

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 *Attorneys for Plaintiff / Counterdefendant /*
 6 *Counterclaimant Soilworks, LLC*

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

9 SOILWORKS, LLC, an Arizona
 10 corporation,

11 Plaintiff / Counterdefendant /
 Counterclaimant,

12 v.

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

15 Defendant / Counterclaimant /
 Counterdefendant.

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

**SOILWORKS, LLC'S RESPONSE TO
 MIDWEST INDUSTRIAL SUPPLY,
 INC.'S MOTION *IN LIMINE* (DOC.
 #106) TO BAR TESTIMONY AND
 EVIDENCE REGARDING THE
 COMPOSITION OF DURASOIL AND
 PLAINTIFF'S OTHER PRODUCTS**

(Before the Honorable David G. Campbell)

18 Midwest's Motion *in Limine* seeking to bar Soilworks from introducing evidence or
 19 testimony regarding the composition of Durasoil and Plaintiff's other products ("Motion")
 20 misstates the record of disclosure and discovery which has taken place in this case. In
 21 addition to the list of ingredients which Soilworks provided to Midwest, Soilworks also
 22 produced an actual sample of the Durasoil product. Multiple copies of Material Safety Data
 23 Sheets with respect to the Durasoil products have been provided to Midwest.

24 In response to Midwest's request for production of documents, Midwest was given
 25 carte blanche access to every document and piece of paper within the files at Soilworks at
 26 Soilworks' only place of business. Midwest took advantage of this access and copied each
 27 and every document provided. After having received the documents and the product sample,
 28 Midwest took deposition testimony from Soilworks pursuant to Rule 30(b)(6) of the Federal

1 Rules of Civil Procedure, and also took deposition testimony from Chad Falkenberg, and
2 Dorian Falkenberg, in their individual capacities.

3 The chemical composition of Soilworks' Soiltac product, as well as all other products
4 manufactured and marketed by Soilworks, are not relevant to any of the issues in this case
5 since Midwest claims only that Durasoil somehow infringes its patents.

6 For all of the above and foregoing reasons, Soilworks respectfully requests that
7 Midwest's Motion *in Limine* to Bar Testimony and Evidence Regarding Composition of
8 Durasoil and Plaintiff's Other Products be denied.

9 Dated this 24th day of September, 2008.

10 KUTAK ROCK LLP

11
12 By _____ /s E. Scott Dosek

E. Scott Dosek, Esq.

John P. Passarelli, Esq.

8601 North Scottsdale Road #300

Scottsdale, AZ 85253-2742

Attorneys for Plaintiff Soilworks, LLC

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CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2008, the foregoing **SOILWORKS, LLC'S RESPONSE TO MIDWEST'S MOTION *IN LIMINE* TO BAR TESTIMONY AND EVIDENCE REGARDING THE COMPOSITION OF DURASOIL AND PLAINTIFF'S OTHER PRODUCTS** was filed electronically. Notice of this filing will be sent to all parties by operations of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s Amy S. Fletcher
Amy S. Fletcher