

2013 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1405

2013 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee
Fort Union Room, State Capitol

HB 1405
January 31, 2013
18087

Conference Committee

Committee Clerk Signature

Carmen Hart

Explanation or reason for introduction of bill/resolution:

To provide an appropriation for the identification of and provision of services to veterans exposed to agent orange.

Minutes:

You may make reference to "attached testimony."

Chairman Jim Kasper opened the hearing on HB 1405.

Rep. Wayne Trottier appeared in support of HB 1405. He read the bill and then presented **Attachment 1** testimony. (2:12-6:08) As a side note, I am a Vietnam era veteran, not a Vietnam battle veteran.

Chairman Jim Kasper I sit behind you and notice you saluting the flag when we say the pledge of allegiance and brings real pride to me.

Rep. Wayne Trottier When I was in basic training and finished, our complete unit except four of us were sent to the fourth infantry division in Washington. That entire unit went to Vietnam. I was not included for whatever reason, and a lot of fourth infantry did not come home. Every time I see the flag, I think of the fourth infantry division.

Rep. Vicky Steiner I am not familiar with this organization. I am curious about when give you state money to a non-state organization.

Rep. Wayne Trottier There is no distinct difference between the organizations and the service organizations. The state and the federal are doing everything they possibly can to address this issue. The big picture here is that there is a significant number of them out there that will not talk to the VA in Fargo and ask for any help, but they do have distinct problems. Did I answer that Rep. Vicky Steiner?

Rep. Vicky Steiner No.

Rep. Vernon Laning Do we have any approximation as to how many Vietnam veterans we still have in ND?

Rep. Wayne Trottier I will let Lonnie answer that.

Lonnie Wangen, North Dakota Commissioner of Veterans' Affairs, appeared in support. There was a town hall type of meeting in Walsh County to talk about veterans' issues. It was amazing to find out how many of these Vietnam veterans had shut that door to help so many decades ago because it had been slammed in their face so many times. One of the big things that got them turned around to listen to us was we had a Vietnam veteran that talked about all the problems he had and all the doors that were slammed and now all the doors that are now open, because there is a lot of help out there now.

Rep. Steven Zaiser I would like to follow up on Rep. Vicky Steiner's question. I think she was trying to get at what is the accountability on the money, the \$100,000? I so much believe in this. Agent Orange is a real serious issue. I want to make sure that the veterans that were subject and exposed to Agent Orange get the help they need.

Lonnie Wangen We have been working with Rep. Trottier on that to make sure that we have plenty of oversight. If it does come through our department as planned, it would be a kind of reimbursement. If they are going to do a town hall and if we have to pay mileage or for the soup and sandwich or whatever it takes to get the veterans there, we will cover that cost.

Rep. Gail Mooney I have a good friend in North Dakota who is an Agent Orange recipient. Do we have any numbers of people in North Dakota that you think might be affected?

Lonnie Wangen We don't have the exact numbers. I could check with the VA to get those numbers. We have about 15,000 Vietnam veterans that if they were in that country, it is a pretty good chance they were affected.

Rep. Gail Mooney The purpose of the \$100,000 would really be to develop a comprehensive outreach type program where you are reaching out specifically to that target group to try to get them to resources?

Lonnie Wangen Absolutely. The money could be used for some advertising for that town meeting inviting Vietnam veterans to talk about the different things like Agent Orange.

Rep. Marie Strinden It sounds like you have already come up with the outreach and now you just need funding for it. Is that true?

Lonnie Wangen Pretty much that is true. If more creative ways come through the DVA, we can approve those also.

Rep. Marie Strinden The purpose of this is to get the veterans to come to the VA or seek medical attention in general?

Lonnie Wangen To get any help we can. The ultimate goal is get them in to the VA and connect them with all the resources that are available.

Dan Stenvold, Vietnam Veteran, appeared in support of this bill and presented **Attachment 2**. (17:12-25:38) When he was on Page 4, he handed out **Attachment 3**, Admiral Zumwalt's report. He answered a previous question about the formation of this

organization. The Vietnam Veterans of America was nationally formed in 1982. A lot of Vietnam veterans were not accepted in many of the other service clubs. We are the only congressionally chartered Vietnam veterans' service organization in the country. You have to produce a DD214 to be in our group. That means you were boots on the ground. Of the 15,000 that served in North Dakota, every one that was boots on the ground is affected by Agent Orange. He stated that he was on 17 different medications for a variety of conditions he has because of Agent Orange.

Rep. Karen Rohr Does Admiral Zumwalt's report hold a page of recommendations on how the government is going to handle our Vietnam vets that were exposed to Agent Orange?

Dan Stenvold No. He basically explains everything that it will or how it is going to affect people.

Rep. Steven Zaiser Do you believe that based on what happened there that other things like this have probably been occurring since the 1980s, since the Agent Orange incident?

Dan Stenvold Since 1950s. The original Agent Orange that was tested before they took it to Vietnam, every one of them are dead. The number one thing is our children and grandchildren. If you look at this document (Attachment 3), they have covered up so much.

Rep. Scott Louser I assume you are going to be participating in the outreach. To whom would you be referring services considering your stance?

Dan Stenvold Hopefully, if we get the money, we can do the advertising. We have to get the word out, and it is not going to come from a government official. A lot of our people don't trust the veterans' service office.

Rep. Scott Louser Is it your goal to get the information out or are you referring to the VA?

Dan Stenvold If we get the information out, I think they will listen to us to at least go to a veterans' service officer and they can get them to the VA.

Rep. Marie Strinden Are you building a network around the state of low cost clinics or other low cost solutions?

Dan Stenvold We have one of the outreach clinics in Grafton which is 17 miles from where I live and I know I have helped 20 or 30 people to get in there. A lot of the guys don't care about themselves anymore because of their age. They need to fight for their children and grandchildren.

Rep. Steven Zaiser How do numbers compare with other states?

Dan Stenvold 2.7 million people with boots on the ground and 90-95% were sprayed with it.

Rep. Gary Paur How will this help your children and grandchildren?

Dan Stenvold The government isn't recognizing a lot of these diseases that have been identified through our scientists. We are basically fighting the government.

Chairman Jim Kasper I would like to summarize your goals. You want to get out to inform Vietnam veterans on what is going on in their bodies and lives and the potential for their children and grandchildren. You want to let the veterans know the veteran facility hospitals and medical care is now there for them and they need to consider taking advantage of it. The third goal is your battle with the national politicians for more funding and coverage for their children and grandchildren because they are affected as well and they don't even know it in many cases.

Dan Stenvold Exactly. Our motto for our national group is never again will one generation of veterans abandon another.

Rep. Steven Zaiser Is one more thing that you are looking for is to try get the science community to look at medication that may medicate some of this or help with some of the effects?

Dan Stenvold We have our own national scientists in DVA. Sometimes medication helps and sometimes it doesn't.

Rep. Karen Rohr I definitely agree with the purpose of this bill. Could this money come from another source?

Dan Stenvold I never asked for the money. Rep. Trottier suggested we do this.

Rep. Karen Rohr I apologize on behalf of our government for something that you were subjected to that you had no idea of.

Dan Stenvold I can accept it. There are a lot of guys that won't.

Bob Olzweski, Vietnam Veteran, appeared. I encourage a do pass.

Steve Volk, Elected State Commander for the Veterans of Foreign Wars for North Dakota, appeared in support. I have had two experiences at work at Burlington Northern Santa Fe Railway. I have two employees that had Agent Orange. One had bone cancer and didn't make it to retirement, 58 years old. Another one was exposed to Agent Orange. It affected his throat. He also didn't make it to retirement, but he is still alive.

Ron Otto, Veteran Service Officer for Morton and Oliver County and also a Vietnam veteran supports HB 1405. I will not be a grandfather. My two daughters have problems with reproduction. Dan is right. Vietnam veterans have an intense dislike with regards to federal government. It is our belief that the federal government is simply waiting for enough of us to die to make it fiscally feasible to open the books. I am with Dan. In the morning I take my regiment of pills. I am appalled that our government did that to us to begin with. We would have fought the war anyway. We didn't need that tool.

Larry Young, Vice President of the organization and combat veteran, appeared in support. I was exposed directly to Agent Orange. A year ago I was diagnosed with prostate cancer, one of the diseases recognized. I completed 36 treatments and so far they have been okay.

No opposition.

Hearing closed.

Chairman Jim Kasper I had no idea on Agent Orange and the ramifications and the emotional scars that our citizens in our state have and our nation have.

