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1972

14 - Summary Report of D.R.D.S. Ethical and Legal Investigation dated August 11, 1988  
(Pages 1972-2023)

Memorandum

Date August 11, 1988

From Executive Officer, NIOSH

Subject Summary Report of DRDS Ethical and Legal Investigation

To J. Donald Miller, M.D.  
Director, NIOSH

Attached is the summary report of the requested ethical and legal investigation of NIOSH employees from the Division of Respiratory Disease Studies (DRDS) who were involved with studies of the employees of the R. T. Vanderbilt Company, Inc.

As you know, this investigation was conducted in coordination with the Department of Health and Human Services (HHS) Office of the General Counsel and the HHS Office of the Inspector General. The only evidence found of the acceptance of gratuities involves the single incident of meals and ground transportation provided during the site visit of August 1986. Otherwise, there has been nothing found to indicate that any NIOSH employees were offered or received any compensation from R.T. Vanderbilt Company, Inc. in order to influence any NIOSH employee's scientific opinion or the timing of the expression of any NIOSH employee's scientific opinion.

However, given the circumstances found in the course of the investigation and despite the fact that one can never document motivations, the actions of certain employees of the Division of Respiratory Disease Studies create the appearance of a conflict of interest. Based upon their inappropriate actions in the course of pursuing the studies of workers employed by R.T. Vanderbilt Company, Inc., appropriate disciplinary action is being taken.

Given the knowledge revealed concerning the events surrounding the activities by the Division of Respiratory Disease Studies in Morgantown and correspondence generated in relation to the studies of workers of the R.T. Vanderbilt Company, Inc., I think your decision for a scientific review of all the data and products relating to the update of the 1980 study by a subcommittee of the NIOSH Board of Scientific Counselors be completed and that the Board provide to you recommendations concerning the validity and the disposition of the data and the reports is most appropriate.

  
Larry W. Sparks

Attachment

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#### SUMMARY FINDINGS OF THE INVESTIGATION

The National Institute for Occupational Safety and Health (NIOSH) has been conducting an internal investigation based on allegations that studies and correspondence relating to the issue of the regulation of tremolite, anthophyllite and actinolite initiated by the Division of Respiratory Disease Studies (DRDS) were influenced by contacts with the R.T. Vanderbilt Company, Inc., which mines and handles such minerals. In the course of the investigation, it was determined that NIOSH procedures regarding the initiation of research studies were not followed, an unauthorized procurement was committed, there were frequent private visits and contacts between certain DRDS employees and the Company, complimentary travel and meals were provided to certain DRDS employees by company officials, and there was a failure to communicate through the chain of command information regarding all components of the study as well as plans communicated to DRDS staff by the company to influence actions within the agency. The following description represents the specific findings to date:

#### Update of the 1980 Study of Gouverneur Talc Company Workers

In 1980, NIOSH published a technical report entitled "Occupational Exposure to Talc Containing Asbestos--Morbidity, Mortality, and Environmental Studies of Miners and Millers" (DHEW 80-115). The report concluded that occupational exposures to the talcs from the Gouverneur Talc District in New York

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(tremolite and anthophyllite) are associated with an increased risk of developing lung cancer. The mortality and environmental studies in the report were completed by investigators from NIOSH-Cincinnati. According to recent statements from NIOSH-Morgantown employees, Vanderbilt did not request NIOSH-Cincinnati researchers to update the 1980 study because the company believed that the NIOSH-Cincinnati staff were already convinced about the deleterious health effects of occupational exposure to this talc. The company, therefore, approached NIOSH-Morgantown staff in the mid-1980's encouraging them to update and reanalyze the 1980 mortality study.

It is difficult to pinpoint the exact date that work to "update" this study began. However, on July 26, 1984, approximately 1 month after NIOSH had testified in the OSHA rulemaking hearing on asbestos, Mr. Konrad Rieger of R.T. Vanderbilt Company, Inc., visited Dr. John Gamble, DRDS, NIOSH-Morgantown, who had participated in the morbidity study which was part of the 1980 NIOSH report. Mr. Rieger traveled from Norwalk, Connecticut, the Company headquarters, to Morgantown, West Virginia, to meet with Dr. Gamble and discuss the 1980 mortality study. On August 21, 1984, Dr. Gamble was again visited in Morgantown by Mr. Rieger and Mr. Al Harvey, both of R.T. Vanderbilt Company, Inc., accompanied by Mr. Dennis Race, the company's attorney. Dr. Gamble recalls having met with company officials on many occasions; however, he does not recall the specifics of any one meeting. He recalls having talked with officials of R.T. Vanderbilt Company, Inc., concerning their opinions about the "inadequacies" of the 1980 NIOSH study, the definition of asbestos, and the mineralogy of the talc mined by their company, as well as the OSHA rulemaking and its impact on the R.T. Vanderbilt Company.

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On September 12, 1984, Dr. Gamble, Dr. Bob Reger, and Dr. Marian Amandus, all BRDS Morgantown employees, were authorized by Mr. Robert Glenn, Director of BRDS, to travel to Norwalk, Connecticut, the headquarters of R.T. Vanderbilt Company, Inc., to discuss, with officials of the Company, a reanalysis of the data from the 1980 study, and to review other data developed by the company relating to tremolite, anthophyllite and actinolite. On September 25, 1984, Ms. Jennifer Starr (working with Dr. Steve Lamm, a private sector consultant for R.T. Vanderbilt Company, Inc.) sent to Dr. Gamble information from the National Death Index and other information from R.T. Vanderbilt Company, Inc., so that Dr. Gamble, too, could "analyze the mortality pattern of the talc workers." At some point around this time, Dr. Lamm sent to Dr. Gamble the data tape from the 1980 NIOSH study which had been provided to Dr. Lamm by NIOSH under the Freedom of Information Act.

On October 3, 1984, a letter was sent to the Social Security Administration (SSA) requesting follow-up information on three cohorts, one of which is described as an "extended cohort being studied for lung cancer." On December 20, 1984, an interagency agreement with the Social Security Administration was signed by Dr. Reger and Mr. Glenn, BRDS Morgantown, formalizing the request for follow-up. On January 28, 1985, an obligation request form was forwarded to Atlanta from BRDS Morgantown requesting the transfer of funds to SSA for the purpose of the "mortality survey of individuals occupationally exposed to asbestos talc, silica dust, etc."

From 1984 through 1986, there were 14 documented meetings between officials of R.T. Vanderbilt Company, Inc., and members of the BRDS Morgantown staff. In addition to the three meetings in the fall of 1984, Dr. Reger was visited by

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Mr. Hugh Vanderbilt, Mr. Al Harvey and Mr. Konrad Rieger, all of R.T. Vanderbilt Company, Inc., on December 20, 1984, in Morgantown. On January 28, 1985, Dr. Reger, authorized by Mr. Glenn, traveled again to Norwalk, Connecticut, to meet with officials of R.T. Vanderbilt Company, Inc. On October 24, 1985, Mr. Rieger and Mr. Harvey of R.T. Vanderbilt Company, Inc. visited Mr. Glenn in Morgantown with the stated purpose of "discussion of mortality." On January 22, 1986, DRDS sponsored a seminar in Morgantown by Mr. Rieger, Mr. Harvey and Mr. G.S. Thompson, all from R.T. Vanderbilt Company, Inc., entitled "Mineralogy of Talc and Asbestos." On March 31, June 17, and July 2, 1986, Mr. John Kelce (an industrial hygienist employed by Vanderbilt) visited Dr. Gamble with the stated purpose of "work." On June 27, July 17 and 18, 1986, Mr. Rieger of R.T. Vanderbilt Company, Inc., traveled from Connecticut to Morgantown to visit either Dr. Gamble or Dr. Reger of DRDS. The last documented meeting found of DRDS employees with officials of R.T. Vanderbilt Company, Inc., occurred on August 22, 1986 between Mr. G.S. Thompson and Mr. Rieger in Morgantown and Mr. Glenn.

There are well established written procedures within NIOSH for the initiation of research projects of which every researcher and manager in the Institute is aware (42 CFR 85 and 85a, Administrative Issuances 6 and 603). All research activities, as well as potential new ideas for research proposed by divisions of NIOSH, are reported to the NIOSH Office of the Director annually in the form of proposed project plans. These plans are submitted in July or August of each year, and there are provisions for supplementing or revising those plans throughout the year. The project plans are not only the mechanism for approval of research activities conducted by the NIOSH divisions, as well as new ideas for research, they are also an accounting of the total resources

1977

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allocated to the divisions for research in both dollars and FTEs. While work on the study of employees of R.T. Vanderbilt Company, Inc., began in Morgantown as early as October 1984, no project plan relating to this work was included in the FY 1983, 1984 or 1985 project plans submitted to the Office of the Director, NIOSH, from DRDS. The travel by Dr. Reger, Dr. Gamble and Dr. Amundson to R.T. Vanderbilt Company, Inc., headquarters in September 1984 was charged to an account for a project entitled "The National Coal Study and Related Research;" the travel in January 1985 by Dr. Reger was charged to a project entitled "Morbidity and Mortality Study of the Industrial Sand Industry."

In the formal NIOSH system for developing research, approval of the project plan is followed by development of a research protocol which is subsequently reviewed by peers (i.e., "peer-review") both within the Institute, and at least two scientific peers outside NIOSH. After peer review, the project is then subjected to "tripartite" review by representatives of the affected industry, labor, and NIOSH. This was not done with respect to the mortality study of talc workers in DRDS Morgantown. From the fall of 1984 through October 1986 work proceeded on this project without a written protocol, without peer review, and without tripartite review.

It is clear from the interview that work on this "project" was intentionally concealed from the NIOSH-Cincinnati staff as well as from the NIOSH-Office of the Director in Atlanta. It appears that not until it was certain that the study would eventually have to be made public, did the DRDS Morgantown staff develop the strategy to have the company request a health hazard evaluation (HHE). The HHE program is mandated by the OSH Act to respond to requests by

1978

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employers or authorized representatives of employees for assistance in determining the effects of potentially toxic or hazardous substances used or found in any place of employment (42 CFR 85.1). A HHE is not an appropriate mechanism for long-term epidemiological research projects.

