

The American Legion

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OFFICE OF THE
EXECUTIVE DIRECTOR

November 13, 2017

The Honorable David J. Shulkin, MD
Secretary of Veterans Affairs
Office of the Secretary
U.S. Department of Veterans Affairs
810 Vermont Avenue, NW
Room 100
Washington, DC 20420

Dear Secretary Shulkin:

The primary responsibility of the Department of Veterans Affairs is to ensure that those who have fought for our freedoms are afforded the quality and timely care and benefits that they so richly deserve upon their transition home. As you are also aware, thousands of veterans who served in the territorial seas off Vietnam are now suffering from higher rates of disease, and other chronic health conditions, which can be directly attributed to those exposures to the herbicide Agent Orange. Despite the science behind the Agent Orange exposures to those service members who served in the territorial seas off Vietnam, they are also known as, "blue water sailors." In as much as the Department of Veterans Affairs continues to deny claims from the Blue Water Navy Veterans, this has continually created a significant hardship for these brave Americans and their caretakers.

During the Vietnam War, approximately twenty million gallons of Agent Orange was sprayed over the Republic of Vietnam, contaminating the lands, rivers, harbors, and territorial seas. Under the *Agent Orange Act of 1991*, Blue Water Navy Veterans were initially entitled to presumptive service connection, relieving them of the burdensome process of producing evidence that directly established service connection for a specific health condition. However, in 2002, the VA reinterpreted the language of the *Agent Orange Act of 1991* to apply only to veterans who served in the inland waterways or "boots on the ground" in the Republic of Vietnam.

On April 5, 2017, the House Committee on Veterans Affairs held a hearing on H.R. 299, the *Blue Water Navy Vietnam Veterans Act of 2017*. During their testimony, VA officials cited cost and lack of scientific evidence as the VA's reasoning for the 2002 policy change. However, there are continuous and numerous studies that indicate plausible scenarios in which Blue Water Navy Veterans could have been exposed to Agent Orange.

For example, a study conducted by the Institute of Medicine shows a *plausible* pathway for Agent Orange to have entered the South China Sea via dirt and debris from rivers and streams. Additionally, a study conducted by the University of Queensland found that Australian shipboard distillation systems, were very

similar and identical to the systems used on U.S. Navy ships during the Vietnam War era, and in fact, *enriched* the toxic dioxin in Agent Orange. This contaminated water was used for cooking, cleaning, showering, laundry, and drinking, exposing U.S. Navy personnel high levels of the toxic chemical.

Furthermore, the U.S. Court of Appeals for Veterans Claims found in *Gray v. McDonald* that the VA's definition of "inland waterways" was "arbitrary and capricious," and the court ordered the VA to redefine "inland waterways" concerning Da Nang Harbor. It is our opinion that VA did not comply with the court's decision and, instead, persisted in its policy of excluding many sailors and marines from coverage.

Given the amount of time elapsed since the Vietnam War, it is almost impossible to definitively prove the presence of Agent Orange in the territorial seas of Vietnam, and within the shipboard water distillation systems. However, these studies, combined with the higher rates of cancers such as Non-Hodgkin Lymphoma among Blue Water Navy Veterans, leaves no doubt that these veterans are entitled to a presumption of service-connected exposure to Agent Orange. We respectfully request that you avail your statutory authority to reverse the 2002 decision and afford the presumption of service connection to all veterans with the Agent Orange-related diseases who served in the territorial seas off the coast of the Republic of Vietnam between January 9, 1962, and May 7, 1975.

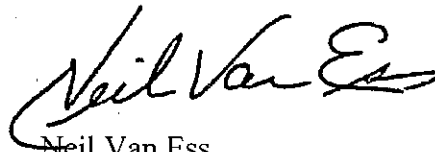
In your recent testimony before the House Appropriations Subcommittee on Military Construction and Veterans Affairs, you expressed doubts about the VA's longstanding position on providing presumptive benefits to Blue Water Navy Veterans and stated you had asked for additional recommendations. In closing, we would like to request an update on whether the Department of Veterans Affairs has since provided you with additional recommendation, and if so, has the department reached a decision?

We thank you for your service to our nation's veterans, and we look forward to working with you to ensure all veterans who have bravely fought for their country receive the support they deserve upon returning home. They too should enjoy the positive measurements of a "social contract" to benefits they earned from a very unpopular conflict during their time of service.

Sincerely,



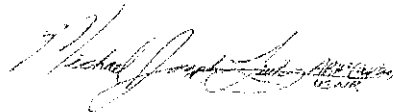
Verna L. Jones
Executive Director
The American Legion



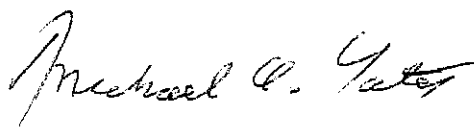
Neil Van Ess
National Commander
Military Order of the Purple Heart



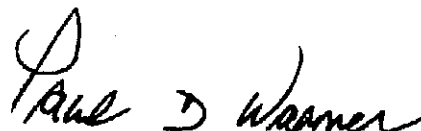
Thomas J. Snee, M.Ed
National Executive Director
Fleet Reserve Association



Michael Joseph Little, ABH2 (AW/SW), USN (IRR)
Director of Legislative Affairs and Government Relations
Association of the United States Navy

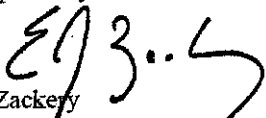


Mike Yates
National Commander
Blue Water Navy Vietnam Veterans Association



Paul D. Warner, Ph.D.
National Commander
Jewish War Veterans of the United States of America

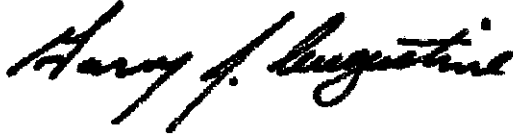
Respectfully



Ed Zackery
1SG, U.S. Army (Retired)
NACVSO, President



Commander J. B. Wells U. S. Navy (Retired)
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Military-Veterans Advocacy, Inc.



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