Rep. Vernon Laning made a motion for a **Do Pass**. It is a one-time expenditure. I think we definitely owe it to our vets to do everything we can.

Rep. Jason Dockter seconded the motion.

Rep. Marie Strinden In the back of our minds, we are all thinking the federal government should be paying for this. I am very glad that our committee can stand up and tell you that the state will take care of you. Hopefully, after this committee as well.

A roll call vote was taken and resulted in **DO PASS, 13-0, 1 ABSENT**.

Rep. Vernon Laning is the carrier.

Date: 1-31-13
 Roll Call Vote #: _____

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1405**

House Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Laning Seconded By Dockter

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Bill Amerman		
Vice Chairman Randy Boehning	X		Rep. Gail Mooney	X	
Rep. Jason Dockter	X		Rep. Marie Strinden	X	
Rep. Karen Karls	X		Rep. Steven Zaiser	X	
Rep. Ben Koppelman	X				
Rep. Vernon Laning	X				
Rep. Scott Louser	X				
Rep. Gary Paur	X				
Rep. Karen Rohr	X				
Rep. Vicky Steiner	X				

Total (Yes) 13 No 0

Absent _____

Floor Assignment Laning

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1405: Government and Veterans Affairs Committee (Rep. Kasper, Chairman)
recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
HB 1405 was placed on the Eleventh order on the calendar.

2013 HOUSE APPROPRIATIONS

HB 1405

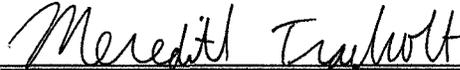
2013 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee Roughrider Room, State Capitol

HB 1405
2/6/13
Job 18419

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for the identification of and provision of services to veterans exposed to agent orange.

Minutes:

You may make reference to "attached testimony."

Rep. Jim Kasper, District 46: Introduced the bill.

Chairman Delzer: The bill says it's going to department of veterans' affairs. Did you get a list of who they were going to hire, what they would do, and what services they would provide?

Rep. Kasper: I think the bill says what it's meant to say.

Chairman Delzer: It doesn't say who would be using the money?

Rep. Kasper: The testimony centered around the fact that it would be the Vietnam Veterans Organization who would be using the funds under the purview of the department of veterans' affairs. They would do the paperwork to request the grant, then go out and do what they said they would.

Chairman Delzer: Did you ask how much would be used for identification, and how much for service? What services do they hope to provide? Or will it be services that are currently available in the general veterans set-up?

Rep. Kasper: The testimony centered around the idea that a Vietnam vet needs to reach another Vietnam vet. It's to educate the vets, identify who they are, and get them counseling and help if they need it.

Chairman Delzer: Have they done that through a stand down in the past?

Rep. Kasper: That did not come up. We felt the veterans' affairs committee and the Vietnam vets would be able to handle it fairly and honestly. We did not get into those details.

Rep. Grande: Maybe we could add clarification language. That grant will filter directly to NDDVA, they have their office deal with this, they have the affiliation to the service officers, and that's the direction they're trying to go. They are trying to filter this right to that particular agency so those veterans are seeking out those veterans.

Chairman Delzer: Further questions? Thank you.

2013 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee Roughrider Room, State Capitol

HB 1405
2/23/13
Job #19412

Conference Committee

Committee Clerk Signature

Mary Brucher

Explanation or reason for introduction of bill/resolution:

A Bill for an Act to provide an appropriation for the identification of and provision of services to veterans exposed to agent orange.

Minutes:

Attached amendments 13.0735.02001 and testimony #1.

Chairman Delzer: This has to do with Agent Orange. It is \$100,000 to the department of veterans' affairs. It doesn't do anything about what they actually are expected to do or any reporting on how they do it. Does anybody have any amendments?

Rep. Bellew: I do have a proposed amendment, passed out .02001 and went over the amendment. Agent Orange is a terrible thing and I can't believe there are any veterans out there who don't know about it.

Chairman Delzer: Representative Trottier said any help we could give would be appreciated. The problem is that some of these people don't like to talk to anybody except somebody that's been through it. He also said that he was going to visit with some of the local elevators about donating to this which is probably what he should have done to start with. He said most of the elevators are local coops or have local boards; they all have people they've dealt with over the years that know of people who have had to deal with that and have problems with it. He didn't seem to think it would be a problem in the eastern part of the state. I don't know what he considers to be the eastern part of the state.

Rep. Hawken: I don't know a ton about this, but I do know the veterans' administration has done a good bit of work with veterans from Vietnam who have developed ALS and there is some connection between Agent Orange and that. People don't really want to talk about it so they don't get the initial treatment that they should have. I have no idea if there are some that are already in the federal piece we could tie into but there may be a good reason for us to get into this.

Chairman Delzer: I think Agent Orange is something we've all heard about; many of us have friends and neighbors involved. Starting a small portion of this to see if it works wouldn't be a bad thing. I was pleased when I heard they might be able to do fundraising for this too. I don't know whether the veterans' organizations ever do any fundraising for this but there are many local groups.

Rep. Kempenich: The problem was not so much the chemical as the application of it which was the issue. We are still using the chemical today. They used a lot of it which was the problem.

Chairman Delzer: We should all take a minute and look at the letter from Sheila Sandness, see Attachment 1. This did allow the postwar trust fund to build up another \$200,000; this is another way to get it built up. We could look at the \$25,000 for this and would need some reporting requirements so we would know whether or not we are accomplishing anything.

Rep. Skarphol: Do we need some additional language that would authorize ...if they were to raise and spend more than the \$25,000, I would hope we would get a report on the utilization on that as well so we'd see if there was more need or that the results were from their work.

Chairman Delzer: I would think it would be good to put another line in that if the veterans' affairs committee can receive gifts or donations for this to expand beyond this that they also report how much it was and how that was used and results from it. If we adopt the amendment I believe that should be part of the amendment.

Rep. Glassheim: I'm not clear on the purpose of this. Is it identification, or provision of medical services?

Chairman Delzer: They have some people out there they know or hear about, this is so they could afford to pay the expenses for another Vietnam veteran to go talk to them and get them into the existing programs that are already there.

Rep. Glassheim: The identification I understand, but it may contemplate providing services with the money. I don't know what is needed if someone is afflicted by Agent Orange.

Chairman Delzer: I think if they get in, the medical services are already covered. The amendment specifies it can only be spent for travel and related operating expenses.

Rep. Grande: How does the language work?

Chairman Delzer: We could require a 2-1 match but I don't think we want to restrict it in this case but the language would say if they receive grants, gifts, or donations to work with this situation we'd like a report of that money as well. We could put in there that we would like them to try and raise the money but I don't know that we could say that they have to raise the money or even that they have to go out and try to raise the money.

Rep. Kempenich: You would say they shall provide a budget report with the grant program and it shall include how the grant was used and the gifts received.

Chairman Delzer: Legislative Council can get us the language. We could then look at that language before we assign the bill to the floor.

Rep. Grande: I would like to move that language on this bill so we can kick this bill out.

Chairman Delzer: We don't have the amendment offered at all yet. We are still just discussing the bill.

Rep. Skarphol: Made a motion to move the 02001 amendment with the language added that we just discussed for the reporting and the legislative intent that they could raise more money.

Sheila Sandness, Legislative Council: Currently the veterans' affairs has appropriation authority for their own funding which is all general fund so would they need some appropriation authority to spend the grants and contributions?

Chairman Delzer: Do they have continuing appropriations?

Lori Laschkewitsch, OMB: They have the ability to spend the grants and the funding that is allocated to them from the post war trust fund by the administrative committee and they don't need appropriation authority for that.

Sheila Sandness: So contributions for this purpose would have to come through the post war trust fund because that's the only place they have appropriation authority on a continuing basis?

Lori Laschkewitsch: That would be correct.

Sheila Sandness: They would have to be instructed to deposit it into the post war trust fund.

Chairman Delzer: Aren't they limited in the post war trust fund to only spend the interest that they deposited in there or can they deposit grants and gifts in there then spend it?

Lori Laschkewitsch: I would have to check on that. You have to make sure it does not become part of principal.

Rep. Grande: I would not like to comingling these things. I would like to see if we could do a line item then they can report off that.

Chairman Delzer: It isn't comingling, it's just parking it there and we could tell them they have to keep it allocated and could only be used for the Agent Orange things.

Sheila Sandness: The only other way to do that would be to give them a continuing appropriation on the funds they receive.

