

May 26, 2017

Ms. Diane D'Arrigo
Nuclear Information and Resource
6930 Carroll Ave Suite 340
Takoma Park, MD 20912

Dear Ms. D'Arrigo:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your submittal to the NRC dated April 7, 2017, on behalf of the Nuclear Information and Resource Service (NIRS) and Beyond Nuclear, styled "Objection and request for reconsideration of general import license issuance to UniTech Service Group, Inc." (UniTech) Your submittal concerns NRC's March 30, 2017, letter returning UniTech Service Group, Inc.'s application¹ for a specific license for the import of Canadian-origin radioactive waste. The NRC returned the import license application to UniTech without action because the proposed import was already authorized under the existing general import license regulation in 10 C.F.R. § 110.27.

By regulation, § 110.27 issues 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 under domestic license. As the NRC explained in greater detail in its March 30 return letter, "radioactive waste" as that term is defined in § 110.2, is excluded from the general import license in 10 C.F.R. § 110.27. The NRC's definition of "radioactive waste" in the import/export context was substantially revised in a 2010 rule issued via notice and comment.² Specifically, "radioactive waste" is defined in § 110.2 in part as material that 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." The NRC explained in its March 30 letter that UniTech's proposed import does not qualify as "radioactive waste" under the definition adopted in 2010, because UniTech will not be importing any material for disposal in any United States (U.S.) land disposal facility or area as defined in 10 CFR part 61 or part 40, respectively. Since UniTech's import does not qualify as "radioactive waste" under the NRC's definition, and since UniTech is authorized to receive and possess this material under its existing Tennessee radioactive material license, UniTech's import is authorized under the § 110.27 general license.

Your letter raises various objections to the NRC's return of UniTech's import license application, which I address below.

Your letter expresses an understanding that the NRC's March 30 return letter has both "granted [UniTech] a general import license" without satisfying the prerequisites for grant of a general

¹ ML17086A272.

² Export and Import of Nuclear Equipment and Material; Updates and Clarifications, 75 Fed. Reg. 44072 (July 28, 2010).

license in 10 C.F.R. § 110.20(b), as well as “effectively granted UniTech an exemption” from the requirement of a specific license for the subject import without giving the public notice of or the opportunity to challenge the exemption.

Your letter reflects a possible misunderstanding of the nature of the NRC’s March 30 letter. I wish to clarify that the only regulatory effect of the NRC’s March 30 letter was the return of UniTech’s import application without action; the NRC did not, through its letter or otherwise, actually “grant” UniTech either a general license or an exemption from a specific licensing requirement, or any other type of regulatory permission. This is because the NRC had *already*, back in 2010, issued the general license that authorizes UniTech’s proposed import under general license. Since UniTech already possessed general import authorization at the time it filed its specific import license application, no additional NRC regulatory action was necessary or required in order to authorize the proposed import under general license. As explained above and in the NRC’s March 30 letter, the general import license authorization for UniTech’s proposed import was adopted in a notice and comment rulemaking in 2010.³ That rulemaking was conducted under 10 C.F.R. Subpart K, in accordance with the procedures for issuance of a general license in 10 C.F.R. § 110.20(b). The Subpart K rulemaking provided a notice of proposed rulemaking and an opportunity for public comment on the proposed rule. All of the public’s comments were addressed by the NRC in the final rule issued in 2010. In addition, the NRC provided public notice of its return of UniTech’s import application, including the March 30 return letter, in a *Federal Register* notice published on April 5, 2017.⁴ Further, the NRC issued an Order on April 11, 2017, in the adjudicatory docket informing NIRS (and another petitioner, Don’t Waste Michigan) that UniTech’s import application had been returned without action and dismissing as moot NIRS’s and Don’t Waste Michigan’s extension and hearing request for the import application.

In your letter, you also state that the radioactive material that UniTech proposes to import from Canada qualifies as radioactive waste under the NRC’s definition in § 110.2, because UniTech will be *exporting* the same Canadian-origin material (after domestic processing) back to Canada for disposal in a facility equivalent to a Part 61 disposal facility.

You are correct that UniTech’s proposed export qualifies as radioactive waste under the NRC’s definition in § 110.2, because the export would be for the purpose of disposal in a Canadian facility equivalent to a Part 61 facility. However, import and export are two separate regulatory transactions, and the fact that radioactive material qualifies as radioactive waste for export purposes does not automatically mean that the material qualifies as radioactive waste for import purposes. As described above and in the NRC’s March 30 letter, the focus of the § 110.2 definition for any given import or export of low-level radioactive material is on whether the material will be disposed of in the U.S. (for imports) or in the foreign destination (for exports). Again, and in contrast to the proposed export, UniTech will not be importing any material for disposal in any U.S. land disposal facility or area, and therefore, the material does not constitute radioactive waste for import purposes under the NRC’s definition.

³ Export and Import of Nuclear Equipment and Material; Updates and Clarifications, 75 Fed. Reg. 44,072 (July 28, 2010).

⁴ Request for a License to Export Radioactive Waste; UniTech Service Group Inc. 82 Fed. Reg. 16,636 (Apr. 5, 2017).

Prior to returning the import application to UniTech, the NRC had incorrectly provided an opportunity for public comment/intervention on the import application, along with the export application. Your letter indicates that these notices caused some confusion. We understand the confusion created by these notices, and therefore reopened the period for public comment/intervention on the export application in our April 5, 2017, *Federal Register* notice.⁵ The public was given until May 5, 2017, to submit comments or intervention requests on the export application.

Finally, your letter notes that a rulemaking is necessary to establish NRC authority over those byproduct material isotopes listed in UniTech's import application which are not specifically enumerated in 10 C.F.R. Part 110, Appendix L. The NRC's authority over byproduct material import stems from the Atomic Energy Act (AEA), rather than from the NRC's regulations. Under section 11e(1) of the AEA, byproduct material within the NRC's regulatory jurisdiction is defined in part as "any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material." The byproduct material isotopes listed in UniTech's application meets this definition. Appendix L to 10 C.F.R. Part 110 is not intended to be a comprehensive list of every byproduct material isotope, but is only an "Illustrative List" of byproduct materials under the NRC's export and import licensing authority under the AEA. Therefore, there is no need to revise the NRC regulation.

Again, thank you for providing your views to the NRC.

Sincerely,

/RA/

David L. Skeen, Deputy Director
Office of International Programs

⁵ See 82 Fed. Reg. at 16637.

SUBJECT: LETTER TO DIANE D'ARRIGO DATED MAY, 26, 2017

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