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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'99 DEC -6 P5:49

BEFORE THE COMMISSION

OFFICE OF SECURITY  
RULE MAKING AND  
ADJUDICATION STAFF

In the Matter of:	)	Docket No. 72-22-ISFSI
	)	
PRIVATE FUEL STORAGE, LLC	)	ASLBP No. 97-732-02-ISFSI
(Independent Spent Fuel	)	
Storage Installation)	)	November 30, 1999

**NOTIFICATION OF CHANGED CASE LAW CITED IN STATE OF UTAH'S  
PETITION FOR INTERLOCUTORY REVIEW OF LBP-99-43**

The State of Utah hereby notifies the Commission of a change in the status of a case relied on by the State in its November 19, 1999 Petition for Interlocutory Review of LBP-99-43. In support of its request for interlocutory review, the State cited a recent decision by the U.S. Court of Appeals for the D.C. Circuit, *National Whistleblower Center v. Nuclear Regulatory Commission*, No. 99-1002, 1999 WL 1024662, \_\_\_ F.3d \_\_\_ (D.C. Cir., November 12, 1999). In a *per curiam* order dated November 22, 1999, the Court vacated the November 12<sup>th</sup> decision, and announced that further briefing and rehearing will be held after a third judge is selected to replace Judge Wald, who left the Court shortly after the November 12<sup>th</sup> decision was issued. The November 22<sup>nd</sup> Order is reported at 1999 WL 1054724 (D.C. Cir.).

Although *National Whistleblower Center* decision has not been reversed, it may no longer be relied on as binding authority. Nevertheless, the cases cited in the *National Whistleblower Center* decision in support of the Court's holding, see 1999 WL

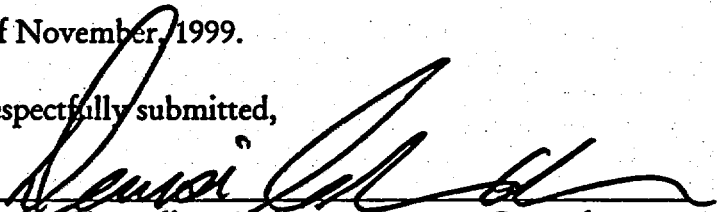
PDR ADOCK

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1024662 at \* 4, are unaffected by the withdrawal of the *National Whistleblower Center* decision, and remain on point in support of the State's petition.<sup>1</sup>

DATED this 30<sup>th</sup> day of November, 1999.

Respectfully submitted,



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<sup>1</sup> See, e.g., *Alaska Professional Hunters Association v. FAA*, 177 F.3d 1030, 1035 (D.C. Cir. 1999); *Guard v. NRC*, 753 F.2d 1144, 1148-49 (D.C. Cir. 1985); *Union of Concerned Scientists v. NRC*, 711 F.2d 370, 381 (D.C. Cir. 1983); and *Paralyzed Veterans of America v. D.C. Arena L.P.*, 117 F.3d 579, 586 (D.C. Cir. 1997), cert. denied *Pollin v. Paralyzed Veterans of America*, 118 S.Ct. 1184, 140 L. Ed.2d 315 (1998).

CERTIFICATE OF SERVICE

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I hereby certify that a copy of NOTIFICATION OF CHANGED CASE

LAW CITED IN STATE OF UTAH'S PETITION FOR INTERLOCUTORY

OFFICE OF SECRETARY  
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REVIEW OF LBP-99-43 was served on the persons listed below by electronic mail

(unless otherwise noted) with conforming copies by United States mail first class, this

30<sup>th</sup> day of November, 1999:

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