

NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Luitpold Pharamceuticals _____ Respondent **SHORT FORM ORDER**

Precision Concepts _____ Site Name (Site) Site No.152158

One Luitpold Drive (formerly 26 Natcon Drive), Shirley, Suffolk County, Site Address

1. Pursuant to Environmental Conservation Law (ECL) 3-0301.1(i), the Department of Environmental Conservation (the "Department") is the agency responsible for the prevention and abatement of all water, land and air pollution including, without limitation, pollution related to gases and vapors. The Department is also the agency responsible, pursuant to ECL 27-1301 et seq., for the implementation of the Inactive Hazardous Waste Disposal Site Program (commonly referred to as the State Superfund Program).

2. Respondent, without admitting liability, consents to the issuance of this Order, waives the right to contest the Department's jurisdiction to issue this Order and to notice and hearing with respect to the issuance and entry of this Order, and agrees to be bound by the terms of this Order, including any attachments thereto.

3. A. Respondent hereby agrees to investigate the possibility of the transport of vapors from contamination (defined herein to include hazardous waste as defined in ECL 27-1301(1) and "petroleum" as defined in Section 172 of the Navigation Law), from the subsurface into buildings (vapor intrusion) at the above site in accordance with the Investigation Plan, attached to and made an enforceable part of this Order, and any modifications thereto that may be approved by the Department. In the event of a conflict between the terms of this Order and the Investigation Plan, the terms of this Order shall control over the terms of the Plan(s).

B. Department staff may require modifications to the Investigation Plan, as appropriate. Respondent shall timely update the Investigation Plan and thereafter be bound by such modifications.

C. The Department shall review each submittal Respondent makes pursuant to the Investigation Plan to determine whether the submittal was prepared, and generation of the data and other information in the submittal was completed, in accordance with the Investigation Plan. The Department shall notify Respondent in writing of its approval or disapproval of any submittal, except for the Health and Safety Plan and the monthly progress reports. Provisions of a Department-approved submittal that require any action or that form the basis for any action on the part of Respondent shall become an enforceable part of this Order. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. After Respondent's receipt of such notice, and within such time period as the Department shall establish under the notice, Respondent shall make a revised submittal to the Department addressing all of the Department's stated reasons for disapproving Respondent's prior submittal. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order.

D. A failure to perform the Investigation Plan as approved by the Department shall constitute a violation of this Order unless Respondent cannot comply with any requirement of this Order or Investigation Plan as a result of a force majeure event. Force majeure event shall mean an event which is brought on as a result of fire, lightning, earthquake, flood, adverse weather conditions, strike, shortages of labor and materials, war, riot, obstruction or interference by adjoining landowners, or any other fact or circumstance beyond Respondent's reasonable control. Notice of such event must be provided to the Department within 5 business days of the event or any claim of force majeure shall be waived.

E. All approved submittals shall be made electronically to the Department's project manager in a

format acceptable to the Department within 30 days of such submittals approval.

4. A. Respondent hereby consents to entry upon the Site (and areas in the vicinity of the Site which may be under the control of Respondent) by any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to matters addressed pursuant to this Order, and by any agent, consultant, contractor, or other person so authorized by the Commissioner for purposes of testing, sampling, taking measurements and any other action related to remedial activities.

B. The Department and Respondent shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled. The Department shall make the results of all sampling and scientific measurements taken under this subparagraph available to Respondent.

5. This Order does not affect the State's right to pursue any claims or to exercise any authorities that the State may have including but not limited to, nor exemplified by, claims for additional or other work pursuant to the Environmental Conservation Law, with respect to any party, including Respondent, regardless of whether Respondent is complying with the provisions of this Order. This Order does not affect any defenses that Respondent may have to any such claims.

6. Respondent hereby indemnifies and holds harmless the Department, the State of New York, and their representatives and employees for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent and Respondent's successors (including successors in title) and assigns.

7. All written communications required by this Order or the Investigation Plan shall be transmitted by United States Postal Service, by private courier service, or hand delivered to the Department's project manager or the contact identified in the Investigation Plan for the Respondent. The Department and Respondent reserve the right to designate additional or different addressees for communication on written notice to the other.

8. This Order constitutes a Department order pursuant to the Environmental Conservation Law and is enforceable as such and is effective the date it is signed by the Commissioner or the Commissioner's designee.

4/9/2011
Date

[Signature]
Respondent's Signature*

Director of Engineering
Respondent's Title (if corporation)

4/11/11
Date

[Signature]
Commissioner's Designee

*NOTE: If Order is with a corporation, the respondent must be an official, authorized corporate representative.