

import activity is authorized under a general license in existing NRC regulations; thus, a specific license is not required.⁵

Specifically, the Request asks 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.”⁶

Requesters “further request that the general license be rescinded.”⁷

As explained below, Requesters fundamentally misunderstand NRC import regulations at 10 C.F.R. Part 110. More specifically, Requesters fail to grasp the concept of a “general license.” This failed understanding incurably taints the arguments put forward by Requesters. The Request also proffers baseless and unsupported assertions. For example, Requesters assert that a public comment opportunity was not afforded when the general import license at 10 C.F.R. 110.27 was issued—which is demonstrably false. Even more fundamentally, Requesters have not identified an appropriate procedural basis for their filing—nor is there one. Accordingly, the Request should be summarily rejected.

II. BACKGROUND

A. UniTech’s Requests to Import and Export Radioactive Materials

On October 20, 2016, as supplemented on December 20, 2016, UniTech filed applications with the NRC seeking specific licenses authorizing the import and export of

⁵ *Id.* at 2.

⁶ Request at 3.

⁷ *Id.* at 1.

radioactive material.⁸ On February 16, 2017, pursuant to 10 C.F.R. § 110.70, the NRC published in the *Federal Register* notices of receipt of the Applications inviting public comments and announcing the opportunity to request a hearing and petition to intervene in the proceedings.⁹

Requesters submitted written comments (“Comments”) on March 13, 2017, via the *regulations.gov* website, on the application review docket for the Export Application.¹⁰ Duplicate copies of the Comments also were submitted, via the *regulations.gov* website, on the application review docket for the Import Application,¹¹ and sent via e-mail to the NRC’s Office of the Secretary and OIP.¹² Among other things, the Comments requested “an extension on the comment period,” which pertains to OIP’s review of the Applications, and also sought an extension “on the deadline to request a hearing and to intervene,” which involves the NRC’s adjudicatory function.¹³

On March 22, 2017, UniTech filed, on the adjudicatory dockets, answers opposing Requesters’ demands for extensions of time to request a hearing and intervene in the proceedings because Requesters had not demonstrated the requisite “good cause” for such extensions.¹⁴ On

⁸ See Import Application; UniTech Services Group, Inc., Application for NRC Export License (Oct. 20, 2016) (“Export Application”) (ML17024A270) (collectively, the “Applications”).

⁹ See Request To Amend a License To Import Radioactive Waste, 82 Fed. Reg. 10,918 (Feb. 16, 2017); Request for a License To Export Radioactive Waste, 82 Fed. Reg. 10,919 (Feb. 16, 2017). The NRC subsequently published corrections to typographical errors in these notices. See Request for a License To Import Radioactive Waste, 82 Fed. Reg. 12,640 (Mar. 6, 2017) (noting the application was for a license, not a license amendment); Request for a License To Export Radioactive Waste, 82 Fed. Reg. 12,641 (Mar. 6, 2017) (noting the correct ADAMS Accession number for the application).

¹⁰ See D. D’Arrigo, NIRS, and M. Keegan, Don’t Waste MI, Public Submission, Docket NRC-2017-0054 (Mar. 13, 2017) (ML17075A136).

¹¹ See D. D’Arrigo, NIRS, and M. Keegan, Don’t Waste MI, Public Submission, Docket NRC-2017-0055 (Mar. 13, 2017) (ML17075A131).

¹² See E-mail from Diane D’Arrigo to Annette Vietti-Cook, NRCExecSec Resource, Andrea Jones, and Hearing Docket, Dockets NRC-2017-0055 and NRC-2017-0054 (Mar. 13, 2017, 11:09 PM).

¹³ See Comments at 1.

¹⁴ See UniTech Answer to Extension Request Letter Filed by the Nuclear Information and Resource Service and Don’t Waste Michigan Dated March 13, 2017 (Mar. 22, 2017) (ML17081A512 (export); ML17081A516 (import)). These answers were timely under 10 C.F.R. § 110.109(b) because UniTech first learned of the

March 30, 2017, OIP issued the No Action Letter returning the Import Application to UniTech without action.¹⁵ The No Action Letter merely explained “that none of the requested activities require a specific import license under the Commission’s regulations” because 10 C.F.R. § 110.27 authorizes the public to engage in such activities without a specific license (*i.e.*, under a “general license”) provided the recipient is authorized to possess and use the material in accordance with relevant NRC or Agreement State regulations. UniTech is so authorized.¹⁶

On April 5, 2017, OIP published a notice in the *Federal Register* noting the return of the Import Application and “reopening” both the comment period and the opportunity to request a hearing and intervene on the Export Application.¹⁷ The next day, on April 6, 2017, Requesters submitted their Request on both the import and export adjudicatory dockets¹⁸ “object[ing]” to the No Action Letter, which they characterize as a “decision,” and which they argue “granted” UniTech both a regulatory exemption¹⁹ and a general import license.²⁰

On April 11, 2017, the Secretary issued an order dismissing as moot Requesters’ adjudicatory requests as to the import proceeding, because the import application is no longer pending before the NRC, and also as to the export proceeding, because an extension was effectively granted when the hearing opportunity period was “reopened.”²¹

motion via an e-mail from NRC Staff on March 15, 2017. *See* Email from Andrea Jones, NRC, to Glenn E. Roberts, UniTech, “FW: Dockets NRC-2017-0055 and NRC-2017-0054” (Mar. 15, 2017, 2:28 PM).