On November 7, 1985, just after the October 24, 1985, visit to Morgantown by Mr. Bieger and Mr. Harvey of Vanderbilt, a request for a HHE was sent from Mr. Harvey to Mr. Glenn of DRDS with a letter noting "per our conversation." The HHE form requested an "updating of the NIOSH (1980) health study of GTC (Gouverneur Talc Company, a subsidiary of R.T. Vanderbilt Company, Inc.)." On November 13, 1985, DRDS Morgantown acknowledged to R.T. Vanderbilt Company, Inc., receipt of the HHE request and assigned Dr. Gamble as the investigator.

Approximately 2 weeks after the receipt of the HHE request, on November 22, 1985, Dr. Gamble sent a memorandum to Mr. Glenn criticizing the NIOSH position on the health risks of exposure to Vanderbilt talc and stated that NIOSH should "re-evaluate" its mortality study. As Dr. Gamble noted during the interviews, this critique, 22 pages long and with 47 references, was not composed in 2 weeks, but was the result of several years of work, far in advance of the HHE request.

On July 8, 1986, Mr. John Kelsa, of R.T. Vanderbilt Company, Inc., in a letter to Dr. Gamble of DRDS, requested that Dr. Gamble share his preliminary report on the results of the mortality update with Mr. Kelsa and Mr. Bieger. A first draft of the report was completed in July 1986. While the report was to have been a HHE, the investigators had made no site visit to the mine or mill, as is the normal procedure for such evaluations. The first draft (dated July 23,

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1986) by Dr. Gamble makes no reference to the HME request. All of the DRDS Morgantown employees who gave oral statements agreed that "this HME was considered different." The HME coordinator for DRDS was not involved in the supervision of this project, nor was Dr. Gamble's normal supervisory chain. For the purposes of this project, Dr. Gamble apparently reported directly to Mr. Glenn, the DRDS Division Director.

When in 1986 the NIOSH Office of the Director in Atlanta learned of the existence of this "HME," DRDS-Morgantown investigators were directed by Mr. Glenn to make a site visit to the mining facility in New York. Mr. Gamble and Mr. Greg Piscitelli of DRDS traveled to Syracuse, New York, on August 4-6, 1986. Transportation to and from the airport, local transportation during the site-visit, and some meals were provided to Dr. Gamble and Mr. Piscitelli by the R.T. Vanderbilt Company, Inc. This was the first time the union representing employees of R.T. Vanderbilt Company, Inc., was consulted regarding this study. Upon return from the site-visit on August 25, 1986 (more than 9 months after receipt of the formal HME request), letters were sent to the union and other government agencies requesting any information they may have had regarding the cohort under study. By regulation, conduct of an HME requires tripartite involvement of management, labor, and government researchers (42CFR85). Up until this time, all information used by DRDS Morgantown investigators (and therefore reflected in the first draft report dated July 23, 1986) had been supplied solely and directly by the Company or its consultants.

1980

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The Office of the Director, NIOSH, first learned of the project to update the 1980 mortality study on July 11, 1986, as the result of a Freedom of Information Act request by the company dated June 27, 1986. Because Mr. Glenn was out of the country, it was not until July 23, 1986, that he met with Dr. J. Donald Miller, Director of NIOSH, to discuss the study. Dr. Miller directed that proper research procedures be immediately instituted and followed and that the original NIOSH-Cincinnati authors be consulted. He directed that a scientific protocol be developed and that it be peer reviewed.

A draft scientific protocol was completed by DRDS on October 3, 1986. Different from the 1980 study design, this protocol proposed a dose response mortality analysis using exposure data and a nested case control study. This protocol was reviewed by scientists internal and external to NIOSH who recommended that the protocol be rejected because the results would have "insufficient statistical power" based on the methodology proposed, to render conclusive results. It was therefore rejected, and this information was communicated to OSHA in a letter dated December 1, 1987, to Mr. John Pendergrass from Dr. Miller.

There was, however, the outstanding HHE request to be dealt with; enough vital statistics data had been collected to allow for an 8 year update of the mortality experience of the cohort. Accordingly, Mr. Glenn, Director, DRDS, committed to the publication of these results in a letter to Mr. Konrad Rieger of R.T. Vanderbilt Company, Inc., dated December 2, 1987.

1981

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Impact on the OSHA Rulemaking for Asbestos

The asbestos standard was promulgated by OSHA on June 17, 1986, including tremolite, anthophyllite, and actinolite in its definition of asbestos. On June 20, 1986, R.T. Vanderbilt Company, Inc., filed a petition for review in the U.S. Court of Appeals for the Second Circuit challenging OSHA's inclusion of tremolite, anthophyllite and actinolite in the newly promulgated asbestos standard.

On June 23, 1986, Mr. Keise of R.T. Vanderbilt Company, Inc., wrote to Dr. Gamble (copy attached). In the letter, Mr. Keise included an "action agenda" developed by the legal counsel to R.T. Vanderbilt Company, Inc., designed to prevent the inclusion of tremolite, anthophyllite and actinolite (minerals present in Vanderbilt talc) in the new OSHA standard. He wrote to Dr. Gamble that the "best hope" for the Company for success in its objections was to "plead the inadequacy of the 1980 NIOSH study." Mr. Keise also requested that Dr. Gamble "consider options" for making his opinions concerning the 1980 study known to OSHA or communicating that a "new study" was underway. The Company's "action agenda" prepared by its legal counsel, charged Mr. Rieger and Mr. Keise of R.T. Vanderbilt Company, Inc., with "coordinating the on-going analysis with NIOSH (Morgantown)." Also included was a copy of the "Petition for Review" to the U.S. Court of Appeals for the asbestos standard and a draft copy of a letter to the Office of the Secretary of Labor from the Vanderbilt attorneys concerning the revised standard. The letter also urged Dr. Gamble to act quickly when "it can do the most good" and advised him to "feel free to share any or all of this material with Dr. Roger and/or Mr. Glenn but please avoid further distribution."

1982

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On June 24, 1986, Dr. Reger of DRDS Morgantown, wrote to Mr. Glenn requesting that Glenn inform the Office of the Director, NIOSH, of the ongoing study by Dr. Gamble so that NIOSH might communicate to OSHA that they "would be well advised to hold up their actions on the subject until Dr. Gamble's work is finished." On June 25, 1986, Mr. Glenn instead wrote to Mr. Richard Lemen, Director of the NIOSH Division of Standards Development and Technology Transfer in Cincinnati, expressing concern about the OSHA definition of asbestos which included tremolite, anthophyllite, and actinolite. No copy of this memo was sent to the Office of the Director. To Mr. Lemen, Mr. Glenn suggested that a group of NIOSH scientists meet to discuss the issue. (It is of note that in May 1984, when DRDS Morgantown commented on the OSHA proposed rule on asbestos dated April 10, 1984, no comments were offered regarding "inadequacies" of the 1980 NIOSH study.)

Both Dr. Gamble and Dr. Reger of DRDS Morgantown denied being influenced by the June 23, 1986, letter from Mr. Kelse (Dr. Reger denies ever having seen it) and both noted that the date of the letter indicates it would not have arrived prior to Dr. Reger's preparing his June 24, 1986, memorandum to Mr. Glenn. Nevertheless, it is clear that there were close communications (either by telephone or in person) between the officials of R.T. Vanderbilt Company, Inc. and the DRDS Morgantown investigators during this critical time.

On June 27, 1986, a Freedom of Information (FOI) request was sent from the attorney representing R.T. Vanderbilt Company, Inc., seeking all data pertaining to the study and all information concerning the 1986 OSHA asbestos standard. On July 10, 1986, the response to the FOI request was handcarried

1983

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to the Office of the Director in Atlanta by Mr. Glenn. The due date for the FOI response was not until July 14, 1986. However, Mr. Glenn informed Mrs. Diane Porter that someone from R.T. Vanderbilt Company, Inc., would be coming to pick up the reply that day. A telephone call from Mr. David Sumner, a staff member of the law firm for Vanderbilt, was returned that afternoon by Mrs. Porter. She was informed that Mr. John Benton, a salesman from R.T. Vanderbilt Company, Inc., was on his way to pick up the package. Mr. Sumner (as well as Mr. Benton, when he arrived) were informed by Mrs. Porter that the package had not been reviewed and would not be available until the following day. Mr. Benton returned the next day, July 11, 1986, with Mr. Hugh Vanderbilt, President, R.T. Vanderbilt Company, Inc., to pick up the package. Much of the correspondence between officials of R.T. Vanderbilt Company, Inc., and the DRDS staff was omitted from the FOI package brought to Atlanta by Mr. Glenn, nor was such correspondence provided by DRDS in response to the subsequent FOI requests by the Company. The letter of June 23, 1986, from Mr. Keiser to Dr. Gamble was never included in any response by DRDS-Morgantown to any of the four FOI requests and/or appeals received by NIOSH from the R.T. Vanderbilt Company, Inc.

On July 17, 1986, Dr. Millar received a telephone call from Secretary of Labor Brock. He reported to Dr. Millar that he had recently met with officials from Vanderbilt. Mr. Brock questioned Dr. Millar on the NIOSH definition of asbestos and the status of the NIOSH study which was underway. Mr. Brock also asked why OSHA had not been made aware of the study during the rulemaking process. He suggested that Dr. Millar get back to Mr. Pendergrass, Assistant Secretary of Labor for OSHA, with the details of the study and the current NIOSH policy regarding the definition of asbestos. Dr. Millar spoke to

1984

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Mr. Pandergrass and followed up the conversations with the letter of July 17, 1986, to OSHA from NIOSH. Nonetheless, while the letter to OSHA communicated that the NIOSH definition and policy regarding asbestos has not changed, OSHA decided to stay the part of the standard relating to tremolite, anthophyllite, and actinolite based in part upon "certain NIOSH staff memoranda which have recently been brought to its (OSHA's) attention as well as submissions by the R.T. Vanderbilt Company and various trade associations . . ." (\$1 FR 37003). The stay on the regulation of tremolite, anthophyllite, and actinolite remains in effect to date.

