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RECORD #198

TITLE: Licensing of Nuclear Materials for Use on the High Seas and
in Antarctica

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

September 18, 1979

MEMORANDUM FOR: Nathan Bassin
Radioisotopes Licensing Branch
Office of Nuclear Material Safety and Safeguards

FROM: James R. Wolf
Attorney
Office of the Executive Legal Director

SUBJECT: LICENSING OF NUCLEAR MATERIALS FOR USE ON THE HIGH SEAS AND
IN ANTARCTICA

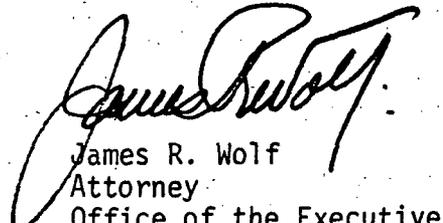
I am returning herewith your proposed letter to Commander Vogt with respect to applications for byproduct and special nuclear material licenses for facilities outside the geographic limits of the United States. Your letter makes the assumption, which we regard as erroneous, that NRC authority under the Atomic Energy Act is restricted to the territory of the United States. While our authority arguably may not attach unless there is some territorial connection at the outset, our interest and jurisdiction once acquired can reasonably be invoked to regulate the use and possession of byproduct and special nuclear material until it has been terminated by virtue of licensed transfer, disposal, or export.

This approach to jurisdiction is manifest in those provisions which distinguish between domestic distribution ("... to any person within the United States...") and foreign distribution ("... for a use which is not under the jurisdiction of the United States.") Sec. 57c.; see also sec. 103d., sec. 104d. Note that the latter clause refers to the United States in a juridical rather than a geographic sense.* In construing the provisions of the Act, it has long been our view that the Commission is authorized to license activities beyond continental limits so long as the activities are subject to United States jurisdiction. This jurisdiction may extend to United States citizens upon the high seas or even in foreign countries when the rights of other nations or their nationals are not infringed. On this basis, according to our legal memoranda files, the AEC found no limitation upon the Commission's power to exercise authority over the N.S. Savannah upon the high seas. Our prior licensing of the Navy to possess radioisotope thermal generators reflects a similar construction of the Act. Moreover, the exercise of regulatory authority to protect the

*Section 82 does differentiate between distributions of byproduct material between persons "outside the United States" on the one hand and "within the United States" on the other. However, even there, there is no bar to exercising regulatory jurisdiction outside territorial limits where the initial distribution is under section 81.

health and safety of the public, see AEA sec. 2e. is no less necessary outside territorial limits, particularly if the materials subject to regulation continue to present potential hazards to United States citizens.

For these reasons, we advise that you process the applications in the same manner as you would process applications for activities that are restricted to the territory of the United States. We note, however, that under the Antarctic Treaty, 12 U.S.T. 794, TIAS 4780, procedures have been established for the formulation of measures regarding questions relating to the exercise of jurisdiction in Antarctica, Article IX 1.(e). We should perhaps inquire of the Department of State regarding any measures as may have been adopted under Article IX, in order to assure that the exercise of NRC jurisdiction there is appropriate.



James R. Wolf
Attorney
Office of the Executive
Legal Director

March 23, 1982

Note To Joseph Wang, NMSS
Material Licensing Branch
Div. of Fuel Cycle & Material Safety

SUBJECT: REQUIREMENT FOR A LICENSE TO POSSESS BYPRODUCT MATERIAL
AT NAVAL BASES IN ANTARCTICA

On 23 March 1982, we discussed the question of whether the Navy would need a license to possess byproduct material in Antarctica. The Navy will need a license to possess byproduct material at its bases in Antarctica. The Navy will not need a specific export license if the material falls within the general license in § 110.24 of 10 CFR Part 110.

Joanna M. Becker

Joanna M. Becker
Special Assistant for
International Affairs

*On telephone conversation
with J. Decker 4/7/82,
NRC authority in Antarctica
covers any U.S. bases (not
just military).*

JCW