¹⁵ *See* No Action Letter.

¹⁶ *See id.* at 2.

¹⁷ Request for a License To Export Radioactive Waste; UniTech Service [sic] Group, Inc., 82 Fed. Reg. 16,636 (Apr. 5, 2017).

¹⁸ This appears to be in error, as the Request complains solely about OIP’s handling of the Import Application.

¹⁹ *See, e.g.*, Request at 1.

²⁰ *See, e.g., id.* at 3-4.

²¹ *See* Order of the Secretary at 2 (Apr. 11, 2017).

Although Requesters do not identify a procedural basis for the Request, UniTech has elected to respond to it as though it were filed under the general motion provisions in 10 C.F.R. § 110.109.

B. NRC Import Regulations

As defined in 10 C.F.R. § 110.2, a *general license* is:

an export or import license effective without the filing of a specific application with the Commission or the issuance of licensing documents to a particular person. A general license is a type of license issued through rulemaking by the NRC and is not an exemption from the requirements in this part. A general license does not relieve a person from complying with other applicable NRC, Federal, and State requirements.

In 1984, the NRC published a final rule that “issued” a general license to “any person” for the import of byproduct, source, or special nuclear material, subject to certain requirements and exclusions (the “General Import License”).²² The General Import License is codified at 10 C.F.R. § 110.27 and reads as follows:

(a) Except as provided in paragraphs (b) and (c) of this section, a general license *is issued to any person* to import byproduct, source, or special nuclear material if the U.S. consignee is authorized to receive and possess the material under the relevant NRC or Agreement State regulations. (Emphasis added).

The NRC amended the General Import License in 1995 to exclude the import of “radioactive waste.”²³ Radioactive waste is defined as:

any 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

²² Export and Import of Nuclear Equipment and Material; Final Rule, 49 Fed. Reg. 47,191, 47,199 (Dec. 3, 1984); *see also* 10 C.F.R. § 110.27.

²³ Import and Export of Radioactive Waste; Final Rule, 60 Fed. Reg. 37,556, 37,562 (July 21, 1995).

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*. [Subject to six exclusions].²⁴

The NRC has explained that the term “equivalent facility” does not apply in the import context.²⁵

More specifically, in developing the “Branch Technical Position on the Import of Non-U.S. Origin Radioactive Sources,” OIP responded to public comments regarding perceived ambiguity in the term “equivalent facility.”²⁶ The comment was made in the context of disused sources, and OIP stated: “The term ‘equivalent facility’ used here [in the definition of *radioactive waste*] refers to Part 61 equivalent facilities in foreign countries for export purposes and does not relate to import of disused sources.”²⁷

C. UniTech’s Proposed Activities

UniTech plans to import tools, metals, and other solid materials that are contaminated with byproduct material and incidental amounts (less than 15 grams per shipment) of special nuclear material (“SNM”) from Canada in order to recover and recycle materials that can be released for unrestricted use.²⁸ UniTech would conditionally release other materials in accordance with its Tennessee facility licenses, and then repackage and export back to Canada (not to a disposal facility) any articles or items not amenable to treatment.²⁹ UniTech’s plan would not result in any items or articles not amenable for treatment being transferred to any land

²⁴ 10 C.F.R. § 110.2 (emphasis added).

²⁵ See Branch Technical Position on the Import of Non-U.S. Origin Radioactive Sources, 78 Fed. Reg. 53,020, 53,023 (Aug. 28, 2013).

²⁶ See *id.*

²⁷ *Id.*

²⁸ See Import Application at 3.

²⁹ See *id.*

disposal area or facility subject to 10 C.F.R. Parts 40 or 61, or any equivalent Agreement State licensed facility.³⁰

Out of an abundance of caution, and in the interest of ensuring compliance with any potentially applicable regulations, UniTech filed an Import Application with the NRC seeking authorization to import certain radioactive materials for treatment.³¹ Upon examining the Import Application, however, OIP confirmed that, per 10 C.F.R. § 110.2, the proposed import “would not, at the threshold, qualify as ‘radioactive waste.’”³² Accordingly, a specific license is not required for UniTech’s proposed import because the import is permitted by existing law³³ (*i.e.*, without the filing of a specific application with the Commission or the issuance of licensing documents).³⁴ Specifically, the proposed import is authorized by the General Import License issued to “all persons” in 1984 and codified at 10 C.F.R. § 110.27.

