



Military-Veterans Advocacy, Inc.
Post Office Box 5235
Slidell, Louisiana 70469-5235

John B. Wells
Commander USN (Ret)
Executive Director

Admitted to practice:
Louisiana
Pennsylvania
District of Columbia

September 14, 2018

Secretary Robert L. Wilkie
Department of Veterans Affairs
810 Vermont Ave. NW
Washington, D.C. 20420

Re: HR 299 Blue Water Navy Vietnam Veterans Act

Dear Secretary Wilkie:

Please find enclosed my letter to Senator Johnny Isakson of September 13, 2018 in rebuttal to your correspondence of September 6th.

I am saddened that you did not meet with me, especially after having agreed to do so. Accordingly I have instructed Susie to cease all further attempts to schedule a meeting. As I would have explained to you, had we met, the science does actually support the Blue Water Navy and HR 299. Hydrologists agree that the dioxin would have infiltrated into the South China Sea. Engineers and two separate committees of the Institute of Medicine confirm the distillation process in use at the time would have enriched the dioxin. Medical experts have found a higher incidence of Agent Orange related disease in Navy veterans than those who fought ashore.

We enjoyed the support of your predecessor and hoped that you too would overrule the bureaucracy and treat our 90,000 veterans fairly. Your responses at your confirmation hearing fostered that hope and led to our endorsement of your nomination.

In my previous correspondence I indicated that our desire was to work with you as a partner rather than an adversary. Since that does not seem possible, rest assured that we will continue this fight in the Congress, the media and the courts.

The Blue Water Navy tragedy is the tip of the iceberg. VA continues to deny benefits for exposure on Guam, Johnston Island, Laos, Cambodia, parts of Thailand, Panama and other areas. Relief for radiation related illnesses is still an issue as a result of exposure on some Pacific islands. Issues remain with the Gulf War and with toxic exposures at Camp Lejeune and Fort McClellan. Finally, diseases from exposure to open burn pits, the Agent Orange of the 21st century, is a new scourge within the veterans community.

I remind you that we have a rulemaking request pending since October 2, 2016 regarding the expansion of the presumption of Agent Orange exposure to Nha Trang and Da Nang harbors. This has been discussed with both former Secretaries Shulkin and McDonald and sufficient time to respond has passed. If I do not received a response within 30 days of the date of this letter, I will initiate mandamus action per the standard articulated in *Telecomms Research & Action Ctr. v. FCC*, 750 F.2d 70, 76 ((D.C. Cir. 1984), as adopted by the Federal Circuit in the recent case of *Martin v. O'Rourke*, 891 F.3d 1338 (Fed. Cir. 2018).

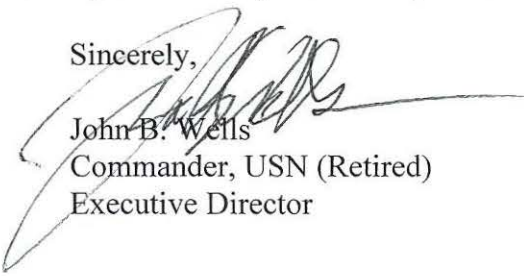
Telephone (985) 641-1855 • Facsimile (985) 649-1536 • Email: JohnLawEsq@msn.com

Secretary Robert L. Wilkie
Department of Veterans Affairs
September 14, 2018

-2-

Please feel free to contact me should you reconsider your decisions, Until then I wish you the best of luck in your sacred duty to provide for the care of veterans and their spouses and children. I assure you that Military-Veterans Advocacy stands ready to remind you of that duty.

Sincerely,



John B. Wells
Commander, USN (Retired)
Executive Director



Military-Veterans Advocacy, Inc.
Post Office Box 5235
Slidell, Louisiana 70469-5235

John B. Wells
Commander USN (Ret)
Executive Director

Admitted to practice:
Louisiana
Pennsylvania
District of Columbia

September 13, 2018

Honorable Johnny Isakson
Chairman, Senate Veterans Affairs Committee
412 Russell Senate Office Building
Washington, DC 20510

Re: HR 299, Blue Water Navy Vietnam Veterans Act

Dear Mr. Chairman:

As you know, Military-Veterans Advocacy, is a non-profit tax exempt group organized under Section 501[c][3] of the Internal Revenue Code. Our mission is to assist veterans by recommending and supporting legislation benefitting members of the military and veterans. We also conduct litigation on behalf of veterans and veterans' groups. Additionally, we educate the public on veterans' issues and train other attorneys on veterans' law.

I am writing to you in response to Secretary Wilkie's letter of September 6, 2018 concerning HR 299. This letter, coupled with the August 1, 2018 testimony of Under Secretary Paul Lawrence was a complete reversal of the VA position under former Secretary Shulkin. Secretary Shulkin had testified before the House Veterans Affairs Committee and the VA/MILCON Subcommittee that he supported the restoration of benefits to the Blue Water navy.

