UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of:	)	Case No. NRC–2017– 0055 Docket #11006248
UniTech Service Group, Inc.	)	License No. IW034
	)	
	)	April 6, 2017

OBJECTION AND REQUEST FOR RECONSIDERATION OF GENERAL IMPORT LICENSE ISSUANCE TO UNITECH SERVICE GROUP, INC.

Now come Nuclear Information and Resource Service, and Beyond Nuclear, nonprofit safe energy and radioactive waste watchdog organizations ("Petitioners"), hereby petition the Nuclear Regulatory Commission and object on behalf of their members to the decision made by the NRC Office of International Programs on March 30, 2017 which granted UniTech Service Group, Inc. a general import license. The effect of granting the general import license is to allow an uncharacterized 10,000 tons of radioactive material/waste to be imported from Canada into the United States without affording the public a hearing or public comment opportunity to be heard. Since it has become a generic license, it could also effectively permit unlimited additional such imports without future notice. Petitioners further request that the general license be rescinded.

Petitioner Nuclear Information and Resource Service ("NIRS") is a nonprofit § 501(c)(3) organization situated at 6930 Carroll Avenue, Suite 340, Takoma Park, MD 20912. Founded in 1978, NIRS is a national information and networking center for individuals and organizations concerned about nuclear power, radioactive waste, radiation and sustainable energy issues which

has some 30,000 supporters, some of whom live along transport routes, in the vicinity of the waste processors, and who come into routine daily contact with items made with recycled materials. They oppose the proposed landfilling, "beneficial" reuse, recycling and other uses, processes, purposes and destinations of the 10,000 tons of radioactive material and its waste components.

Petitioner Beyond Nuclear ("BN") is a nonprofit § 501(c)(3) organization which educates and activates the American public about the connections between nuclear power and nuclear weapons and the need to abolish both to safeguard the future. Located at 6930 Carroll Avenue, Suite 400, Takoma Park, MD 20912, Beyond Nuclear advocates for an energy future that is sustainable, benign and democratic. The organization brings its petition on behalf of its approximately 15,000 members, some of whom live at Canada-U.S. border crossing areas and all of whom oppose the proposed landfilling, "beneficial" reuse, recycling and other uses and purposes to which the 10,000 tons of radioactive material and its waste components will be put.

Petitioners contend that the 10,000 tons of radioactive material slated for import should be classified as "radioactive waste" within the meaning of 10 C.F.R. § 110.2 because it is "material that contains or is contaminated with source, byproduct, or special nuclear material that by its possession would require a specific radioactive material license in accordance with this Chapter and is imported or exported for the purposes of disposal in a land disposal facility as defined in 10 CFR part 61. . . or an equivalent facility. . . ."

I. Background

On October 27, 2016, the NRC received an application for a specific import license (IW034) from UniTech to import into the United States 10,000 metric tons of byproduct material

in the form of radioactive contaminated tools, metals, and other solid materials, along with incremental amounts of special nuclear material (less than fifteen grams per shipment).

On October 27, 2016, the NRC also received an associated application for a specific export license (XW023) from UniTech to export 10,000 metric tons of byproduct material, along with incremental amounts of special nuclear material (less than fifteen grams per shipment). On March 30, 2017, David Skeen, Deputy Director, Office of International Programs, NRC, sent a letter (copy attached) (ADAMS Accession No. ML17086A272) to Glenn Roberts, Corporate Health Physicist, UniTech. The letter announced that the NRC was returning UniTech's application for a specific import license without action, because the requested import activities are ostensibly authorized under an NRC general import license.

On April 5, 2017, the NRC announced in the Federal Register that "the only regulatory action pending before the NRC is UniTech's application for a specific export license. . . ." 72 Fed. Reg. 16637. The thrust of this determination prevents the public from filing a petition for leave to intervene against a specific import license. We object to that determination as detailed below.

II. Nature of Petitioners' Request

A. UniTech Proposes To Import Radioactive Waste/Material Some Of Which Will Ultimately Be Exported Back To Canada And Disposed Of As Waste In A Facility 'Equivalent' To A 10 C.F.R. Part 61 Facility

NIRS and BN request that the NRC Office of International Programs reconsider its March 30, 2017 decision whereby the NRC granted an exemption to UniTech and ruled that UniTech's October 2016 application for a specific import license was unnecessary because the proposed shipments are "authorized under the general import license regulation set forth in 10 C.F.R. §

110.27." The NRC effectively granted UniTech an exemption request, stating that the NRC would not act on the specific import license request. The NRC letter stated that the agency would return the specific import license request to UniTech, without acting on it. The manner in which this determination was made violated NRC regulatory procedure and denied the public a challengeable, final administrative determination. Petitioners were not even notified of this decision and it was not published in the docket.

