ATTACHMENT D.3

Dawn L. Smalls
Executive Secretary to the Department
of Health and Human Services
200 Independence Ave SW #603H
Washington, DC 20201

Re: SEC Tracking Number SEC00141

Dear Ms. Smalls:

Please accept the following as the requirements set up for filing a request for an Administrative Review by the three-person panel in regard to the Secretary's agreement with the Advisory Board's decision to deny granting an SEC status for all employees in all locations of Hooker Electrochemical Corp. headquartered in Niagara Falls, NY.

We, the petitioners, list the following arguments in favor of a reversal.

1. The SEC status rightfully should have been granted when NIOSH passed the 180-day requirement for evaluation. This rule is still on the books as evidenced by current SEC petitions under evaluation. Either the rule applies or it doesn't.

   WHY WAS HOOKER TREATED THIS WAY?

2. NIOSH has requested the FOIA in Atlanta to forward all material to the petitioner that was sent to the Secretary prior to her decision-making on Hooker. This has not been accomplished. Therefore, asking the petitioners to respond via this request for an Administative Review is not giving "due process".

   WHY IS HOOKER BEING TREATED THIS WAY?

3. *The Work Group on Hooker dealt within a program called TBD-6001 (Battelle) for a lengthy time making all determinations on so-called findings. Then after the petitioner pointed out some things in the evaluation of NIOSH's Evaluation, which had passed the 180-day requirement, suddenly the TBD was made a standalone and the Group was determined to use "surrogate data". They even changed the name of the group. In the past, companies such as Hooker, no longer in existence with no records were automatically granted the award as long as claimants did work for an atomic location and did become ill or died. This method should have still applied for Hooker.

   WHY WAS HOOKER TREATED THIS WAY?

   *See Attachment

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Arguments Continued:

4. The use of "surrogate data" in dealing with compensatory programs is not viewed favorably even by all members of this Advisory Board. Yet the Work Group insisted on accepting it with the Hooker claim. NIOSH searched and found three companies that they thought did the same process as Hooker. These companies are Mallinckrodt, Electromet and Fernald. Only Mallinckrodt had been granted an SEC in the past and only because the Board felt that there were insufficient records and the Congress failed to act within the 30 day requirement. The other two were still being considered by other work groups when the Hooker Work Group made its decision to deny. Mallinckrodt is still in business and there were insufficient records but the Work Group and NIOSH saw fit to use it as "Surrogate Data" for Hooker which no longer exists. How can the Work Group be 100% certain that they can trust Mallinckrodt's procedures?

BREAKING NEWS: The Majority of the surrogate data used to reconstruct dose is from Fernald. The Chair of the Fernald Work Group stated that the Work Group cannot verify the accuracy of the air monitoring used for Hooker Chemical. Therefore, NIOSH cannot guarantee that the data they used from Fernald is accurate. Since this data cannot be verified as true air monitoring readings, it cannot be used to reconstruct dose.

In addition it should be noted that Fernald had even been cited by a court for improper handling of records in order to deceive.

BREAKING NEWS: NIOSH HAS REVERSED ITS DECISION ON ELECTROMET AND CLAIMS IT CANNOT DO "DOSE RECONSTRUCTION".

Please note that both of these announcements above were made just recently which is after the denial of the Hooker SEC petition. The Board was in too much of a hurry to deny.

The claim being made regarding the process used by these companies is that it is similar to Hooker. However, since the position taken is that it was both an inside and outside process, the petitioners disagree since they know it mainly as an inside job. No evidence has been given to indicate otherwise.

WHY IS HOOKER BEING TREATED THIS WAY?

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Arguments Continued:

5. Before the Board voted, the petitioner asked for more time since the request for information from FOIA made in August 2011 had not been received. This request was denied. They went ahead and voted denying the petition. It was not a unanimous decision. Considering NIOSH's "faux pas" on the 180-day requirement, the question again is,

   WHY WAS HOOKER TREATED THIS WAY?

6. The Federal Advocate, at the behest of the Chair of the Advisory Board, called the petitioner to find out what information was looked for from FOIA. This is denying the right of the petitioner to search for information. The petitioner objected to the Board about this cross examination and it demonstrates once again further proof of how much in a hurry the Board was to deny the petition.

   WHY WAS HOOKER TREATED THIS WAY?

