



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

April 30, 2021

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 November 11, 2020 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML20188A222). Your letter stated that it was a response to former NRC Chief Financial Officer Maureen E. Wylie's letter dated April 18, 2019 (ADAMS Accession No. ML19079A245), which, in turn, was in response to your earlier letters dated January 22, 2019 (ADAMS Accession No. ML19030A581), and February 28, 2019 (ADAMS Accession No. ML19065A048).

In your November 11, 2020, letter, you request reimbursement of \$3,120,792.82 in fees that you state the NRC assessed to Aerotest Operations, Inc. (Aerotest) between March 2005 and October 2020 (for NRC activities performed between September 2004 and September 2020), and that Aerotest paid to the NRC, "for years of service not performed or poorly rendered." You also request additional details related to certain fees assessed between 2005 and 2019. Furthermore, you request "[c]hanges to the NRC behavior to ensure USNRC oversight is reasonable, relevant, technically, and legally accurate and cost effective."

Background

In an earlier letter dated January 22, 2019, you had similarly requested a reimbursement, in the amount of \$2,482,682.31, of fees that were invoiced to Aerotest through October 2018 and that Aerotest paid to the NRC from 2005 and 2018. You stated that you were requesting reimbursement because activities associated with the fees "were not performed in a satisfactory manner."

In her letter dated April 18, 2019, Ms. Wylie explained that your January 22, 2019, letter did not identify what specific activities the NRC staff performed in an unsatisfactory manner, why any specific activity was performed in an unsatisfactory manner, or how the specific activities relate to the fees paid. Furthermore, in her letter Ms. Wylie noted that "[d]uring the period of time referenced in your [January 22, 2019] letter, the NRC carried out its licensing and inspection responsibilities consistent with NRC policy and guidance, and Aerotest's activities." Therefore, Ms. Wylie concluded that she could not determine that your January 22, 2019, request had merit.

In your November 11, 2020, letter, you submitted information, in response to Ms. Wylie's April 18, 2019, letter, that you stated identifies what specific activities the NRC staff performed in an unsatisfactory manner, why specific activities were performed in an unsatisfactory manner, and

how the specific activities relate to the fees paid. You also stated that this information demonstrates that the statement in Ms. Wylie's letter that "[d]uring the period of time referenced in your [January 22, 2019] letter, the NRC carried out its licensing and inspection responsibilities consistent with NRC policy and guidance, and Aerotest's activities" is incorrect.

The information you submitted included several examples and discussion of how you did not believe the NRC staff carried out its responsibilities appropriately. You discussed how you believe Aerotest has not been treated fairly by the NRC staff, and you suggested that the NRC staff intentionally "ran up" Aerotest's fees. In addition, you submitted information, for individual NRC billing invoices since 2005, which you stated provides justification for a refund of the fees paid for each invoice. The invoices you referenced include both NRC staff hourly fees assessed pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 170, and annual license fees assessed pursuant to 10 CFR Part 171. The information you provided for each invoice generally relates to the various NRC staff performance examples you provided. The information for many of the invoices also includes statements in which you suggest that Aerotest should be entirely exempt from NRC fees based on the types of activities it conducts.

Discussion

Below, I address both the timeliness of your reimbursement and information requests, and your claims regarding the NRC staff work for which you were invoiced. I also respond to your general claims regarding the NRC's fee policy and suggestion that Aerotest should be entirely exempt from fees.

I. Aerotest's Dispute of Fees Assessed Prior to October 21, 2020 Is Untimely

Section 15.31(a) in 10 CFR states that "[a] debtor who disputes a debt shall explain why the debt is incorrect in fact or in law within 30 days from the date that the demand letter was mailed or hand-delivered." Section 170.51 in 10 CFR states, with respect to NRC staff hourly fees assessed pursuant to 10 CFR Part 170, that "[a]ll debtors' requests for review of the fees assessed or appeal or disagreement with the prescribed fee (staff hours and contractual) must be submitted in accordance with the provisions of [10 CFR 15.31]." The requirement that requests for review or appeal of fees be submitted within 30 days helps ensure that the NRC can respond to such requests appropriately and efficiently; it also helps ensure the NRC complies with federal debt-collection rules.¹

As Ms. Wylie stated in her April 18, 2019, letter, your January 22, 2019, letter did not provide details supporting your reimbursement request. Additionally, I note that your request for reimbursement of fees invoiced through October 2018 in your January 22, 2019, letter was untimely pursuant to 10 CFR 15.31(a) and 170.51 because you did not submit your request to the NRC within 30 days of the date of any of the invoices in question. Furthermore, with the exception of your request for a refund of \$42,717 for hourly fees assessed in Invoice Number LFB 21-0354, dated October 21, 2020, I note that your request for fee refunds, and request for

¹ NRC licensees are encouraged to seek timely clarification regarding invoices, when needed, by submitting an NRC Form 527, "Request for Information Related to Fees-For-Service."

further details related to certain fees, in your November 11, 2020, letter are similarly untimely or have already been separately addressed.²

