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# Blue Water Navy Vietnam Veterans Association



## A Suggested Approach for Making a Case for Disability Entitlement by Offshore Vietnam Veterans

Page number citations are from the IOM Report from the Committee on Blue Water Navy Vietnam Veterans and Agent Orange Exposure. This, and the 2008 Agent Orange Update, constitutes the second time the IOM has advised the DVA to include offshore military personnel in eligibility for presumption of exposure to herbicide in Vietnam.

### **Was the Blue Water Navy exposed to dioxin-based herbicide?**

IOM Report states that there was **too little data** to conclusively determine whether the Blue Water Navy (BWN) **had or had not been exposed** to dioxin-based herbicides, such as Agent Orange.

### **What is the basis of the “presumption of exposure” rule?**

*“Because of the impossibility that most Vietnam veterans could prove that they had been exposed to Agent Orange or other herbicides in Vietnam during the war, the 1991 Agent Orange Act created a presumption of service connection; that is, exposure to herbicides in Vietnam was presumed for any Vietnam veteran who became ill with a disease found to be associated with TCDD exposure. That presumption—a mechanism of disability compensation that the VA has used in other contexts—allows veterans to receive disability compensation and treatment for a medical condition without having to provide proof that the condition was “incurred in or aggravated by” their military service.”(pg.4)*

### **Did the BWN have the potential for exposure?**

*“The committee identified several plausible exposure pathways and routes of exposure to Agent Orange–associated TCDD in the three populations. Plausible pathways and routes of exposure of Blue Water Navy personnel to Agent Orange–associated TCDD include **inhalation** and **dermal contact** with aerosols from spraying operations that occurred at or near the coast when Blue Water Navy ships were nearby, **contact** with marine water, and uses of **potable water** prepared from distilled marine water.”(pg7)*

### **Were the Blue Water Navy Offshore Veterans exposed to enhanced herbicide concentration in their ship-board water system?**

*“No measurements of TCDD concentrations in seawater were collected during the Vietnam conflict, so it is not possible to ascertain the extent to which drinking water on US vessels may have been contaminated through distillation processes. However, it seems likely that vessels with such distillation processes that traveled near land or even at some distance from river deltas would periodically collect water that contained dioxin. Thus, a presumption of exposure of military personnel serving on those vessels is not unreasonable.” (2008 Update, 2009)*

*“One exposure mechanism is specific to Blue Water Navy ships: possible TCDD contamination of potable water from shipboard distillation plants. The 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.” (pg93)*

**Is it possible to demonstrate that the Brown Water or land-based veterans were or were not exposed to dioxin-based herbicides while serving in Vietnam?**

*“[ ] 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.”(pg93)*

**Were the boots-on-ground personnel at any higher risk for dioxin-based cancer than BWN?**

*“There is no consistent evidence to suggest that Blue Water Navy Vietnam veterans were at higher or lower risk for cancer or other long-term adverse health effects associated with Agent Orange exposure than shore-based veterans, Brown Water Navy veterans, or Vietnam veterans in other branches of service.” (pg.8)*

A qualitative assessment results in a description of the event rather than measurement taken during an event. At that point, no “scientific” answer can be given because no quantitative elements can be assessed, measured, and compared. This is the basis of ‘presumption of exposure.’ In the Agent Orange Act of 1991, Congress had a choice of making the eligibility very narrow, which would eliminate invalid claims but present a high probability of eliminating some valid claims; or to make the eligibility broad enough to be certain to grant all valid claims and take a chance that some invalid claims could make it through the system. They chose the broad interpretation of wording.

The IOM Report of 2011 on Offshore Exposure to Herbicide proved beyond any reasonable doubt:

- 1) That the DVA has no existing data to contradict or negate a claim for exposure from offshore personnel just as it has no existing data to validate a claim for exposure from any service personnel that claim exposure to herbicide while having served with boots-on-ground or on inland water;
- 2) That it is at least as likely as not that any claim for exposure to herbicide by offshore personnel is as valid a claim as any claim for exposure to herbicide by personnel who served on land or inland water. In neither case can a causal relationship be established between the injury or disease and the presence of and contamination by dioxin-based herbicide. In neither case can the VA provide any quantitative data to measure a level of contamination or provide an association between the location of the veteran and the location of dioxin-based herbicide by any means other than assumption and presumption;
- 3) The IOM Report put offshore exposure probability in equipoise with on-land exposure probability. The DVA is not capable of providing any quantitative data that can stand as “contradictory evidence” to any assertion by offshore personnel for claims of presumptive exposure to Agent Orange-dioxin;

- 4) The veteran should be given the benefit of the doubt unless the DVA can present valid data to prove otherwise.
  
- 5) A sound argument can be given for the probability of dioxin-based herbicide on the ground, but no data providing actual levels of concentration can support that contention. A sound argument can be given for the probability of Agent Orange-dioxin in the offshore water, but no data can support that contention. Likewise, no data can refute any assertion regarding actual levels of concentration within the offshore waters or on the Vietnam landmass.

The 2008 Recommendation from the IOM/NAS to the VA to include BWN in presumptive claims was based on the fact that there was absolutely no evidence of a medical or scientific nature that anything had changed from the pre-Feb, 2002 situation and the post-Feb, 2002 situation. There were no grounds by which the IOM could justify the removal of benefits that had been granted in 1991 and had been provided to offshore veterans up to the Feb, 2002 date of change by the DVA.

It was based on this that the IOM Committee concluded 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.”

Despite the ‘acceptance’ by the DVA of a relationship between any particular disease and contamination by dioxin (a component of Agent Orange), there is a vast body of medical and scientific data that proves dioxin to be a highly potent carcinogen, an immune system and endocrine system disruptor, and one of the most lethal and environmentally persistent man-made poisons.

- Secretary Shinseki did not accept the Seventh Biennials Committee’s Recommendation.
- Shinseki ordered a new study focused on the Blue Water Navy issue.
- The Committee on Blue Water Navy Vietnam Veterans and Agent Orange Exposure reported in May of 2011.
- The Report was not conclusive as to any quantifiable level of exposure, but it validated the probable exposure paths of Agent Orange-dioxin to the Blue Water Navy personnel.

The IOM Report is pier reviewed.

The Da Nang Harbor Report, found at [www.BlueWaterNavy.org](http://www.BlueWaterNavy.org) , was reviewed by Dr. Wayne Dwernychuk, a now-retired chief scientist for the Hatfield Group directly involved with the analysis of dioxin presence in Vietnam. The Da Nang Harbor Report provides the means to attain a reasonable possibility for estimation of a quantitative range of measurable dioxin entering the harbor water on a continuous basis during the operational time frame of the Da Nang Air Field.

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We are not lawyers or legal advisors. The above is the result of our intellectual analysis and conclusions based on nothing more than Common Sense. Consult an attorney on any legal issues.