#### The Pathology Study

On May 21, 1986, Dr. Gamble and Dr. Val Vallaythan, both of DRDS Morgantown, initiated an "ad hoc" study which attempted to link the results of autopsies of former Vanderbilt talc workers with their occupational exposure histories. A letter of agreement was signed by Dr. Gamble and Dr. Vallaythan on June 17, 1986, with an outside pathologist, Dr. Jerrold Abraham. No contract or purchase order was executed to formally procure these services as is required. Again, there was no scientific protocol prepared for the study and no peer review of it. On May 5, 1987, Dr. Abraham sent preliminary results of his pathological interpretation as well as tissue slides to Dr. Vallaythan. No follow-up was pursued by the NIOSH investigators. On June 14, 1988, Dr. Abraham wrote to Dr. Edward Baker, Acting Director of DRDS, inquiring about delays in completion of the study, its importance to the OSHA rulemaking, and questioning whether it had been stopped due to "industry pressure as implied by several persons." Through this letter, the NIOSH

1985

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Office of the Director learned for the first time of this "ad hoc" study. Communications with Dr. Abraham in 1986 were taking place around the time that the protocol for updating the talc study was being developed, yet this pathology study involving former Vanderbilt workers was not noted in the protocol nor reported to Dr. Miller by Mr. Glenn. Nor was the "ad hoc" study ever mentioned in any DRDS research project plans. Dr. Gamble said he had "forgotten about it." While Dr. Vallyathan said he knew of the scientific scrutiny under which studies related to Vanderbilt talc were then viewed and, therefore, he "put the slides aside" and did not pursue it any further.

#### MHRAC Involvement

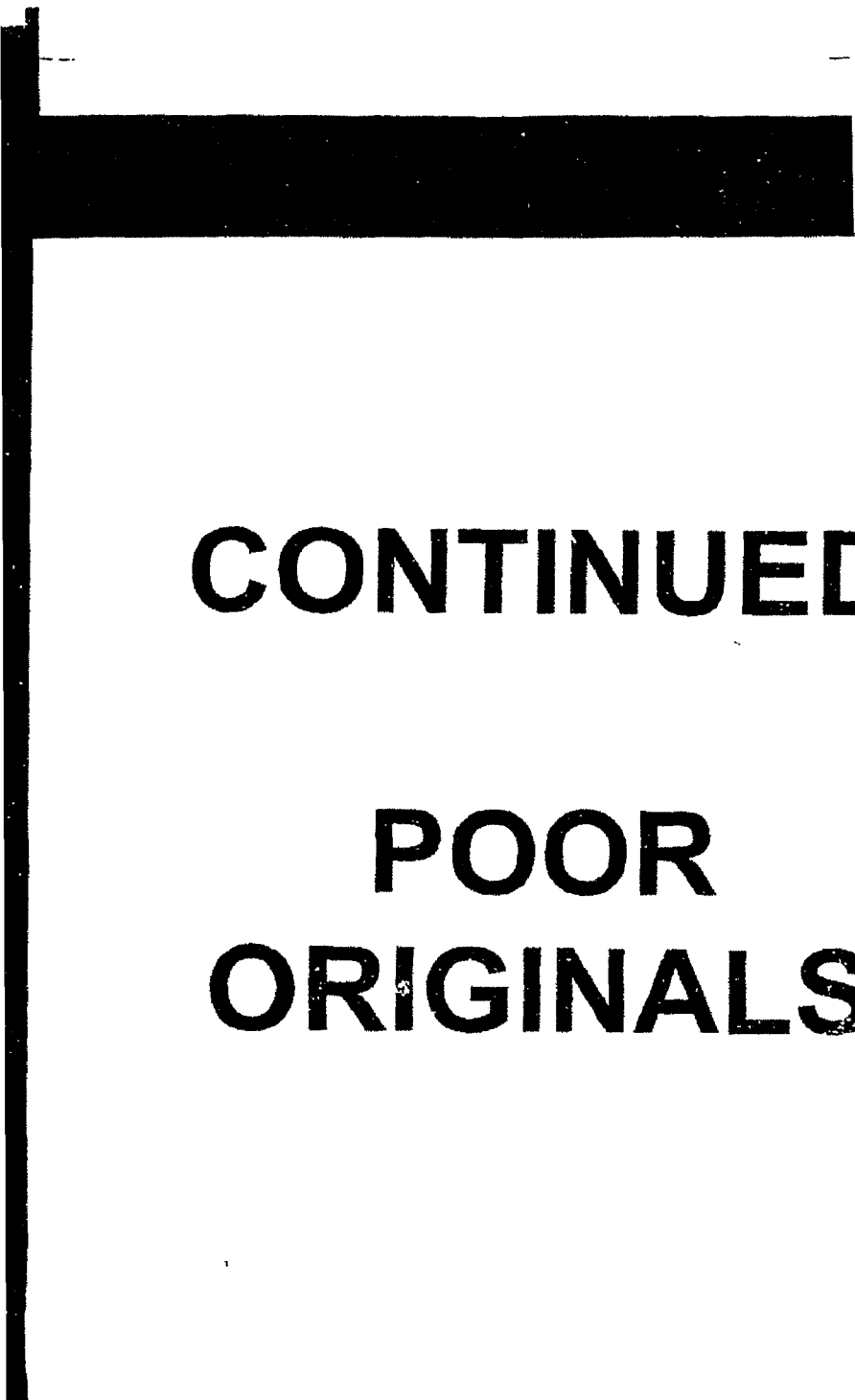
As reflected in the "action agenda" attached to the letter of June 23, 1986, from Mr. Keise to Dr. Gamble, the R.T. Vanderbilt Company, was advised by its legal counsel to "consider obtaining support from other groups." The Mine Health Research Advisory Committee (MHRAC) was listed as one such target group. At a meeting on November 15, 1985, Dr. Clark Cooper, a member of MHRAC, suggested that the Committee include on its agenda a discussion of the regulatory definition of asbestos. On January 28, 1986, Mr. Al Harvey of R.T. Vanderbilt Company, Inc., sent to Mr. Glenn, the Executive Secretary of MHRAC, a list of names for a panel of experts needed for the discussion on asbestos proposed to be held at the May 1986 meeting of MHRAC. On May 29, 1986, a panel presentation organized by Dr. Gamble and Mr. Glenn concerning the definition of asbestos was held at the MHRAC meeting in Tucson, Arizona. The panel included scientists from NIOSH, EPA, MSHA, BOM, and Mt. Sinai. Mr. C.S. Thompson from R.T. Vanderbilt Company, Inc. was included on the panel. At the

27/11/86

1986

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October 28, 1986 MHRAC meeting, Dr. Cooper again raised the issue of the definition of asbestos, requesting that MHRAC reach closure on the discussions in Tucson. The committee then passed a recommendation which read: "The Mine Health Research Advisory Committee recommends that NIOSH, MSHA, and the Bureau of Mines work closely with other regulatory agencies in reaching agreement on a definition of asbestos for public health purposes that conforms to sound mineralogic, experimental, and epidemiologic information." (Mr. Bieger of R.T. Vanderbilt Company, Inc. attended the meetings of MHRAC in November 1985 and October 1986.



**CONTINUEE**

**POOR  
ORIGINALS**

Company, as well as the OSHA rulemaking and its impact on the K.F. Vanderbilt Company.

1987

APPENDIX

NAMES AND TITLES OF PRINCIPLE PERSONS  
LISTED IN THE CHRONOLOGY AND SUMMARY OF EVENTS

|                          |                                                                                                                                                 |
|--------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|
| Jerrold L. Abraham, M.D. | Director of Environmental and Occupational Pathology<br>State University of New York<br>Health Science Center, Syracuse, New York               |
| Harlan Amandus           | Epidemiologist, Division of Respiratory Disease Studies, National Institute for Occupational Safety and Health, Morgantown, West Virginia       |
| Clark Cooper, M.D.       | Consultant in Occupational Health,<br>Lafayette, California<br>Member, Mine Health Research Advisory Committee                                  |
| John Gamble, Ph.D.       | Epidemiologist, Division of Respiratory Disease Studies, National Institute for Occupational Safety and Health, Morgantown, West Virginia       |
| Robert (Bob) E. Glenn    | Director, Division of Respiratory Disease Studies, National Institute for Occupational Safety and Health, Morgantown, West Virginia             |
| Allan M. Harvey          | Director, Environmental Affairs, R.T. Vanderbilt Company, Inc., Norwalk, Connecticut                                                            |
| John W. Kelse            | Corporate Industrial Hygienist, R.T. Vanderbilt Company, Inc., Norwalk, Connecticut                                                             |
| Richard A. Lemen         | Director, Division of Standards Development and Technology Transfer, National Institute for Occupational Safety and Health, Cincinnati, Ohio    |
| J. Donald Miller, M.D.   | Director, National Institute for Occupational Safety and Health, Atlanta, Georgia                                                               |
| Greg Piacitelli          | Industrial Hygienist, Division of Respiratory Disease Studies, National Institute for Occupational Safety and Health, Morgantown, West Virginia |

R.T. Vanderbilt Company, Inc., and members of the 0205 Morgantown staff. In addition to the three meetings in the fall of 1934, Dr. Reger was visited by

1988

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|------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Diane D. Porter              | Assistant Director for Legislation and Policy Coordination, National Institute for Occupational Safety and Health, Atlanta, Georgia                         |
| Dennis M. Recc, P.C.         | Attorney for R.T. Vanderbilt Company, Inc. /Kin, Gump, Strauss, Bauer & Feld, Attorneys at Law, Washington, D.C.                                            |
| Robert (Bob) B. Reger, Ph.D. | Senior Mathematical Statistician, Division of Respiratory Disease Studies, National Institute for Occupational Safety and Health, Morgantown, West Virginia |
| Konrad C. Rieger             | Ceramics Engineer, Minerals, Paper and Ceramics Department, Research and Development Division, R.T. Vanderbilt Company, Inc., Norwalk, Connecticut          |
| C. Sheldon Thompson, Ph.D.   | Director, Mineral Research, R.T. Vanderbilt Company, Inc., Norwalk, Connecticut                                                                             |
| Vel Vallaychen, Ph.D.        | Pathologist, Division of Respiratory Disease Studies, National Institute for Occupational Safety and Health, Morgantown, West Virginia                      |
| Hugh B. Vanderbilt           | President, R.T. Vanderbilt Company, Inc., Norwalk, Connecticut                                                                                              |

approval of research activities conducted by the NIOSH divisions, as well as new ideas for research, they are also an accounting of the total resources

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1989



**H. T. Vanderbilt Company, Inc.**

10 WINDFELD STREET, NORWALK, CONNECTICUT 06851 • (203) 853-1400  
CABLE: "SUFVAN" NORWALK, CONNECTICUT • TWX: 710-486-2840

June 23, 1986

John Gamble, PhD  
Centers of Disease Control  
NAT'L INSTITUTE OF OCC. SAFETY & HEALTH  
944 Chestnut Ridge Road  
Horgantown, WV 26505-2888

Dear John:

Attached please find follow-up on the Work History gaps, comment & data regarding fiber samples and analysis. I am still in need of the Dept. Code list so I can complete the "exposure tables". I am thinking now that I may switch to straight particle counts instead of an index and reflect these for every year (rather than average for every 5 year period). While this will require another major time expenditure I think it will be more defensible. Estimates for job codes with no dust data shall be made as we discussed. Since I've put all other tasks aside we should be ready to go over this exposure tables early next week.

