

Exhibit 5

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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 CHAD
FALKENBERG IN SUPPORT OF
SOILWORKS' OPPOSITION TO
DEFENDANT'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

21 STATE OF ARIZONA)
22)ss
23 COUNTY OF MARICOPA)

24 I, Chad Falkenberg, declare as follows:

25 1. I am the President of Soilworks, LLC. Soilworks distributes environmentally-
26 safe dust and erosion control agents throughout the United States. In that respect, Soilworks
27 is a direct competitor of Midwest Industrial Supply, Inc. I submit this Declaration in Support
28 of Soilworks' Opposition to Defendant's Motion for Partial Summary Judgment. I have

1 personal knowledge of the facts set forth in this Declaration and can testify competently to
2 those facts.

3
4 2. Oil-Sheen Free is not generally understood to be under any specific standard or
5 test method in the dust control and soil stabilization industry.

6 3. Midwest became aware of Durasoil on a Military helipad test in Yuma, AZ in
7 and around September and/or October of 2005 when Soilworks successfully tested its
8 products against Midwest's Envirokleen product.

9
10 4. Polar Supply Company, a vendor of Soilworks' products, bids all its own
11 projects including those with the Alaska Department of Transportation. Soilworks does not
12 bid any projects in Alaska and is not involved in the decision-making process related to
13 which projects Polar Supply chooses to bid.

14
15 5. Durasoil has no "rainbow effect" when poured into/onto water. Soilworks use
16 of the term "oil-sheen-free" is based upon a visual examination of the products interaction
17 with water and my common knowledge of white-oils.

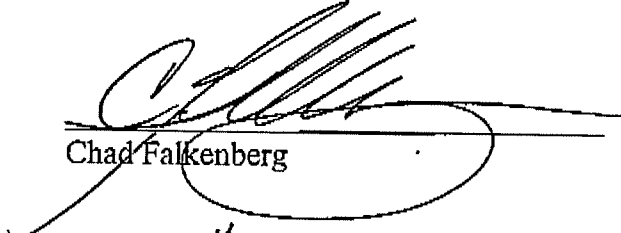
18
19 6. The soil-stabilization and dust control industry is made up of sophisticated
20 manufacturers and vendors of soil and dust stabilization products, contractors and
21 subcontractors and sophisticated federal, state and local governmental and corporate entities
22 which submit requests for bids which require soil stabilization products.

23 7. It is common industry practice that a contractor or vendor will submit a bid for
24 projects even if it is apparent from the bid request that the contractor's or vendor's products
25 or service do not meet the expressed specifications or requirements of the bid request. It is
26 common practice to bid as an alternate or a substitute to help generate awareness of a product
27 or service in the mind of the buyer. Such bid responses sometimes lead to a change in a
28 buyer's bid requests specifications especially if a bid is considerably cheaper than what was

1 previously bid by other companies.

2
3 I declare under penalty of perjury and the laws of the United States of America that
4 the foregoing is true and correct.

5 Executed this 11th day of June, 2008, at Gilbert, Arizona.

6
7
8 
9 Chad Falkenberg

10 The foregoing was acknowledged before me this 11th day of June, 2008, by Chad
11 Falkenberg.



14 
15 Notary Public

16 My Commission Expires:

17 July 27, 2009

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