In a December 20, 2016 email to the NRC (attached), UniTech stated that "All materials that would require transfer to a land disposal facility subject to 10 CFR Part 61 shall be returned to Canada under the associated export license XW023." The basis for the ruling was that UniTech's expressed intention to not dispose of any material in a 10 C.F.R. Part 61 U.S. facility (which would require the imported material to be classified as "radioactive waste" under § 110.2) avoided a violation of 10 C.F.R. §110.27(c), which prohibits importation of "radioactive waste" under a general license.

The NRC's ruling is objectionable because the agency did not consider UniTech's undisputed admission that it would be exporting radioactive material for disposal in an "*equivalent* [land disposal] facility," *i.e.*, a facility equivalent to a 10 C.F.R. Part 61 facility. When material must be disposed of in such a facility, it is by definition 10 C.F.R. § 110.2 "radioactive waste." UniTech agreed in December 20, 2016 correspondence with the NRC that some of the imported material should be classified as "radioactive waste" under §§ 110.2 and 110.27. The company admitted: "Again, materials subject to this specific license application are classified as waste at the time they are imported. Given that UniTech's processes are effective to render the materials suitable for release and beneficial reuse does not redefine them as non-waste

materials at the time they were imported."

The NRC's March 30 determination letter violates 10 C.F.R. § 110.20 in the following ways:

- § 110.20(a) allows a person to use an NRC general license as authority to import nuclear equipment or material, "if the nuclear equipment or material to be . . . imported is covered by the NRC general licenses described in §§ 110.21 through 110.27." As delineated above, UniTech's specific license application is not covered by any NRC general license conditions described in §§ 110.21 through 110.27 and thus the company must resubmit, or the NRC reactivate, its application for a specific license in accordance with §§ 110.31 through 110.32.

- There is no reference in the March 30 determination to the requirement of §110.20(b) that "the Commission may issue a general license for export or import if it determines that any exports or imports made under the general license will not be inimical to the common defense and security or constitute an unreasonable risk to the public health and safety and otherwise meet applicable statutory requirements." The NRC made no findings as to the presence or absence of effects on the common defense and security or risks to the public health and safety when it made its ruling.

- The NRC at this point stands in violation of § 110.20(b)'s requirement that "A general license is issued as a regulation after a rulemaking proceeding under subpart K of this part." No Subpart K rulemaking to codify the March 30 letter determination appears to be contemplated.

In addition, there were notice irregularities surrounding the publishing of public notice. Specifically, the February 16, 2017 Federal Register notice caused a regulation.gov comment

deadline of March 20, 2017. The March 6, 2017 Federal Register correction did not result in publication of a commensurate correction to the public comment deadline or the intervention deadline, which should have been 30 more days. Although we received written notice of the April 6th date, there has been no change to the regulation.gov page as to this, either, which inaccurately shows the public comment period to have closed on March 20, 2017. And there has been to date no public response to Petitioners' requests for a 90-day extension of these deadlines, nor to requests from a US Congressmember and an industry coalition.

Finally, Mr. Skeens' March 30, 2017 determination as Deputy Director of the Office of International Programs has not been placed in the docket of the specific license proceeding. The NRC has been aware of the intentions of NIRS to intervene in the specific license proceeding and has *de facto* terminated it completely outside of the accepted litigation procedure.

B. Some Of The Isotopes To Be Imported Are Not Listed As 'Byproduct Materials' Under NRC Export/Import Licensing Authority

These isotopes listed in UniTech's October 27, 2016 Form 7 import application are not enumerated in 10 C.F.R. Part 110, Appx L, the "Illustrative List of Byproduct Materials Under NRC Export/Import Licensing Authority:"

Lanthanum, unspecified as to isotope

Neptunium 239

Plutonium 238

Plutonium 239/40

Silver 108

A rulemaking pursuant to 10 C.F.R. Subpart K is a prerequisite to establishing NRC import licensing authority over the above isotopes in the absence of a request for a specific

license application.

III. Argument

Courts should defer to the NRC's interpretation of its own regulations unless that interpretation is plainly erroneous, or inconsistent with the regulation. *Decker v. Northwest Environmental Defense Center*, 133 S.Ct. 1326, ___ U.S. ___, Syll. ¶ 3 (2013) This is one of those times when the agency interpretation is erroneous because it is not consistent with the clear wording of the applicable regulations. UniTech's objective is to return radioactive waste to Canada which would be classified as 10 C.F.R. Part 61 waste if it were to remain in the United States. It is being returned to Canada for disposition in an "equivalent facility." The term "equivalent facility" describes and refers to facilities outside the U.S. which are equivalent to facilities regulated inside the U.S.

