July 18, 2000

Joanne S. Greathouse
Chief Executive Officer
Joint Review Committee on Education in Radiologic Technology
20 North Wacker Drive
Suite 900
Chicago, Illinois 60606-2901

Dear Ms. Greathouse:

I am responding to your letter of June 19, 2000, on behalf of JRCERT, addressed to the Office of the General Counsel of the United States Nuclear Regulatory Commission (NRC). The answers to the questions posed in your letter are set forth below.

NRC regulations apply to all individuals participating in licensed activities. Therefore, if students are participating in licensed activities, they are covered by any applicable NRC regulations. 10 C.F.R. 19.3 defines a "worker" as "an individual engaged in activities licensed by the Commission and controlled by a licensee, but does not include the licensee." A non-employee, such as a student, is a worker for purposes of occupational dose limits if she engages in licensed activities controlled by an NRC licensee.

The occupational dose limits are set forth in 10 C.F.R. Part 20, Subpart C. Separate dose limits are prescribed for a declared pregnant woman in 10 C.F.R. Part 20.1208. A declared pregnant woman is "a woman who has voluntarily informed the licensee, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant." 10 C.F.R. 20.1003. These provisions apply to students to the extent that they meet the definition of "worker" provided in 10 C.F.R. 19.3. Since students are provided the same regulatory protections as other workers, no additional mechanisms are necessary for their protection. For further guidance on the declared pregnant woman, please refer to Regulatory Guide 8.13, which is available on the NRC web site (www.nrc.gov).

JRCERT also raised a question regarding the relationship between the NRC declared pregnant woman regulations and the Pregnancy Discrimination Act amendments to Title VII. In the Statement of Consideration accompanying the final rule for 10 C.F.R. 20.1208, the Commission explained that it adopted a voluntary disclosure regulation in order to avoid sex discrimination issues that would be posed by requiring women to reveal their pregnancy status to licensees. See 56 Fed. Reg. 23360 (May 21, 1991). In 1991, the United States Supreme Court held that a non-voluntary policy of excluding all fertile women from jobs involving lead exposure constituted sex discrimination under the Pregnancy Discrimination Act amendments to Title VII. See UAW v. Johnson Controls, Inc., 499 U.S. 187 (1991). The Supreme Court noted, "Decisions about the welfare of future children must be left to the parents who conceive, bear, support, and raise

them rather than to the employers who hire those parents." Id. at 206. This statement is consistent with the position stated by the Commission when it adopted the declared pregnant woman regulation. As noted above, further details about and explanation of the declared pregnant woman regulation can be located in Regulatory Guide 8.13.

A review of NRC legal documents did not indicate that any challenge to 10 C.F.R. 20.1208 had been raised. Additionally, a detailed search of federal case law did not reveal any lawsuits in which an institution was held responsible for radiation effects subsequent to the adoption of a voluntary disclosure policy. The Office of the General Counsel did not conduct a state-by-state search of case law to determine if any such lawsuits existed. The Supreme Court in Johnson Controls stated, in dicta, that employers would be protected from state tort liability for prenatal injury if that tort liability was inconsistent with the clear command of Title VII. 499 U.S. at 209. However, in Silkwood v. Kerr-McGee Corp., 464 U.S. 238 (1984), the Supreme Court held that an award of punitive damages based on state tort law for plutonium contamination was not preempted by federal law.

I hope the information above is useful to JRCERT. Please contact me if I can be of further assistance.

Sincerely,

/RA/

Stuart A. Treby
Assistant General Counsel for
Rulemaking and Fuel Cycle

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