One of the most distressing things that I learned in meetings with various VA officials, including former Secretaries McDonald and Shulkin, was that the VA action officers had no naval operational experience. I think that is reflected by their unenlightened approach to this problem. I discovered that there were no VA experts in the fields of hydrology, thermodynamics, navigation or seamanship assigned to this project. As a retired surface warfare officer I am conversant with all of these areas. Accordingly, I ask that you disregard their flawed analysis. Frankly, they lack the expertise to provide factual or meaningful information.

- **The Science Does Support the Presumption That Those Who Served in the Bays, Harbors and Territorial Seas of the Republic of Vietnam Were Exposed to Agent Orange.**

The VA consistently cherry picks through the Institute of Medicine (IOM) reports taking phrases out of context to support their position. One item they ignore is the conclusions of the 2008 update which states in Veterans and Agent Orange: Update 2008 (2009) (pp. 655-56). "The

current definition of Vietnam service is not supported by existing data. The evidence that this committee has reviewed makes limiting Vietnam service to those who set foot on Vietnamese soil seem inappropriate.” They went on to state: “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.”

The VA consistently misquotes another study from the Institute of Medicine claiming that the Committee found that exposure by Blue Water veterans “could not reasonably be determined.” What the Committee actually said was:

This lack of information makes it impossible to quantify exposures for Blue Water and Brown Water Navy sailors and, so far, for ground troops as well. Thus, the committee was unable to state with certainty whether Blue Water Navy personnel were or were not exposed to Agent Orange and its associated TCDD. Moreover, the committee concluded that it could not state with certainty that exposures to Blue Water Navy personnel, taken as a group, were qualitatively different from their Brown Water Navy and ground troop counterparts.

Institute of Medicines’ Blue Water Navy Vietnam Veterans and Agent Orange Exposure (2011) p. 133. <https://www.nap.edu/read/13026/chapter/9#133> In other words, there was no more or less evidence to support the exposure of Blue Water Navy veterans than the ground forces or those who served in the internal rivers.

The VA also argues that the Agent Orange was destroyed by sunlight within hours and would not make it out into the South China Sea. This was based on adherence to foliage receiving direct sunlight. *Id.* at p. 72. The IOM actually did address the fate of the dioxin in waters such as rivers and other estuarine waters as follows:

Thus, the committee concluded that whereas most particle-bound and colloidbound TCDD would deposit in the estuaries of river deltas, some small fraction of total TCDD in the dissolved phase or bound to colloids and particles would make its way out to coastal waters.

The Committee went on to say:

TCDD tends to adsorb on organic matter in water; thus, freshwater that contains suspended organic matter and enters marine systems from areas that were treated with herbicides is likely to have contained Agent Orange-associated TCDD.

Id. at 102.

The IOM also noted that TCDD that emulsified and adhered to the seabed could be re-suspended. Their finding reads as follows:

Resuspension of sediment-sorbed chemicals can be an important process in shallow waters, such as the coastal zone off the Mekong Delta, where the sea bottom drops from a depth of 5 m extending about 5 km offshore to 20 m about 40 km offshore (Hordoir et al., 2006). Resuspension events in shallow waters are expected when winds are high, at times of very high river discharge (for example, during the summer monsoon season) when turbulent flows could entrain sediment particles, and possibly as a result of a ship dropping or pulling up an anchor. Although resuspension can bring particle-bound chemicals back into the water column, they will redeposit as the turbulence dissipates. Thus, sediment-bound chemicals can cycle between sediment and the water column.

Id. at pp. 77-78. The maritime traffic in the shallow areas of the bays, harbors and estuarine waters of the territorial seas would constantly cause the dioxin to churn up to the surface where it would be ingested into the distilling suction. Notably, the IOM has also recognized that 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.” IOM (Institute of Medicine). 2012. *Veterans and Agent Orange: Update 2010*. Washington, DC: The National Academies Press at p. 62.

The presence of the dioxin in the sediment is uncontroverted. Toxic levels of the dioxin were found in the sediment of Nha Trang Harbor two decades after the war. <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.631.3121&rep=rep1&type=pdf> Additionally, dioxin was found in lobsters 150 miles from shore as the result of an accidental spillage into the Passaic River. <https://www.state.nj.us/dep/dsr/dioxin/lobstersdioxin.pdf>. The VA also fails to explain how, in light of their destructive sunlight theory, toxic levels of the dioxin remain in the soil. The United States has just invested \$84 million in remediation costs to remove the dioxin from Da Nang Airport. We are currently spending more to remediate Bien Hoa. The scientific facts belie the VA’s claim.

