Agent Orange: Exposures, Presumptive Diseases, and Definitions

Recommendations

• Congress should enact legislation to concede herbicide exposure to Vietnam War veterans who served in the waters offshore of Vietnam, commonly referred to as Blue Water Navy veterans.

• The VA should, by regulation, include the additional presumptive diseases for Agent Orange exposure as recommended by the National Academy of Medicine (NAM).

• Congress should enact legislation to concede Agent Orange exposure for veterans who served on or near the Korean Demilitarized Zone (DMZ) earlier than April 1, 1968, and later than August 31, 1971.

• Congress should enact legislation to concede Agent Orange exposure to Vietnam era veterans with service on military bases in Thailand.

• Congress must not redefine herbicides as those solely used in Vietnam.

Background and Justification

Blue Water Navy Vietnam Veterans

In 1990, the Center for Disease Control (CDC) concluded the Selected Cancer Study which showed that Vietnam veterans are at a 50 percent increased risk for non-Hodgkin's lymphoma. The risk was even higher with those who served in the U.S. Navy offshore. Subsequently, VA published 38 C.F.R. § 3.313 that recognizes non-Hodgkin's lymphoma for those who served in the waters offshore of Vietnam.

When the VA implemented the Agent Orange Act of 1991, they determined that veterans who received the Vietnam Service Medal, including those who served in the waters offshore, were exposed to Agent Orange. In 1993, a VA General Council Opinion held that veterans with service in the waters offshore were exposed to Agent Orange.

The Veterans Benefits Improvements Act of 1996 extended the war-time period for service in Vietnam. Subsequently, a VA General Council Opinion in 1997 determined that this implied that...
only veterans who physically served in Vietnam were exposed to Agent Orange. In 2002, the VA updated its manual reiterating that exposure to Agent Orange was conceded only to those physically in Vietnam. The decision to exclude Blue Water Navy veterans from exposure to Agent Orange was not based on science.

The NAM’s 2008 update to its study, *Veterans and Agent Orange* stated that, “given the available evidence, the committee recommends that members of the Blue Water Navy should not be excluded from the set of Vietnam-era veterans with presumed herbicide exposure.”

In 2011, NAM convened the Blue Water Navy Vietnam Veterans and Agent Orange Exposure Committee to address Agent Orange exposure for Blue Water Navy veterans. Its report found that, “information to determine the extent of exposure experienced by Blue Water Navy personnel was inadequate, but that there were possible routes of exposure.”

In 2016, NAM determined that, “the observed distributions of these most reliable measures of exposure [to TCCD] make it clear that they cannot be used as a standard for partitioning veterans into discrete exposure groups, such as service on Vietnamese soil, service in the Blue Water Navy, and service elsewhere in Southeast Asia.”

Based on a 1990 CDC Study, the VA conceded Agent Orange exposure to Blue Water Navy veterans. For a decade, Blue Water Navy veterans were eligible for and received presumptive service-connection. The VA administrative decision in 2002, not based on science or law, chose to eliminate Agent Orange exposure to the waters offshore of Vietnam. However, now, the VA states there is a lack of science to concede Agent Orange exposure to Blue Water Navy veterans.

Congress should enact legislation to concede herbicide exposure to Vietnam veterans who served in the waters offshore of Vietnam to address the inequity and injustice for Blue Water Navy veterans.

**Additional Presumptive Diseases for Agent Orange Exposure**

To address diseases related to herbicide exposure, Congress passed the Agent Orange Act of 1991. The act directed VA to presume a service-connected disability for conditions the National Academy of Sciences deemed related to Agent Orange exposure. However, in October 2015, the Agent Orange Act of 1991 expired and it was not renewed by Congress.

The National Academy of Medicine (NAM), formerly the Institute of Medicine (IOM), published the *Veterans and Agent Orange* update in 2016. The committee concluded that the information assembled constituted compelling evidence for adding bladder cancer and hypothyroid conditions. Further, the study clarified that Vietnam veterans with “Parkinson-like symptoms”, but without a formal diagnosis of Parkinson disease, should be considered under the presumption that Parkinson’s disease.

The report noted that although VA has not found hypertension to be presumptively related to service in Vietnam, the committee reaffirmed the conclusions of previous studies that hypertension should be placed in the category of limited or suggestive evidence of association. On November 1, 2017, the VA issued a press release noting they were exploring these new presumptive conditions related to herbicide exposure. To date, the VA still has not added the NAM recommended presumptive diseases, nor has the VA provided an update to its 2017 press release.

In November 2018, NAM released the report, *Veterans and Agent Orange: Update 11*. The report concludes that there is sufficient evidence of an association between Agent Orange and the development of hypertension and monoclonal gammopathy of undetermined significance (MGUS).

The VA should include bladder cancer, hypothyroidism, “Parkinson-like symptom” hypertension, and MGUS as additional presumptive diseases for Agent Orange exposure as
recommended by NAM. Since the Agent Orange Act of 1991 has expired, we urge Congress to enact legislation to establish a presumptive disability decision-making process that will effect Agent Orange exposure and all future exposures and resultant presumptive diseases or illnesses were operating on or near the Korean DMZ. The end date of exposure should be later than August 31, 1971. It should be at least four years after the last date of application as this is in line with the end date of exposure conceded in Vietnam.

Agent Orange in Thailand


There are no current statutes or VA regulations to automatically concede veteran exposure to Agent Orange while serving in Thailand during the Vietnam era. VA's manual (M21-1) does recognize herbicide exposure for specific military occupational specialties on the perimeter of eight Thai Royal Air Force bases.

Congress should enact legislation to codify the concession of Agent Orange exposure to all Vietnam era veterans with service on military bases in Thailand, regardless of military occupational specialty. This will remove the obstacle the VA has placed for presumptive service connection for Thailand veterans.

Defining Herbicides and Agent Orange

In February 2018, the Administration’s proposed budget for FY 2019 included their request for legislation seeking to clarify the chemicals at issue for presumptive service connection for herbicide exposure.

The proposed budget noted, “VA seeks to amend 38 U.S.C. § 1116 to define the harmful chemicals, specifically Tetrachlorodibenzo-p-dioxin (TCDD), used in herbicides. IOM has determined that the only chemical in herbicides for which there are adverse health effects is TCDD. The Department knows that TCDD was not used in commercial herbicides on bases outside of Vietnam. Defining the harmful chemical (TCDD) used in herbicides within the Republic of Vietnam would allow VA to clarify complex rules for exposure claims outside Vietnam.”

The DOD has acknowledged that herbicides with TCDD were used in Vietnam, on the Korean DMZ, and at Royal Thai Air and Army bases. To change the definition of herbicides to specifically limit its use within Vietnam clearly goes against the information provided by the DOD. If enacted, VA would be able to deny all claims based on Agent Orange exposure outside of Vietnam and this proposal appears to be an attempt by the VA to limit presumptive service connection based on herbicide exposure outside of Vietnam.