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Exhibit 1

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

SOILWORKS, LLC, an Arizona
corporation,

Plaintiff / Counterdefendant /
Counterclaimant,

v.

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

Defendant / Counterclaimant /
Counterdefendant.

NO.: 2:06-CV-2141-DGC

STIPULATED PROTECTIVE ORDER

(Assigned to the Hon. David G. Campbell)

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the Court enters the following Protective Order. This order does not confer blanket protections on all disclosures or responses to discovery and the file protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. As set forth in Section 10, below, this Protective Order creates no entitlement to file confidential information under seal; the Local rules of this Court set forth the procedures that must be followed and reflect the

1 standards that will be applied when a party seeks permission from the court to file material
2 under seal.

3 **2. DEFINITIONS**

4 2.1 Party. Any party to this action, including all of its officers, directors,
5 employees, consultants, retained experts, and outside counsel (and their support staff).

6 2.2 Disclosure or Discovery Material. All items or information, regardless of the
7 medium or manner generated, stored, or maintained (including, among other things,
8 testimony, transcripts or tangible things) that are produced or generated in disclosures or
9 responses to discovery in this matter.

10 2.3 “CONFIDENTIAL” Information or Items. Information (regardless of how
11 generated, stored or maintained) or tangible things that qualify for protection under standards
12 developed under F.R.Civ.P.26(c).

13 2.4 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
14 Items. Extremely sensitive “Confidential Information or Items” of a proprietary business or
15 technical nature, that would be of value to a competitor, potential competitor, customer
16 and/or potential customer of the Party or non-party holding the proprietary rights thereto, and
17 whose disclosure to another Party or non-party would create a substantial risk of serious
18 injury that could not be avoided by less restrictive means.

19 2.5 Receiving Party. A Party that receives Disclosure or Discovery Material from
20 a Producing Party.

21 2.6 Producing Party. A Party or non-party that produces Disclosure or Discovery
22 Material in this action.

23 2.7 Designating Party. A Party or non-party that designates information or items
24 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or
25 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

26 2.8 Protected Material. Any Disclosure or Discovery Material that is designated as
27 “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

28 2.9 Outside Counsel. Attorneys who are not employees of a Party but who are

1 retained to represent or advise a Party in this action.

2 2.10 House Counsel. Attorneys who are employees of a Party.

3 2.11 Counsel (without qualifier). Outside Counsel and House Counsel (as well as
4 their support staffs).

5 2.12 Expert. A person with specialized knowledge or experience in a matter
6 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
7 witness or as a consultant in this action and who is not a past or a current employee of a
8 Party or of a competitor of a Party's and who, at the time of retention, is not anticipated to
9 become an employee of a Party or a competitor of a Party's. This definition includes a
10 professional jury or trial consultant retained in connection with this litigation.

11 2.13 Professional Vendors. Persons or entities that provide litigation support
12 services (e.g., photocopying; videotaping; translating; preparing of exhibits or
13 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their
14 employees and subcontractors.

15 3. SCOPE

16 The protections conferred by this Order cover not only Protected Material (as defined
17 above), but also any information copied or extracted therefrom, as well as all copies,
18 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations
19 by parties or counsel to or in court or in other settings that might reveal Protected Material.

20 4. DURATION

21 Even after the termination of this litigation, the confidentiality obligations imposed by
22 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a
23 court order otherwise directs.

24 5. DESIGNATING PROTECTED MATERIAL

25 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
26 Party or non-party that designates information or items for protection under this Order must
27 take care to limit any such designation to specific material that qualifies under the
28 appropriate standards. A Designating Party must take care to designate for protection only

1 those parts of material, documents, items, or oral or written communications that qualify – so
2 that other portions of the material, documents, items, or communications for which
3 protection is not warranted are not swept unjustifiably within the ambit of this Order.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
5 shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to
6 unnecessarily encumber or retard the case development process, or to impose unnecessary
7 expenses and burdens on other parties, expose the Designating Party to sanctions.

8 If it comes to a Party’s or a non-party’s attention that information or items that it
9 designated for protection do not qualify for protection at all, or do not qualify for the level of
10 protection initially asserted, that Party or non-party must promptly notify all other parties
11 that it is withdrawing the mistaken designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided in this
13 Order (see, e.g., second paragraph of Section 5.2(a), below), or as otherwise or ordered,
14 material that qualifies for protection under this Order must be clearly so designated before
15 the material is disclosed or produced.

