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Healing Ourselves & Mother Earth

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Tuesday, September 4, 2001

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Hon. Spencer Abraham Secretary of Energy

1000 Independence Ave., SW Washington, DC 20585

Dear Secretary Abraham:

By this letter, Healing Ourselves & Mother Earth (HOME) places you and the United States Department of Energy (DOE) on notice that DOE's scheduled public hearings in Nevada regarding the consideration of the recommendation of Yucca Mountain for a high-level nuclear waste repository violate the United States Constitution's protection under the Fifth Amendment guarantee of due process, the First Amendment guarantee of the right to petition for redress of grievances, and statutory protections of similar interests under the Administrative Procedures Act. We request that your agency include this letter in the administrative record of the Yucca Mountain Project public hearing process.

Your department has a clear choice at this time. You can proceed with hearings as scheduled and trample upon the constitutional rights and statutory protections at issue. Alternatively, you could reschedule the hearings with reasonable, proper notice, and a meaningful opportunity for citizens to participate and be heard. The facts and our arguments on this matter follow.

1. The Department of Energy's original meeting notice published in the Federal Register on August 21, 2001, excluding intervening weekends and National holidays, provided only ten business days until the meeting. See generally, 66 FR 43850-43851 (August 21, 2001).¹

Additionally, the rushed scheduling of all three Nevada hearings have caused them to be in direct conflict with other important meetings of affected community members in the immediate area, some of those most concerned with nuclear issues in general, and Yucca Mountain Repository issues specifically:

- ◆ The Las Vegas hearing is scheduled simultaneous to the Community Advisory Board (CAB) for Nevada Test Site Programs. This was clearly known by DOE, as the CAB meeting was displaced by the relocated Yucca Mountain hearing.
- ◆ The Pahrump and Amargosa Valley hearings are scheduled simultaneous to the Nuclear Waste Preparedness trainings for local volunteer Emergency Response personnel. As DOE personnel are involved in these trainings, this too should have come as no surprise.

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2. Locally, the Department of Energy's published announcement of the meeting stated that the location would be a Las Vegas hotel. A week later, on August 27, your agency announced that the location was not available for the meeting. When your agency announced that the meeting location was not available, local organizations, State government, and local citizens appealed to you and the Office of Civilian Radioactive Waste Management to cancel the meetings.

The basis of these appeals, including that of HOME, was twofold. First, DOE scheduled the hearings without adequate notice to the public. Second, even if DOE's notice had been adequate, absent a final environmental impact statement and final DOE rule on site suitability guidelines, participating members of the public, organizations, and State agencies have no basis to make a meaningful evaluation and comment upon DOE's site recommendation. Therefore, the public will not have a meaningful opportunity to participate in the hearing process.

DOE's decision to proceed with hearings at this time, under these circumstances and the others described herein, plainly violates even the most minimal standards of due process and the right to petition for redress of grievances under the 5th and 1st Amendments. DOE has provided neither reasonable notice nor a meaningful opportunity to participate in the public hearing process, and, in doing so, denies the interested public an opportunity to seek redress of grievances through the administrative process. These defects, at the same time, violate the protections of the Administrative Procedures Act cited herein at footnote 1.

3. On August 30, 2001, DOE issued a Federal Register notice suggesting topics hearing participants should address in their comments. This notice was also defective and did not meet minimum standards of due process. The reason is that in the notice DOE provided a scope for bounding the admissibility or relevance of such public comments when no limitation on comments should have been suggested. See generally, 66 FR 45845-45846 (August 30, 2001).

4. When the hotel venue became unavailable, the DOE decided to reschedule the meeting for the same evening at a new location, the DOE Nevada Operations Office. That office was once centrally located in Las Vegas. Long-time residents were very familiar with the building and location. However, DOE moved the office to North Las Vegas. It is now located in a primarily industrial area. Residents do not know this section of town very well, nor do residents routinely visit it. Moreover, the building, to the extent residents know of it at all, is also known as the National Nuclear Security Agency Office—not a name associated with the Yucca Mountain project or the DOE. Thus, the average citizen in this area would not have a clear idea where the meeting would be taking place.

Were these problems not enough to confound local citizenry who wish to participate in the scheduled meeting, on August 31st—just two business days before the hearing, on a day when many people were leaving town for a three-day weekend—the DOE officially noticed the new meeting location. See generally, 66 FR 46209-46210 (August 31, 2001). In the Notice, DOE provides the wrong address for the meeting. The correct address is 232 Energy Way, North Las Vegas, NV 89030. The DOE notice in the Federal Register states the address 2332 Energy Way, North Las Vegas, Nevada 89193-8518. There is no such address in the Las Vegas valley, and that zip code is one located at the Las Vegas airport.

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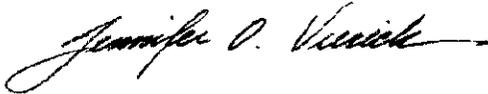
Upon the facts and arguments stated above, your agency's insistence upon holding the hearings as scheduled violates the fundamental rights of the residents of Nevada and California, those of our organization and its members, and any and all interested members of the public. These rights to participate in the democratic process are basic Constitutional guarantees to all citizens in the United States under the First and Fifth Amend-

ments to our Constitution. They are also reinforced and regulated in administrative process under the Administrative Procedures Act as cited above in footnote 1.

We ask that you change your schedule instead of violating the law of the land. An appropriate remedy readily available to your agency is that you order the hearings rescheduled on a full thirty days notice and at a time and in a location readily accessible to interested persons by means of local public transportation in Las Vegas. Perhaps by that time, you will also find it possible to make available to the public in sufficient quantity the DOE document in question: the Yucca Mountain Preliminary Site Suitability Evaluation.

Sincerely,

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Jennifer Olarama Viereck, Director

CC:

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¹ Additionally, the scheduled hearings violate citizens' due process and First Amendment rights—and ours—in several other ways. DOE's notice does not make plain to interested persons that this is their hearing opportunity on DOE's site recommendation of Yucca Mountain as the national high-level nuclear waste repository.

DOE's notice was issued less than 30 days after public availability of the over 370-page, highly technical Yucca Mountain Preliminary Site Suitability Evaluation. (And, despite repeated attempts, our office has still been unable to obtain a hard copy of this document.) This is far less time than interested citizens need to formulate comments on the site recommendation.

Moreover, neither DOE's issuance of the evaluation and recommendation, nor the scheduled hearings will take place at a time when DOE's regulations include a final rule on site selection criteria. DOE's proposed rule for these criteria, 10 CFR Section 963, is a draft rule. As DOE's rule for site recommendation criteria is not final, no interested person has a basis for evaluating DOE's recommendations. Absent such a basis, an interested person's participation cannot be meaningful.

We believe this situation violates the Administrative Procedures Act, 5 U.S.C. Section 101 et seq., particularly Chapter 5 governing notice, comments, publication, rulemaking procedures, and formal and informal hearings. Significantly, DOE's actions in this matter also violate our (and all other interested persons') rights to due process of law and to petition for redress of grievances under the Fifth and First amendments to the Constitution. These fundamental defects in DOE's notice and hearing process, without more, provide ample reason for DOE to reschedule the hearings on the conditions described herein.