IV. Conclusion

The ruling that UniTech need not seek a specific import license for the 10,000 tons of radioactive material to be shipped into the U.S. is based on a flawed, unreasonable and arbitrary interpretation of § 110.27. Petitioners request that the March 30, 2017 determination letter be rescinded and that the NRC conduct a specific import license proceeding on UniTech's application.

/s/ Diane D'Arrigo

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As to legal objections and arguments

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "OBJECTION AND REQUEST FOR RECONSIDERATION OF DETERMINATION OF GENERAL IMPORT LICENSE" were served by me upon the parties to this proceeding via my deposit of the document in the NRC's Electronic Information Exchange system this 6th day of April, 2017. I further certify that on this date, I served a paper copy via regular U.S. Mail, postage prepaid, upon Executive Secretary, U.S. Department of State, Washington, DC 20520.

/s/ Diane D'Arrigo
Diane D'Arrigo, NIRS

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

March 30, 2017

Mr. Glenn Roberts
UniTech Services Group, Inc.
Suite 202
138 Longmeadow Road
Longmeadow, MA 01106

Dear Mr. Roberts:

In October 2016, the U.S. Nuclear Regulatory Commission (NRC) received a specific import license application—IW034—from UniTech. In its import license application, UniTech stated that it seeks to import 10,000 metric tons of byproduct material from Canada in the form of radioactive-contaminated tools, metals, and other solid materials, along with incremental amounts of special nuclear material (less than fifteen grams per shipment). Once imported, UniTech plans to sort and repackage this radioactive material, recover and recycle those materials that can be released for unrestricted use, and then export back to Canada any remaining radioactive material, so that "no materials imported under this license shall be transferred to any land disposal facility subject to 10 CFR Part 61."

By an e-mail dated December 20, 2016, UniTech provided follow-up information clarifying UniTech's plans were limited to characterizing and processing "waste materials as appropriate based on their physical and radiological conditions." That e-mail reaffirmed that "all materials that would require transfer to a land disposal facility subject to 10 CFR Part 61 shall be returned to Canada under the associated export license XW023." UniTech also stated its view that it needed a specific license to import the radioactive materials, and it requested that the U.S. Nuclear Regulatory Commission (NRC) provide written confirmation to the contrary if UniTech's view was not correct.

Based on the information that UniTech has provided in its application—and confirmed in its follow-up e-mail—UniTech does <u>not</u> need a specific import license to bring this material into the United States (U.S.). Rather, this proposed import is authorized under the general import license regulation set forth in 10 C.F.R. § 110.27. By regulation, section 110.27 allows issuance of a general license to any person to import byproduct, source, or special nuclear material if the U.S. consignee is authorized to receive and possess the material. In this case, UniTech is the U.S. consignee, and it is already authorized to receive and possess this material under its existing Tennessee radioactive material license.

Section 110.27 contains two exceptions to the general import license, neither of which is applicable here. Specifically, section 110.27(b) provides that the general license does not authorize the import of more than 100 kilograms per shipment of source and/or special nuclear material. Since UniTech will only be importing less than fifteen grams of special nuclear material per shipment, this exception does not apply. In addition, section 110.27(c) provides that the general license does not authorize the import of radioactive waste. "Radioactive waste" is a defined term in the Commission's regulations (at 10 C.F.R. § 110.2) for the purposes of import and export licensing, and it is defined as:

> [A]ny material that contains or is contaminated with source, byproduct, or special nuclear material that by its possession would require a specific radioactive material license in accordance with this Chapter and is imported or exported for the purposes of disposal in a land disposal facility as defined in 10 CFR part 61, a disposal area as defined in Appendix A to 10 CFR part 40, or an equivalent facility; or recycling, waste treatment or other waste management process that generates radioactive material for disposal in a land disposal facility as defined in 10 CFR part 61, a disposal area as defined in Appendix A to 10 CFR part 40, or an equivalent facility.

If the imported material falls within this regulatory definition of "radioactive waste," then any of six listed "exclusions" to the definition may apply. The Commission adopted its existing definition of radioactive waste in a final rule issued in 2010 after public notice and comment pursuant to the Administrative Procedure Act.[1]

In its December e-mail, UniTech posits that none of the six "exclusions" to the definition of "radioactive waste" in 10 C.F.R. § 110.2 would likely apply to this proposed import. But UniTech's application, confirmed by its December e-mail, makes clear that UniTech will not be importing any material for ultimate disposal in any U.S. land disposal facility or area as defined in 10 CFR part 61 or part 40, respectively. Therefore, the radioactive materials that UniTech plans to import into the United States would not, at the threshold, qualify as "radioactive waste" under the definition in 10 C.F.R. §110.2. As a result, the six exclusions to that definition do not need to be considered.

This letter provides UniTech with written confirmation that none of the requested activities require a specific import license under the Commission's regulations. Accordingly, we are returning UniTech's specific import license application (IW034) without action.