Chairman Delzer: They have to report on the use of it all then it would all be covered.

Sheila Sandness: Correct.

Rep. Pollert: Seconded.

Chairman Delzer: We have a motion to amend with 02001 with language discussed to allow them to put gifts, grants, or donations to park it in the post war trust fund on a separated basis where they would have to report the amount and the usage of all funds dealing with this grant.

VOICE VOTE: MOTION CARRIED.

Chairman Delzer: We have the bill before us.

Rep. Grande: Made a motion for a Do Pass as Amended.

Rep. Skarphol: Seconded.

ROLL CALL VOTE: 19 YES 2 NO 1 ABSENT

Rep. Bellew will carry this bill.

VR
2/25/13

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1405

Page 1, line 2, after "orange" insert "; to authorize collections for deposit into the veterans' postwar trust fund; and to provide for a report to the budget section"

Page 1, line 5, replace "\$100,000" with "\$25,000"

Page 1, line 9, after the period insert "Grants awarded under this section may be used only for travel and related operating expenses."

SECTION 2. AUTHORIZATION TO ACCEPT OTHER FUNDS - DEPARTMENT OF VETERANS' AFFAIRS. The department of veterans' affairs may receive gifts, grants, and donations to assist in the identification of and the provision of services to North Dakota veterans who had been exposed to agent orange during the Vietnam conflict during the biennium beginning July 1, 2013, and ending June 30, 2015. The department must deposit these contributions and grants into the postwar trust fund. Contributions and grants received for the purposes of these services are not to become part of the principal of the postwar trust fund, but are available to the department of veterans' affairs only for the purpose of providing grants to assist in identifying and serving veterans exposed to agent orange.

SECTION 3. SERVICES TO VETERANS EXPOSED TO AGENT ORANGE - BUDGET SECTION REPORT. The department of veterans' affairs shall provide a report to the budget section during the 2013-14 interim regarding any funds received to provide services to veterans exposed to agent orange; the status of the grant program, including information on the use of the grants awarded; and outcomes of the services provided."

Renumber accordingly

Date: 2/23/13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1405

House Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number .02001

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Skarphol Seconded By Rep. Pollert

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer			Rep. Streyle		
Vice Chairman Kempenich			Rep. Thoreson		
Rep. Bellew			Rep. Wieland		
Rep. Brandenburg					
Rep. Dosch					
Rep. Grande			Rep. Boe		
Rep. Hawken			Rep. Glassheim		
Rep. Kreidt			Rep. Guggisberg		
Rep. Martinson			Rep. Holman		
Rep. Monson			Rep. Williams		
Rep. Nelson					
Rep. Pollert					
Rep. Sanford					
Rep. Skarphol					

Total Yes _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

*.02001 amend + additional language discussed
to allow them to put gifts/grants/donations
in funds but keep separate to deal w/ agent over
voice vote carries*

Date: 2/23/13
 Roll Call Vote #: 2

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1405**

House Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0735.02002

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Grande Seconded By Rep. Skarphol

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X		Rep. Streyle		X
Vice Chairman Kempenich	X		Rep. Thoreson	X	
Rep. Bellew	X		Rep. Wieland	X	
Rep. Brandenburg	X				
Rep. Dosch		X			
Rep. Grande	X		Rep. Boe	X	
Rep. Hawken	X		Rep. Glassheim	X	
Rep. Kreidt	X		Rep. Guggisberg	X	
Rep. Martinson	X		Rep. Holman	X	
Rep. Monson	X		Rep. Williams	X	
Rep. Nelson					
Rep. Pollert	X				
Rep. Sanford	X				
Rep. Skarphol	X				

Total Yes 19 No 2

Absent 1

Floor Assignment Rep. Bellew

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1405: Appropriations Committee (Rep. Delzer, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (19 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1405 was placed on the Sixth order on the calendar.

Page 1, line 2, after "orange" insert "; to authorize collections for deposit into the veterans' postwar trust fund; and to provide for a report to the budget section"

Page 1, line 5, replace "\$100,000" with "\$25,000"

Page 1, line 9, after the period insert "Grants awarded under this section may be used only for travel and related operating expenses.

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SECTION 3. SERVICES TO VETERANS EXPOSED TO AGENT ORANGE - BUDGET SECTION REPORT. The department of veterans' affairs shall provide a report to the budget section during the 2013-14 interim regarding any funds received to provide services to veterans exposed to agent orange; the status of the grant program, including information on the use of the grants awarded; and outcomes of the services provided."

Renumber accordingly

2013 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1405

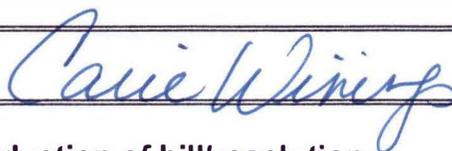
2013 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veterans Affairs Committee
Missouri River Room, State Capitol

HB 1405
03/14/2013
Job Number 19942

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for the identification of and provision of services to Veterans exposed to Agent Orange; to authorize collections for deposit into the veterans' postwar trust fund; and to provide for a report to the budget section.

Minutes:

Chairman Dever: Opened the hearing on HB 1405.

Representative Trottier, District 19: See Attachment #1 for testimony as sponsor and in support of the bill. See Attachment #2 for proposed amendment.

(7:12)Chairman Dever: So the House reduced the dollars and then required the money be put into the veteran's postwar trust fund?

Representative Trottier: Yes.

Chairman Dever: Then they provided the \$25,000 and were gifts, grants, and donations in the original bill?

Representative Trottier: I do not believe so, but I did volunteer that. I have been working on a project where we would go to contributors on a volunteer basis to farmers, elevators, and banks to match some of these funds and then as it became somewhat obvious that they might only get \$25,000, I recognized we need to find more than that because they are going to spend a lot more than that. They are very willing to be transparent. They would present their bills to the North Dakota Vietnam Veterans Affairs office to be paid out that way with whatever expenses they might have.

(8:55) Senator Marcellais, District 9: Testified in support of the bill. He talked about a former senator that died from Agent Orange.

(10:45) Chairman Dever: What other efforts are being made in this regard?

Senator Marcellais: I do not know specifically but I can do some research. I am preparing a floor speech for Vietnam Veteran's Day and I have been doing a lot of research on the Vietnam War. We had 199 veterans from North Dakota that were killed.

(11:58) Representative Amerman, District 26: Testified in support of the bill. I wear three hats as I come before this committee; I am a representative, a Vietnam veteran, and a father. It is in the capacity of a father that I stand before you today. When this bill was introduced in the GVA committee in the House, I was down in Denver with my 30 year old son that was diagnosed with a malignant brain tumor. As of now, he is doing fine and continuing radiation and chemotherapy. I am not here to tell you what I know about Agent Orange; I am here to tell you what I don't know, what I need to know, and what I want to know along with other families out there. I do not know if my service in Vietnam has contributed to my son's situation and is the reason why he is dealing with what he is. We would like to find some answers for our families. I don't think we will find the answers in my lifetime but maybe my family will. It is my understanding that what we were exposed to could go down 7 generations. I know we have to have a balanced checkbook in the end, but in the case of this bill, you are balancing dollars against lives. I wanted to tell you that I have a very personal commitment to this bill, and to me out of all the veterans' bills, this one is the most important. I would like closure for my family to know if my serving my country lead to the tumor in my son's brain.

(18:27) Chairman Dever: Walked through the bill to explain and talk about what it does.

(19:20) Representative Amerman: My understanding of this bill is that it is to provide funding to the appropriate people in the organization to bring in professionals to talk to our veterans groups. We are under the eye of other states and others might be willing to come out with private funding etc. if we do. The bill may need to have some work on wording.

Chairman Dever: Continues to explain the bill.

(21:53) Representative Amerman: Let's get the money in the bill and let the right people spend the money how they see fit.

Senator Marcellais: Did you go take your Agent Orange physical? It is required by the federal government if you are going to get any benefits.

Representative Amerman: I have not seen a doctor since I was a child.

Senator Marcellais: I would recommend it.

Representative Amerman: Maybe someday I will. I am not going to go for a handout if I don't need one so to speak.

Chairman Dever: What is your son's name?

Representative Amerman: My son's name is Josh. He is in good shape to fight what he is fighting. We will continue the battle.

Chairman Dever: While you continue the battle, we will continue to pray.

Representative Amerman: Thank you.

