

**EXHIBIT 6**

**LANL Comments, Encl. 3 at 1  
(December 12, 2013)**

## **ENCLOSURE 3**

General Comments on the draft Discharge Permit

ENV-DO-13-0326

LAUR-13-29209

U1302039

Date: DEC 12 2013

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**General Comment No. 1. Permit Condition II.V, Page 6 (Definition of Secondary Containment)**

This permit condition defines "secondary containment" by incorporating (verbatim) the definition of "secondary containment" as that term is used under the New Mexico Hazardous Waste Regulations (NMAC 20.4.2.1 *et seq.*) and EPA rules under the Resource Conservation and Recovery Act of 1976 ("RCRA", 42 U.S.C. § 6901 *et seq.*) at 40 C.F.R. § 264.193. This proposed condition is inappropriate for at least four reasons. First, the RLWTF is a wastewater treatment unit which is exempt from the requirements of 40 C.F.R. § 264.193 and 20.4.2.1 NMAC. Second, neither the Water Quality Act, NMSA 1978 §§ 74-6-1 to -17 (the "WQA"), nor its implementing regulations authorize imposition of this condition. Third, there is no evidence that the proposed condition satisfies the WQA's mandate that any proposed condition be both reasonable and necessary to ensure compliance with the WQA and applicable regulations considering site-specific conditions. Fourth, the proposed condition is infeasible and economically impractical to the extent that it would require retrofitting an existing facility. The proposed condition should be revised to recognize the existing leak prevention and detection provisions described in the permit application and which conform with NMED's regulations.

First, the proposed condition is inappropriate because the RLWTF is a wastewater treatment unit as defined by 40 C.F.R. § 264.1(g)(6) and is thus exempt from RCRA requirements, including RCRA's definition of "secondary containment." NMED's attempt to impose inapplicable RCRA requirements is not appropriate. To qualify as an exempt wastewater treatment unit, a facility must (1) be a wastewater treatment facility subject to regulation under Clean Water Act (CWA) §§ 402 or 307(b), (2) receive and treat or store an influent wastewater which is hazardous waste as defined in 40 C.F.R. § 261.3, and (3) meet the definition of a "tank" or "tank system" in 40 C.F.R. § 260.10. The RLWTF satisfies each of those conditions. The RLWTF is regulated under CWA § 402 by EPA pursuant to NPDES Permit No. NM0028355, receives and treats a small amount of hazardous wastewater, and constitutes a "tank system" as defined in 40 C.F.R. § 260.10. The NPDES permit for the RLWTF contains water quality standards that are more stringent than drinking water standards under the federal Safe Drinking Water Act. NMED also issued a Section 401 State Certification for that NPDES permit to ensure that the effluent meets state water quality standards. Further, industrial wastewater discharges that are point sources regulated under § 402 of the CWA are excluded from RCRA's definition of "solid waste" under 40 C.F.R. § 261.4(a)(2). EPA exempted wastewater treatment facilities that met RCRA's waste water treatment unit exemption, like RLWTF, to avoid dual regulation of wastewater units regulated under § 402 of the CWA. See Faxback No. 13526 (1993).

Although the RLWTF is exempt from RCRA's secondary containment requirements, the draft permit defines "secondary containment" by incorporating verbatim RCRA rules for "secondary containment" at 40 C.F.R. § 264.193. RCRA contains very prescriptive requirements, which NMED-GWQB is attempting to inject in the draft permit definition, to determine if tank and tank systems meet "secondary containment" requirements. For example, the RCRA secondary containment requirements mandate that "tanks" and "tank systems" are "sloped or designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation within a 24-hour time period; designed to be free of cracks, gaps, or fissures; or designed, constructed and maintained to surround the primary unit completely." Because it