

Please Take Quick Action

The Agent Orange Equity Act of 2009 (Blue Water and Blue Sky Veterans)

In the July 2010 American Legion magazine there was an excellent article (see below) concerning the exposure of Blue Water and Blue Sky veterans to Agent Orange who do not meet the current requirement of "boots on the ground" for VA disability claims. This issue has been at the center of much debate, litigation and political manipulation and the article sets forth clear, indisputable, scientific evidence of their exposure along with a chronological listing of the history of political and legal maneuvering of our government to evade its responsibility. This is an injustice, to say the least. The House version of the bill is HR 2254 (257 co-sponsors) and the Senate version is S. 1939 (19 co-sponsors). There are enough co-sponsors for the House version. We need action for getting Senators signed on as co-sponsors. We need to have as many of our people calling, writing and e-mailing their respective US Senators requesting that they sign on as co-sponsors of S.1939. If you call, ask for the staffer who handles Veterans Affairs and ask him to request his boss to co-sponsor S. 1939. Many sailors and airmen have been left out in terms of medical help and compensation for the diseases of Agent Orange. Less than one third of Vietnam Vets are alive today while the average age is only 63. This Act would provide the needed coverage to all who flew and sailed through contaminated air and sea while drinking, cooking and bathing with contaminated water.

Blue Water Battle

Sailors suffer illness, disability as VA denies Agent Orange benefits to an entire class of Vietnam veterans.



By Ken Olsen - July 1, 2010

Bombs are loaded onto planes aboard USS Bon Homme Richard off Vietnam in 1965. Sailors claim they, too, were exposed to Agent Orange. Photo by Kyoichi Sawada/Corbis

Robert Ross heard the low-flying plane heading his direction as he stood on the signal bridge of USS Vega on a late-summer day in 1966. Bathed in Southeast Asian sunshine, he was listening to Frankie Valli & The Four Seasons when he looked up just in time to get a face full of spray.

"The officer on deck was panicking," Ross recalls. "They hollered, 'Everybody inside! Agent Orange!' But it was too late."

Forty-three years later, time is running out for Ross and tens of thousands of other sailors suffering from various cancers, Parkinson's disease, diabetes and heart conditions caused by Agent Orange exposure during the Vietnam War. For nearly a decade, VA, acting on a Bush administration directive and a punitive court decision, has severed their benefits or denied their claims. Under these new VA rules, so-called "Blue Water" and "Blue Sky" veterans are deemed not to have suffered any ill effects from the millions of gallons of toxic defoliant spread across the jungles during the war, regardless of any contact they may have had with it. The government's rationale: they did not set foot on land or couldn't meet VA's stringent requirements for proof that they were exposed.

"VA acts as if there is an invisible shield at the shoreline," says David Greenberg, a Navy veteran. "In reality, Agent Orange blew out over the ocean. It also fell into the rivers and streams that fed out into the ocean. (And) because Navy ships distilled Agent Orange-tainted seawater for cooking, drinking and showering, it's incomprehensible for VA to deny we were exposed."

Denise Ross, whose husband is fighting for benefits, calls VA's treatment of Agent Orange veterans disgraceful. "They have lost everything. They have no way to support themselves. They are dying at an incredible rate. And VA treats them as if they are lying."

Their last hope: legislation backed by The American Legion and other veterans groups that would restore the Agent Orange benefits Congress first authorized in 1991 for everyone who served in the Vietnam War – on land, in the air or at sea.

Operation Ranch Hand. The U.S. military sprayed 20 million gallons of the deadly dioxin-based herbicide in Vietnam and Laos to strip the dense jungle that gave the enemy cover, to destroy their crops, and to clear ground for U.S. fire bases. Operation Ranch Hand ran from the early 1960s to the early 1970s.

VA still required proof of exposure, beginning in the 1970s when veterans first raised concerns about their own strange illnesses and birth defects among their children, says Bart Stichman, joint executive director of the National Veterans Legal Services Program, which has represented Agent Orange victims since the 1970s.

