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 8 Facsimile: (480) 429-5001

9 *Attorneys for Plaintiff*
 10 *SOILWORKS, LLC, an Arizona corporation*

11 **UNITED STATES DISTRICT COURT**
 12 **IN AND FOR THE DISTRICT OF ARIZONA**

13 SOILWORKS, LLC, an Arizona
 14 corporation,

15 Plaintiff,

16 v.

17 MIDWEST INDUSTRIAL SUPPLY, INC.,
 18 an Ohio corporation authorized to do
 19 business in Arizona,

20 Defendant.

NO.: 2:06-CV-02141-DGC

**DECLARATION OF DORIAN
 FALKENBERG IN OPPOSITION TO
 DEFENDANT'S MOTION TO
 DISMISS**

21 I, Dorian Falkenberg, declare as follows:

22 1. I am the Vice President of Soilworks, LLC. Soilworks distributes
 23 environmentally-safe dust and erosion control agents throughout the United States. In that
 24 respect, Soilworks is a direct competitor of Midwest Industrial Supply, Inc. I submit this
 25 Declaration in Opposition to Defendant's Motion to Dismiss. I have personal knowledge of
 26 the facts set forth in this Declaration and can testify competently to those facts.

27 2. Soilworks and Midwest compete in the sale of their respective products and
 28 services throughout the United States.

EnviroKleen

Synthetic Organic Dust Control™

We're the Company That Invented Synthetic Organic Dust Control™...

Responding to the need for more environmentally sound chemical dust suppressants, Midwest Industrial Supply, Inc. invented EnviroKleen® in 2001. EnviroKleen® is the safest, purest and highest performing chemical dust suppressant on the market.

EnviroKleen® is the Safest Chemical Dust Suppressant in the World...

EnviroKleen®, manufactured using a patent-pending process, is crystal clear, odorless and non-toxic to humans, animals, marine and plant life.

EnviroKleen® has been Independently Tested and Verified...

The performance of EnviroKleen®, unlike most other chemical dust control products, has been verified by the U.S. Environmental Protection Agency's Environmental Technology Verification Program (US EPA ETV). This verification confirms, with high quality data, that EnviroKleen® provides excellent performance, is safe for you and the environment, and protects you from deceptive or false claims by other manufacturers.



Have Questions?
Click on the ? button to visit our FAQs Section

Midwest Industrial Supply, Inc. has received U.S. Patent No. 7,074,266 and U.S. Patent No. 7,081,270 for its state of the art technology developing compounds and their use to produce its new category of soil stabilization and dust control called "synthetic organic dust control"™. Midwest makes its new innovative technology "synthetic organic dust control"™ available under the registered trademarks EnviroKleen®, EK35®, Arena Rx® and Diamond Doctor®.

Others claiming to offer products similar to EnviroKleen®, EK35®, Diamond Doctor® or Arena Rx® are either not supplying Synthetic Organic Dust Control™ or are infringing on Midwest Industrial Supply's patents. The granting of the U.S. Patent now allows Midwest to pursue those who make, use, sell, offer for sale and/or import knock-off or imitations infringing Midwest's technology.

Download EnviroKleen® Product Literature:

EnviroKleen®

PRODUCT LITERATURE

[EnviroKleen® MSDS](#)

RELATED CONTENT

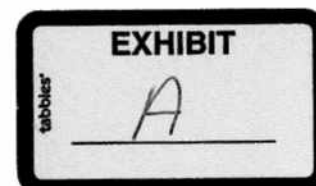
[EnviroKleen® Brochure](#)

[EnviroKleen® Environmental Data](#)

[Related Articles](#)

[EnviroKleen® Technical Brochure](#)

[EnviroKleen® Tests and Verification Results](#)



From: shickman@polarsupply.com [mailto:shickman@polarsupply.com]
Sent: Thursday, July 27, 2006 10:01 AM
To: Dorian Falkenberg
Subject: FW: Patent Notice

-----Original Message-----

From: Dave Shooner
Sent: Thursday, July 27, 2006 8:41 AM
To: Steve Hickman
Subject: FW: Patent Notice

-----Original Message-----

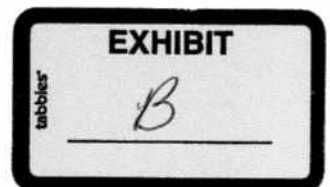
From: Bob Vitale [mailto:bob.vitale@midwestind.com]
Sent: Thursday, July 27, 2006 7:36 AM
To: Dave Shooner
Cc: Skeriotis, John M.
Subject: Patent Notice

Dave

Please see the attached.

Bob Vitale

10/23/2006



July 27, 2006

Mr. David Shooner, Sales Manager
Polar Supply Company, Inc
300 E. 54th Street
Anchorage, Ak 99518-1230

Dear Mr. Shooner,

This letter is meant to apprise you of a recent development at Midwest Industrial Supply, Inc. Midwest invented the category of synthetic organic dust control agents, more commonly known as EK35® and EnviroKleen®. Recently, the United States Patent and Trademark Office awarded Midwest United States Patent No. 7,074,266.

There are a number of imitators that claim to be synthetic organic dust control agents; however, none of those competitors can have the formulation or method as that of EK35® or EnviroKleen®. The granting of the U.S. Patent now allows Midwest to pursue those who make, use, **sell, offer for sale** and / or import knock-off or imitators of EK35® or EnviroKleen®.