Also attached is an abbreviated copy of the intended OSHA Asbestos Standard, points of primary concern (by yours truly) and an "action" agenda developed through our legal council. Please feel free to share any or all of this material with Bob Reiger and/or Bob Glenn but please avoid further distribution.

As you will note from the agenda, our first effort shall be to stay the inclusion of nonasbestiform tremolite, anthophyllite and actinolite in the Standard until adequate health evidence supports it or until a separate Standard properly based and reviewed is developed. In approximately a week and a half Hugh shall meet with secretary Brock for this purpose.

As the "medical" basis for inclusion of these minerals falls to the original NIOSH mortality and IH report, our best hope for a stay (and possible avoiding a court battle) is to plead the inadequacy of this report. Here, we know many besides ourselves consider that study far to problematic to form the basis for this OSHA action. I suspect you and others at Morgantown feel similarly. If correct, how can this be made known to secretary Brock without compromising interdepartmental diplomacy?

With due respect, I would ask that you review the possibilities. Perhaps a statement on the fact that a new study is underway - in part because the older work was so problematical. Perhaps your office could answer several questions directed to you via letter (Konrad is poised with pen in hand for just this approach, as we speak). In any event, we ask only for a honest opinion - one you feel completely comfortable with.

develop the strategy to have the company request a health hazard evaluation (HHE). The HHE program is mandated by the OSH Act to respond to requests by

1990

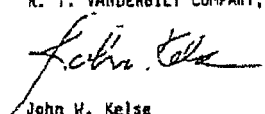
ha Gamble - Page 2  
ne 23, 1986

 **R.T. Vanderbilt Company, Inc.**

As our attorneys have pointed out to us, the lack of comment from within OSH at this time could prove embarrassing should this reach the court house. ose who feel inclusion of these minerals in the Asbestos Standard is unjust - at best premature - should make their feelings known - now, when it can do the st good. Personally, I hate to press this issue on you, but for more than T. Vanderbilt is involved - the ramifications go far beyond those I originally lieved. Please talk this over in Morgantown - I'll phone shortly.

Respectfully,

R. T. VANDERBILT COMPANY, INC.

  
John W. Kelse  
Corporate Industrial Hygienist

X/sk  
achment

S. Just received you print out on Dept & Jobs so I'll get on this ASAP. I did miss my flight (my own fault) but I picked up another just a little later - no problem.

draft of the report was completed in July 1986. While the report was to have been a HME, the investigators had made no site visit to the mine or mill, as is the normal procedure for such evaluations. The first draft (dated July 23.

1991

#### Prior Work History Update: Employers

##### Long Year Co., Joy Co., Spig & Herwood

All three companies are contract drilling concerns. Long Year is the oldest of these companies and the one used most often at GTC (Joy Co. Least used). Employees of these companies would be involved in all mining operations in the area (taic, zinc and even iron ore in the early days (1930's & earlier). Dust exposures for those involved in drilling would be the same as that reflected for GTC & Int'l drillers. If not GTC work or if work prior to 1948 drilling exposures would be very high as "wet drilling" in area was not common until 1948 (at least 4 times the level as that reflected for current drilling at GTC).

##### Myatt Mine

This was a very old operation pre-dating 1900. The site mined and milled both zinc and taic (with tremolitic content similar to GTC) depending on the level of one or the other in the mined area. It switched from zinc to taic twice until the early 40's (last operation was taic) until GTC and St. Joe's obtained rights to their properties (St. Joe's for metal rights - GTC for non metals). The area involved is approximately 8 miles northeast of GTC mill #1. The mills used by this company were never operated by GTC and the property never mined by GTC to date. Dust exposures for those employed by the company (mine & mill) were no doubt characteristic of all early operations - extremely dusty - at least 4 times greater than GTC mining and perhaps 8 times greater in their mill.

##### Baglee & Swell

This is a machining company in Watertown, NY (50 miles from GTC). Work exposures would be contingent on materials, equipment used and controls involved (none of which is known). More specifically, exposure would be contingent on metals & lubricating oils used.

##### Loomis Taic

Always involved in taic this operation began in 1919 and continued into the early 50's when Int'l Taic took over its holdings. Most of what was Loomis - then Int'l, is now part of GTC (mill #3 & open pit mine #2). Taic here, of course, was the same as GTC taic. Dust exposures for Loomis Taic employees (as they were for Int'l) were very high compared to GTC (at anytime). Levels 4 to 8 times are estimated (prior to wet drilling and good mill dust control).

##### Shadow Taic Mill (Gay, NY)

Gay, NY is not in the area of GTC (40+ miles) and all those contacted had no knowledge of them or their operation.

##### Cain & Roach

This "assembly" company is also not recognized. Either the name has changed or it is not in the area.

1992

AKIN, GUMP, STRAUSS, HAUER & FELD

ATTORNEYS AT LAW

A PARTNERSHIP ALLOWING PROFESSIONAL CORPORATION

SUITE 400

1302 NEW HAMPSHIRE AVENUE NW

WASHINGTON D.C. 20004

(202) 587-4000

MEMORANDUM

June 20, 1986

AGENDA

- Outline on 1986 OSHA Standard
- Action Plan
- Notice of Appeal
- Letter to Secretary Brock's Office
- Request for Stay (OSHA)
- Open Discussion on Overall Strategy

of R.      verbi... Company, INC., dated December 2, 1987.

1993

1986 OSHA STANDARD  
PUBLISHED JUNE 17, 1986

- Action taken by OSHA
  - 1984 Preamble
    - Adoption of mineralogical definition of asbestos
    - Cease regulation of "tremolite in the talc product"
  - 1986 Standard
    - Definition of asbestos corrected
    - Scope of Standard expanded to include non-asbestos minerals
- Legal Recourse
  - File appeal
    - Judicial review of OSHA's action
  - Request that enforcement be Stayed
    - Assistant Secretary Pendergrass (OSHA)
    - Appellate Court
- Legal Aspects (procedure)
  - Standing
    - Adversely affected party
      - different Standard from enforcement
      - hazard communication coverage
    - -- facility coverage
    - Consider joinder with customer
  - Venue/Consolidation
    - Second Circuit
    - Normal consolidation of cases into one Circuit Court

letter also urged Dr. Gamble to act quickly when "it can do the most good" and advised him to "feel free to share any or all of this material with Dr. Reger and/or Mr. Glenn but please avoid further distribution."

1994

-2-

- 5th/D.C. Circuit
- Opposition to consolidation
- Legal Arguments
  - Notice and Comment Requirement
    - Entirely new standard
    - OSHA admissions
  - Merits
    - Reasonableness test
      - substantial evidence
      - arbitrary and capricious
    - Medical data insufficient
      - Inconclusive
      - No different than 1984 Preamble

... at ... .. 1986 ... ..  
standard. On July 10, 1986, the response to the FOI request was handcarried

1995

ACTION PLAN

• Akin-Gump

- Petition for Review
- Position paper for Secretary Brock
- Stay Request
  - DOL
  - Court
- Possible meeting with OSHA/Solicitor for reconsideration
- Opposition to Consolidation
- Internal memorandum on substantive legal issues
- Legal analysis of Standard
- Various Briefs

... the details of the study and the current  
NIOSH policy regarding the definition of asbestos. Dr. Miller spoke to

1996

-2-

• RTV

- RTV and Brock meeting
- Internal analysis of 1986 Standard
  - Epidemiology (Konrad Rieger)
  - Mineralogy/Fiber Count (Dr. Thompson/Al Harvey)
- Develop plan for new epidemiology studies (Konrad Rieger/John Reisel)
- Coordinate legal issues and strategy (Paul Vanderbilt/Al Harvey)
- Coordinate on-going analyses with NIOSH (Morgantown) (Konrad Rieger/John Reisel)
  - Updated NIOSH Study
  - NIOSH Review of 1986 Standard
  - Consider meeting with NIOSH
- Coordinate efforts with ANC (and membership) for support (Dr. Thompson/Al Harvey)
- Coordinate efforts with other groups, Tile Council and American Ceramics Society for Support (Konrad Rieger)
- Consider obtaining support from other groups
  - Bureau of Mines
  - Mine Health Research Advisory Committee
  - Steelworkers Union

making ques g wht... at has been stop you use to "industry  
 pressures as implied by several persons." Through this letter, the NIOSH

1997

AKIN, GUMP STRAUSS, HAUER & FELO

ATTORNEYS AT LAW

DALLAS OFFICE  
 400 POST OFFICE CENTER  
 1700 REXFORD AVENUE  
 DALLAS, TEXAS 75201-4016  
 (214) 886-2600

LONDON OFFICE  
 31 CLAPHAM STREET  
 LONDON W 8 5L  
 (01) 408-0923

A MEMBERSHIP INCLUDING PROFESSIONAL CORPORATIONS

1000 NEW HAMPSHIRE AVENUE, N.W.  
 SUITE 400  
 WASHINGTON, D.C. 20008

(202) 897-0000  
 TELE. NUMBERS:  
 88-003  
 88-003

UNITED STATES BAR NUMBER 887, 1000

AUSTIN OFFICE  
 800 MEANS "ONE"  
 AUSTIN, TEXAS 78771  
 (512) 499-6700

SAN ANTONIO OFFICE  
 100 ONE RIVERWALK  
 700 NORTH ST. SUITE 1  
 SAN ANTONIO, TEXAS 78201  
 (512) 224-8001

June 19, 1986

Clerk of the Court  
 United States Court of Appeals  
 for the Second Circuit  
 Room 1702  
 U.S. Courthouse  
 40 Foley Square  
 New York, New York 10007

Re: R.T. Vanderbilt Company, Inc. v. Occupational  
 Safety and Health Administration, et al.

