(4), and consequently be withheld from public disclosure. Aerotest's December 20, 2017, letter indicated that the documents it considers to be proprietary are Enclosure 5 (Appendix A to response to request for additional information (RAI) No. 2) and Enclosure 6 (non-public version of safety analysis report (SAR) Chapter 15) to its letter.

The regulations in 10 CFR 2.390, "Public inspections, exemptions, requests for withholding," include requirements related to submissions to the NRC for which withholding from public disclosure is requested. Specifically, 10 CFR 2.390(b) contains procedures, including document marking and affidavit requirements, which must be followed by anyone submitting a document to the NRC who seeks to have the document, or a portion of it, withheld from public disclosure because it contains trade secrets, privileged, or confidential commercial or financial information.

The NRC staff has reviewed your application and affidavit in accordance with the requirements of 10 CFR 2.390. The NRC staff has concluded that insufficient justification was provided to determine that all of the information sought to be withheld from public disclosure was proprietary information.

The NRC staff noted that the marking of the documents sought to be withheld from public disclosure does not clearly indicate that the information in the documents is proprietary information withheld from public disclosure under 10 CFR 2.390, in accordance with the marking requirements in 10 CFR 2.390(b)(1)(i). The NRC staff noted that the affidavit requests withholding under 10 CFR 9.17(a)(4), rather than 10 CFR 2.390. Additionally, the NRC staff

noted that the affidavit does not appear to identify the document or part to be withheld, in accordance with 10 CFR 2.390(b)(1)(ii)(A); include a specific statement of the harm that would result if the information sought to be withheld is disclosed to the public, in accordance with 10 CFR 2.390(b)(1)(ii)(D); or indicate the location(s) in the document of all information sought to be withheld, in accordance with 10 CFR 2.390(b)(1)(ii)(E).

The NRC staff notes that, in accordance with 10 CFR 2.390(b)(1)(iii), if the affidavit accompanying a withholding request is based on 10 CFR 2.390(a)(4), which allows withholding of privileged or confidential trade secrets and commercial or financial information, the affidavit must contain a full statement of the reason for claiming the information should be withheld from public disclosure. This statement must address with specificity the considerations listed in 10 CFR 2.390(b)(4). The affidavit states that the information to be withheld from disclosure is proprietary financial information, but does not appear to include a full statement of the reasons why the information should be withheld, as required by 10 CFR 2.390(b)(1)(iii).

In accordance with 10 CFR 2.390(b)(4), in order to make a determination that information is a trade secret or confidential or privileged commercial or financial information, and should be withheld from public disclosure, the NRC will consider, in part, whether the information is available in public sources. The NRC staff notes that certain financial information that is designated as confidential (redacted) in SAR Chapter 15 had previously been provided to the NRC as public information during its review of Aerotest's license transfer application. Specifically, Aerotest's license transfer application supplements dated April 21, 2016 (ADAMS Accession No. ML16117A259), and October 10, 2016 (ADAMS Accession No. ML16294A250), provided certain publicly-available financial information, and by electronic mail dated November 2, 2016 (ADAMS Accession No. ML16312A345), Aerotest stated that certain other financial information, which had previously been non-public, could be made publicly available.

As such, the NRC staff has concluded that the information sought to be withheld from public disclosure does not meet the requirements of 10 CFR 2.390. Please respond within 30 days of the receipt of this letter to inform the staff of your plans for revising your RAI response and request for withholding proprietary information, to resolve the identified deficiencies as described above.

If you have any questions regarding this review, please contact me at (301) 415-4067 or by electronic mail at Edward.Helvenston@nrc.gov.

Sincerely,

/RA/

Edward Helvenston, Project Manager
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

cc:

Sandra Warren, General Manager
Aerotest Operations, Inc.
3455 Fostoria Way
San Ramon, CA 94583

California Energy Commission
1516 Ninth Street, MS-34
Sacramento, CA 95814

Radiologic Health Branch
P.O. Box 997414, MS 7610
Sacramento, CA 95899-7414

Test, Research and Training
Reactor Newsletter
P.O. Box 118300
University of Florida
Gainesville, FL 32611

SUBJECT: AEROTEST RADIOGRAPHY AND RESEARCH REACTOR - REQUEST FOR WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE
 DATE: FEBRUARY 2, 2018

DISTRIBUTION:

PUBLIC	PRLB R/F	RidsNrrDlpPrta	NParker, NRR
RidsNrrDlpPrtb	CMontgomery, NRR	CBassett, NRR	EHelvenston, NRR
RidsNrrDlp	AMendiola, NRR	AAdams, NRR	RidsOgcMailCenter
SLynch, NRR			

ADAMS Accession No.: ML18010A562

***concurred via email**

OFFICE	NRR/DLP/PRLB/PM*	NRR/DLP/PROB/LA*	NRR/DLP/PRLB/BC
NAME	EHelvenston	NParker	AAdams
DATE	1/16/18	1/16/18	1/19/18
OFFICE	OGC/NLO*	NRR/DLP/PRLB/PM	
NAME	CMullins	EHelvenston	
DATE	2/1/18	2/2/18	

OFFICIAL RECORD COPY