III. ARGUMENT

A. The Request Is Procedurally Improper and Misunderstands NRC Import Regulations

The Request asks that “[OIP] reconsider its March 30, 2017 decision.”³⁵ Since the Request seeks an action by OIP, not the presiding officer, it is unclear why the Request was filed on the *adjudicatory* docket. Regardless, the challenge is impermissible. The NRC’s procedures for import and export licensing are generally contained in 10 C.F.R. Part 110. But Part 110 does not provide any opportunity to lodge a bare “objection” or “request for reconsideration” with OIP. Although the NRC’s general Rules of Practice and Procedure in Part 2 permit motions for

³⁰ *See id.*

³¹ *See id.* at 2-4.

³² No Action Letter at 2.

³³ *See id.*

³⁴ *See* 10 C.F.R. § 110.2 (definition of “general license”).

³⁵ Request at 3.

reconsideration in adjudications,³⁶ they do not permit challenges to routine NRC Staff regulatory interpretations—particularly those that lead to no action.³⁷

More fundamentally, Requesters grossly mischaracterize the No Action Letter as “granting” a general import license to UniTech. That simply is not the case. As stated in 10 C.F.R. § 110.27, the NRC “issued” the General Import License to “all persons” when it promulgated the regulation. The No Action Letter merely advised UniTech that its proposed activities already were authorized under existing law, without the need for a specific license. Accordingly, Requesters’ “request that the general license be rescinded” would require an amendment to the regulation. If Requesters seek a rule change, they must petition for rulemaking under 10 C.F.R. Part 110, Subpart K, not file a pleading on an adjudicatory docket.³⁸

B. Requesters’ Remaining Arguments Are Similarly Baseless and Improper

Requesters’ assertion that the General Import License was issued outside of a Part 110, Subpart K proceeding³⁹ and “without affording the public a hearing or public comment opportunity”⁴⁰ is false. In reality, the NRC convened Subpart K rulemakings and solicited public

³⁶ *E.g.*, 10 C.F.R. § 2.323(e), 10 C.F.R. § 2.341(d), 10 C.F.R. § 2.345.

³⁷ Even if, hypothetically, the Request was viewed as a “Petition for Reconsideration” under Part 2, it would be incurably defective because Requesters fail to mention, much less satisfy, the attendant procedural and substantive requirements. *See, e.g.*, 10 C.F.R. §§ 2.345(b) (requiring demonstration of “a compelling circumstance, such as the existence of a clear and material error in a decision, which could not have been reasonably anticipated, which renders the decision invalid.”); 2.323(e) (requiring leave of the presiding officer before even filing a motion for reconsideration); *see also* 10 C.F.R. § 2.341(d) (imposing similar requirements).

³⁸ *See* 10 C.F.R. § 110.131(a).

³⁹ Request at 5.

⁴⁰ *Id.* at 1.

comments before the General Import License was issued to “all persons” in 1984,⁴¹ and on multiple occasions since then when the rule was amended.⁴²

Likewise, Requesters’ claim that, in issuing the General Import License, 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”⁴³ also is demonstrably false. The *Federal Register* notice for the 1984 issuance of the General Import License explicitly addressed those topics:

The Commission has concluded that the amendments [to Part 110, including issuance of the General Import License] are not inimical to the common defense and security, do not constitute an unreasonable risk to the public health and safety, and will not result in any activity which adversely affects the environment. Furthermore, the amendments are consistent with the Atomic Energy Act of 1954, as amended by the Nuclear Non-Proliferation Act of 1978, and do not conflict with the safeguards criteria of the International Atomic Energy Agency.⁴⁴

Equally false is Requesters’ assertion that the No Action Letter “granted an exemption to UniTech.”⁴⁵ In short, UniTech did not request an exemption, the No Action Letter never references an exemption, and the NRC regulations at 10 C.F.R. § 110.2 *explicitly* state that a general license “is *not* an exemption” (emphasis added).

Requesters also argue that UniTech’s planned import “should” be classified as “radioactive waste” because—according to Requesters—UniTech plans to return the imported material to Canada for disposition in an “equivalent facility.”⁴⁶ Requesters’ argument is

⁴¹ Export and Import of Nuclear Equipment and Material; Proposed Rule, 49 Fed. Reg. 7,572 (Mar. 1, 1984).