Dear Sir:

Enclosed please find the original and six (6) copies of a Petition for Review by the R.T. Vanderbilt Company, Inc. of the amended standards issued by the Occupational Safety and Health Administration (OSHA) on June 17, 1986, governing Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite (29 C.F.R. §§ 1910.1001 and 1926.58). We understand that, pursuant to Rule 15(c) of the Federal Rules of Appellate Procedure, this petition is to be served upon each respondent by the Clerk of the Court. Also enclosed is the filing fee of \$65.00, an additional copy of our Petition and a self-addressed, stamped envelope. Please time stamp the additional copy of our Petition and return same to the undersigned.

Pursuant to Rule 15(c), we have served all other parties who were admitted to participate in the rulemaking proceedings before OSHA. Those parties so served are identified on the list attached to the enclosed certificate of service.

...OSE, MSHA, and Mt. Sinai. Mr. C.S.  
Thompson from R.T. Vanderbilt Company, Inc. was included on the panel. At the

1998

AKIN, GUMP, STRAUSS, MAUER & FELD

Clerk of the Court  
United States Court of Appeals  
for the Second Circuit  
June 19, 1986  
Page Two

In addition, we are enclosing a copy of the new standards for your reference. Because of the voluminous nature of this document, we have enclosed only one copy. However, we will gladly provide you with additional copies if you need them.

Thank you for your consideration in this matter.

Very truly yours,

*Dennis M. Race*  
Dennis M. Race, P.C.

13at  
Enclosures (as noted)

Via FEDERAL EXPRESS

1999

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

R.T. VANDERBILT COMPANY, INC.,  
Petitioner,

v.

OCCUPATIONAL SAFETY AND HEALTH  
ADMINISTRATION, UNITED STATES  
DEPARTMENT OF LABOR, SECRETARY  
OF LABOR WILLIAM BROCK,  
ASSISTANT SECRETARY OF LABOR  
JOHN A. PENDERGRASS,  
Respondents.

PETITION FOR REVIEW

Pursuant to Section 6(f) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 655(f), the R.T. Vanderbilt Company, Inc. petitions this Court for review of the Standards for Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite promulgated by the Occupational Safety and Health Administration, United States Department of Labor on June 17, 1986, to be codified at 29 C.F.R. §§ 1910.1001 and 1926.58.

Petitioner R.T. Vanderbilt Company, Inc. is a business incorporated under the laws of the state of New York, with its principal place of business in Norwalk, Connecticut.

Respectfully submitted,

AKIN, GUMP, STRAUSS, HAVER & FELD

By:

Dennis M. Race  
Dennis M. Race, P.C.  
Daniel Joseph, P.C.  
David G. Sumner  
Suite 400  
1333 New Hampshire Avenue, N.W.  
Washington, D.C. 20036  
(202) 887-4000

CERTIFICATE OF SERVICE

I certify that copies of the attached Petition for Review have been mailed on the 14th day of June, 1986, by certified mail, postage prepaid, return receipt requested, to Respondents as follows:

William E. Brock  
Secretary of Labor  
Room S-2018  
United States Department of Labor  
280 Constitution Avenue, N.W.  
Washington, D.C. 20210

John A. Pendergrass  
Assistant Secretary of Labor  
for Occupational Safety and Health  
Room S-2315  
United States Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

I further certify that pursuant to Rule 15(c), Federal Rules of Appellate Procedure, copies of the attached Petition for Review were also mailed on this same day, by first-class mail, postage prepaid, to the parties who were admitted to participate in the proceeding before the Occupational Safety and Health Administration. We are attaching the list of those parties as prepared by OSHA for Exhibit 91 (Notices of Intention to Appear at the Hearing on OSHA's 1984 Proposed Revision of the Asbestos Standard) of OSHA Docket No. H-033C.

  
\_\_\_\_\_  
David G. Sumner

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| I - Medical Information on George Serviss .....                                                                                     | 3468        |
| J - Medical Information on Joseph Theriault .....                                                                                   | 3468        |
| K - Medical Information on Frederick Weir .....                                                                                     | 3468        |
| Reply Affidavit of Barney F. Bilello, Esq. sworn to June 29, 1995<br>with exhibit A .....                                           | 3468        |
| A - Excerpts from Deposition Testimony of Frederick Kuehl .....                                                                     | 3468        |
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2001

MEMORANDUM

**DRAFT**

TO: Office of the Secretary of Labor  
FROM: Akin, Gump, Strauss, Hauer & Feld  
DATE: June 20, 1986  
RE: Revised OSHA Asbestos Standard of June 17, 1986

Thank you for the opportunity to meet with Secretary of Labor Brock regarding the above-captioned matter. In response to your request for a summary of the topic we wish to discuss with the Secretary, we have summarized below the general background of the issues involving our client, the R.T. Vanderbilt Company, Inc.

In 1972 OSHA promulgated an asbestos regulation that contained a definition of asbestos which was not mineralogically correct. From 1972 until the effective date of the revised Asbestos Standard, OSHA has been the only federal agency to have an asbestos definition which included, among other minerals the non-asbestos forms of the minerals tremolite, anthophyllite and actinolite. All other federal agency definitions have recognized the distinction and have included only the asbestos form of the three named minerals.

The R.T. Vanderbilt Company, Inc., a small, family-owned operation, mines and mills commercial talc which is used to make ceramic tile, decorator paints, and other goods. Because its talc contains two of the minerals in question (tremolite

and anthophyllite) the Company has expended thousands of dollars and countless hours trying to convince OSHA to correct its definition. OSHA's failure to correct the overly broad definition and the gross mischaracterization of tremolite and anthophyllite has stigmatized R.T. Vanderbilt's product, with the result that the Company has lost a substantial amount of business and dropped from being the leading U.S. talc producer to the number four or five position.

In its Preamble to the revised Asbestos Standard, OSHA announced in April 1984 that it intended to (1) conform its asbestos definition with other agencies and use a mineralogically correct definition; and (2) no longer regulate minerals found in talc, such as tremolite, under its Asbestos Standard. Prior to the publication of the 1986 Standard, Vanderbilt representatives met with Assistant Secretary Michael Baroddy and counsel to discuss the proposed Standard, particularly the asbestos definition. Mr. Baroddy expressed his concern and his commitment to correct any errors contained in the original Standard. As stated below, OSHA has taken some steps to correct the glaring mistakes contained in the 1972 Standard and the R.T. Vanderbilt Company is appreciative of Mr. Baroddy's efforts in this regard. Unfortunately, the revised Standard creates new and greater problems beyond those discussed with Mr. Baroddy.

In the 1986 Standard, published on June 17, 1986, OSHA in fact acknowledged its error and revised the definition of asbestos to include only the asbestos form of the minerals

in question. This admission notwithstanding, OSHA, contrary to its assertion in the 1984 Preamble, did not exclude the non-asbestos forms of the minerals from the Asbestos Standard. Instead, without any notice to the R.T. Vanderbilt Company or any other interested party, OSHA expanded the Asbestos Standard to include the regulation of not only asbestos, but the three non-asbestos minerals of tremolite, anthophyllite and actinolite as well. In essence, OSHA promulgated an entirely new standard without the minimum notice and comment plainly required by statute.

It has always been the position of the R.T. Vanderbilt Company that regulation of its talc was an appropriate subject of inquiry for OSHA to undertake. However, the vehicle that OSHA has employed to pursue strict regulation is blatantly inappropriate. Through the new standard, OSHA has unapologetically and unabashedly made clear that its definition of asbestos since 1972 has been wrong. Further, by its own admission, OSHA states in the Preamble to the new Standard that the medical evidence on exposure to the minerals in question is inconclusive. Yet, OSHA presumed to regulate the minerals as if they had the same effects as asbestos -- which, unlike the minerals in question, is characterized by voluminous undisputed medical data to support its very strict regulation. Incredibly, the very medical data that OSHA has relied upon in the 1986 Standard was in OSHA's possession prior to its pronouncement in the 1984 Preamble -- which declared OSHA's intention to change

-4-

the definition of the asbestos and cease regulation of "mineral products such as tremolite in talc products" under the new Asbestos Standard.

It is our opinion that OSHA's decision to treat the minerals in question the same as asbestos is not supported by mineralogic or medical data and is clearly in violation of OSHA's procedural requirements for rulemaking. The action will be appealed by the R.T. Vanderbilt Company in the appropriate U.S. Circuit Court of Appeals. In this regard, R.T. Vanderbilt will request that the Department of Labor agree to stay enforcement of the OSHA Standard until a judicial decision is reached or the rule-making issue discussed above is resolved amicably. As this stay request will make abundantly clear, unless the standard, as it applies to the non-asbestos minerals, is held in abeyance, the R.T. Vanderbilt Company will be forced to cease operations.

2005

AKIN, GUMP STRAUSS, HAUER & FELD

ATTORNEYS AT LAW

A PARTNERSHIP HOLDING PROFESSIONAL CORPORATIONS

1333 NEW HAMPSHIRE AVENUE NW

SUITE 400

WASHINGTON D.C. 20004

(202) 827-4000

TELETYPE NUMBERS:

85-863

440-808

4000

AKIN'S STREET 2ND FLOOR 200

DALLAS OFFICE  
4100 FIRST CITY CENTER  
1700 MIDCIVIC AVENUE  
DALLAS, TEXAS 75201-4518  
(214) 658-2800

LOS ANGELES OFFICE  
21000 CUREN STREET  
LOS ANGELES, CA 90004  
(213) 408-0983

AUSTIN OFFICE  
500 MEADOWS TOWER  
AUSTIN, TEXAS 78701  
(512) 469-6200

SAN ANTONIO OFFICE  
1100 ONE INTERNATIONAL  
700 NORTH ST. SUITE 601  
SAN ANTONIO, TEXAS 78201  
(512) 224-8100

BY MESSENGER

June 20, 1986

John A. Pendergrass  
Assistant Secretary of Labor  
for Occupational Safety and Health  
U.S. Department of Labor  
Room S-2315  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

**DRAFT**

In re: STANDARDS FOR OCCUPATIONAL EXPOSURE TO  
ASBESTOS IN GENERAL, MARITIME AND CON-  
STRUCTION INDUSTRIES  
(OSEA DOCKET NO. R-033C)

REQUEST OF THE R.T. VANDERBILT COMPANY,  
INC. FOR A STAY PENDING JUDICIAL REVIEW

Dear Mr. Pendergrass:

On June 20, 1986, the R.T. Vanderbilt Company, Inc. ("Vanderbilt") filed a petition for review with the United States Court of Appeals for the Second Circuit, seeking review of the Revised Standard for Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite, Fed. Reg. [ ] ("revised standard"). Vanderbilt respectfully requests that OSEA stay the revised standard pending judicial review. Fed. Reg. [ ] (June 17, 1986).