Sincerely,

David L. Skeen, Deputy Director
Office of International Programs

[1] Export and Import of Nuclear Equipment and Material; Updates and Clarifications, 75 Fed. Reg. 44072 (July 28, 2010). The NRC's definition of "radioactive waste" in the import/export context was substantially revised in this rulemaking.

From: Glenn E. Roberts
To: Jones, Andrea
Cc: Michael R. Fuller
Subject: [External_Sender] UniTech - Pending Waste Import Application
Date: Tuesday, December 20, 2016 8:26:16 PM

Dear Ms. Jones,

Pursuant to our earlier phone conversation, UniTech provides the following information. We believe that this information resolves the concerns expressed and obviates the need for resubmission. We respectfully request your consideration in this regard.

The quoted sentences below are directly from the middle of page 3 of our import application. Information without quotes has been added for explanatory purposes.

"Imported Materials may be received along with routine shipments (e.g., laundry imported under general license) or in separate dedicated conveyances." UniTech has been a principal in discussions with NRC going back 16 years regarding laundry being conducted under general license pursuant 10 CFR Part 110. It is not our intent to include laundry and decontamination of protective clothing and related products in this specific import license. The forgoing sentence merely indicates that the materials subject to this specific license request may be transported along with laundry.

"The requested processes include sorting and repackaging of waste and offers benefits to our customers and the public." [Emphasis added.] Included in the description in Block 15, materials may include bags of conventional waste from the customers comprised of paper, cardboard, plastic, cloth, and miscellaneous debris.

"Valuable items and materials will be recovered. Recovered materials may be routed for additional processing (not necessarily subject to the requirements of a specific NRC Import License): e.g., conventional laundry, respirator processing, or Tool and Material Decontamination (TMD)." The foregoing sentence explains that materials retrieved from the waste may be subject to processes that would be subject to general license. That does not excuse that fact that they are being sent as waste to be processed as waste.

"Materials that can be released for unrestricted use may [be] reused or recycled (i.e, beneficial reuse). Materials that cannot be released for unrestricted use may be conditionally released in accordance with the Tennessee facility licenses." Again, materials subject to this specific license application are classified as waste at the time they are imported. Given that UniTech's processes are effective to render the materials suitable for release and beneficial reuse does not redefine them as non-waste materials at the time they were imported.

Further, some imported materials may be known to require return to the customer as waste but require mechanical separation during UniTech's processing.

There are two example exclusions to the definition of radioactive waste that we would wish to discuss.

- "(2) A contaminant on any non-radioactive material (including service tools and protective clothing) used in a nuclear facility (an NRC- or Agreement State-licensed facility (or equivalent facility) or activity authorized to possess or use radioactive material), if the material is being shipped solely for recovery and beneficial reuse of the non-radioactive material in a nuclear facility and not for waste management purposes or disposal;" and
- (6) Imported solely for the purposes of recycling and not for waste management or disposal where there is a market for the recycled material and evidence of a contract or business agreement can be produced upon request by the NRC.

Exclusion (2) does not apply to those materials that are not intended for reuse in a nuclear facility. The majority of the subject imported waste is not intended for reuse in a nuclear facility.

Exclusion (6) does not apply because materials are being imported for waste management or disposal. Given that UniTech may release and recycle some of the materials does not support the *a posteriori* reclassification of them after the fact.

UniTech asserts that it would be inappropriate to not include unrestricted release and beneficial reuse in NRC Form 7 items 13.b and 14.b. Those terms accurately convey what is being done to the materials imported as waste and classified as waste at the time of import. Customers may ship the materials because they have no further use (the classical definition of waste), and they are not necessarily interested in the means UniTech employs to disposition them. UniTech believes, as a first option, materials should be processed as necessary for beneficial reuse if economically feasible to do so. It is important that we note that the licensed conditional release process involves a volumetric assay of materials, most often not suitable for surface assay, and disposition in a manner that is classified neither as recycling nor as beneficial reuse.

A concise statement of the end use would be "Categorization and processing of waste materials as appropriate based on their physical and radiological conditions. All materials that would require transfer to a land disposal facility subject to 10 CFR Part 61 shall be returned to Canada under the associated export license XW023."

Finally, we affirm that only materials that require a specific waste import license shall be subject to this request and the specific license shall not be utilized for any materials acceptable for import under general license. Upon consideration of the information herein, if the NRC feels that none of the requested activities require a specific license, we would welcome the NRC's written confirmation in that regard.

Kind regards,
Glenn

Glenn Roberts
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From: Jones, Andrea [mailto:Andrea.Jones2@nrc.gov]
Sent: Tuesday, December 20, 2016 10:39 AM
To: Glenn E. Roberts <groberts@unitechus.com>
Subject: FRN for Export back to Canada