⁴² See, e.g., 51 Fed. Reg. 47,208 (Dec. 31, 1986); 56 Fed. Reg. 38,336 (Aug. 13, 1991); 58 Fed. Reg. 13,003 (Mar. 9, 1993); 60 Fed. Reg. 37,564 (July 21, 1995); 61 Fed. Reg. 35,602 (July 8, 1996); 65 Fed. Reg. 70,291 (Nov. 22, 2000); 68 Fed. Reg. 31,589 (May 28, 2003); 70 Fed. Reg. 37,991 (July 1, 2005); 75 Fed. Reg. 44,089 (July 28, 2010); 77 Fed. Reg. 27,114 (May 9, 2012).

⁴³ Request at 5.

⁴⁴ 49 Fed. Reg. at 47,195.

⁴⁵ Request at 3.

⁴⁶ *Id.* at 2, 7.

baseless. First, Requesters make the bare assertion that the NRC’s interpretation of “equivalent facility” in the No Action Letter is “unreasonable and arbitrary” because the term should include, for import purposes, “facilities outside the U.S.”⁴⁷ While the NRC does view the term as including “equivalent facilities in foreign countries for export purposes,” it does not relate to imports.⁴⁸ And for good reason—materials going *from* the United States *to* a foreign country are *exports*, not imports, and therefore are considered under the export licensing framework. Requesters cite no legal authority and attempt no analytical explanation as to why the NRC interpretation is defective or why theirs is legitimate.

More importantly, the “equivalent facility” argument is a red herring. The NRC’s interpretation of 10 C.F.R. § 110.27 in the No Action Letter did not even opine on the “equivalent facility” language—and for a very simple reason. As stated in the plain text of the Import Application, remaining radioactive material “shall be returned to the customer,”⁴⁹ *not* to a disposal facility (in the United States or elsewhere).

In addition, Requesters allege that certain isotopes listed in UniTech’s Import Application are not explicitly listed in Appendix L to Part 110.⁵⁰ As a preliminary matter, the only reference to Appendix L in Part 110 relates to general *export* licenses⁵¹—it does not prescribe regulatory requirements for *import* licensing. Nonetheless, UniTech notes the following with regard to Requesters’ specific complaints:

- “Lanthanum” in the Import Application refers to Lanthanum 140, which is listed in Appendix L;

⁴⁷ *Id.* at 7.

⁴⁸ 78 Fed. Reg. at 53,023.

⁴⁹ Import Application at 3.

⁵⁰ Request at 6-7.

⁵¹ *See* 10 C.F.R. § 110.23(a).

- Plutonium is SNM, not byproduct material, so there is no reason it would be listed in Appendix L;⁵² and
- As noted in its title, Appendix L is an “[i]llustrative” list, not an exclusive or comprehensive one.

Overall, Requesters provide no support for their illogical assertion that “[a] rulemaking pursuant to 10 C.F.R. Subpart K is a prerequisite to establishing NRC import licensing authority” over materials not listed in Appendix L.⁵³ Nor is there any.⁵⁴

Finally, Requesters explain that courts should defer to the NRC’s interpretation of its regulations unless that interpretation is plainly erroneous, or inconsistent with the regulations and go on to argue that OIP’s interpretation regarding the Import Application is erroneous.⁵⁵ Nevertheless, Requesters stop short of articulating why the NRC is not qualified to interpret its Part 110 regulations in this context or how it has made an error. Nor have they made any showing whatsoever as to why they, the Requesters, are better able to interpret the plain language of the regulations than the NRC. Accordingly, the Request fails to advance any legitimate basis for reconsideration of the No Action Letter.

IV. CONCLUSION

For the reasons stated above, the Request should be summarily rejected.

⁵² See 10 C.F.R. § 110.2 (definition of “special nuclear material”).

⁵³ Request at 6-7.

⁵⁴ Section 161A of the Atomic Energy Act of 1954, as amended, (42 U.S.C. § 2201) provides broad authority to the NRC to regulate source, byproduct, and special nuclear material. It is absurd to suggest that the NRC could give itself “authority” beyond that delegated by Congress simply by convening a rulemaking.

⁵⁵ Request at 7.

Respectfully submitted,

Executed in Accord with 10 C.F.R. § 2.304(d)

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Dated in Washington, D.C.
this 13th day of April 2017

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of)	
)	
UNITECH SERVICES GROUP, INC.)	Docket Nos. 11006248 & 11006249
)	
(Import & Export of Low-Level Waste))	April 13, 2017
)	

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, a copy of the foregoing “UNITECH ANSWER TO NUCLEAR INFORMATION AND RESOURCE SERVICE’S & BEYOND NUCLEAR’S ‘OBJECTION AND REQUEST FOR RECONSIDERATION’” was served upon the Electronic Information Exchange (the NRC’s E-Filing System) in the above-captioned docket.

Signed (electronically) by Ryan K. Lighty

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