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TITLE: NRC's Jurisdiction at U.S. Armed Force Bases Abroad

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

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MEMORANDUM TO: Vandy Miller, Chief
Material Licensing Branch
Division of Fuel Cycle and Material Safety

FROM: Thomas F. Dorian, Senior Attorney
Regulations Division
Office of the Executive Legal Director

SUBJECT: NRC'S JURISDICTION AT U.S. ARMED FORCES BASES ABROAD

We talked last Friday, July 12, 1985, about NRC's jurisdiction at U.S. armed forces bases abroad, and I promised to write you a brief memorandum on the subject. The context of our discussion was that Region III wants to know what it should do, if anything, about a problem with some gunsights containing promethium-147 at an Army base in South Korea. In a nutshell, Region III, probably need not do anything about the gunsights.

NRC has both territorial jurisdiction and personal jurisdiction. Normally, its territorial jurisdiction is limited to the licensing and regulation of special, source, and byproduct nuclear material within the geographical limits of the U.S. and its trust territories and possessions. (An exception is armed forces bases abroad.) Thus, this type of jurisdiction ceases when a person exports nuclear material outside U.S. territorial limits, i.e., the person sends or takes the material past U.S. customs. NRC's personal jurisdiction, however, is not limited in this way. Personal jurisdiction travels with a U.S. person, whether that is an individual licensee or the entire U.S. army as a licensee, wherever that person may be using nuclear materials -- in the U.S., in neutral territories, on the high seas, abroad, and in space. As a legal matter, NRC has no problem regulating U.S. persons when they use nuclear materials in the U.S., or, say, in Antarctica or Puerto Rico, on the high seas, or in space. It does run into a problem, though, when it attempts to regulate U.S. persons using nuclear materials within the geographical jurisdiction of another country. The problem arises because NRC's jurisdiction over a U.S. person using nuclear materials in another country may conflict with that country's geographical jurisdiction within its own territory. Over the years, NRC has solved this possible conflict of laws problem in the same way for private persons and for public persons such as the armed forces. For individuals, normally its policy has been that it will exert its jurisdiction only until they reach the geographical jurisdiction or the customs area of another country. (Occasional exceptions arise, but these are handled case-by-case.) For the armed forces using nuclear materials at U.S. bases around the world without having exported

these materials, it has had to temper its policy a bit. U.S. armed forces bases abroad are considered part of the U.S. for the purpose of carrying out U.S. laws; however, they also are part of the territory of the country in which they are located. Consequently, the rights and responsibilities of both the U.S. and the host country are spelled out in treaties and other documents. To avoid any conflicts with other countries or with the armed forces, NRC's policy has been that normally it will not exercise its jurisdiction, personal or territorial, as long as the armed forces use their own internal permit systems, provided for by NRC licenses, to regulate their own use of these materials at these bases. The recent license you issued to the Army was written in this way.

As Ford

Turning to the problem at the Army base in South Korea, I suggest that you advise Region III that it need do nothing about the problem as long as the Army handles it under its own internal permit system. Of course, the Region should work with the Army to acquire as much information as it can about the problem for NRC's use. Under the license you recently issued to the Army, *as Ford* NRC may take enforcement action if the Army's permit system breaks down. The action would have to depend upon the specifics of the case.

I hope that this memorandum has addressed your concerns. You may wish to circulate it for information in your Office and among the Regions. If you have any other questions, please feel free to call me at 492-8690.

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