Because of the irreparable harm to Vanderbilt occasioned by the newly promulgated asbestos standard, Vanderbilt requests that it be informed of OSEA's decision by 4:00 p.m., Friday, June 27. If OSEA desires additional time to consider this Request, petitioner asks that a temporary stay be entered pending a final ruling. Should OSEA decline to issue a stay by the time requested, Vanderbilt intends to seek a stay from the Second Circuit pending judicial review.

John A. Pendergrass  
U.S. Department of Labor  
June 20, 1986  
Page Two

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The standards for issuance of a stay are well-settled. A party requesting a stay must demonstrate that: (1) there is a substantial likelihood of success on the merits, (2) it will suffer irreparable harm if a stay is denied, and (3) that issuance of a stay would not substantially harm other parties or interfere with the public interest. The facts upon which the Vanderbilt Company relies to meet each of these three criteria are set forth below.

I. Petitioner's Likelihood of Prevailing on the Merits

Vanderbilt will contest the inclusion of nonasbestiform tremolite, anthophyllite and actinolite within the asbestos exposure standards and the definition of "asbestos fiber" used in both proposed standards. Vanderbilt believes that OSHA did not provide adequate notice and comment that it was considering expansion of the asbestos standard to include nonasbestiform minerals. Further, OSHA's inclusion of nonasbestiform tremolite, anthophyllite and actinolite and definition of "asbestos fiber" are not supported by substantial evidence in the hearing record.

A. Inadequate Notice and Comment

In OSHA's Proposed Rule and Notice of Hearing ("PRNH") published in the Federal Register on April 10, 1984, the agency raised several issues regarding its proposed revision of the asbestos standard currently in effect (29 C.F.R. § 1910.1001 (1986)). Among the questions listed to encourage public comment was the following:

4. Whether the change in the definitions of "asbestos" and "asbestos fiber" would clarify the standard's scope, and properly relate to known or suspected workplace hazards; whether specifying the mineralogic definition of asbestos, such as using the term "tremolite asbestos" rather than the current term "tremolite," would better define the health hazard....

John A. Fendergrass  
U.S. Department of Labor  
June 20, 1986  
Page Three

In the PRNH's "Summary and Explanation of the Proposed Amendments and Other Issues Relevant to the Permanent Standard," OSHA appeared to answer the above question in the affirmative. OSHA correctly acknowledged that it is the only governmental agency that regulates the nonasbestiform varieties of tremolite, anthophyllite and actinolite. Moreover, the agency conceded that the evidence presented by proponents of a mineralogically accurate definition of asbestos was un rebutted from a mineralogical standpoint. Id. at 14122. Accordingly, OSHA proposed adoption of a mineralogically accurate definition. Id.

In its newly issued standards, OSHA indeed has adopted a mineralogically accurate definition of "asbestos:"

"Asbestos" includes chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, and any of these minerals that have been chemically treated and/or altered.

Fed. Reg. \_\_\_\_\_ (to be codified at 29 C.F.R. 55 1910.1001(b) 1926.58(b)). However, OSHA has also expanded the scope of the standard to include not only asbestos, but also tremolite, anthophyllite and actinolite, which OSHA defines as "the non-asbestos form of these minerals, and any of these minerals that have been chemically treated and/or altered." Id. Thus, OSHA incredibly distinguishes nonasbestiform tremolite, anthophyllite and actinolite from true asbestos, but proposes to regulate these minerals exactly as if they are asbestos.

More importantly, the inclusion of nonasbestos minerals is particularly inappropriate given OSHA's stated intention to promulgate a standard for asbestos exposure. Had OSHA intended to issue a standard for all serpentine and amphibole minerals or for industrial talc as well as asbestos, it was incumbent on OSHA to state this in the notice of proposed rule-making. Such notice clearly would have elicited greater and more involved commentary from interested parties. The effect of OSHA's stated intention to adopt a mineralogically accurate definition of asbestos was to limit almost all of the commenters on this issue to short statements of agreement with OSHA's proposal. Even those commenters who disagreed with OSHA's proposal offered no new evidence to support their positions.

John A. Pendergrass  
U.S. Department of Labor  
June 20, 1986  
Page Four

It is clear that OSHA's stated intention to adopt a mineralogically accurate definition of asbestos effectively precluded adequate discussion as to whether nonasbestiform tremolite, anthophyllite and actinolite merit regulation. Consequently the notice given in the FRN was inadequate for the purposes of including these nonasbestiform minerals in the standard. The due process rights of interested parties and the public interest can be protected only by notice of intent to regulate these minerals followed by a hearing as mandated by OSHA's procedural regulations. The procedural shortcut attempted here by OSHA directly contravenes those regulations.

**B. Lack of Substantial Evidence**

OSHA cannot support its inclusion of nonasbestiform tremolite, anthophyllite and actinolite or its definition of "asbestos fiber" by reference to the hearing record. Indeed, OSHA admits in the preamble to the newly issued standards that the medical data as to health effects of nonasbestiform tremolite and anthophyllite are "inconclusive" (OSHA does not discuss nonasbestiform actinolite at all). OSHA concludes that:

There is insufficient evidence upon which to state with any degree of certainty that exposure to some forms of fibrous tremolite or anthophyllite is safe. For this and other reasons discussed in Section X of this Preamble (Summary and Explanation), OSHA has not revised its definition of asbestos to exclude certain fibrous forms of these minerals. The Agency believes that this decision comports with prudent public health policy.  
(Emphasis added).

Fed. Reg. at \_\_\_\_\_.

This language indicates that OSHA has established no reasonable basis for regulating the nonasbestiform varieties of these minerals, much less for regulating these minerals as if they were asbestos. Moreover, OSHA's implication that it can regulate these minerals because those who opposed their inclusion in an asbestos standard failed to demonstrate that they

John A. Pendergrass  
U.S. Department of Labor  
June 20, 1966  
Page Five

were safe is without merit. As OSHA stated in the preamble to the 1984 PRNH:

(t)he evidence presented by proponents of adoption by OSHA of a mineralogic definition of asbestos which has the effect of excluding asbestos in talc is un rebutted from a mineralogic standpoint.

Thus, OSHA anticipates it will adopt the mineralogic definition of asbestos advocated by the authors of the comments cited above. Of course, evidence presented in rebuttal to these comments, if any, and evidence resulting from cross examination will be considered in OSHA's final decision.

49 Fed. Reg. at 14122 (citations omitted).

One would infer from OSHA's inclusion of nonasbestos tremolite, anthophyllite and actinolite in its asbestos exposure standard that arguments for an exposure standard limited only to true asbestos had been seriously undermined during the rulemaking process. On the contrary, the evidence presented by those who sought to exclude nonasbestos minerals from the amended asbestos standard remains "unrebutted." Those parties who sought to include the nonasbestos varieties of these three minerals have offered no new evidence in support of their position beyond that cited by OSHA in the notice of proposed rulemaking. On the other hand, the proponents of a standard limited solely to true asbestos have offered testimony and submitted several new studies that not only provide a sound scientific basis for their position, but also call into question the assumptions and findings of those upon whom OSHA relies to justify its inclusion of these three nonasbestos minerals.

As to the definition of "asbestos fiber" proposed by OSHA, numerous commenters noted the inaccuracy of characterizing a mineral particle only three times longer than it is wide as a "fiber." In justifying adoption of its proposed definition of "asbestos fiber," OSHA relies almost exclusively upon the

John A. Fendergrass  
U.S. Department of Labor  
June 20, 1966  
Page Six

testimony and comments of officials of the National Institute for Occupational Safety and Health (NIOSH). However, NIOSH offers no scientific basis for its recommendation that "asbestos fiber" be defined as a particle of one of the six listed minerals with a length-to-width ratio of 3 to 1, or greater. In its written presentation, NIOSH offers only the statement that "[a]t present, NIOSH knows of no compelling scientific argument upon which to change this definition." A review of NIOSH's written submissions shows that NIOSH offers no scientific argument, compelling or otherwise, to support its definition. The NIOSH panel repeats this pattern in its oral testimony on the definition of "asbestos fiber," the whole of which follows:

[Mr. Martonik:] In other words then, Mr. Zumwalde, the key characteristic of any mineral that should be covered under the OSHA standard would be whether it's one of the six mineral types that's named in the definition, and whether it's fibrous. And "fibrous" means that the aspect ratio is greater than 3/1?

Mr. Zumwalde: Correct.

Id. at 195. Thus, NIOSH has offered no evidence to OSHA on the definition of "asbestos fiber" that was not already available to OSHA at the time it issued its proposal to modify its definition of asbestos. On the other hand, numerous commenters urged OSHA to consider a higher aspect ratio, among other criteria, and submitted substantial scientific and technical evidence in support of their position.

For the above reasons, Vanderbilt is confident that OSHA cannot support its choices and that Vanderbilt will prevail on the merits after judicial review of the standards.

## II. Petitioner's Demonstration of Irreparable Harm

Vanderbilt can demonstrate more than adequately the irreparable harm needed to justify issuance of a stay. Inclusion of nonasbestiform tremolite and anthophyllite in the asbestos exposure standard will force Vanderbilt out of the business of mining and marketing industrial talcs. All talcs mined by Vanderbilt at its Gouverneur Talc Company facilities contain these two minerals as natural constituents. The presence of nonasbestiform tremolite and anthophyllite makes these talcs more commercially desirable than talcs not containing these minerals.

