

Blue Water Navy Vietnam Veterans Association



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BEYOND ARBITRARY AND CAPRICIOUS

For the fourth time in just over four years, the Institute of Medicine (IOM) has taken a position contrary to current Department of Veterans Affairs (DVA or VA) policy regarding the exposure of Blue Water Navy personnel to Agent Orange/Dioxin (AO/D) during their service in the Vietnam War. The DVA continues to claim that these offshore Navy and Marine personnel were not exposed to Agent Orange during their active military service. The IOM continues to undermine that position by showing that all veterans of that War had nearly equal probability of exposure to the herbicide.

The DVA persists in its irrational and scientifically groundless position of withholding health care and compensation from Blue Water Navy Vietnam veterans who are sick and dying of the exact diseases that other military veterans of that War receive care for on a routine basis. This article reviews those reports in chronological order and shows the consistency of the IOM's conclusions and, consequently, the absurdity of the DVA's position.

THE FIRST REPORT

The IOM's "Veterans and Agent Orange: Update: 2008" (released July 24, 2009¹) clearly states: "...members of the Blue Water Navy should not be excluded from the set of Vietnam-era veterans with presumed herbicide exposure." The Update: 2008 is also the IOM's first serious examination of an Australian report on ship-board water distillation from a 2002 Queensland, Australia Study titled "Examination of the Potential Exposure of Royal Australian Navy (RAN) Personnel to Polychlorinated Dibenzodioxins and Polychlorinated Dibenzofurans via Drinking Water." This concept of contaminated water aboard both American and Australian naval vessels now plays an important part in the assumptions regarding plausible pathways for AO/D contamination of the offshore Blue Water Navy personnel of both countries.

THE SECOND REPORT

In October, 2009, the DVA tasked the IOM with an 18-month study to determine whether the Vietnam veterans in the Blue Water Navy experienced exposures to herbicides and their contaminants comparable with those of the Brown Water Navy Vietnam veterans and those on the ground in Vietnam. By its very wording, this started off as a "comparative" study, a concept that fundamentally violates the concept of presumptive exposure. However, as it turned out, the conclusions of the IOM Report [Blue Water Navy Vietnam Veterans and Agent Orange Exposure](#), released in May, 2011 were a further set-back to the DVA's position. That report concluded:

- There isn't enough data to make any statement regarding 'quantitative' exposure amounts for not only the offshore Blue Water Navy, but for the troops with 'boots-on-ground' and those who patrolled the rivers and inland waterways (the 'brown water') of Vietnam; and

- There can be no statement of certainty that any group of Vietnam veterans had even experienced 'qualitatively' different exposures to herbicides.

Of course, this information was already known and was the basis for using 'presumptive exposure' when the 1991 Agent Orange Act was written. Because no measurement data existed from the time of the Vietnam War, all statements attempting to address such measurements will always be only pure speculation. We know that the entire environment of South Vietnam was contaminated with AO/D, but we don't know how much AO/D was released in any specific area and we don't know how much AO/D contaminated any individual or group.²

THE THIRD REPORT

The IOM's "Veterans and Agent Orange: Update 2010" (released in 2011, shortly after the release of the 2011 IOM Blue Water Navy and Agent Orange Report) reiterated that "the NAS [National Academy of Science] convened the Blue Water Navy Vietnam Veterans and Agent Orange Exposure Committee to address that specific issue; its recently released report (IOM, 2011) 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." This report reprinted statistical tables from the results of the 1990 CDC Selected Cancers Study which indicate that Blue Water Navy personnel had the highest risk level for certain Agent Orange-related cancers. It goes on to say that "US Navy riverine units are known to have used herbicides while patrolling inland waterways (IOM, 1994; Zumwalt, 1993), and it is generally acknowledged that estuarine waters became contaminated with herbicides and dioxin as a result of shoreline spraying and runoff from spraying on land. Thus, military personnel who did not serve on land were among those exposed to the chemicals during the Vietnam conflict."

THE FOURTH AND NEWEST REPORT

In their bi-annual report released December 3, 2013, the IOM repeats and refers back to the findings of the three previous key reports that indicate:

- The individuals who served offshore Vietnam should not be exempted from receipt of VA benefits for Agent Orange-related disabilities, as there is no medical or scientific evidence to deny those veterans the benefits that other service members from the Vietnam War receive on a regular basis;
- There were several viable pathways for exposure of the crews on the ships of the Seventh Fleet who served offshore Vietnam;
- There is no evidence that Agent Orange/Dioxin did not poison the veterans in question and there is overwhelming evidence indicating a high probability that it did;
- No single group of veterans that served anywhere in Southeast Asia should be removed from the benefits for presumptive exposure to the deadly herbicides used in the broader geographical area throughout the Vietnam War.

In the December 2013 release of "Veterans and Agent Orange: Update: 2012," the IOM once again reminded the DVA that no evidence exists for reliably segmenting Vietnam veterans by location if intending to address exposure to the carcinogenic element (TCDD) found in the herbicides used throughout Southeast Asia. They also stated that even though reliable scientific measurements do not exist to quantify the exact amounts of any TCDD exposure for any Vietnam veteran, there were possible and plausible routes for exposure of Blue Water Navy personnel.

Deceptions of Deep Concern

One of the more disturbing things about this issue is the stream of misinterpretations and deceptive statements the DVA has given in its reports to Congress and the American people. They have gone out of their way to release so many manipulated interpretations of the IOM reports that one veteran's advocacy group, the Blue Water Navy Vietnam Veterans Association (BWNVVA), has been calling for a Congressionally-based public censure of the agency for nearly a year.