VA conceded that chloracne, skin lesions caused by chemical exposure, was connected to Agent Orange exposure in 1978. And in 1984, Congress ordered VA to assemble a committee of scientists to study whether the list of illnesses presumed to be caused by Agent Orange should be expanded.

A responded by handpicking scientists, some of whom had worked for chemical companies that manufactured Agent Orange, Stichman says. In essence, “they denied everybody,” Stichman says.

By then, there were 800 studies on dioxin, the key toxin in Agent Orange. VA’s committee “reviewed a couple dozen studies” in 10 months, Stichman says. His group sued, and a federal court in California ordered VA to start over.

Meanwhile, Dow, Monsanto and other Agent Orange manufacturers settled a class-action lawsuit with veterans. The \$180 million settlement didn’t go far but was important in making the case for health problems the herbicide inflicted.

Congressional Reprieve. By 1990, the U.S. Centers for Disease Control and Prevention concluded that the 3 million veterans who served in Vietnam suffered a 50-percent-higher rate of non-Hodgkin’s lymphoma than veterans who didn’t serve in Southeast Asia. VA then added that lone cancer to a short list of Agent Orange illnesses it would cover.

Realizing VA would never go far enough, Congress passed the Agent Orange Act of 1991. The legislation made it clear that anyone who served in the war – whether on land or in Vietnam’s territorial waters – was presumed to have been exposed and should receive VA benefits for illnesses caused by it. It also called for the National Academy of Sciences to determine which diseases were connected to Agent Orange. Over the next decade, soft-tissue sarcoma, lung, trachea and larynx cancer, multiple myeloma, Type 2 diabetes and other diseases were added to the list of Agent Orange conditions VA would cover.

Meanwhile, the Royal Australian Navy discovered that running dioxin-tainted seawater through its ships’ distilling machines – identical to equipment the U.S. Navy used to supply cooking, drinking and bathing water to ships in Vietnam – magnified the dioxin’s strength, Stichman says. A study by the Institute of Medicine, an arm of the National Academies of Science, later confirmed that.

The fortunes of Blue Water veterans changed after George W. Bush became president. In 2002, VA quietly rewrote its rules to require that all veterans prove they had physically set foot in Vietnam – known as “boots on ground” – to qualify for Agent Orange benefits.

“They didn’t go through formal rule-making,” Stichman says. VA started denying new claims and cutting off Blue Water veterans who previously had been receiving benefits. This occurred even though a greater percentage of Vietnam War sailors developed non-Hodgkin’s lymphoma than those who served with ground forces.

“So a guy who gets benefits from 1996 to 2002 for trachea cancer found his benefits severed,” Stichman explains. The sole exception was veterans with non-Hodgkin’s lymphoma.

Haas’ Legal Voyage. Jonathan L. Haas thought he had legal grounds to challenge VA’s sudden exclusion of some 500,000 Vietnam War sailors who became known as the Blue Water veterans. He remembered clouds of Agent Orange drifting from the shore and engulfing his ammunition tender, the Mount Katmai. Forty years later, he filed an Agent Orange claim for diabetes and kidney problems.

Haas fought all the way to the Supreme Court, with the help of the National Veterans Legal Services Program and a friend-of-the-court brief from The American Legion. He lost. And when the high court refused to hear Haas v. Nicholson in early 2009, it effectively affirmed VA’s right to rewrite the rules and prevent Blue Water veterans from receiving Agent Orange benefits.

The Bush administration also pushed for legislation prohibiting Blue Water veterans from qualifying for presumptive Agent Orange exposure. The effort failed. But the Haas decision prevented tens of thousands of sick and disabled Blue Water veterans from getting VA benefits, including Thomas J. Laliberte, a naval photographer who serviced aerial reconnaissance cameras on the A-5 Vigilantes that flew from USS Constellation in the Gulf of Tonkin.