We have appraised Soilworks LLC, 681 N Monterey Street, Gilbert Az 85233 of this patent and to date we have not received a substantive response. As you may or may not be aware, U.S. Patent law requires that a response be received by the patent owner when someone has been accused of infringement.

Attached please find U.S. Patent No. 7,074,266. It is our full expectation that this and several more patents will enable us to protect our intellectual property in the marketplace.

If you have any questions, please feel free to telephone me regarding the above.

Sincerely,

Midwest Industrial Supply, Inc.



Robert Vitale
President

Cc: John Skeriotis

From: sgordner@polarsupply.com [mailto:sgordner@polarsupply.com]
Sent: Monday, July 31, 2006 6:33 PM
To: Chad Falkenberg; Dorian Falkenberg
Cc: shickman@polarsupply.com
Subject: Patent Issue

Chad and Dorian,

Polar Supply has received the response from your counsel, John Passarelli, regarding the supposed patent violation of which we were notified by Midwest Industrial.

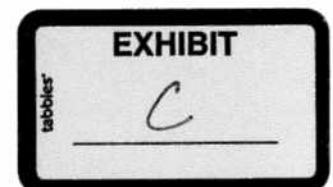
Please be advised that Polar Supply Ownership has also been contacted directly by Mr. Bob Vitale of Midwest Industrial. Polar Supply Ownership and management has requested that Midwest Industrial notify Polar Supply if they believe Polar Supply is violating the patent in question, and if so how do they believe we are violating that patent. Midwest has responded that Mr. Skerottis will be addressing our questions.

Polar Supply has obviously consulted our counsel and we have been advised to request a hold harmless from Solworks, LLC for any and all litigation and/or liability which could result from Polar Supply Co., Inc. continuing to market and sell Solworks products, pending a resolution of the claimed patent violation.

Please advise.

Steve Gordner
Polar Supply Co., Inc.
Main 563-5000
Direct 646-4715

10/23/2006

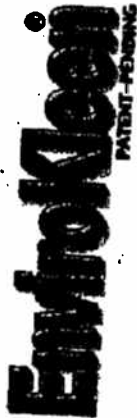


MIDWEST

All Inquiries

All Productivity Needs

Product Information



We're the Company That Invented Synthetic Organic Dust Suppressants...
Responding to the need for more environmentally sound chemical dust suppressants, Midwest Industrial Supply, Inc. invented EnviroKleen® in 2001. EnviroKleen® is the safest, purest and highest performing chemical dust suppressant on the market.

TO LEARN MORE ABOUT ENVIROKLEEN, CLICK ON THE LINKS BELOW:
• EnviroKleen® Brochure - The World Leader in Environmentally Sound Dust Control Solutions

EnviroKleen® is the Safest Chemical Dust Suppressant in the World...

EnviroKleen®, manufactured using a patent-pending process, is crystal clear, odorless and non-toxic to humans, animals, marine and plant life.

TO SEE SPECIFIC ENVIRONMENTAL DATA ON ENVIROKLEEN, CLICK ON THE LINKS BELOW:

- Material Safety Data Sheets (MSDS)
- EnviroKleen® Toxicity Characteristics Leaching Procedure, Potential Ecotoxicity, Toxicity Daphnia Magna, Microtox®, Rainbow Trout Acute Toxicity and Static Sheen Results
- US EPA ETV Environmental Data (Acute & Chronic Aquatic Toxicity - VOC, Semi-Volatiles, Metals, TQLP, PAH Tests)

EnviroKleen® has been Independently Tested and Verified...

The performance of EnviroKleen®, unlike most other chemical dust suppressants, has been verified by the US Environmental Protection Agency's Environmental Technology Verification Program (USEPA ETV). This verification confirms, with high quality data, that EnviroKleen®

<http://www.midwestind.com/products/ek.cfm>

EXHIBIT

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provides excellent performance, is safe for you and the environment, and protects you from deceptive or false claims by other manufacturers.

TO LEARN MORE ABOUT ENVIROKLEEN TESTS AND VERIFICATION, PLEASE CLICK ON THE LINKS BELOW:

- US EPA ETV Verified EnviroKleen® Controlled Total Particulate Matter (PM10 & PM2.5) with Control Efficiencies of up to 100% in ETV Testing
- EnviroKleen Ranked #1 in US Army Corps of Engineers Helped Dust Control Test
- Dust Completely Eliminated on United Nations Helped
- EnviroKleen® Confirmed by Boeing as a Dust Suppressant for Aircraft Surfaces
- New Patent-Pending Product Technology Tested at Ft. Leonard Wood Military Base
- EnviroKleen® Meets Air Pollution Emissions Requirements for the Arizona Department of Emergency and Disaster Preparedness

ENVIROKLEEN® CAN BE IMITATED BUT CANNOT BE DUPLICATED

Click Here for a Comparison to Imitations



Home | Customer Service | Industrial Products | Problems/Needs | Services | Site Map
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Website design & development by WBL.

<http://www.midwestind.com/products/ek.cfm>

3/2/2005

3/2/2005

COMPARE MIDWEST AND ENVIROKLEEN TO THE COMPETITION

Midwest Industrial Supply, Inc. and EnviroKleen

Softworks, LLC and Durasoil

1 HERITAGE

✓ Softworks, LLC is a new entrant, formed in 2003

2 INNOVATION

✓ Softworks, LLC is an imitator of synthetic organic dust suppressant technology.

3 PRODUCT PERFORMANCE

✓ No current test or performance data*

✓ No US EPA ETV verification testing*

4 CUSTOMER SUPPORT

✓ Limited service available*

*According to Softworks, LLC current website