II. Aerotest Has Not Shown the NRC Improperly Assessed Fees

Notwithstanding the untimeliness of your requests, I confirm that during the time periods referenced in your letters, Aerotest was appropriately assessed hourly fees. Pursuant to 10 CFR 170.21, NRC staff time for activities for research reactors such as the Aerotest Radiography and Research Reactor (ARRR) is billed on a “full cost” basis, reflecting the actual effort (in hours) expended by NRC staff. Furthermore, although the time periods referenced in your letters exceed the NRC’s retention period for records of hours billed, after coordination with the NRC staff, I note that the overall hourly fees you state were assessed during the time periods referenced in your letters appear, in general, to be reasonable and consistent with the wide extent and number of activities NRC staff conducted related to Aerotest since 2004. Regarding annual fees, Aerotest held NRC Facility Operating License No. R-98 for the ARRR during the entirety of the time periods referenced in your letters, and I therefore also confirm that Aerotest was appropriately charged annual fees, pursuant to 10 CFR 171.15(f).

III. Aerotest Has Not Shown NRC Oversight Was Inappropriate

I also confirm that, during the time periods referenced in your January 22, 2019, letter, as stated in Ms. Wylie’s April 18, 2019, letter; and, during the subsequent time period referenced in your November 11th letter, the NRC staff carried out its licensing and inspection responsibilities consistent with NRC policy and guidance, and Aerotest’s activities. The NRC staff performance issues you allege in your November 11, 2020, letter appear to relate largely to your perception that the NRC staff has not provided appropriate, adequate, or consistent oversight of Aerotest during (and prior to) the time periods referenced in your letters.

In response to the issues you describe in your November 11, 2020, letter, I note that NRC inspections, for the ARRR and other facilities, are based on a sampling of facility activities, to verify compliance of the sampled items with the current license and NRC regulations. The inspections are conducted in accordance with procedures, and various items are inspected at a periodicity that is commensurate with their potential safety significance. Inspection procedures specify the periodicity (e.g., biennial for Class II research reactors) for individual routine inspection modules (i.e., inspection areas), but multiple inspections may be conducted to complete all of the modules within the specified period (additional inspections, e.g. special inspections, may also be performed as appropriate). The purpose of NRC inspection reports is to document the specific safety-related items that were inspected and how any issues are dispositioned; inspection reports are not intended to be used to draw conclusions regarding NRC “approval” of any specific licensee activity, the overall condition of a facility (beyond the specific safety-related items inspected), or the viability of future facility operation. Inspections and inspection reports do not involve the NRC making any licensing conclusions or findings (unlike licensing approvals).

² For the fees you previously disputed for Invoice Number LFB 20-1849, dated January 15, 2020, see my letters dated March 13 and August 31, 2020 (ADAMS Accession Nos. ML20073E318 and ML20212L739, respectively), which provided information regarding those fees, and provided my final decision regarding your dispute of those fees.

NRC licensing activities, for the ARRR and other facilities, are also conducted using established practices, policies, and guidance. The NRC staff conducts licensing activities and reviews as needed to allow it to make specific findings required by NRC regulations.

Notwithstanding NRC inspection or licensing activities (which inspect an appropriate sampling of facility activities, and review facility or license changes as appropriate, respectively, but do not inspect or review every licensee activity), it is ultimately incumbent upon licensees to ensure that they are in compliance with their current license and NRC regulations. Furthermore, if changes to the license are necessary (to make updates needed to ensure continued compliance, or for other reasons), it is the responsibility of the licensee to request these changes.

IV. Aerotest's General Fee-Policy Concerns Do Not Provide a Basis for Relief

In your November 11, 2020, letter, you also raise concerns related to general NRC fee policy as it relates to Aerotest, and you appear to suggest that Aerotest should be entirely exempt from NRC fees given the types of activities it conducts. I note that you have expressed similar concerns in previous letters dated June 4, 2018 (ADAMS Accession No. ML18163A111), and June 24, 2020 (ADAMS Accession No. ML20188A22).

As Ms. Wylie previously explained in a letter to Aerotest dated November 7, 2018 (ADAMS Accession No. ML18268A345), Aerotest has not shown that any such broad exemptions from NRC fees would be "in the public interest" in accordance with 10 CFR 170.11(b) or 171.11(c). Therefore, the NRC is unable to grant Aerotest a general exemption from NRC fees.

In your November 11, 2020, letter, you state that Aerotest has not been granted appropriate fee flexibilities afforded to small businesses. As Ms. Wylie explained in her November 7, 2018, letter, and a letter dated October 30, 2019 (ADAMS Accession No. ML19275H120), however, the NRC granted Aerotest exemptions (in response to requests it submitted in fiscal years 2018 and 2019) that allow it to pay annual fees comparable to those paid by similarly situated small-entity materials licensees for fiscal year 2018 and subsequent fiscal years.³

To the extent Aerotest seeks further fee relief, I would remind you that the NRC's rulemaking processes include opportunities for public input, and I would encourage you to use these opportunities to raise any concerns you may have regarding the NRC's cost-recovery regulations.

