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April 17, 2023

Mr. Ricardo Maestas
New Mexico Environment Department
Ricardo.maestas@state.nm.us

RE: Draft Specifications Prepared by the New Mexico Environment Department (NMED)
Regarding Renewal of the Waste Isolation Pilot Plant (WIPP) Permit

Dear Mr. Maestas,

It is my sincere hope that the New Mexico Environment Department will recede from certain conditions it wishes to impose regarding renewal of the WIPP operating permit, as these demands run counter to federal law. That the State of New Mexico, through the NMED, would even attempt to impose requirements that it knows, or should know, are legally impermissible is beneath the customary professional standards of the Department.

I have been a member of the New Mexico Legislature's interim Radioactive and Hazardous Materials Committee (RHMC) for twelve years. When the subject of WIPP comes up, without fail, the Committee is reminded that the federal government has exclusive jurisdiction over radiological matters (*see, e.g.,* the Atomic Energy Act of 1954 and the Nuclear Waste Policy Act of 1982), meaning states shall not venture to regulate such issues. The heads at NMED are well aware of this federal preemption. In fact, the Department's website prominently acknowledges this reality with the statement that, "New Mexico does not have the authority to regulate the radiological aspects of the waste at WIPP. This is regulated...by certification by EPA's Radiation Protection Program" (i.e., federally).

I find it extremely odd that NMED did not seek public input from the citizens who live closest to WIPP before drafting and publishing modifications to permit renewal. Citizens of Carlsbad overwhelmingly support the Waste Isolation Pilot Plant's existence, mission, and operation and should have been consulted. The fact that they were not included in discussions indicates that NMED catered to individuals and groups known for having an anti-WIPP bias. This lack of balance is highly problematic. It also explains why NMED's document of proposed changes

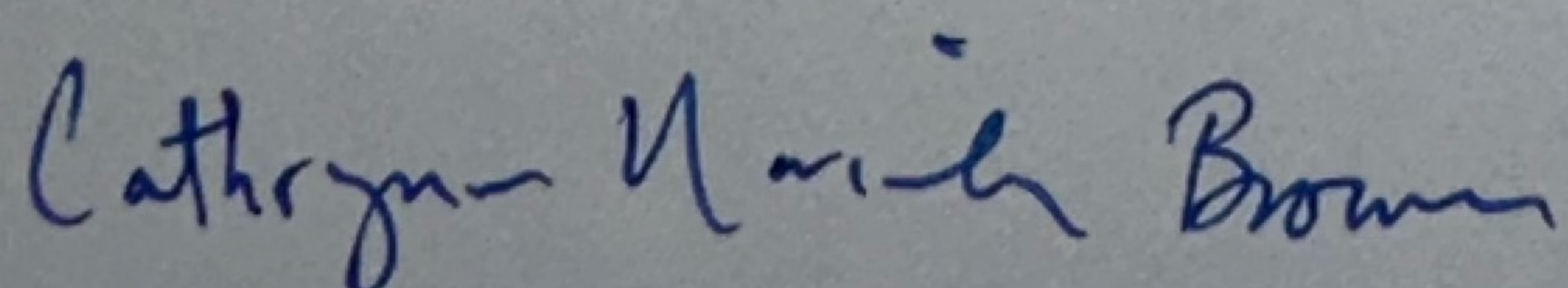
dated December 20, 2022 is more about entertaining the whims and wishes of certain political cliques than it is about compliance with applicable state and federal law.

I raise the following objections:

- The demand for preferential treatment for LANL waste is highly improper, unreasonable, unjustified, and outside NMED's scope of authority. The U.S. Department of Energy must continue handling waste emplacement scheduling with consideration given to waste acceptance criteria and a host of other factors, including the overall needs of the complex. To suggest that WIPP operations cease until "X" amount of LANL waste is emplaced would be not only destabilizing to the cleanup mission but very likely would put WIPP employees and workers at generator sites in unpredictable and costly standby modes (and, foreseeably, force layoffs), causing unwarranted delays and great additional expense. This demand must be removed from the permit renewal specifications.
- The U.S. Department of Transportation is charged with regulating transportation of TRU mixed waste to and from hazardous waste facilities. The New Mexico Environment Department does not possess any such authority [see Resource Conservation and Recovery Act (RCRA)]. Naturally, if NMED lacks authority over transportation, it cannot possibly delegate or assign authority to the Western Interstate Energy Board, particularly one of the WIEB's committees, which NMED is attempting to do. This provision is improper and must be removed from the permit requirements.
- The continued successful operation of WIPP should not be treated like a chess match. It is clear that several of the new permit conditions are intended to "box WIPP in," setting traps designed to trigger permit revocation. Clearly, a "Stop WIPP" agenda is at play. It is outrageous that NMED would even suggest that WIPP be automatically abolished if the United States Congress ever decides to amend the Land Withdrawal Act (Public Law 102-579). This is an intended usurpation of federal authority.

There are several other newly fashioned requirements for permit renewal that I find equally troubling. Suffice it to say, I believe NMED is duty-bound to remove permit conditions that are *ultra vires*. Furthermore, requirements should be edited out that would thwart or diminish WIPP's efficient conduct of operations, constrain the DOE's ability to achieve meaningful environmental cleanup and, in the final analysis, fail to add real value to the permanent waste disposal process.

Sincerely,



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