John A. Pendergrass  
U.S. Department of Labor  
June 20, 1986  
Page Seven

OSHA's totally unsubstantiated decision that nonasbestiform tremolite, anthophyllite and actinolite should be treated in the same manner as asbestos means that the full range of OSHA monitoring, housekeeping, hazard communication, medical surveillance and associated record-keeping requirements for asbestos will now be imposed upon Vanderbilt's customers. The promise of increased regulation and expense, combined with the stigma of "asbestos" will definitely have a profound and permanently deleterious effect upon Vanderbilt's sale of industrial talc and, eventually, will cause Vanderbilt to cease operations entirely.

### III. The Public Interest

OSHA cannot demonstrate that issuance of a stay will interfere with the public interest. Indeed, OSHA concedes in the preamble to the newly issued standards that the medical evidence upon which it relies to regulate nonasbestiform tremolite, anthophyllite and actinolite is inconclusive. Without a showing that regulation of nonasbestiform tremolite, anthophyllite and actinolite as if it were asbestos is necessary to protect the health of American workers, OSHA has no basis for arguing that it is acting in the public interest.

Given the compelling need to analyze thoroughly the factual bases and assumptions upon which OSHA relies in its improper inclusion of nonasbestiform tremolite, anthophyllite and actinolite in this health standard, the public interest requires at the very least a remand of the "Definitions" section of these standards for further rulemaking procedures with adequate notice and comment before these standards are imposed. Unless regulatory agencies comply with their statutory mandates and provide interested parties with their full due process rights, the public interest will inevitably be harmed.

### IV. Conclusion

In the arguments stated above, Vanderbilt has demonstrated that it fulfills all three requirements for issuance of a stay of OSHA's amended standards for occupational exposure to asbestos. Therefore, Vanderbilt respectfully urges that OSHA grant such a stay.

John A. Fendergrass  
U.S. Department of Labor  
June 20, 1985  
Page Eight

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Very truly yours,

Dennis M. Race, P.C.  
Daniel Joseph, P.C.  
David G. Sumner

Counsel for the R.T.  
Vanderbilt Company, Inc.

rjat

via HAND DELIVERY

CHRONOLOGY  
Vanderbilt Talc MME

1984

|                    |                                                                                                                                                                                                                                                                                                                                       |
|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| April 10, 1984     | OSHA publishes a proposed rule for asbestos.                                                                                                                                                                                                                                                                                          |
| June 21, 1984      | NIOSH testifies at the OSHA public hearing on Occupational Exposure to Asbestos. The NIOSH definition for asbestos recommends the inclusion of <u>fibrous tremolite</u> , <u>fibrous anthophyllite</u> and <u>fibrous actinolite</u> with a fiber defined as particles with an aspect ratio of 3:1 determined on a microscopic level. |
| July 26, 1984      | Visitor Registration log notes Konrad Rieger (Vanderbilt) visits John Gamble from 8:15 a.m. to 1:30 p.m. Purpose is stated as discussion of mortality.                                                                                                                                                                                |
| August 21, 1984    | Visitor Registration log notes A.M. Harvey, K.C. Rieger (Vanderbilt) and D.M. Race (Attorney for Vanderbilt) visit John Gamble from 8:48 a.m. to 12:00 noon.                                                                                                                                                                          |
| September 12, 1984 | Travel vouchers for Bob Reger, John Gamble and Marlin Amandus (DRDS) from Morgantown to Norwalk, Connecticut to meet with R.T. Vanderbilt Company, Inc. Orders signed by Bob Glenn for Reger and by Reger for Gamble and Amandus.                                                                                                     |
| September 25, 1984 | Letter from Jennifer Starr (Consultant w/Lamm) to John Gamble (DRDS) as a follow-up to telephone conversation and transmitted information from Ehs National Death Index, along with information provided to them by Vanderbilt. Letter conveys an understanding that Gamble was analyzing the mortality pattern of talc workers.      |

October 3, 1984 Letter from Joseph Costello (DRDS) to Ted Kalandros (SSA) requesting an interagency agreement in order to get access to records for follow-up of three cohorts, one described as an "extended cohort being studied for lung cancer."

November 14, 1984 Visitor Registration log notes Konrad C. Rieger (Vanderbilt) visits John Gamble from 8:15 a.m. to 3:00 p.m.

December 20, 1984 Visitor Registration log notes H.B. Vanderbilt, A.M. Harvey and K.C. Rieger (Vanderbilt) visit Bob Reger at 10:34 a.m. for "discussion."

December 20, 1984 Interagency agreement signed by Joseph Costello, Bob Reger and Bob Glenn (DRDS) between NIOSH and SSA entitled "Mortality Study of Individuals Occupationally Exposed to Various Dusts."

1985

January 28, 1985 Obligation request for the transfer of money to SSA with the stated purpose as "Mortality survey of individuals occupationally exposed to asbestos talc, silica dust, etc."

January 28, 1985 Travel voucher for Bob Reger (DRDS) from Morgantown to Norwalk, Connecticut to meet with R.T. Vanderbilt. Orders signed by Bob Glenn.

October 23, 1985 Letter from Bob Reger (DRDS) to Konrad Rieger (Vanderbilt) thanking him for sending the Lamm 6/6/83 manuscript and noting the need for further study of this cohort. References John Gamble (DRDS) as a knowledgeable researcher in this area.

October 24, 1985 Visitor Registration log notes K.C. Rieger and A.M. Harvey visit Bob Glenn from 8:50 a.m. to 10:55 a.m. and state the purpose as "discussion of mortality."

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November 7, 1985 Letter from Allan Harvey (Vanderbilt) to Bob Glenn (DRDS) enclosing a completed HHE form "per our conversation."

November 7, 1985 Request for Mining HHE form from Allan Harvey (Vanderbilt) requesting an "updating of the NIOSH (1980) health study of CTC."

November 13, 1985 Certified Letter from Deanna Grass (DRDS) to Allan Harvey (Vanderbilt) acknowledging receipt of the HHE request and noting the assignment of John Gamble (DRDS) as the investigator.

November 15, 1985 Meeting of MHRAC in Morgantown. Clark Cooper (Member) requests that the committee consider the issue of the regulatory definition of asbestos as an item for the agenda. Konrad Rieger (Vanderbilt) attends the meeting.

November 22, 1985 Memo from John Gamble (DRDS) to Bob Glenn (DRDS) critiquing the NIOSH position on Vanderbilt talc and stating that NIOSH should re-evaluate its mortality study.

1986

January 22, 1986 Seminar entitled "Mineralogy of Talc and Asbestos" presented at ALOSH to DRDS staff by Konrad Rieger, John Kelsae, Allan Harvey and C.S. Thompson (Vanderbilt).

January 28, 1986 Letter from Allan Harvey (Vanderbilt) to Bob Glenn (DRDS) suggesting names for the panel of experts for the May 1986 meeting of MHRAC to discuss the definition of asbestos.

March 31, 1986 Visitor Registration log notes John Kelsae (Vanderbilt) visits John Gamble (DRDS) from 9:20 a.m. to 9:40 a.m.

April 23, 1986 Letter from John Kelsae (Vanderbilt) to John Gamble (DRDS) enclosing plant and process data.

May 8, 1986 Letter from Bob Glenn (Exec Sec, MHRAC) to John Gamble (DRDS) thanking him for agreeing to participate in the discussion of asbestos minerals at the MHRAC mtg on May 29 with enclosures (handwritten notes).

May 14, 1986 Letter from Allan Harvey (Vanderbilt) to Bob Glenn (DRDS) requesting that C.S. Thompson be allowed to make an oral presentation during the May meeting of MHRAC.

May 21, 1986 Letter from Bob Glenn (DRDS) to Al Harvey (Vanderbilt) following up on telephone conversation of May 20 and sending handouts sent to MHRAC concerning the asbestos presentation.

May 21, 1986 Letter from Val Vallyathan (DRDS) and John Gamble (DRDS) to Jerrold Abraham (Pathology Consultants) requesting his assistance in locating and analyzing autopsy lung tissue from 46 cases with an exposure history in the talc industry.

May 29, 1986 Panel presentation organized by John Gamble concerning the definition of asbestos is presented and discussed at MHRAC in Tucson, Arizona.

June 17, 1986 New asbestos standard promulgated by OSHA.

June 17, 1986 Visitor Registration log notes John Kease (Vanderbilt) visits John Gamble (DRDS) from 9:10 a.m. to 3:45 p.m.

June 17, 1986 Letter from Jerrold Abraham (Pathology Consultant) to Val Vallyathan and John Gamble (DRDS) agreeing to serve as a consultant on the autopsy analyses.

June 20, 1986 Dennis Race, an attorney representing Vanderbilt filed a petition in the U.S. Court of Appeals for the Second Circuit challenging OSHA's inclusion of tremolite, anthophyllite and actinolite in the newly promulgated asbestos standard. The petition is a request to stay the standard for these substances stating that they are

June 23, 1986 Letter from John Keise (Vanderbilt) to John Gamble (DEDS) enclosing work history gaps, comment & data regarding fiber samples and analysis. Also attached is abbreviated copy of the intended OSHA Asbestos Standard, points of primary concern, and an "action" agenda developed through Vanderbilt's legal council.

June 24, 1986 Memo from Bob Reger (DEDS) to Bob Glenn (DEDS) concerning the OSHA definition of asbestos as it relates to the non-asbestiform minerals - tremolite, anthophyllite and actinolite suggesting that OSHA "hold up" on their decision to regulate until Gamble's study is completed.

June 25, 1986 Memo from Bob Glenn (DEDS) to Dick Leman (DEDTT) concerning the OSHA definition of asbestos and requesting that a group of NIOSH scientists meet to discuss the issue.

June 27, 1986 Visitor Registration log notes Konrad Rieger visit to Bob Reger from 8:35 a.m. to 9:15 a.m.

June 27, 1986 FOI Request from Dennis Race (Attorney - Vanderbilt) requesting all data pertaining to the HRE and all information in our files relating to the 1986 OSHA asbestos standard.