(24:30) Lonnie Wangen, Commissioner of Veteran's Affairs: Testified in support of the bill with some amendments. This bill is not just about Agent Orange. It is for the most part, but we can help our Vietnam veterans in other ways with this funding. Yesterday there were 22 suicides of veterans in the United States. 70% or 15 of them were Vietnam veterans. They did return to a hostile country that did not accept what they stood for and what they did. Shame on our country for that. It is very difficult for these veterans to go in

and get help. As they are suffering not only mentally but with health problems and bill pile up and the government closed the doors on them many time. They don't want to go back because of that and they do not realize that the VA we have now is way different than the VA they came home to. (Shared a personal story of a veteran affected with Agent Orange not wanting to ask for help) In North Dakota alone, from 2001 to 2011 we lost 220 veterans to suicide. I am trying to study that to find out who they were and what era they were in. The research so far shows that it will be about 70% will be our Vietnam veterans. We did do some town halls in Walsh County and we had quite a few people show up. A veteran spoke and it spurred many veterans getting help from that person speaking. We talked for 2 to 3 hours explaining benefits and answering questions. We do not want this money to go into the postwar trust fund - we want it to go into the general fund so that we can expend it directly to the VVA for their expenditures. As far as grants and gifts go, I would much rather prefer to see this go to the Vietnam veterans. If we are doing any fundraising, they are going to get a tax break. It makes it a lot easier and cleaner if donations go directly to the VVA. Either way, if that is still in here, my plan will be to have that money go into the VVA. The \$25,000 is way too low for what we need to do. If we can show a good example in North Dakota, other states may follow and we can spread this throughout our country. I felt that the \$100,000 that we asked for was a good start. We have 53 counties and to do one town hall in 53 counties is going to be a lot to do. We are just looking to help cover their expenses.

(31:23)Chairman Dever: If we deleted section 2 then it will satisfy both the issue of the postwar trust fund and the issue of donations?

Lonnie Wangen: Yes, I know the VVA has been spending a lot their money on this already and there are other organizations and I am sure we can all work together to try and get some more funds from the community, but we cannot always count on that.

Chairman Dever: I understand that there are about 60,000 veterans in North Dakota.

Lonnie Wangen: Yes, that is the estimate from the federal VA.

Chairman Dever: How many are Vietnam veterans?

Lonnie Wangen: About 15,800 are Vietnam veterans.

Chairman Dever: I know you are concerned about all veterans, but I am curious what efforts there might be out there that are targeted to this particular issue?

Lonnie Wangen: We are doing town hall meetings and we are targeting Vietnam veterans. We want to get them registered and find out how many we actually have out there and what their needs are. If they are in the guard then they get good information on their benefits explained to them right away. We are working with the Department of Defense and the VVA to have better information on those in regular active duty that are discharged. We do have so many in the rural areas and that seems to be where the suicides are coming from.

Chairman Dever: I recall the briefing I had on the benefits that I would be eligible for at the end of my time in service and all I could think about was going home.

Lonnie Wangen: That is all you heard and that has hurt a lot of our veterans.

(35:05) Senator Marcellais: Thank you for what you are trying to accomplish for the veterans, and is \$100,000 enough? Would you want to ask us for more?

Lonnie Wangen: I think it would be a good start in this biennium.

Chairman Dever: It is to identify veterans that are out there who should be receiving federal services. We have done a lot in the last 4 or 5 years training county veteran service officers on what benefits should be available to them.

Senator Marcellais: Comment on veteran in home town.

(37:30) Dan Stenvold, President of North Dakota Vietnam Veterans of America: See Attachment #3 for testimony in support of the bill and Attachment #4 for additional information.

(46:10) Chairman Dever: How would you see the money utilized?

Dan Stenvold: I would like to see the town halls. We had a faces of Agent Orange at our state picnic in Park River and I was hoping for 50 people and we had 220 show up. The presenter was wonderful and we have experts that we can bring in from Washington DC; we just need the money. This year it will be in West Fargo. The veterans that we have not reached just don't trust us. It is all about awareness. I don't know how we can get them sometimes. We have been fighting it for 11 years. I take 14 pills a day and 7 shots a day because of Agent Orange. My life is limited. I made a promise to myself that I will help veterans till the day I die.

Chairman Dever: We wish you a long life.

Dan Stenvold: I don't think it is going to happen but thank you. I have had a good life.

Vice Chairman Berry: I am wondering the 23 known diseases that are attributed to Agent Orange, is there a reference to where we can find them?

Dan Stenvold: Some of them are in the report that I gave you.

Senator Marcellais: They are on the Vietnam Veteran website.

Chairman Dever: Our intern printed them.

Senator Marcellais: Thank you for your work. Is there something for sailors even though they were not on land?

Dan Stenvold: We have been fighting that as an organization for the "blue water navy". They did not get on shore, but they were exposed by the planes that flew through the Agent

Orange and then landed on the carrier and were cleaned up there. They were probably just as exposed as some of the people on land, but the government will not accept that. Our equipment was contaminated and had to be cleaned when it came back and it stays in the ground forever. Our government has a big problem.

(52:30) John Jacobsen, North Dakota Veterans Coordinating Council: See Attachment # 4 for testimony in support of the bill.

(53:51) Ron Otto, Morton/Oliver County Veterans Service Officer, Vietnam Veteran: Testified in support of the bill. I have been a service officer for 26 years and I have seen so much; you are surprised every time you turn a corner with regards to this particular issue. (Gave personal experience of a Vietnam veteran that is dying) I understand that the legislature needs to balance their books but \$100,000 is not a lot to ask for this particular issue in a biennium. That is not a lot for this state. It is interesting to look at my federal government that sent us there and what they did to us, and then the political shuffle that started with regard to the harmfulness of it. After years of research and finger pointing, as this has evolved, we started out with a handful of disorders and now there are so many. I came to the conclusion after the years of service connecting veterans for diseases and then burying them, that the US government will never take full responsibility or fully disclose until enough of us are dead. Then it becomes economically feasible for them to do it. Then they can afford to do it. I will make you a bet - if you give us \$100,000 for the biennium, and I myself find 3 veterans and service connect them for these conditions We have paid the state back \$100,000. I bet I will find a lot more than three. The amount of money this bill will provide in putting heads together to get around the state is worth it and it will pay dividends. The health care and mental assistance is important. We need to get the veterans to come forward. I have two daughters and I will never be a grandfather. I take a

handful of pills twice a day and I am affected by Agent Orange. We need some help in getting the word out. With all of the advertising we have done, there are still people who do not know there is something out there for them. (Gave another personal story of a veteran)

(1:02:00) Chairman Dever: Thanked Ron for his service to veterans.

(1:02:51) Kelly Schmidt, State Treasurer: Testified to support the amendments to this bill. After reading the endorsement bill, I would support the amendments. The uniform principle and income act does not allow for this money to be deposited in the veterans postwar trust fund without it not becoming part of the principle.

Chairman Dever: Asked Kelly Schmidt to send an e mail to that effect and closed the hearing on HB 1405.

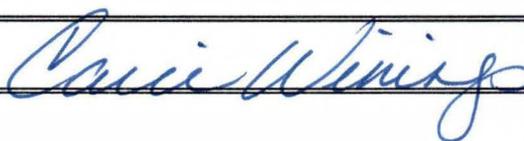
2013 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veterans Affairs Committee
Missouri River Room, State Capitol

HB 1405
03/21/2013
Job Number 20336

Conference Committee

Committee Clerk Signature



Minutes:

Chairman Dever: Opened HB 1405 for committee discussion. See Attachment #1 for testimony given to committee by the State Treasurer, Kelly Schmidt after the public hearing.

Senator Nelson: Moved to amend line 6 to \$75,000 and delete Section 2.

Vice Chairman Berry: Seconded.

Committee Discussion: The committee discussed the proposed amendments and clarified them with the intern. Deleting part of section 2 was an amendment brought in by Representative Delzer (03001 version), but the committee wants all of the section deleted and to rewrite the title. The House had amended the last sentence of Section 1 and the committee briefly discussed whether or not they wanted to keep that. The committee discussed the purpose of and who would be getting the grant. The Department of Veterans Affairs will be giving the grant and it is anticipated that they would be granting the Vietnam Veterans Association of America the funds to travel and inform veterans of their rights regarding Agent Orange and other benefits.

A Roll Call Vote Was Taken On the Amendment: 7 yeas, 0 nays, 0 absent.

Senator Schaible: Moved a Do Pass As Amended and Re-refer to Appropriations.

Vice Chairman Berry: Seconded.