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (apart from transcripts of depositions or
18 other pretrial or trial proceedings), that the Producing Party affix the legend
19 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY¹” at
20 the top of each page that contains protected material. If only a portion or portions of the
21 material on a page qualifies for protection, the Producing Party also must clearly identify the
22 protected portions(s) (e.g., by making appropriate markings in the margins) and must
23 specify, for each portion, the level of protection being asserted (either “CONFIDENTIAL”
24 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

25 A Party or non-party that makes original documents or materials available for
26 inspection need not designate them for protection until after the inspecting Party has

27 _____
28 ¹ “ATTORNEYS’ EYES ONLY” may be used in the place of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” as used herein and throughout this STIPULATED PROTECTIVE ORDER

1 indicated which material it would like copied and produced. During the inspection and
2 before the designation, all of the material made available for inspection shall be deemed
3 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party
4 has identified the documents it wants copied and produced, the Producing Party must
5 determine which documents, or portions thereof, qualify for protection under this Order,
6 then, before producing the specified documents, the Producing Party must affix the
7 appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
8 EYES ONLY”) at the top of each page that contains Protected Material. If only a portion or
9 portions of the material on a page qualifies for protection, the Producing Party also must
10 clearly identify the protected portion(s) (e.g., by making appropriate markings in the
11 margins) and must specify, for each portion, the level of protection being asserted (either
12 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

13 (b) for testimony given in other pretrial or trial proceedings, that the Party or
14 non-party offering or sponsoring the testimony identify on the record, before the close of the
15 hearing, or other proceeding, all protected testimony, and further specify any portions of the
16 testimony that qualify as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”
17 When it is impractical to identify separately each portion of testimony that is entitled to
18 protection, or when it appears that substantial portions of the testimony may qualify for
19 protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on
20 the record (before the proceeding is concluded) a right to have up to 20 days to identify the
21 specific portions of the testimony as to which protection is sought and to specify the level of
22 protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
23 ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that are appropriately
24 designated for protection within the 20 days shall be covered by the provisions of this
25 Protective Order.

26 Transcript pages containing Protected Material must be separately bound by the court
27 reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or
28 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or

1 non-party offering or sponsoring the witness or presenting the testimony.

2 (c) for testimony given in a deposition, that the Party or non-party offering or
3 sponsoring the testimony may invoke on the record (before the deposition or proceeding is
4 concluded) a right to have up to 20 days to identify the specific portions of the testimony as
5 to which protection is sought and to specify the level of protection being
6 asserted ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
7 ONLY"). Only those portions of the testimony that are appropriately designated for
8 protection within the 20 days shall be covered by the provisions of this Protective Order.

9 Transcript pages containing Protected Material must be separately bound by the court
10 reporter, who must affix to the top of each such page the legend "CONFIDENTIAL" or
11 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," as instructed by the Party or
12 non-party offering or sponsoring the witness or presenting the testimony.

13 (d) for information produced in some form other than documentary, and for any
14 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
15 container or containers in which the information or item is stored the legend
16 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." If
17 only portions of the information or item warrant protection, the Producing Party, to the
18 extent practicable, shall identify the protected portions, specifying whether they qualify as
19 "CONFIDENTIAL" or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

20 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
21 designate qualified information or items as "CONFIDENTIAL" or "HIGHLY
22 CONFIDENTIAL – ATTORNEYS' EYES ONLY" does not, standing alone, waive the
23 Designating Party's right to secure protection under this Order for such material. If material
24 is appropriately designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
25 ATTORNEYS' EYES ONLY" after the material was initially produced, the Receiving Party,
26 on timely notification of the designation, must make reasonable efforts to assure that the
27 material is treated in accordance with the provisions of this Order.
28

1 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 6.1 Timing of Challenges. Absent good cause, a challenge to a Designating
3 Party's confidentiality designation shall occur by the later of (1) the date set forth in the
4 Court's scheduling order or (2) thirty (30) days from receipt of production.

5 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
6 Party's confidentiality designation must do so in good faith and must begin the process by
7 conferring directly (in voice to voice dialogue; other forms of communication are not
8 sufficient) with counsel for the Designating Party. In conferring, the challenging Party must
9 explain the basis for its belief that the confidentiality designation was not proper and must
10 give the Designating Party an opportunity to review the designated material, to reconsider
11 the circumstances, and, if no change in designation is offered, to explain the basis for the
12 chosen designation. A challenging Party may proceed to the next stage of the challenge
13 process only if it has engaged in this meet and confer process first.