Secretary Wilkie is incorrect when he claims that the Australian report on distillation is irrelevant to Navy procedures. This peer reviewed report correctly details the impact of the distillation process on dioxin. Australian ships used the same distillation process as American ships. In fact many Australian ships were constructed in U. S. Shipyards using the same equipment. The Australian report correctly showed that the dioxin would co-distill as part of the process. This is based on Henry’s Law of thermodynamics and was confirmed by two separate committees of the Institute of Medicine. *Veterans and Agent Orange: Update 2008 (2009)* p. 55 and *Blue Water Navy Vietnam Veterans and Agent Orange Exposure (2011)* p. 133 and Appendix. What the Committee actually said was: “[t]he committee’s assessment corroborates the Australian finding that in experiments simulating the water-distillation system used on Navy ships the system had the potential to enrich TCDD concentrations from the feed water to the distilled potable water.” *Id.* p. 133. Notably in response to the words “highly uncertain,” the IOM went on to say: “[t]herefore, an independent analysis was conducted in order to determine the likelihood of codistillation of TCDD; this analysis was conducted using a theoretical model.”

Id. Appendix at p. 137. The experiments performed by the Committee as documented in the Appendix resolved that uncertainty.

The VA's assertion that Navy ships did not distill water within 12 miles of shore is an outright fabrication. As the IOM noted:

Although the committee was told that Blue Water Navy ships did not typically make potable water within 12 miles of shore, the committee was also told that in exceptional circumstances a ship might take up water for distillation while relatively close to the coastline.

Id. at p 11. The basis of the VA misrepresentation was a 1990 medical manual issued decades after the war. It noted that "desalting of polluted harbor water or seawater for human consumption shall be avoided except in emergencies." *Id.* at p. 104. This "guidance" and it was guidance and not a firm regulation, was often ignored due to the needs of the ships. Steam ships were not always efficient, especially those built during World War II. Water consumption was high in the tropics due to the needs of the crew and the higher sea injection temperature which actually compromised efficiency.

In actuality, the position of the Navy and the VA is simply irrelevant. There was no restriction on the production of feed water for the boilers. The same system was used for both feed and potable water. Accordingly productions of feed water contaminated the entire system down to the distribution manifold. The guidance concerning potable water was based on concern over biologicals. The boilers did not care about biologicals and any that existed would have been destroyed in the superheated process which resulted in temperatures exceeding 800° Fahrenheit. The dioxin would co-distill however and make its way, via steam reducers to the laundry, the galley, the scullery and the hot water heaters. Since all hotel services were powered by steam, this represented an additional source of contamination. What is maddening is that Dr. Ralph Erickson is aware of this. It has been explained to him on a number of occasions. Consequently, I must conclude that he intentionally lied to the Committee in his August 1, 2018 testimony.

The Secretary further ignores other factors of shipboard life and its interrelation with the contaminated water. Fire hoses were used to wash off the anchor chain and anchor before it was housed. They were also used for wash downs on deck and in the engineering spaces or to wash algae and other foreign matter off small boats lifted aboard. This water, which was drawn directly from the harbor or the sea, would inadvertently splash the sailors. The same seawater was used in the toilets. Of course shipboard personnel worked on the salt water systems to complete maintenance and repairs. Mail, stores and personnel came from Vietnam by boat and helicopter, bringing the dioxin with them. It soon permeated the entire ship.

The Secretary is incorrect when he says the science does not support HR 299. Rather, the opposite is true. The science supports the bill and despite the VA obfuscation, it should be sent to the Senate floor for a final vote.

- **Disabled Veterans Are Helped by the Modified VA Funding Fees.**

The Secretary either intentionally or negligently misstates the impact of the offset on disabled veterans. As a threshold matter, the fee is waived for disabled veterans unless they seek a jumbo loan. Those veterans who are 100% disabled are exempt even if they seek a jumbo loan. The bill lifts the cap on the jumbo loans, allowing the veteran to obtain a VA loan at a low interest rate. Under current law, the veteran must obtain secondary financing in excess of the jumbo cap. Normally the secondary financing will be at a significantly higher interest rate.

Military-Veterans Advocacy frankly does not like any offset. Unfortunately, Congress passed the Pay As You Go Act of 2010 (PAYGO) which requires CBO scoring and an offset. We believe that veterans' benefits should be exempt from PAYGO. Veterans have already paid for these benefits with their years of dangerous service. Since there does not seem to be any movement toward exempting veterans from PAYGO, we are forced to devise an offset. Notably all Veterans Service Organizations support this bill and its offset and we consider this the most innocuous offset possible. Until such time as the law is changed, and we hope that day is soon, we will continue to comply by suggesting offsets.