A Roll Call Vote Was Taken: 7 yeas, 0 nays, 0 absent.

Senator Schaible: Carrier.

13.0735.03002
Title.04000

Adopted by the Government and Veterans
Affairs Committee
March 21, 2013



Handwritten signature and date: 3/21/13

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1405

Page 1, line 2, remove "to authorize collections for deposit into the veterans"

Page 1, line 3, remove "postwar trust fund;"

Page 1, line 6, replace "\$25,000" with "\$75,000"

Page 1, remove lines 12 through 20

Renumber accordingly

Date: 3/21
 Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES**

BILL/RESOLUTION NO. 1405

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number line 6 # 75,000 / delete Sect. 2

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Nelson Seconded By Senator Berry

Senators	Yes	No	Senator	Yes	No
Chairman Dick Dever	✓		Senator Carolyn Nelson	✓	
Vice Chairman Spencer Berry	✓		Senator Richard Marcellais	✓	
Senator Dwight Cook	✓				
Senator Donald Schaible	✓				
Senator Nicole Poolman	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 3/21

Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1405

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0735.03002 04000

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Schaible Seconded By Senator Berry

Senators	Yes	No	Senator	Yes	No
Chariman Dick Dever	✓		Senator Carolyn Nelson	✓	
Vice Chairman Spencer Berry	✓		Senator Richard Marcellais	✓	
Senator Dwight Cook	✓				
Senator Donald Schaible	✓				
Senator Nicole Poolman	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Schaible

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1405, as engrossed: Government and Veterans Affairs Committee (Sen. Dever, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS and BE REREFERRED to the Appropriations Committee (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1405 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "to authorize collections for deposit into the veterans"

Page 1, line 3, remove "postwar trust fund;"

Page 1, line 6, replace "\$25,000" with "\$75,000"

Page 1, remove lines 12 through 20

Renumber accordingly

2013 SENATE APPROPRIATIONS

HB 1405

2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

HB 1405
03-28-2013
Job # 20604

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL regarding identification of & provision of services to veterans exposed to Agent Orange

Minutes:

Attached testimony:

Chairman Holmberg called the committee to order on Thursday, March 28, 2013 at 10:15 am in regards to HB 1405. All committee members were present except Senator Warner and Senator O'Connell.

Becky J. Keller- Legislative Council
Laney Herauf - OMB

Representative Wayne Trottier, District 19: Introduced the bill and testified in favor. 1405 was brought to light when he visited Viet Nam Vets picnic last summer. He is a vet but not a Viet Nam vet. Why does ND have to take care of Agent Orange? It is a mix of two chemicals, when combined they are death on vegetation and humans. Viet Nam soldiers were told for 25 years it would not harm them. Since then 400,000 have died from Agent Orange illnesses. The problem is they don't believe anything the government tells them. Many of them have applied for help; a lot of them won't accept anything from the government. ND vets can reach out to these people, and these Viet Nam vets will listen to them. This was brought to help them cover some expenses, like mileage. The commander has spent this year on driving, setting meetings, getting help. (3.27)

Senator Robinson: You mentioned 60,000 deaths as a result of the Viet Nam war and 400,000 since, across the country as a result of Agent Orange. Do you have any idea how many Viet Nam vets we have in North Dakota?

Rep Trottier: I don't know.

Vice Chairman Bowman: so the \$100,000 is really administrative fee you need to contact the vets that possibly have Agent Orange, to help government find these people.

Rep Trottier: it goes to the VA; they can only authorize or give that money as bills are turned in. Those bills will be for mileage, meetings and similar type things. It will only go to the ND Viet Nam Veterans Association, a private organization, many of the Viet Nam veterans won't belong to the vet club or any other organization.

Representative Bill Amerman District 26: I could testify as a state Representative, or Viet Nam vet exposed to Agent Orange. I will testify today as a father. The bill before you is bigger than you think, we are presumed as we were in Viet Nam, to have occupational diseases, there are many diseases. We were exposed to Agent Orange, there is evidence it can be passed on for 7 generations. My son was diagnosed with a malignant brain tumor. Me and my son will find out, and his family. A lot of females, birth defects assumed to happen because they were exposed to AO. The bill does a couple of things, yes it pays mileage, helps make more public awareness to maybe someday get private funds for research to go forward, it can be used for a speaker, for bill boards to bring out public awareness, that would be up to the VA and different vet organization. When it came out of the House it was \$25 thousand, it is \$75 thousand now. I just ask for your support for this bill. (9.49)

Senator Marcellais, District 9, Rolette County testified in favor of the HB 1405 and provided Testimony attached # 1.

I did sign up for the agent orange settlement for my dependents I may never see it but maybe my dependent will see it someday. There is a physical you need to take at the VA Hospital in Fargo to qualify for the Agent Orange settlement. He read his written testimony. Told of veterans affected by PTSD and Agent Orange. This bill requests that \$75,000 be transferred from the general fund to the Dep.t of Veterans Affairs, do the math, we have 15,000 veterans, that is only \$5.00/ veteran, for those that served in Viet Nam. (16.03)

Lonnie Wangen, Commissioner of Veterans Affairs of ND. Here to answer questions from the committee. He is behind this bill.

Vice Chairman Bowman with all the problems we have had with AO is this the first time we have ever tried to help with this? If it is I am appalled at that. How come now?

Lonnie Wangen, that is a good question, in the 50s before agent orange was ever used it was stated it was harmful, and yet it was used, it was kept a secret and this is why Viet Nam veterans are very distrustful of their government. The federal government has done a lot to open up quite a few of these presumptives now and there is NVLSP (National Veterans Legal Service Providers), they have been fighting for decades. The federal government is not going to be admitting to this and providing the care and need until enough of the Viet Nam vets die. In ND we have been reaching out, to the Viet Nam vets to help them get the help they need. Vets trust vets, and now that helps them in getting help at the VA hospital.

Senator Robinson: I forgot the number, 15,000 in ND, Viet Nam Vets, a significant number are struggling with this issue, what can you tell us about that?

Lonnie, because of the illnesses from PTSD, and from having these terrible AO diseases, of the suicides we have 70% are Viet Nam vets. We are losing a veteran every 65 minutes in the USA. In the past the Viet Nam vets were working on this outreach before they ran out of funds, in the small time they have worked, they had over 300 cases in the Minot area, where the veterans and their dependents were having problems with Agent Orange. They have gotten them to get some help. We want to help them before it's too late.

Chairman Holmberg closed the hearing on HB 1405

Vice Chairman Bowman moved a do pass. 2nd by **Senator Wanzek**

Chairman Holmberg: Call the roll on a Do Pass on HB 1405.

A Roll Call vote was taken. Yea: 11; Nay: 0; Absent: 2.

Chairman Holmberg: This goes back to GVA. **Senator Schaible** will carry the bill.

The hearing was closed on HB 1405.

Date: 3-28-13

Roll Call Vote # 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1405

Senate Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Adopt Amendment Do Pass
 Do Pass as Amended Do Not Pass

Motion Made By Bowman Seconded By ~~Bowman~~ Robinson

Senators	Yes	No	Senator	Yes	No
Chariman Ray Holmberg	/		Senator Tim Mathern	/	
Co-Vice Chairman Bill Bowman	/		Senator David O'Connell		
Co-Vice Chair Tony Grindberg	/		Senator Larry Robinson	/	
Senator Ralph Kilzer	/		Senator John Warner		
Senator Karen Krebsbach	/				
Senator Robert Erbele	/				
Senator Terry Wanzek	/				
Senator Ron Carlisle	/				
Senator Gary Lee	/				

Total (Yes) 11 No _____

Absent 2

Floor Assignment GVA Schaubler

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1405, as engrossed and amended: Appropriations Committee (Sen. Holmberg, Chairman) recommends DO PASS (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed HB 1405, as amended, was placed on the Fourteenth order on the calendar.

2013 CONFERENCE COMMITTEE

HB 1405

2013 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee
Fort Union Room, State Capitol

HB 1405
April 16, 2013
21187

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Provide an appropriation for the identification of and provision of services to veterans exposed to agent orange

Minutes:

You may make reference to "attached testimony."

Rep. Vicky Steiner opened the conference committee on HB 1405.

Senator Schaible The Senate took out the language in Section 2 which the House had with the grants and money being available to the Post War Trust Fund. It was my understanding that is not a workable situation. They can take the money and put it in there, but they couldn't draw it back out to use that, so we eliminated that. I think Appropriations took it down to \$25,000, and we put it back to \$75,000.