14 6.3 Judicial Intervention. A Party that elects to press a challenge to a
15 confidentiality designation after considering the justification offered by the Designating
16 Party may file and serve a motion under this Court's Local Rules that identifies the
17 challenged material and sets forth in detail the basis for the challenge.

18 Until the court rules on the challenge, all parties shall continue to afford the material
19 in question the level of protection to which it is entitled under the Producing Party's
20 designation.

21 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

22 7.1 Basic Principles. A Receiving Party may use Protected Material that is
23 disclosed or produced by another Party or by a non-party in connection with this case only
24 for prosecuting, defending, or attempting to settle this litigation. Such Protected Material
25 may be disclosed only to the categories of persons and under the conditions described in this
26 Order. When the litigation has been terminated, a Receiving Party must comply with the
27 provisions of Section 11, below (FINAL DISPOSITION).

28 Protected Material must be stored and maintained by a Receiving Party at a location

1 and in a secure manner that ensures that access is limited to the persons authorized under this
2 Order.

3 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
4 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
5 disclose any information or item designated CONFIDENTIAL only to:

6 (a) the Receiving Party’s Outside Counsel of record in this action, as well as
7 employees of said Counsel to whom it is reasonably necessary to disclose the information for
8 this litigation.

9 (b) the officers, director, and employees (including House Counsel) of the
10 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
11 signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

12 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure is
13 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by
14 Protective Order” (Exhibit A);

15 (d) the Court and its personnel;

16 (e) court reporters, their staffs, and professional vendors to whom disclosure is
17 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by
18 Protective Order” (Exhibit A);

19 (f) during their depositions, witnesses in the action to whom disclosure is
20 reasonably necessary and who have signed the “Agreement to Be Bound by Protective
21 Order” (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that
22 reveal Protected Material must be separately bound by the court reporter and may not be
23 disclosed to anyone except as permitted under this Protective Order.

24 (g) the author of the document or the original source of the information.

25 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
26 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
27 Designating Party, a Receiving Party may disclose any information or item designated
28 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

1 (a) the Receiving Party’s Outside Counsel of record in this action, as well as
2 employees of said Counsel to whom it is reasonably necessary to disclose the information for
3 this litigation;

4 (b) Experts (as defined in this Order) (1) to whom disclosure is reasonably
5 necessary for this litigation, (2) who have signed the “Agreement to Be Bound by Protective
6 Order” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4, below,
7 have been followed;

8 (c) the Court and its personnel;

9 (d) court reporters, their staffs, and professional vendors to whom disclosure is
10 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by
11 Protective Order” (Exhibit A); and

12 (e) the author of the document or the original source of the information.

13 7.4 Procedures for Approving Disclosure of “HIGHLY CONFIDENTIAL –
14 ATTORNEYS’ EYES ONLY” Information or Items to “Experts”

15 (a) Unless otherwise ordered by the court or agreed in writing by the Designating
16 Party, a Party that seeks to disclose to an “Expert” (as defined in this Order) any information
17 or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
18 ONLY” first must make a written disclosure to the Designating Party that (1) sets forth the
19 full name of the Expert and the city and state of his or her primary residence, (2) attaches a
20 copy of the Expert’s current resume, (3) identifies the Expert’s current employer(s),
21 (4) identifies each person or entity from whom the Expert has received compensation for
22 work in his or her areas of expertise or to whom the expert has provided professional
23 services at any time during the preceding five years, and (5) identifies (by name and number
24 of the case, filing date, and location of court) any litigation in connection with which the
25 Expert has provided any professional services during the preceding five years.

26 (b) A Party that makes a request and provides the information specified in the
27 preceding paragraph may disclose the subject Protected Material to the identified Expert
28 unless, within seven court days of delivering the request, the Party receives a written

1 objection from the Designating Party. Any such objection must set forth in detail the
2 grounds on which it is based.

3 (c) A Party that makes a timely written objection must meet and confer with the
4 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
5 agreement. If no agreement is reached, the Party seeking to make the disclosure to the
6 Expert may file a motion seeking permission from the court to do so.

7 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
8 **PRODUCED IN OTHER LITIGATION**

9 If a Receiving Party is served with a subpoena or an order issued in other litigation
10 that would compel disclosure of any information or items designated in this action as
11 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the
12 Receiving Party must so notify the Designating Party, in writing (by fax, if possible)
13 immediately and in no event more than three court days after receiving the subpoena or
14 order. Such notification must include a copy of the subpoena or court order.

