



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

EA-21-021

March 5, 2021

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

SUBJECT: AEROTEST OPERATIONS, INC. – ACKNOWLEDGEMENT OF LETTER
REGARDING DECOMMISSIONING PLAN AND EXERCISE OF
ENFORCEMENT DISCRETION (EPID NO. L-2019-PMP-0107)

Dear Dr. Slaughter:

By letter dated June 28, 2019 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML19184A112), Aerotest Operations, Inc. (Aerotest) declared the Aerotest Radiography and Research Reactor (ARRR), located in San Ramon, Contra Costa County, California, to be permanently shut down as of December 6, 2018. In a letter dated July 30, 2019 (ADAMS Accession No. ML19193A077), the U.S. Nuclear Regulatory Commission (NRC) staff noted that, since Aerotest has certified that it has permanently ceased operations of the ARRR as of December 6, 2018, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) 50.82, "Termination of license," paragraph (b)(1), Aerotest is required within 2 years (i.e., before December 5, 2020) to submit an application for license termination. The application must be accompanied or preceded by a proposed decommissioning plan (DP) with contents as specified in 10 CFR 50.82(b)(4). In a letter dated March 26, 2020 (ADAMS Accession No. ML20098D415), Aerotest stated that it planned to submit its proposed DP on or before December 4, 2020.

By letter dated November 18, 2020 (ADAMS Accession No. ML20332A032), you notified the NRC that, due to Coronavirus Disease 2019 (COVID-19) restrictions in Contra Costa County and the State of California, Aerotest would be unable to submit its DP by December 5, 2020. You further stated that, if restrictions lessened in the spring of 2021, Aerotest may be able to update and submit its DP by July 31, 2021; however, if restrictions remained in place it may not be able to submit its DP until after July 31, 2021.

In your November 18, 2020, letter, you indicated that Aerotest has a preliminary draft DP that needs to be updated. Additionally, because Contra Costa County has placed restrictions on certain business activity and is limited to only essential business, Aerotest has been unable to allow contractors into its facilities to provide an updated bid. In a teleconference held with you on February 2, 2021, you clarified that the updated bid is needed to provide accurate cost information associated with the disposal of certain ARRR components and that this information is necessary to be able to provide credible decommissioning funding and cost information to the NRC as required by 10 CFR 50.82. You added that most contractors capable of performing this work were required to limit the number of employees that could travel in 2020 in order to comply with the COVID-19 restrictions that were in place, and that this has impacted your ability to submit a comprehensive updated DP. You stated that Contra Costa County continues to be in

the most restrictive reopening tier (purple) in California. You also indicated that you were hopeful that, once Aerotest was able to ship out its fuel (the fuel must be shipped before decommissioning activities can begin), ARRR facility decommissioning could be considered an essential business function with respect to possible COVID-19 restrictions in California.

The NRC staff evaluated the circumstances surrounding Aerotest's failure to submit a DP by December 5, 2020, as required by 10 CFR 50.82(b)(1). In light of the low safety significance of the non-compliance with 10 CFR 50.82(b)(1), and consistent with Enforcement Guidance Memorandum 20-002, "Dispositioning Violations of NRC Requirements During Coronavirus Disease 2019 (COVID-19)," I have been authorized, after consultation with the Director, Office of Enforcement, to exercise enforcement discretion for past non-compliance associated with this issue in accordance with Section 3.5 of the Enforcement Policy. Going forward, the NRC staff will continue to exercise enforcement discretion as long as Aerotest takes appropriate action to submit an application for license termination and comprehensive proposed DP, and come into compliance, by July 31, 2021. Periodic communications between Aerotest and the NRC staff may be required regarding your progress toward achieving full compliance by that date. Additionally, I encourage you to contact Mr. Edward Helvenston at 301-415-4067, or by electronic mail at Edward.Helvenston@nrc.gov, regarding any further potential decommissioning-related COVID-19 impacts, or other potential future COVID-19 regulatory impacts, well in advance of such impacts, if possible.

If you have any questions, please contact Mr. Duane Hardesty, Acting Chief, Non-Power Production and Utilization Facilities Licensing Branch at (301) 415-3724, or at Duane.Hardesty@nrc.gov.

Sincerely,



Signed by Shams, Mohamed
on 03/05/21

Mohamed Shams, Director
Division of Advanced Reactors and Non-Power
Production and Utilization Facilities
Office of Nuclear Reactor Regulation

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

cc:

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
Attention: Ms. Amber Johnson
Dept. of Materials Science and Engineering
University of Maryland
4418 Stadium Drive
College Park, MD 20742-2115

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DATED: MARCH 5, 2021

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