V. Aerotest's Dispute of Fees Invoiced October 21, 2020 Is Unsupported

Your request for refund of \$42,717 for hourly fees assessed in Invoice Number LFB 21-0354, dated October 21, 2020, was submitted within 30 days of the invoice date, and it is therefore timely. You state that you are disputing the charges in this invoice because of the type of license Aerotest holds for the ARRR⁴ and because of the types of activities that Aerotest conducts. You also state that you are disputing the portion of the charges (\$23,090) in Invoice

³ Under 10 CFR Part 170, small-entity materials licensees pay "full cost" fees for licensing, inspection activities, and other services.

⁴ Aerotest holds a license under section 104c of the Atomic Energy Act license for a production or utilization facility that is useful in the conduct of research and development. Section 104c licenses are issued pursuant to 10 CFR § 50.21(c).

Number LFB 21-0354 related to the operations and security inspections that were conducted at the ARRR in August 2020 because of the general NRC staff performance issues you describe in your November 11, 2020, letter. As discussed above, your general NRC staff performance claims appear to relate largely to your perception that the NRC staff has not provided appropriate, adequate, or consistent oversight of Aerotest during (and prior to) the time periods referenced in your letters.

After consulting with the NRC staff, however, I confirm that staff time charges in Invoice Number LFB 21-0354 are valid. The work specified within the invoice is for activities related to the review of Aerotest's possession-only license amendment request submitted by letter dated March 21, 2019 (ADAMS Accession No. ML19084A051), as supplemented, and for activities related to the operations and security inspections conducted at the ARRR in August 2020, as discussed above (including project management interface related to the inspections). Aerotest was appropriately billed for actual effort (in hours) expended by NRC staff related to these activities pursuant to 10 CFR 170.21. As discussed above and in Ms. Wylie's previous letter dated November 7, 2018, Aerotest has not shown that fee exemptions based on the types of activities that Aerotest conducts are "in the public interest." Additionally, the type of license Aerotest holds does not relieve it from paying hourly fees. And finally, regarding your statements related to NRC staff performance and the August 2020 inspections, I am confident that the NRC staff carried out its inspection responsibilities appropriately, as discussed above.

Conclusion

Based on the information you have provided, I deny your request for reimbursement of the charges in Invoice Number LFB 21-0354, dated October 21, 2020. Additionally, because your requests for reimbursement, and requests for information, related to earlier invoices were not submitted within 30 days as required by 10 CFR 15.31(a) and 170.51, and your technical basis for requesting a refund is unsubstantiated, I must deny your requests for reimbursement of the charges in earlier invoices and your requests for information related to those invoices. Regarding your request in your November 11 letter for "[c]hanges to the NRC behavior to ensure USNRC oversight is reasonable, relevant, technically, and legally accurate and cost effective," I reiterate that, as discussed above, the NRC staff carried out Aerotest licensing and inspection activities appropriately, and the NRC appropriately billed Aerotest for these activities in accordance with NRC regulations.

This letter represents my final determination related to the merits and timeliness of matters raised in your January 22, 2019 and/or November 11, 2020 letters.

Please direct any questions regarding the settlement of NRC invoices to Ms. Carly Nelson-Wilson of my staff at 301-415-8147 or Carlyleamaryllis.Nelson-Wilson@nrc.gov. For further questions regarding billing, please contact Ms. Kelly Riner of my staff at 301-415-6246 or Kelly.Riner@nrc.gov. Lastly, for questions about the technical work being performed as it relates to your license, please contact Mr. Edward Helvenston at 301-415-4067 or Edward.Helvenston@nrc.gov.

Since  Signed by Johnson, Cherish
on 04/30/21

Cherish K. Johnson, CFO
Office of the Chief Financial Officer

Aerotest Response Letter February 25, 2020 DATE April 30, 2021

Docket 50-228

ADAMS Accession No.: Ltr ML21056A317

* via email

OFFICE	OCFO/DOC/LAFBB /FBT	OCFO/DOC/LAFBB /FBT	NRR/DANU/UNPL	NRR/DANU/UNPL
NAME	PRiner <i>PR</i>	JGibbs-Nicholson <i>JG</i>	EHelvenston <i>EH</i>	DHardesty <i>DH</i>
DATE	Feb 25, 2021	Mar 8, 2021	Mar 10, 2021	Mar 10, 2021
OFFICE	OGC/GCRPS /LCLSP/NLO	OCFO/DOC/FSOB	OCFO/DOB/LFPT*	NRR/DANU
NAME	MClark <i>MC</i>	ELegrand <i>EL</i>	ARossi <i>AR</i>	BSmith <i>BS</i>
DATE	Apr 21, 2021	Apr 23, 2021	Apr 26, 2021	Apr 27, 2021
OFFICE	OCFO/DOC/LAFBB	OCFO/DOC	OCFO/DOC	OCFO
NAME	MBlair <i>MB</i>	DD'Abate <i>DD</i>	KDarling <i>KD</i>	BFicks <i>BF</i>
DATE	Apr 28, 2021	Apr 28, 2021	Apr 28, 2021	Apr 29, 2021
OFFICE	OCFO			
NAME	CJohnson <i>CJ</i>			
DATE	Apr 30, 2021			

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