<<http://bluewaternavy.org/publiccensure.htm>>

By law, through the Agent Orange Act of 1991, the DVA was required to assume that anyone within the Vietnam Theater of Combat who shows symptoms of diseases related to Agent Orange/Dioxin was exposed to herbicide and was to receive medical and financial veteran benefits administered by the DVA. The VA complied with that legislation until 2002, when they changed their internal regulations to eliminate eligibility for anyone who did not have their "boots on the ground" within the borders of Vietnam or on its nearby islands off the eastern and western coast of the Mekong Delta³. It was originally the DVA that specified that being in the Theater of Combat, as evidenced by earning the Vietnam Service Medal, was the legitimate interpretation of the 1991 Agent Orange Act. A change in their 'interpretation' of the intent of Congress 11 years after the fact is more likely driven by financial concerns than by legal or rational concerns, especially when that change flies in the face of the accumulated facts.

In addition to the conclusions of the IOM, including their statement from Update: 2008 that "...there is little reason to believe that exposure of US military personnel to the herbicides sprayed in Vietnam was limited to those who actually set foot in the Republic of Vietnam....",

The BWNVVA has diligently and deeply analyzed the existing documentation and has reached similar conclusions of its own. In a series of three extensive studies, the BWNVVA has concluded:

- There is "logical and robust medical and scientific data that begs acknowledgment by the DVA of the inevitable exposure of offshore personnel to the illnesses related to exposure to herbicides and their contaminants [especially] when they were situated in Da Nang Harbor;⁴
- "In this analysis of the probability of contamination of the aircraft carriers offshore Vietnam, a careful scientific analysis of the conditions determined a 100% feasibility of contaminants from the atmosphere being carried back to the carriers once their airplanes entered the airspace above South Vietnam. Therefore, those who served aboard Task Force 77 aircraft carriers in the Vietnam War ... should receive the same DVA consideration for medical care and disability support as those who were in-country with boots-on-ground."⁵
- The latest study of offshore Vietnam veterans concludes: "[t]heir exposure came by sea through the contamination of the on-board water systems. The ship's evaporators took sea water already tainted with toxins from drainage and runoff into the bays and harbors and eventually to sea and greatly increased the toxicity levels [of the Dioxin]. It came by air via the spray drift and the contaminated particles that electrostatically clung to the carrier-based aircraft during bombing missions. And it came from land by way of the massive amounts of contaminated dirt and dust delivered both directly on materials and personnel who travelled from Da Nang and other Vietnam shore locations to the ships, and by the particle suspension brought to the fleet by the prevailing atmospheric conditions including the west to east weather patterns."⁶

What Needs to be Done?

If Americans are ever going to solve the problems of veteran disrespect and mistreatment by the Department of Veterans Affairs which currently is occurring in epidemic proportions, from denial of benefits for older veterans to inept handling of newer veteran problems like claim backlogs and

unprecedented suicide rates of the men and women returning from Iraq and Afghanistan, the public is going to have to step forward with a unified voice and demand change. Change will not come about on its own and not without pushing hard on our elected officials. And if anyone thinks that these problems are trivial compared to items like the national budget and partisan bickering over health care and taxes, they had best stop and think again. Without the military forces that protect our freedoms, like our current ability to continue to operate in a Representative Democracy, the general public will no longer have a say in how this country is run. The surviving members of our military become our veteran population.

Every individual of voting age needs to please immediately contact their Senators and Representatives <http://www.contactingthecongress.org/> and tell them that HR-543, The Blue Water Navy Vietnam Veterans Act, must immediately be passed by the House and forwarded to the Senate. If you don't all act now, you bring the possibility of not being able to act in the future one step closer to reality.

John Paul Rossie, Executive Director
Blue Water Navy Vietnam Veterans Association
PO Box 1035
Littleton, CO 80160

FOOTNOTES:

¹ The "Agent Orange Update" is a congressionally mandated, bi-annual report typically published the year following its title date.

² In May, 2008, the U.S. Court of Appeals for the Federal Circuit ruled in the VA's favor in 'Haas vs. Peake' on the question of the Agency's right to interpret and change its own internal regulations. This ruling was given under Chevron Deference, which requires a reasonable basis for any such change. However, in this instance, that element of the Deference seems to have been ignored. The VA argued in court that the herbicide was sprayed by various military units over the land onto the vegetation, and they had no idea how any AO/D could have gotten into the water in near-shore and off-shore locations. They failed to ask a Fourth Grade Science class about the Earth's water cycle.

³ The VA Project 211 was set up to identify Blue Water Navy ships that ventured onto the Internal Waterways of Vietnam and Blue Water Navy ships whose crewmembers had their boots on ground in Vietnam. Over 250 such ships have been identified, representing approximately 100,000 Blue Water Navy personnel now considered to be 'other than Blue Water Navy'. Among these, there are 10 ships recognized for crew being ashore in An Thoi (Phu Quoc Island) and 2 ships recognized for crew being ashore on Con Son Island.

⁴ "The Da Nang Harbor Report," April, 2011, www.bluewaternavy.org/danangcombo2.pdf

⁵ "Dioxin On The Carriers," February, 2012, <http://www.bluewaternavy.org/DIOXIN ON THE CARRIERS2.pdf>

⁶ "A Re-Analysis of Blue Water Navy Veterans and Agent Orange Exposure," June, 2013, www.bluewaternavy.org/RelOM.htm