Senator Dever The bill was introduced at \$100,000. The House took it down to \$25,000, and then there was a reference to a continuing appropriation, gifts and donations. What was the other reference to \$25,000?

Senator Schaible The 01 was an additional \$25,000 to this.

Senator Dever It wasn't really appropriated to donate money to the Department of Veterans Affairs. They said if you are going to make a donation, then make it directly to the veterans' organization, because they are a 501C3, and donations to them would be deductible. We removed that reference. as Senator Schaible said, the Post War Trust Fund is not a holding place for money for other purposes. That goes into the principal and the revenue is generated by that principal used for veterans' programs.

Senator Schaible The only other change is that we moved the money back to \$75,000.

Rep. Gary Paur Section 2, contributions and grants received for the purposes of these services are not to become part of the principal of the Post War Trust Fund but are available to the department only for the purposes of providing grants to assist and identifying and serving veterans exposed. It didn't become actually part of the principal of the Post War Trust Fund.

Senator Dever My understanding is that the Veterans' Post War Trust Fund is created in the constitution. Money that goes into that becomes part of the principal.

Rep. Gary Paur You may be right.

Jeb Oehlke, Deputy State Treasurer, appeared. Inaudible until 3:50.

Rep. Vicky Steiner Does this money that is given go into the Post War Trust Fund, or is it allowed to be used for the stand down for the agent orange?

Jeb Oehlke Inaudible. Can't hold in a separate account. (5:08)

Rep. Jason Dockter We only can use the interest that has accumulated on that for bus services and services that pertain to veterans? Is that correct?

Jeb Oehlke There is pretty broad authority to use those earnings.

Rep. Vicky Steiner The Senate's position is that we cannot deposit this money into the Post War Trust Fund and then also ask for it to not become part of it, and that is why you took that out?

Senator Schaible We thought that there was appropriation for money to do this. There was also availability to get grants and ask for donations to continue that to build it. Our understanding is that if you stick it in the Post War Trust Fund, it stays in there and the interest is used for their other things. We allowed the \$75,000 just to be used for the awareness of agent orange.

Rep. Vicky Steiner You don't have anything about the Post War Trust Fund in your amendment?

Senator Schaible Exactly. It was our understanding that you could stick donations and money in there. There is no other avenue to take it out and use it for the intended purposes.

Senator Dever The bill was introduced at \$100,000. The House took it to \$25,000. I had a conversation with the chairman of the House Appropriations. He said go ahead and increase the dollars, just don't go too high. We increased the dollars and didn't go too high. I would move that the House accede to the Senate amendments.

Senator Schaible seconded.

Rep. Jason Dockter We can take a vote, but I will probably resist so we can discuss it in the House.

Senator Marcellais There are 15,000 veterans in the state of North Dakota. If we allow \$75,000, that is \$5 a veteran. I testified to that in Appropriations. That is not very much for the number of Vietnam veterans we have in the state of North Dakota.

Senator Schaible This isn't for treatment for agent orange. There are programs available to treat agent orange. The thing is getting the awareness and connecting the services with the people that need it. That is what this money is for.

Rep. Gary Paur I would resist the motion to go with the Senate's version. I would rather think about it.

Senator Dever Did the House reduce the dollars in GVA or did they reduce it in House Appropriations?

Rep. Vicky Steiner I believe it was in House Appropriations. I believe the big discussion item we may have is the final dollar amount. In my own mind, I am going to resist the motion, because I am not exactly sure yet what kind of dollar amount I am comfortable with.

Senator Dever The Senate would quant with any dollars over \$75,000 that you would feel comfortable with. I think \$75,000 is a good number. I suspect the House Appropriations chair would support it, and I think the Senate has a pretty firm position at that dollar amount.

A roll vote was taken and resulted in 3-3. Motion fails.

We will be meeting at a later date.

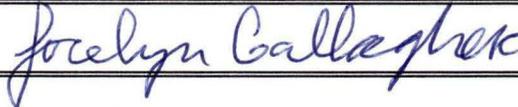
2013 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee
Fort Union Room, State Capitol

HB 1405
April 17, 2013
Job 21197

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

To provide an appropriation for the identification of and provision of services to veterans exposed to Agent Orange.

Minutes:

You may make reference to "attached testimony."

Rep. Vicky Steiner opened the conference committee on HB 1405. Is this the first time we're doing this program?

Senator Dever ND would be leading the way in this effort. This is about veterans. Vietnam veterans are reluctant to step forward to get medical care. Whatever the amount we determine is minor, but it makes a huge difference for those veterans.

Senator Schaible My understanding is there is pretty good care available for treatment of agent orange. This goes on up to 7 generations. If the children, grandchildren don't get into the system, this amount of money to start and keep it to move forward is needed.

Senator Marcellais I am one of those Vietnam veterans. I don't know if this caused my son's birth defects and we lost Senator Bercy last year due to Agent Orange. \$75,000 to me isn't much, but it's a start.

Senator Dever Any veteran who served in Vietnam and later contracts diabetes it is an automatic 20% disability.

Rep. Jason Dockter I think the position of the house with appropriation by putting it down \$25,000 is once this program starts it is a good program. I think we could come to some compromise and get this off the ground. Since we are the first in the nation and with the benefits of this program we will have future funding service dogs Rep. Boehning resurrected.

Senator Dever I did concur on the service dogs. I have a bit of a concern with the fact that we were told the cost of one dog \$15,000 and the bill now says maximum of 12,500. Section 2 provide report to the budget section justify the dollars spent. I feel good about 75,000.

Senator Schaible Originally we looked at how we are going to meet outreach and it was PSAs, town hall meetings, etc. and including billboards. The cost alone of billboards for 2 months in two locations is \$27,800. The 25,000 would only buy the billboard, is this enough to get a good start? I think we need to go more than the 25,000 level.

Rep. Gary Paur I agree but I'm going to resist on the effort to go with the \$75,000.

Rep. Jason Dockter How would the Senate feel on \$50,000?

Senator Dever I had hoped we would come with a serious offer to the table.

Rep. Jason Dockter That's 100% increase from the 25,000 to 50,000. I am putting that out there.

Senator Dever I understand that's a 50% decrease from the previous position of the House GVA.

Rep. Vicky Steiner I don't believe it was included in the Governor's budget. I think this was a stand outside the Veterans budget. It was a brand new program brought outside separately.

Senator Dever If we're going to give adverse consideration to anything that was not in the Governor's budget I think we've gone beyond that.

Senator Schaible I understand we are trying to do the best interest by compromise but I feel this is a priority issue. Even at 75,000, we thought it was minimal enough to get the job done. I feel the Senate's version is set at 75,000 and fee the importance of the seriousness of this issue.

Senator Dever I think house and senate would both like to do what we can. I don't think \$75,000 is a budget buster. I suggest we send the bill to the House floor at 75,000, debate it on conference committee report and if they kill the report we'll bring it back down and ask for further consideration of this committee. It doesn't need to go on the 11th order for up or down. Ask for a verification vote so members of house are free to vote from undo pressure from anyone.

Rep. Vicky Steiner I think we can resolve it here, I don't think we need to take it to that level. We are very close.

Rep. Jason Dockter By starting this program is there any other matching education to bring this total up from where we have. This is a pilot, is there any other funding that will incorporate with that?

Senator Schaible Initially that was the idea is that we have a matching grant with the original language that was in the bill. We talked about community meetings and informational stuff. They were just asking for transportation so there is a local input to contributions. That is the whole idea of keeping it going, this is just to organize it through

the state office and get it started. This amount is enough to put some ads in the papers and hopefully the rest of the local contribution can come in and take care of it.

Senator Dever I would like to mention I am not aware of any other dollars specific to this program.

Rep. Vicky Steiner Grants awarded under this section may be used only for travel and related operating expenses. My understanding was it's going to be a sandwich event.

Senator Schaible Yes, I'm sure the ads, and PSAs, billboards, etc. none of it was a unique plan. Those were ideas of how the plan would be initiated. A lot of it would be how much funding they have. **15:51 recording is blank.**

16:06

Rep. Vicky Steiner The house is very supportive of this program and veterans. It's just a level of funding to kick off a brand new program. Whether we go with one number or the other, we're supportive to get this program kicked off.

Rep. Jason Dockter The question about matching, whatever money we come up with people will be coming out of the woodwork to support and get it going with social media, etc. Once they have seed money to get the message out I think will help.