- **The Offset Will Cover the Cost of the Benefits.**

The VA has articulated a projected ten-year cost of \$5.5 billion to restore these benefits. That is preposterous. When I met with Secretary Shulkin last year, we discussed the VA's 2015 estimated cost of \$4.4 billion in 2015. I asked that I be allowed to meet with his estimators to determine how that estimate was derived. He indicated a willingness to allow that but it never materialized. I did meet with the CBO, however, and worked with them subsequent to that meeting to ensure that all assumptions were proper and that an accurate cost estimate was determined. I am convinced that the CBO estimate is proper.

The VA has not made their analysis available to me or, to my knowledge, to the Committee. Accordingly there is no way to determine its veracity. I do find it strange that the estimate has increased from \$4.4 billion to \$5.5 billion despite the increased number of deaths as well as the discovery of additional ships that have entered the internal river system and are now covered under existing law. Without any evidence to support the VA estimate, it should be rejected in favor of the CBO score.

- **The Planned VA Study Is Unnecessary and of Questionable Veracity.**

The VA proposes to delay action pending a new study that should be released in late 2019. This study is purported to track the health and morbidity of Vietnam veterans. Previous studies have shown a higher level of health effects among Blue Water Navy veterans than any other group.

In September 1990, Center for Disease Control (CDC) published their findings in The

Association of Selected Cancers with Service in the U.S. Military in Vietnam as their Final Report. They found in the case of non-Hodgkin's lymphoma (NHL) on page 34: "...of the 32 men with NHL who served in the Navy, 28 served in blue water on ocean-going vessels. None of the Navy veterans with NHL reported serving in brown water (on small vessels engaged in patrolling near shore or on rivers). As a group, land-based men (including men who served in the brown-water and shore Navy) tended to have a lower risk than did men who were stationed at sea." Notably the VA provides benefits to Blue Water Navy veterans for NHL but not for the many other Agent Orange related diseases. They are unable to explain this dichotomy.

The Australian Department of Veterans Affairs, in a 2005 Cancer Incidence Study, p. xix https://www.dva.gov.au/sites/default/files/files/consultation%20and%20grants/healthstudies/mortcanvietvet/cancer_incidence.pdf found:

The pattern of cancer incidence varied between the Service branches. Navy veterans had the highest rate of cancer, higher than expected by 22-26%, followed by Army veterans, higher than expected by 11-13%. In comparison Air Force veterans had a 6-8% higher than the expected rate of cancer, although this was not statistically significant.

The report went on to say:

Among the Service branches, Navy veterans had the highest mortality rate, elevated by 37%, with significant elevations in mortality from neoplasms, circulatory diseases and external causes.

Id. at p. 2.

Another study, the Third Australian Vietnam Veterans Mortality Study, pp 91-92 https://www.dva.gov.au/sites/default/files/files/consultation%20and%20grants/healthstudies/mortcanvietvet/mortality_study.pdf found the following:

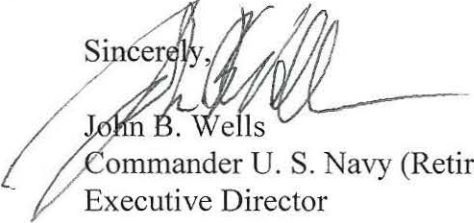
Amongst the Services cancer mortality was significantly elevated for Navy veterans only. However there were significant differences for individual cancers between the Services. There was a higher than expected cancer mortality from lung cancer, melanoma and mesothelioma amongst Navy veterans whereas Army veterans had a higher than expected mortality from cancers of the eye, oral cavity, pharynx and larynx and head and neck.

Recreating these studies would appear to be a waste of time and resources. Additionally, given the disingenuous conduct of the VA on this subject, their results would be of questionable veracity. Dr. Erickson's involvement undermines any credibility or integrity the study might have. Additionally, the undersigned, who is the recognized expert on the subject, was specifically told he was not invited to participate in the study. Had the VA wanted to conduct a study they should have done so years ago. This is just another stalling tactic.

HR 299 represents a seven-year legislative commitment of Military-Veterans Advocacy. It has won unanimous support among the Veterans Service Organizations and the House of Representatives. Only the VA stands in opposition. The support of former Secretary Shulkin seems more credible than the flawed arguments of the current Secretary. Notably Secretary Wilkie does not explain why he departed from his predecessor's position. Nor does he explain why his letter seems to be at odds with testimony given at his confirmation hearing.

Consequently, I ask that you schedule a mark-up hearing to move HR 299 to the floor.

Sincerely,



John B. Wells
Commander U. S. Navy (Retired)
Executive Director

cc: Honorable Jon Tester, Ranking Member
Hon. Robert Wilkie, Secretary of Veterans Affairs