7. There is still the question of the use of "surrogate data" in order to use dose reconstruction. Neither of these two procedures should have been used for Hooker since it no longer exists and there are no records.

   The Federal Advocate was involved in the creation of dose reconstruction and has been termed by petitioners as a "person of conflict of interests" and this also gives proof that NIOSH is bent on using this method no matter what. The use of "surrogate data" plays an important role for NIOSH in order to use "dose reconstruction". Once again, neither should be used in regard to Hooker since it no longer exists and there are no records.

   WHY WAS HOOKER TREATED THIS WAY?

8. *The Board has requested the EPA to further support their use of "surrogate data". This request was made and not answered before the vote. The petitioners have not been notified even yet if it has ever been answered. This information should have been requested long before and no vote taken until received. Again, further proof of the rush on the part of the Board to deny.

   WHY WAS HOOKER TREATED THIS WAY?

   *See attachment

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Arguments Continued:

9. The Work Group and the Advisory Board have become so dependent on the use of "surrogate data" that they have become blinded by their own methods. Case in point, at one of the teleconferences that the petitioner was allowed to listen in on, one of the Board members questioned, "If we don't use surrogate data, what can we use? We use surrogate data everyday. I use it when I decide how I am going to prepare my zucchini. Ha, ha." Well, the answer is don't use it for companies that no longer exist and there are no records. The Board members should have realized that paying the awards would certainly be less expensive than all the "rigamarole" that these groups have expended and the fact that they have gone way beyond the original executive order or "act" signed by President Clinton to keep things simple and not to frustrate the petitioners. Surrogate data may be something to joke about by Board members but to the petitioners it has become a very serious issue.

WHY IS HOOKER BEING TREATED THIS WAY?

10. This panel is following the "rule of three". So such a rule does exist. Using Mallinckrodt alone does not serve the rule of three - why three companies and then go down to one? In the rule of three, selections are made of companies that are within close proximity to the company being analyzed. If not that close, then within the same state. This was not done with the Hooker claim. The only company that may have qualified in this designation would have been Electromet. However, Electromet has now been disqualified by NIOSH itself since it cannot do dose reconstruction. Again, proof of how much in a hurry the Board was to deny.

WHY WAS HOOKER TREATED THIS WAY?

11. The petitioners found that the role of the ombudsman did not serve them well after the initial stages. Filing for the SEC was encouraged by the ombudsman and assistance was given in the correct phrasing before filing. However, as time went on, it was more and more difficult to get ombudsman help. The reasons given were the overload of cases, phone messages, e-mails, etc. to handle. Also, that this "act" doesn't allow more help. The ombudsman did make a request of the Federal Advocate to have a phone conference with the petitioner, but it never happened. Instead the Federal Advocate told the ombudsman that he could well understand how laymen found it difficult to understand all the scientific jargon. This is further proof of not keeping it simple and frustrating the petitioners.

WHY WAS HOOKER TREATED THIS WAY?

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Arguments Continued:

12. Included in this process is the Work Group's use of SC & A to review NIOSH's findings. Upon advice from the ombudsman, the petitioner requested the input of SC & A. This was a mistake since SC & A really did not do a fair job. Even when they found differences, they conceded to NIOSH's findings saying because it was more favorable to the claimant. When questioned by the petitioner how was it more favorable - SEC or dose reconstruction? The SC & A response was dose reconstruction. The truth is SEC is more favorable.

As turn of events will have it, the petitioners suggest that this group be investigated for allowing the atmosphere of "making book" on its employees to exist in the work place.

WHY WAS HOOKER TREATED THIS WAY?

We, the petitioners, therefore, request that the Board's denial be rejected. We also request that the three-person panel deem it necessary for the information from all of the FOIA locations that have not so far complied with the requests from the petitioners and NIOSH be made available to the petitioners without delay. Also that the appeal to FOIA be speeded up. This request definitely spells out that the three-person panel set a "moratorium" on the SEC status for Hooker and that Congress be advised of same in order to allow the petitioners access to the FOIA material and time to digest it. After all of this is handled properly, the petitioners are certain that the panel will encourage the Secretary to reverse her decision and Hooker will be granted SEC status.