Rep. Gary Paur Isn't this going to be used in conjunction with the stand downs? Isn't this just a supplement? It wouldn't be a stand-alone program, would it?

Senator Schaible It can be either way. The problem is the reluctance of Vietnam veterans to seek out help in services. They don't trust service agencies designed to help them. It could be used as a stand-down to get them but I think it is more of a direct go find them type thing.

Senator Dever Similar to a stand-down is an outreach program. The provision that applies only to travel and related expenses I think was an amendment placed on the bill in the House.

Rep. Gary Paur I believe you are correct.

Senator Dever Appears to me we've come to a conclusion that we might need to have further conversations outside the committee and reschedule.

Rep. Vicky Steiner I think that's a helpful suggestion. Adjourned.

2013 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee
Fort Union Room, State Capitol

HB 1405
April 17, 2013 (PM)
21224

Conference Committee

Committee Clerk Signature

Carmen Hart

Explanation or reason for introduction of bill/resolution:

Provide an appropriation for the identification of and provision of services to veterans exposed to agent orange

Minutes:

Attachment 1

Rep. Vicky Steiner opened the conference committee on HB 1405. We are down to the dollar amount.

Senator Schaible We are still at \$75,000. I would vote no on \$50,000, because \$75,000 is a low enough figure that is a reasonable amount, but is high enough to actually get the job done.

Senator Dever I would follow the wisdom of the Senate conference committee chairman.

Rep. Gary Paur I asked Wayne Trottier who is the prime sponsor about our \$50,000 proposal. He said that was the original intent of the bill. He said the Vietnam veterans would be tickled pink with \$50,000.

Senator Dever Why did he introduce it at \$100,000?

Rep. Gary Paur That is kind of a common practice. I don't understand but they were hoping for \$50,000 and said the Vietnam veterans would be happy.

Senator Schaible I imagine they would be happy with any amount we would give them. It is at the Senate side, and we feel that \$75,000 is an appropriate amount.

Rep. Vicky Steiner Do you have any accounting of that \$75,000?

Senator Schaible I don't have a breakdown of what it would be used for. They had some bids for advertising and some signs. 24 months for 2 billboards was \$27,000. They thought about running some radio spots to invite people to functions and we know what that costs. They would prioritize until the \$75,000 was gone.

Rep. Jason Dockter went over **Attachment 1** which had a breakdown of the use of \$50,000. I, too, don't think billboards are very effective.

Rep. Vicky Steiner I have done some town halls for other events. We have had from 60 to 200 people attend these 6 town halls. Each one of them was roughly \$600-\$800 for a barbeque and beverage. You might get that price down if you get some community donations. Hopefully, this program will grow and more of your veterans will attend. If you did 20 town halls, you are doing an outreach to 20 different community blocks across the state which I think would cover the area of the state very well. Sometimes they need transportation to the VA Hospital in Fargo, and they do not want to go by themselves so another veteran takes them to their appointment. We think this is very reasonable. Are there things that you think are unreasonable that would justify another \$25,000?

Senator Schaible If it was for one year, it is fine. You take all this and divide it by two, then it is too thin.

Rep. Jason Dockter For transportation, the federal rate of 55 cents for 1,000 miles would be \$550. At \$20,000 over two years would be appropriated for 40,000 miles.

Senator Schaible I just took the \$20,000 divided by 50 cents a mile and ended up with 4,000 miles. I am off. I apologize.

Rep. Jason Dockter It would be approximately 40,000 miles.

Rep. Vicky Steiner This is an approximation. They might not need that type of transportation cost either. I am not sure if they have speakers in four or five spots across the state who might be helping out with these outreach programs, and their mileage could be significantly less.

Senator Schaible I am thinking the transportation might be higher. If you are going to reach these people, I think it is going to be a couple people go visiting them at their home, actually targeting them. You might do all of this and have somewhat of a poor turnout the first year. Hopefully, the second year you will get a bigger rebound. I would hate to throw an amount of money on there and just miss it. I imagine we will look at this again in two years.

Rep. Gary Paur Rep. Trottier was saying in a way that this would be sufficient to get the project going and then look at it in two years. There is more of an acceptance to go to Fargo.

Rep. Vicky Steiner The point he is trying to make is that \$20,000 was spent, but a lot of that was going to the Minneapolis hospital because the Fargo hospital wasn't as trusted as it is today. Hopefully, that \$20,000 figure is on the high end, and that Fargo will be the hospital of choice.

Senator Marcellais I have been involved with this on the Turtle Mountain Indian Reservation. I assisted with some outreaches with the federal government. The initial time we had it I went out and recruited veterans to come to this outreach. In two days we had

over 101 veterans that were seen. The next time they had the outreach I wasn't involved and they didn't have as a good turnout as the first time. We need to gain the confidence of Vietnam veterans. They are not going to come in groves to find you. The largest population of veterans is Native Americans. We have alcoholism and drugs on the reservations. When you get out of the service, you don't have a job or a home. If you go on drugs or alcohol, that is the third thing you need help with. The last thing is suicide. We have a high suicide rate right now. I think \$75,000 is nothing to keep our veterans living.

Senator Schaible This isn't the services to these people. This is just the awareness for that service. We want to make sure we are not missing the mark. Is 50 enough? Maybe it is, but I think for the Senate 75 is where we are at.

Senator Dever We find ourselves, the Senate conferees, defending the House bill against the House.

Rep. Vicky Steiner It is common for people to enter bills that have a little bit of inflation factor in anticipation of meeting House appropriations members and knowing that they possibly could trim it. I think it is imperative that we listen to what the bill sponsor's original intent was. I don't think this program will fail at \$50,000. How do you justify the extra money?

Rep. Gary Paur I am very reluctant to go over that \$50,000. If we can't come to agreement now, I suggest we recess again.

Senator Dever Thank you for putting together the numbers, and I think we are starting to put a fine point on this. I think we need further consideration of it.

The meeting was adjourned.

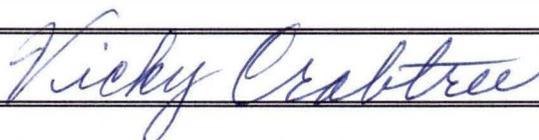
2013 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee
Fort Union Room, State Capitol

HB 1405
April 18, 2013
Job #21269

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Provide an appropriation for the identification of and provision of services to veterans exposed to Agent Orange.

Minutes:

Rep. Steiner opened the conference committee on HB 1405. We have discussed 1405. One of my concerns is on Section 2 and I appreciate that the Senate found out that the Post War Trust Fund would not allow us to do what we wanted to do with this money and so the House is willing to change that and agree with the Senate. I checked to see if we could clean this up prior to establishing the dollar amount. I was told that was not possible as it comes in one motion for both changes. Is that your understanding?

Sen. Dever: I think we can, but I think it would be better to do it all together. If you are agreeing with the Senate amendment on that, it is already out.

Rep. Steiner: We are agreeing on Section 2. We are not agreeing on Section 1. Section 2 is out so the only question is the dollar amount.

Sen. Dever: I appreciated you brought the proposed budget numbers. There appears to me that there is no publicity in those numbers. There might be a need for advertising if we are going to hold events around the state. The dollars need to be a little higher than what we talked about before.

Sen. Schaible: There was a friend of Ron Ness and he was a Viet Nam veteran and was interested in this issue. I told Ron if his friend would like to sit with me, it would be an honor. He did sit with me and I asked him about his Viet Nam experience and he couldn't tell me he was a veteran. It is difficult for some of these people to even say they are a veteran. We are talking a difference of \$25,000-\$50,000 and it is not a large sum of money. I understand compromise and negotiations and give and take. I feel we need to keep the dollar figure right here.

Rep. Paur: We are addressing the version 4000, but the House has passed 3000 and if we don't come to some resolution, the Senate will have the option of adopting the 3000 version. As it sits now, that Section 2 would be in.

Sen. Dever: The Senate passed the 4000 version of the bill. The House passed over to us the 3000 version. We are talking the difference between 3000 and 4000. If we leave the bill as it is and the House was to accede to the Senate, the bill would go to the House floor as it is in 4000.

Rep. Paur: But, if we don't accede, then it is either dead or you adopt the 3000 version.

Sen. Dever: If you agree to take it up and argue this on the conference committee report, then the bill goes up to \$75,000 and you can either adopt or reject the conference committee report. We would then come back to the conference committee. If we leave it as it is, the Senate does not vote on it again.

