

1 E. SCOTT DOSEK #012114
JOHN P. PASSARELLI #16018 (NE)
2 KUTAK ROCK LLP
Suite 300
3 8601 North Scottsdale Road
Scottsdale, AZ 85253-2742
4 (480) 429-5000
Facsimile: (480) 429-5001

5
6 *Attorneys for Plaintiff*
SOILWORKS, LLC, an Arizona corporation

7
8 **UNITED STATES DISTRICT COURT**

9 **IN AND FOR THE DISTRICT OF ARIZONA**

10
11 SOILWORKS, LLC, an Arizona
corporation,

12 Plaintiff / Counterdefendant /
13 Counterclaimant,

14 v.

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

17 Defendant / Counterclaimant /
Counterdefendant.

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

**PLAINTIFF'S RESPONSE AND
OBJECTIONS TO MIDWEST'S
STATEMENT OF FACTS IN
SUPPORT OF ITS MOTION FOR
PARTIAL SUMMARY JUDGMENT**

18
19 Plaintiff Soilworks hereby submits its responses and objections to Midwest's
20 Statement of Facts in Support of its Motion for Partial Summary Judgment pursuant to
21 United States District Court Local Rule 56.1 as follows:

- 22
- 23 1. Undisputed.
 - 24 2. Undisputed.
 - 25 3. Disputed as not supported by any admissible evidence in this record.
 - 26 4. Undisputed.
 - 27 5. Undisputed.
- 28

1 6. Undisputed except as to reference to Synthetic Organic Dust Control, which is
2 not at issue in this case.

3 7. Undisputed.

4 8. Undisputed.

5 9. Disputed as not supported by any admissible evidence in this record.

6 10. Disputed. Irrelevant. Trademark of Synthetic Organic Dust Control is not at
7 issue in this case.

8 11. Disputed. Irrelevant. Trademark of Synthetic Organic Dust Control is not at
9 issue in this case.

10 12. Disputed. Irrelevant. Trademark of Synthetic Organic Dust Control is not at
11 issue in this case.

12 13. Disputed. Irrelevant. Trademark of Synthetic Organic Dust Control is not at
13 issue in this case.

14 14. Disputed as not supported by any admissible evidence. Furthermore, it is
15 irrelevant because the trademark of Synthetic Organic Dust Control is not at issue in this case.

16 15. Undisputed.

17 16. Undisputed.

18 17. Undisputed.

19 18. Undisputed.

20 19. Undisputed.

21 20. Undisputed.

22 21. Undisputed.

23 22. Undisputed.

24 23. Undisputed.

25 24. Undisputed.

26 25. Disputed in all respects.

27 26. Disputed as not supported by any admissible evidence in this record.

28 27. Undisputed.

 28. Undisputed.

- 1 29. Undisputed.
- 2 30. Undisputed.
- 3 31. Undisputed.
- 4 32. Disputed. Irrelevant. Trademark of Synthetic Organic Dust Control is not at
5 issue in this case.
- 6 33. Disputed. Irrelevant. Trademark of Synthetic Organic Dust Control is not at
7 issue in this case.
- 8 34. Disputed. Irrelevant. Trademark of Synthetic Organic Dust Control is not at
9 issue in this case.
- 10 35. Disputed. Irrelevant. Trademark of Synthetic Organic Dust Control is not at
11 issue in this case.
- 12 36. Disputed. Irrelevant. Trademark of Synthetic Organic Dust Control is not at
13 issue in this case.
- 14 37. Disputed. Irrelevant. Trademark of Synthetic Organic Dust Control is not at
15 issue in this case.
- 16 38. Undisputed. Soilworks use of keywords is in accord with applicable law and
17 mirrors the conduct of Midwest.
- 18 39. Undisputed.
- 19 40. Undisputed.
- 20 41. Undisputed.
- 21 42. Undisputed.
- 22 43. Undisputed.
- 23 44. Undisputed.
- 24 45. Disputed as not supported by any admissible evidence in this record.
- 25 46. Undisputed.
- 26 47. Undisputed.
- 27 48. Undisputed.
- 28 49. Undisputed.
50. Disputed as not supported by any admissible evidence in this record.

- 1 51. Disputed as not supported by any admissible evidence in this record.
- 2 52. Disputed. *See Ex. 5* attached to Soilworks' Response to Motion for Summary
3 Judgment filed contemporaneously herewith.
- 4 53. Undisputed.
- 5 54. Disputed as not supported by any admissible evidence in this record.
- 6 55. Disputed as not supported by any admissible evidence in this record.
- 7 56. Disputed as not supported by any admissible evidence in this record.
- 8 57. Undisputed.
- 9 58. Undisputed.
- 10 59. Undisputed.
- 11 60. Undisputed.
- 12 61. Disputed. Irrelevant.
- 13 62. Undisputed.
- 14 63. Undisputed.
- 15 64. Disputed as not supported by any admissible evidence in this record.
- 16 65. Undisputed.
- 17 66. Undisputed.
- 18 67. Disputed as not supported by any admissible evidence in this record.
- 19 68. Undisputed.
- 20 69. Undisputed as to the existence and sending of the letter by Mr. Passarelli.
21 Midwest's mischaracterization of that letter is disputed.
- 22 70. Undisputed.
- 23 71. Soilworks does not dispute the sending of letters by Midwest. Soilworks
24 disputes the contents of those letters.
- 25 72. Disputed as identifying incomplete evidentiary sources of claim.
- 26 73. Undisputed.
- 27 74. Undisputed.
- 28 75. Disputed as identifying incomplete evidentiary sources of claim.

