



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

October 30, 2019

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

Dear Dr. Slaughter:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter dated August 28, 2019 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML19249A985), which requests that the fiscal year (FY) 2019 annual fee of \$82,400 that the NRC assessed to Aerotest Operations, Inc. (Aerotest) within invoice LFB-19-4890 dated August 14, 2019, be rescinded for Facility Operating License No. R-98 (Docket No. 50-228).

The NRC has established regulations for the granting of exemptions from annual fees under Title 10 of the *Code of Federal Regulations* (10 CFR) Section 171.11, "Exemptions," for which licensees may apply in accordance with 10 CFR 171.9, "Communications." Although your letter does not cite a particular provision in 10 CFR 171.11 in requesting a fee waiver, the NRC has reviewed your request pursuant to 10 CFR 171.11(c):

10 CFR 171.11(c) The Commission may, upon application by an interested person or on its own initiative, grant an exemption from the requirements of this part that it determines is authorized by law or otherwise in the public interest.

In your letter, you state that Aerotest, the license holder for the Aerotest Radiography and Research Reactor (ARRR), declared cessation of operation on December 6, 2018, and that you have submitted a possession-only license amendment request (LAR). You further state that the request for the annual fee to be rescinded is supported by 42 U.S.C § 2214 since fees should be "for services or a thing of value" to the operating 10 CFR Part 50 licensees, and that this is reflected in 10 CFR 171.15(f).

By letter dated March 21, 2019 (ADAMS Accession No. ML19084A051), as supplemented in subsequent communications, Aerotest submitted a LAR proposing to amend the ARRR facility operating license to possession-only. In its LAR, as supplemented, Aerotest had also stated that it had permanently ceased operation of the ARRR as of December 6, 2018. By letter dated July 30, 2019 (ADAMS Accession No. ML19193A077), the NRC staff accepted Aerotest's LAR for review and stated that it expects to complete its review and make a determination on the LAR by July 8, 2021. With confirmation of the permanent cessation of operation, the NRC staff's July 30, 2019, letter also terminated the NRC staff's review of the ARRR license renewal application, dated February 28, 2005 (ADAMS Accession No. ML13120A434), as supplemented.

Pursuant to 10 CFR 171.15(f), annual fees are assessed to licensees authorized to operate a research or test (non-power) reactor licensed under 10 CFR Part 50, unless the reactor is exempted from fees under § 171.11(b). Additionally, as discussed in NUREG-1537, Part 1, "Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors: Format and Content," issued in February 1996, Section 17.1.2, if a research or test reactor is subject to annual licensing fees, the granting of a possession-only license amendment removes the basis for assessment of 10 CFR Part 171 annual fees. Annual fees are assessed based on the license authorization, not the licensee's actual use of licensed material. This NRC policy is consistent with 42 U.S.C § 2214, which requires that "[t]he Commission shall establish, by rule, a schedule of charges fairly and equitably allocating the aggregate amount of charges ... among licensees" and that "[t]o the maximum extent practicable, the charges shall have a reasonable relationship to the cost of providing regulatory services and may be based on the allocation of the Commission's resources among licensees or classes of licensees." The fees assessed to licensees and applicants by the NRC must also conform to the requirement in 42 U.S.C § 2214 that the NRC collect approximately 90 percent of its annual budget authority (less certain excluded items) through both 10 CFR Part 170 user fees and 10 CFR Part 171 annual fees.

Consistent with this NRC policy, even though Aerotest has declared cessation of operation of the ARRR, Aerotest will still be assessed an annual fee until the ARRR is no longer authorized to operate (i.e., until a possession-only license amendment is issued). Your letter does not show that it would be "in the public interest" to completely deviate from this policy, and thus I am unable to grant your request that Aerotest's entire FY 2019 annual fee be waived.

However, by letter dated November 7, 2018 (ADAMS Accession No. ML18268A345), I had previously granted Aerotest a one-time discounted annual fee of \$850 for FY 2018 due to its unique set of facts in that, although it is a 10 CFR Part 50 licensee, it is a small entity similar to other classes of licensees. The NRC had requested at that time that, in subsequent years, Aerotest submit a new request for a fee exemption for each fiscal year for which it desires an exemption, including sufficient documentation to substantiate Aerotest's fee-exemption request.

Given the permanent shutdown status of the ARRR as of FY 2019, and given that Aerotest's situation continues to represent the unique set of facts that warranted a discount of the FY 2018 annual fee, I am now able to grant Aerotest a partial exemption under 10 CFR 171.11(c) for FY 2019 and subsequent fiscal years until completion of the LAR review. This partial exemption reduces your 10 CFR Part 171 annual fee to equal the lower tier small entity fee, which is \$900 for FY 2019 and for subsequent fiscal years until completion of the LAR review, would be the lower tier small entity fee that applies in each of those fiscal years. In addition, Aerotest should include a copy of this letter with submittal of the annual fee each fiscal year until completion of the LAR review by emailing the copy and invoice number to OCFO at FeeBillingInquiries.Resource@nrc.gov.

Aerotest will continue to be responsible for paying current and future 10 CFR Part 170 user fees, including any 10 CFR Part 170 user fees related to future actions (e.g., decommissioning activities), even if a possession-only license amendment is issued. As noted in the November 7, 2018, letter granting a discounted annual fee for FY 2018, small entity materials licensees pay full cost fees for licensing, inspections, and other activities covered by 10 CFR Part 170.

Furthermore, the discounted annual fees granted herein will no longer be applicable if the permanent shutdown status of the ARRR changes, if the status of the LAR changes (e.g., if the LAR is withdrawn or denied), or if Aerotest's status otherwise changes such that its situation may no longer represent the unique set of facts warranting a continued annual fee discount. If any of those circumstances apply, the NRC requests that Aerotest submit a new request for a fee exemption for each fiscal year for which it desires an exemption.

Please direct any questions regarding the settlement of invoice LFB-19-4890 for your FY 2019 annual fee to Mrs. Christian Leatherbury of my staff at 301-415-3479. For any fee-related questions, please contact Mr. William Blaney c/ my staff at 301-415-5092.

Sincerely,

/RA/

Maureen E. Wylie
Chief Financial Officer

SUBJECT: LETTER TO DAVID M. SLAUGHTER, AEROTEST FEE WAIVER RESPONSE TO
 REQUEST DATED AUGUST 28, 2019; RESPONSE LETTER
 DATED: October 30, 2019

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