15 The Receiving Party also must immediately inform in writing the Party who caused
16 the subpoena or order to issue in the other litigation that some or all the material covered by
17 the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party
18 must deliver a copy of this Protective Order promptly to the Party in the other action that
19 caused the subpoena or order to issue.

20 The purpose of imposing these duties is to alert the interested parties to the existence
21 of this Protective Order and to afford the Designating Party in this case an opportunity to try
22 to protect its confidentiality interests in the court from which the subpoena or order issued.
23 The Designating Party shall bear the burdens and the expenses of seeking protection in that
24 court of its confidential material – and nothing in these provisions should be construed as
25 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive
26 from another court.

27 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

28 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed

1 Protected Material to any person or in any circumstance not authorized under this Protective
2 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of
3 the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected
4 Material, (c) inform the person or persons to whom unauthorized disclosures were made of
5 all the terms of this Order, and (d) request such person or persons to execute the
6 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

7 **10. FILING PROTECTED MATERIAL**

8 If a party intends to submit a pleading or motion that contains documents or
9 information of another party that has been designated “HIGHLY CONFIDENTIAL –
10 ATTORNEYS’ EYES ONLY,” the submitting party must file its pleading or motion under
11 seal, seek leave to file the aforementioned documents or information under seal, or
12 provide the other party with 24 hour notice of the intention to submit “HIGHLY
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information with the pleading or
14 motion. Such notice will expressly identify the specific “HIGHLY CONFIDENTIAL –
15 ATTORNEYS’ EYES ONLY” documents or information that will be submitted with the
16 pleading or motion. The purpose of this notice is to enable the parties to (1) meet-and-confer
17 regarding whether “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
18 documents or information will be filed under seal and (2) provide the party who designated
19 the documents or information “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
20 ONLY” with the opportunity to file a motion to file the documents or information under seal
21 in the event that the party submitting the pleading or motion declines to file a motion to file
22 the designated information or documents under seal. Absent a Court Order or agreement
23 from the Designating Party the filing party may not file the aforementioned documents with
24 the Court

25 **11. MOTIONS TO FILE DOCUMENTS UNDER SEAL**

26 Any motion to seal or otherwise restrict public access shall describe, at a minimum,
27 (a) the nature of the materials or proceedings at issue, (b) the legitimate private or public
28 interests which warrant the relief sought, (c) the clearly defined and serious injury that would

1 result if the relief sought is not granted, and (d) why a less restrictive alternative to the relief
2 sought is not available.

3 **12. FINAL DISPOSITION**

4 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty
5 (60) days after the final termination of this action, each Receiving Party must return all
6 Protected Material to the Producing Party. As used in this subdivision, “all Protected
7 Material” includes all copies, abstracts, compilations, summaries or any other form of
8 reproducing or capturing any of the Protected Material, but not attorney work product. With
9 permission in writing from the Designating Party, the Receiving Party may destroy some or
10 all of the Protected Material instead of returning it. Whether the Protected Material is
11 returned or destroyed, the Receiving Party must submit a written certification to the
12 Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty
13 (60) day deadline that identifies (by category, where appropriate) all the Protected Material
14 that was returned or destroyed and that affirms that the Receiving Party has not retained any
15 copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of
16 the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
17 archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence
18 or attorney work product, even if such materials contain Protected Material. Any such
19 archival copies that contain or constitute Protected Material remain subject to this Protective
20 Order as set forth in Section 4 (DURATION), above.

21 **13. MISCELLANEOUS**

22 13.1 Right to Further Relief. Nothing in this Order abridges the right of any person
23 to seek its modification by the Court in the future.

24 13.2 Right to Assert Other Objections. Each Party retains any right it has to object
25 to disclosing or producing any information or item on any ground not addressed in this
26 Protective Order. Similarly, each Party retains any right to object on any ground to use in
27 evidence of any of the material covered by this Protective Order.
28

1 STIPULATED AND AGREED:
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4 /s/E. Scott Dosek
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5 JOHN P. PASSARELLI #16018
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6 Suite 300
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Protective Order that was issued by the United States District Court for the District of Arizona on _____ [date] in the case of Soilworks, LLC v. Midwest Industrial Supply, Inc., 2:06-CV-02141-DGC. I agree to comply with and to be bound by all the terms of this Protective Order and I understand and acknowledge that failure to comply could expose me to sanctions and punishment in the nature of contempt. I will not disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with the provisions of this Order.

Date: _____

Printed Name: _____

Signature: _____