July 1, 1986 Visitor Registration log notes John Keise (Vanderbilt) visit to John Gamble from 9:00 a.m. to 10:10 a.m.

July 8, 1986 Letter from John Keise (Vanderbilt) to John Gamble (DEDS) sending copy of survey approach recently discussed. Keise also request that he and Konrad review Gamble's preliminary paper, if possible.

July 12, 1986 Visitor Registration log notes K. Rieger (Vanderbilt) to visit John Gamble at 9:05 a.m.

July 17, 1986 Letter from John Knebel (AMC) to J. Donald Millar (NIOSH) requesting that NIOSH intervene with OSHA concerning their inclusion of tremolite, anthophyllite and actinolite in the new asbestos standard. The John Gamble memo of 11/22/85, the Bob Reger memo of 6/24/86 and the Bob Glenn memo of 6/25/86 were included as enclosures.

July 17, 1986 Letter from J. Donald Millar (NIOSH) to John Pendergrass (OSHA) reiterating the NIOSH definition of asbestos.

July 18, 1986 Visitor Registration log notes K. Rieger (Vanderbilt) visit to Bob Reger from 9:50 a.m. to 10:25 a.m.

July 18, 1986 Letter from John Pendergrass (OSHA) to Dennis Race (Vanderbilt Attorney) granting a temporary stay of 9 months (until 4/21/87) of the asbestos standard as it relates to tremolite, anthophyllite, and actinolite. The stay will reopen the record on these substances and enable OSHA to analyze the 7/17/86 letter to OSHA from NIOSH and certain internal NIOSH staff memos.

July 23, 1986 Bob Glenn travels to Atlanta to meet with Dr. Millar to explain the study which was underway.

July 23, 1986 Draft report by John Gamble (DRDS) entitled "Mortality of a Cohort of E.T. Vanderbilt Tremolite Workers, 1947-1983."

August 4-6, 1986 John Gamble and Greg Piacitelli (DRDS) travel to Syracuse, NY to "conduct site visit MRETA 86-012."

August 22, 1986 Visitor Registration log notes C.S. Thompson and K.C. Rieger visit to Bob Glenn from 9:50 a.m. to 1:50 p.m.

August 28, 1986 Letters (7) from Greg Piacitelli (DRDS) to OSHA, MSHA, Steelworkers and NY State Labor Department requesting information. (Letter incorrectly dated 8/28/85)

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|--------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Aug. 29, 1986            | Memo from Bob Glenn (DRDS) to all DEES Project Officers explaining NIOSH policy regarding study protocol development and procedures for HREs and tripartite review attaching pertinent regulations and administrative issuances.                                           |
| August - September 1986  | Internal review of draft report                                                                                                                                                                                                                                            |
| September 2, 1986        | Letter from Konrad Rieger (Vanderbilt) to John Gamble (DEES) transmitting information Gamble requested regarding the analysis of tremolitic talc samples.                                                                                                                  |
| September 4, 1986        | Letter from Ed Baier (OSHA) to Greg Piacitelli (DRDS) responding to his 8/25/86 letter requesting talc exposure information. No records found.                                                                                                                             |
| September 24, 1986       | Letter from Greg Piacitelli (DRDS) to Dr. Alice Stark (NY State Health Department) regarding data files on GTC.                                                                                                                                                            |
| October 1986 - June 1987 | Draft protocol completed. Internal review and revision of protocol.                                                                                                                                                                                                        |
| October 17, 1986         | Publication in the Federal Register of the July 21, 1986 partial stay of the asbestos standard for tremolite, anthophyllite and actinolite.                                                                                                                                |
| October 28, 1986         | At the MHEAC meeting in Cincinnati, Clark Cooper (MHEAC Member) requests that MHEAC bring to closure the discussion concerning asbestos at the May meeting and introduces a resolution which was passed by the committee. Konrad Rieger (Vanderbilt) attended the meeting. |
| October 28, 1986         | Letter to S. Mitchell (MSHA) from Greg Piacitelli (DRDS) thanking him for records concerning Gov. Talc Company.                                                                                                                                                            |
| October 28, 1986         | Letter from Joseph Walk (The Hartford) to Greg Piacitelli informing him that they (Hartford) did not retain data reports for Gouverneur Talc Company prior to 1984.                                                                                                        |

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November 5, 1986 Letter from Roy Bernard (MSHA) to Greg Placitelli (DRDS) transmitting information requested in his 8/28/86 letter.

November 21, 1986 Letter from Robert Stone (NY State Health Department) to John Gamble (DRDS) discussing the release of medical surveillance questionnaires and x-rays completed on the GTC employees.

December 18, 1986 Letter from Hugh Vanderbilt to Bob Glenn (DRDS) requesting the status and an update concerning the EHE.

1987

January 5, 1987 Letter from Bob Glenn (DRDS) to H. B. Vanderbilt responding to his 12/26/86 letter requesting the status of the EHE. (Letter incorrectly dated 1/5/86.)

March 18, 1987 FOI from Dennis Race (Vanderbilt Attorney) requesting all documents relevant to the current study and the communications with OSHA relative to the partial stay of the asbestos standard. He also requests information from meetings in 1981 on medical data concerning tremolite, anthophyllite and actinolite.

April 28, 1987 Letter from Dennis Race (Vanderbilt Attorney) to Donald Burreth (CDC) requesting response to his March 18 FOI request.

April 30, 1987 Publication in the Federal Register of the extension of the partial stay of the OSHA Asbestos standard for tremolite, anthophyllite, and actinolite until July 21, 1988 (52 FR 15722).

May 5, 1987 Letter from Jerrold Abraham (Pathologist) to Val Vallyathan transmitting the slides from the autopsy tissue that he had collected.

May 5, 1987 Letter from Donald Burreth (CDC) to

|                      |                                                                                                                                                                                                                                                                                 |
|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| June 5, 1987         | Letter from Dennis Race (Vanderbilt Attorney) to Robert Windom (ASH) appealing CDC response of May 5, 1987 to his FOI request of March 16, 1987.                                                                                                                                |
| June - November 1987 | External peer review of the protocol.                                                                                                                                                                                                                                           |
| September 4, 1987    | Letter from Robert Windom (ASH) to Dennis Race (Vanderbilt Attorney) responding to his June 5 letter appealing the response to his March 16, 1987 FOI.                                                                                                                          |
| November 18, 1987    | Memo from Bob Glenn (DEDS) to J. Donald Millar recommending that analyses of the mortality data of the Vanderbilt cohort be postponed "until sufficient power is obtained to render results that are clearly interpretable."                                                    |
| December 1, 1987     | Letter from J. Donald Millar (NIOSH) to John Pendergrass (OSHA) concerning the decision by NIOSH to postpone the Vanderbilt study and providing further clarification concerning the NIOSH definition of asbestos and our position concerning the fibrocity of Vanderbilt talc. |
| December 2, 1987     | Letter from Bob Glenn (DEDS) to Konrad Rieger (Vanderbilt) relaying the decision to postpone the analysis of the mortality data of Vanderbilt workers. Agreed to complete the HME by reporting on the industrial hygiene (environmental) portion of the study.                  |
| December 3, 1987     | FOI from Dennis Race (Vanderbilt Attorney) requesting the most recent data concerning the HME and NIOSH involvement with OSHA on the regulation of tremolite, anthophyllite, and actinolite.                                                                                    |
| December 3, 1987     | Letter from Dennis Race (Vanderbilt Attorney) to Robert Windom (ASH) requesting reconsideration of the June 5, 1987 FOI appeal concerning the Vanderbilt HME files.                                                                                                             |

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December 9, 1987

Letter from Paul Vanderbilt to Bob Glenn (DRDS) requesting that NIOSH reconsider its decision to postpone the mortality study and complete the HHE. If not, he requests that NIOSH repudiate the 1980 technical report for the reasoning upon which we based the decision not to proceed with the current study.

1988

March 14, 1988

Letter from Robert Winden (ASH) to Dennis Race (Vanderbilt Attorney) upholding the earlier decision (9/4/87) of denial of access to predecisional and deliberative documents.

March 22, 1988

Letter from John Kaise (Vanderbilt) to Diane Dunkin (OD) confirming an April 20 meeting to discuss the HHE results.

April 6, 1988

Letter from Dennis Race (Vanderbilt Attorney) to Diane Porter (OD) clarifying a misunderstanding noted in the March 22 letter from John Kaise. The sole purpose of the meeting on April 20 is to discuss the results of the HHE not the fibrocity of Vanderbilt calc.

April 20, 1988

Meeting with John Kaise (Vanderbilt) and Bob Glenn, John Gamble (DRDS), Phil Bierbaum, Dave Brown (DSHEPS), Ralph Zumwalde (DSDIT), Larry Sparks and Diane Porter (OD) to discuss the preliminary results of the HHE.

June 14, 1988

Letter from Jerrold Abraham (Pathology Consultant) to Ed Baker (DRDS) inquiring as to the status of the epidemiologic study of calc workers. He requests payment for the portion of the study which he has completed and forwarded to NIOSH and states that he can proceed with the study without NIOSH involvement if the Institute does not wish to continue with its earlier commitment of May 21, 1986.

June 23, 1988

Internal investigation begins

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July 12, 1986 Letter from Ed Baker (DEDS) to Hugh B. Vanderbilt transmitting results of the HHE and noting a full report will follow within the next several days.

July 12, 1988 Letter from J. Donald Miller to John Pendergrass (OSHA) concerning the status of the studies involving tremolite, anthophyllite and actinolite. A copy of the June 23, 1986 letter and its attachments are enclosed as well as a letter from Ed Baker (DEDS) to Hugh Vanderbilt relaying the results of the HHE report.

July 18, 1988 Letter from Dennis Eace (Vanderbilt Attorney) to Ed Baker (DEDS) concerning receipt of his July 12 letter to Hugh B. Vanderbilt transmitting results of the HHE.

July 22, 1988 Letter from J. Donald Miller to Hugh Vanderbilt stopping further distribution of the HHE report until an extensive review is completed.

July 22, 1988 Memorandum to Division and Office Directors in NIOSH concerning the appointment of an ad hoc committee of the Board of Scientific Counselors to review all data and reports concerning the study of workers at Vanderbilt. Taic due to inappropriate approaches by the company throughout the conduct of the study.