The petitioners thank the panel for the time spent with this Review and know that after realizing the truth of the present situation and the latest developments coming from discoveries about Electromet and Fernald, they will encourage the Secretary to reverse her decision and then notify Congress accordingly that Hooker Electrochemical Corp. workers in all locations have been added to the SEC category.

PLEASE NOTE THAT AN ATTACHMENT HAS BEEN ADDED WITH CURRENT DATA.

Very truly yours,

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ATTACHMENT:

Further arguments in support of a reversal to give Hooker Electrochemical Corp. workers the SEC Status.

1. The petitioners suggest that the three-person panel consult this link listed below to see what the Advisory Board has laid out as a foundation for surrogate data:

   www.cdc.gov/niosh/ocas/pdfs/abrwh/proc/abrwh-proc-sd-r0.pdf

   This is dated May 14, 2010.

   As you can see, it is very general and could be made to go along with any choice made as surrogate data. It is not credible. When the petitioner asked NIOSH who the author was, the response was that there was no author. This did not allow the petitioner to discuss this format with anyone to tie in any historical background on surrogate data. The reference given by NIOSH and also found by the petitioner is explained in the main body of this Request for Review whereby a company must be close by or no farther than the same state. When the petitioner explained this to the Board, an objection was raised and this fact was rejected. The petitioner still supported it and there has been no follow-up from the Board. Surrogate data cannot be turned into anything to suit NIOSH's decisions. They claim that they are following the guidelines from the Board. However, the guidelines are not credible. Simplicity would say the following:

   a. Is the location an atomic worker location? Yes or No

   b. Was the person an employee of this location? Yes or No

   c. Did the person have a serious illness? Yes or No

   d. Did the person die? Yes or No

   e. Are the survivors who they say they are? Yes or No

   End of story.

   If fraud is suspected in any of these categories, it can be handled by a fraud unit.

   End of story.

   Trying to put people and their sickness into a percentile is really out of line.

   With all due respect to the people running these groups and their education and background, simplicity is not their "forte".

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2. An Advisory Board session was held on February 28, 2012 to discuss Electromet. The Board voted to give the SEC status to this company. Once again, the Board was too much in a hurry to deny Hooker.

   The basis for giving the SEC is that there wasn't sufficient documentation to do dose reconstruction by NIOSH. Even SC & A's input didn't counteract this decision.

   Remember Electromet is the only company of the three (surrogate data) in close proximity to Hooker. Having been given the SEC takes it out of the group of three. This leaves two.

   Fernald represents most of the documents used against Hooker and Fernald has also been eliminated since dose reconstruction cannot be done. This now leaves one.

   Mallinckrodt is too far away for a choice as surrogate data and so that leaves zero. The manner in which Mallinckrodt received an SEC is suspect and goes back as another company with insufficient records. So how can NIOSH, SC & A, the Work Group or the Advisory Board recognize it as valid in judging Hooker? *SEE BELOW-N.B.

3. In listening in via the teleconference on February 28, 2012, the petitioner was amazed at how difficult it was for the NIOSH rep to try to explain their decision change. Here are some comments - sound bites if you will:

   a. Air data doesn't make sense ...
   b. Much better after 1948 - no documentation existed before that time.
   c. Major health improvements but NIOSH doesn't know what they did. (Health and Safety Lab)
   d. Different conclusion arrived at, can't do dose reconstruction.
   e. GA - samples - not too good.
   f. Electromet can't give them info needed.
   g. DOL can't do without the info.
   h. SC & A countered with dose reconstruction could be done for later years and not earlier.
   i. Chair of the Work Group understood the stand of both but felt the group hadn't had enough time to study this.
   j. Objection from the Board that doing partials - giving a segment of workers the SEC and the others not had not worked in the past.

   FINALE: SEC given to Electromet.

*Please Note Well: A serious lawsuit has just recently been filed against Mallinckrodt for contaminating Cold Water Creek with nuclear wastes based on residents developing various cancer conditions who are under age 50.

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4. As a reminder to this panel, reference was made in the main body of this Request for Review to the TBD. One of the comments that really cinches or clinches the truth about this is the following made by NIOSH and it is:

"After the TBD fell apart or whatever way you want to say it ..."

A slip of the lip - probably not. The truth will out.

In conclusion, this attachment illustrates further how Hooker workers were misjudged by NIOSH, SC & A, the Work Group, and the Advisory Board.