

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

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 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 /  
 18 Counterdefendant.

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

**SOILWORKS, LLC’S RULE 26  
 DISCLOSURES**

19 Pursuant to the provisions of Rule 26(a)(1) of the Federal Rules of Civil procedure  
 20 Plaintiff Soilworks, LLC (hereinafter “Soilworks”) hereby serves its initial disclosures upon  
 21 Defendant Midwest Industrial Supply, Inc. (hereinafter “Midwest”). Soilworks reserves the  
 22 right to amend and/or supplement these disclosures based upon its continuing investigation  
 23 and discovery in this case.

24 **A. Individuals Likely To have Discoverable Information**

25 Pursuant to Fed.R.Civ.P. 26(a)(1)(A), Soilworks is informed and believes that the  
 26 following individuals may be likely to have discoverable information.

- 27 1. Dorian Falkenberg, an officer of Soilworks, 681 North Monterey Street,  
 28

1 Suite 101, Gilbert, Arizona 85233-3814. Ms. Falkenberg has knowledge concerning the  
2 overall operation of Soilworks, the composition of Soilworks' products, the manner in which  
3 Soilworks' products are manufactured, marketed, sold and distributed, the competitive  
4 environment among Soilworks, Midwest and their competitors and the facts alleged in the  
5 Complaint and Reply and Counterclaim.

6 2. Chad Falkenberg, an officer of Soilworks, 681 North Monterey Street,  
7 Suite 101, Gilbert, Arizona 85233-3814. Mr. Falkenberg has knowledge concerning the  
8 overall operation of Soilworks, the composition of Soilworks' products, the manner in which  
9 Soilworks' products are manufactured, marketed, sold and distributed, the competitive  
10 environment among Soilworks, Midwest and their competitors and the facts alleged in the  
11 Complaint and Reply and Counterclaim.

12 3. Polar Supply Company, 300 East 54<sup>th</sup> Street, Anchorage, Alaska 99518. Polar  
13 Supply Company is a customer of Soilworks and/or Midwest. The employees of Polar  
14 Supply, including Messrs. Shooner and Shickman, have knowledge concerning the  
15 competitive environment for soil stabilization, erosion control and dust control products, the  
16 method by which parties to this litigation and their competitors advertise and promote the  
17 sale of said products and the specific actions taken by Midwest with respect to the alleged  
18 proprietary rights claimed by Midwest.

19 4. Midwest Industrial Supply, Inc., 1101 Third Street, SE, Canton, Ohio 44704.  
20 The officers and employees of Midwest that have knowledge concerning: (i) the  
21 manufacture and distribution of Midwest's products; (ii) the application for registration of  
22 the patents identified in the Complaint, Answer and Counterclaim and Reply and  
23 Counterclaim; (iii) the advertising, marketing and promotion of Midwest's products to its  
24 customers, including Polar Supply Company identified above; and (iv) the facts as alleged in  
25 the Answer and Counterclaim. These officers and employees will include those identified by  
26 Defendant in its Initial Disclosures.

27 5. Soilworks anticipates that discovery will identify employees of suppliers and  
28 customers who will have knowledge concerning the manufacture and distribution of soil

1 stabilization, erosion control and dust control products, which knowledge will be relevant to  
2 the issues in this case.

3 **B. Categories and Location of Documents, Data Compilations and Tangible Things**

4 1. Business records of Soilworks that relate to the manufacture, distribution, sales  
5 and/or marketing of Soilworks' products.

6 2. Documentary materials relating to the manner in which Soilworks advertises,  
7 promotes, markets, distributes and/or sells its products to its customers.

8 3. Documentary materials relating to the manner in which Midwest advertises,  
9 promotes, markets, distributes and/or sells its products to its customers.

10 4. Documentary materials relating to the manner in which competitors advertise,  
11 promote, market, distribute and/or sell their products to their customers.

12 5. Documentary materials relating to the manufacture and distribution of soil  
13 erosion products.

14 6. Documentation relating to Soilworks' and Midwest's manufacture,  
15 distribution, marketing and sale of its products.

16 7. Documentary materials relating to suppliers and customers of Soilworks and  
17 Midwest.

18 The foregoing documents are located either at the premises of Soilworks or at the  
19 offices of Plaintiff's counsel, Suite 300, 8601 North Scottsdale Road, Scottsdale, AZ  
20 85253-2742.

21 **C. Computation of Damages**

22 Soilworks is claiming actual damages, lost profits, Midwest's profits, prejudgment  
23 interest along with statutory damages pursuant to the causes of action listed in its  
24 Complaint. Soilworks is also seeking enhanced damages along with its attorneys' fees as  
25 available under at least the Lanham Act (case law or statutory). Soilworks also seeks an  
26 injunction against Midwest's actions as set forth in its Complaint. Soilworks respectfully  
27 reserves the right to supplement its computation of damages.  
28

1 **D. Insurance**

2 Soilworks has preliminarily concluded that there is no insurance coverage in place  
3 that would be applicable to the claims asserted in this action.

4 Dated this 21<sup>st</sup> day of May, 2007.

5 KUTAK ROCK LLP

6  
7 By \_\_\_\_\_/s

8 E. Scott Dosek  
9 John P. Passarelli  
10 Suite 300  
11 8601 North Scottsdale road  
12 Scottsdale, AZ 85253-2742

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*Attorneys for Plaintiff*

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 21<sup>st</sup>, 2007, the foregoing Soilworks, LLC's Rule 26 Initial Disclosures was served on all parties 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.

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/s  
Amy S. Fletcher