The airplanes flew in areas recently sprayed with Agent Orange and periodically landed in Vietnam, accumulating dioxin residue, Laliberte says. He routinely worked on the airplane cameras and camera pods after these missions.

A computer programmer, truck driver and pressman since leaving the service, Laliberte says he was never sick until he was overcome with fatigue in August 2006. He couldn’t keep up at work and was laid off from his printing-plant job. Two weeks later,

Laliberte was hospitalized with multiple myeloma. His kidney failure was so profound that he was "within days of dying," Laliberte says.

His wife divorced him five months later. Laliberte was left only with Social Security disability benefits and temporarily moved in with a friend. VA has denied his Agent Orange-exposure claim, and he's still living in his friend's spare room.

"I feel abandoned," Laliberte says, his voice hoarse from the steroids he takes to calm the side effects of chemotherapy. "I know I was there. I know I was exposed. And I feel that way not only for myself, but for the thousands of veterans who need help but can't get the health care they need."

Three years ago, Laliberte joined the newly formed Veterans Association of Sailors of the Vietnam War and now serves as its president. Together with The American Legion and other veteran groups, the VASVW is pushing legislation to restore veterans' Agent Orange benefits.

Rep. Bob Filner, D-Calif., chairman of the House Veterans Affairs Committee, stressed urgency before hearings he called in May. "Congress' original intent was to provide these veterans with benefits based on their exposure to Agent Orange and other deadly herbicides ... regardless of arbitrary geographic line-drawing," he wrote in a letter to his colleagues.

VA declined to address specific issues raised by veterans in this article. But in a statement prepared for The American Legion Magazine, VA noted it has proposed adding hairy cell leukemia, Parkinson's disease and ischemic heart disease to the list of illnesses presumed to be connected to Agent Orange exposure, and "is committed to pursuing all medical research efforts that improve our understanding of diseases that could be presumptively service-connected."

Ross' Dying Wish. Nevada veteran Robert Ross wonders if he'll outlive the VA appeals process. He developed blistering sores on his back in the 1970s and diabetes in 1995. He suffered heart failure in 2001, but is not a transplant candidate because of kidney problems. He had thyroid cancer, suffers from neuropathy, and fights an indigestion problem. Two years ago, doctors likened his life expectancy to that of a terminal-cancer patient.

Ross filed a claim with the Reno, Nev., VA in 2008. He was denied as a result of the Haas ruling. He cannot prove he took the face full of spray that late-summer day in 1966. He cannot prove he was close enough to the shore to see people's faces. He cannot prove his ship was tied to a dock on several trips into Da Nang Harbor to re-supply U.S. ships.

"People are under the impression that these men have access to proof of where they were all of the time, of incidents that occurred while they were on ship, and every location of their ship," Denise Ross says. "It was wartime. A lot of that information wasn't put in the ship's log or written down."

Ross filed a notice of disagreement with the Reno VA in April 2009. "We provided them the doctor's letter that said my husband has a year to live," Denise says. "I begged them. I said, 'My husband is dying. Can't you just deny his claim so we can file an appeal?' We're concerned about our son, who has asthma and other medical issues."

That denial finally came this spring, a year after the Rosses' urgent plea. They will appeal this summer. The case will drag on perhaps another year – a year Ross might not have.

The Rosses, like Laliberte, are putting their hope in the legislation.

"Every senator and member of Congress has the responsibility to step in immediately," Denise says. "They can't put a stop to the suffering. But they can restore the benefits that have been denied these men. I want it made right not just for my husband, but for everyone."

Click the link(<http://thomas.loc.gov/cgi-bin/bdquery/z?d111:SN01939:@@P>)to see if the U.S. Senator from your State has signed on as a co-sponsor. If not, please click the link (http://www.senate.gov/general/contact_information/senators_cfm.cfm) of the full list of U.S. Senators to identify the 2 U.S. Senators from your state. Please e-mail the Senators directly with the link provided and follow up with a call to his/her Office and ask for the staffer who handles Veterans Affairs and ask him to request his boss to co-sponsor S. 1939.