Rep. Steiner: Thank you for the clarification.

Sen. Dever: Is that an effort the House would like to make?

Rep. Steiner: I don't believe so.

Sen. Dever: I offered a compromise of substituting \$65,000 for \$75,000 and delete the sentence that reads beginning on line 9, "Grants awarded under this section may be used only for travel and related operating expenses."

Sen. Schaible: Second.

Rep. Steiner: I would like to check why that language was put in and research to see if that was a significant change or not. I don't think the dollar amount is taking us where we need to go.

Sen. Dever: Are you suggesting we need more?

Rep. Steiner: Next biennium I would agree to look at more. The House is in belief that is an adequate amount for the beginning of this program.

Sen. Dever: The language was added in House Appropriations. My guess is they don't want us to pay someone a salary to carry out this program. I don't think anyone has the intention of hiring anybody to do it. I think the Viet Nam Veterans of America and other organizations work from the heart and work as volunteers trying to do right by their brother soldiers from Viet Nam.

Rep. Steiner: I don't think the House has any difference of opinion on how valuable soldiers and the military. I think we need the focus of this committee on how much the dollar amount is needed to start this program.

Sen. Dever: We defeat the motion in the Senate at \$75,000. I didn't mean to imply any difference between the Senate and the House in our regard for veterans and their need for services. I think the sentence provides restrictions that make the program unworkable.

Rep. Steiner: Take the roll on the motion.

ROLL CALL VOTE: 3 y 3 n

MOTION FAILS

Rep. Steiner: I would like to check on the traveling and related operating.

Sen. Dever: I read it as expenses related to travel.

Rep. Steiner: It says related operating.

Rep. Paur: Would it make sense to put in there, grants awarded under this section may not be used for salaries?

Sen. Dever: I would suspect the county veterans service officers would assist in this process.

Rep. Steiner: I believe that is in another bill too.

Sen. Dever: County veteran service officers receive a salary otherwise. If they participate in this program would they be in violation of that stipulation?

Rep. Paur: I wouldn't think so.

Rep. Steiner: I want to visit some of the people on our side and we can come back and revisit this.

2013 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee
Fort Union Room, State Capitol

HB 1405
April 18, 2013 #2
Job #21291

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Provide an appropriation for the identification of and provision of services to veterans exposed to Agent Orange.

Minutes:

See Attachments #1-2

Rep. Steiner opened the conference committee on HB 1405. I did some research. You proposed \$65,000. This is not stand down money. The Senate bill 02007 there is \$10,000 for stand down money for sandwiches and that kind of thing. They actually only spent \$5,000. There is \$15,000 that would be turned back July 1. I visited with House Appropriations chairman and he said this money is actually for advertising to reach the veterans. For the volunteer to go out and drive and pick up this person and possibly take them to the VA. I haven't portrayed this bill accurately. You are proposing \$75,000 for this volunteer to drive and reach these veterans and pick them up. We are going to withdraw the \$50,000 and go to \$25,000 or maybe a little higher. The gentlemen who testified for our committee said he personally drove and spent \$20,000 of his own money to take these veterans back and forth, but it didn't include advertising. My apologies for not understanding what this money is being used for. The House has significant money in other budgets. The House brought back the service dogs which was \$50,000. There is \$250,000 in the postwar trust fund. Our homestead tax credit for veterans was cut by the Senate. Upward bound is still in progress which is around \$400,000. The entire budget is almost \$2 million. We are talking about in 1405 is supporting the travel of a volunteer to drive to someone's home, talk to them and possibly driving them to the VA in Fargo. We are really talking about travel and related operating expenses. We need to set these guidelines out so the money is properly spent according to the intent of this law. Possibly the Senate and House might want to add things like for a volunteer get make personal visits to a veteran and for advertising about this particular Vietnam veteran program. We want to get specific and I don't know if it is automatically turned back if not spent.

Sen. Dever: You have represented this bill up to this point exactly as it was represented to me prior to its introduction and through its hearing in the Senate. I suspect the hearing was the same in the House. I am insulted by what I just heard. I am going to need to cool down before we can discuss this any further. I suggest we adjourn this meeting and schedule another one tomorrow.

Sen. Schaible: This bill is before us and it is about people affected by Agent Orange. If you want a factor in there that says we will account for the money and how it is spent; I don't have a problem with that. The issue is can we give money to these veterans. When we dance around all the other stuff I have to agree with my Chairman that to me that is way off the line.

Rep. Steiner I didn't bring up to upset anybody. I thought it was a stand down. I was told it is separate in the budget. This is one on one and it is for travel. I was told there has been disappointment sometimes that we are trying to do things for veterans and then the money is not spent and it doesn't get to them and it is not used. I'm trying to protect our intent is followed.

Sen. Schaible: I don't disagree with that, but stand downs are a different issue and they are a good program. Upward bound is a different issue. Don't have a problem with reporting. I find it bazaar we are talking about these things.

Sen. Dever: I am familiar with stand downs. The reason there is money being returned for those stand downs is because they have been so successful that organizations step forward in support of them. This is a very different program. This is specifically for Vietnam veterans impacted by Agent Orange. I have always said that Vietnam veterans have a right to be compensated for situations that came about as a result of their service. That responsibility is on the federal government and the responsibility of the state is to do everything we can to get them what they need to access that federal. I think that is what this program does. That is what was heard in the House and Senate GVA. If Appropriations wants to turn it into something other than that (inaudible).

Rep. Steiner: I was told it was possible if we don't have guidelines that maybe it won't be used. We might be able to roll that \$15,000 that wasn't spent into this particular program.

Sen. Dever: The \$15,000 and \$50,000 would make it \$65,000.

Rep. Steiner: The House thinks \$35,000 looks pretty good. We can sleep on it and have a meeting tomorrow.

Sen. Schaible: I see very little movement in my opinion.

Sen. Marcellais: The service dogs you talked about has nothing to do with Agent Orange. That is PTSD and that is a different thing completely. That is in in the VA budget. Agent Orange is just for Vietnam veterans.

Rep. Steiner: I just wanted to acknowledge that there are programs out there that are new. Do you honestly think a volunteer needs to spend \$75,000 driving around the state in two years?

Sen. Dever: It is not gas money. Look at the two handouts I gave you. (See Attachments #1 and #2.) One of those suggests what needs to come together to put together a town hall meeting. That is the route we should be considering. That is what was represented to us in both those hearings.

Rep. Steiner: Maybe there was a misunderstanding as to what was presented to House Appropriations. They understood that food was not included. Maybe I presented it wrong when we started this hearing.

Sen. Dever: You presented it exactly as we understood it.

Rep. Paur: Would it be to our advantage to have the original sponsor speak to us as to what his intentions were with the bill?

Sen. Dever: I don't have any objection. I would like to hear from Rep. Amerman who came and testified in the Senate committee. He gave me the two handouts and feels very strongly about this.

Rep. Paur: I thought this would help in understanding the original intent of this.

Sen. Dever: I don't have any objection to it. I have had those conversations with Rep. Trottier and I think I know what his intentions were with the bill.

Sen. Marcellais: That one person isn't going to find all 15,000 veterans in two years. It is going to have to be more than one person to find those 15,000 in the North Dakota. It is \$5.00 a veteran in this bill.

The meeting was adjourned.

2013 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1405
April 19, 2013
21328

Conference Committee

Committee Clerk Signature

Carmen Hart

Explanation or reason for introduction of bill/resolution:

Provide an appropriation for the identification of and provision of services to veterans exposed to agent orange

Minutes:

You may make reference to "attached testimony."

Rep. Vicky Steiner opened the conference committee on HB 1405. The House has to something to offer.

Rep. Jason Dockter One offer is to change \$75,000 to \$50,000 on Line 5. On Line 9 after 2015 after the period strike the sentence through Line 10 which is grants awarded under this section may be used only for travel and related operating expenses.

Rep. Gary Paur seconded.

Senator Dever I think the Vietnam veterans and their descendants can live with this. They should be able to put together a good program with this \$50,000. The future of the success depends on the success of it in this biennium, and I think that future success will bring about dollars that will help to continue the program from other sources. I think we can support this. We appreciate the hard work by the House.

Senator Schaible Of course, I would like more funding, but I understand the concept of compromise and the concerns. I think the program is good enough to endorse this and move it forward and just hope we see some real success with this.

Senator Marcellais I would agree with the other two senators. It is a starting point and, hopefully, this will grow.

Senator Dever The deletion of that sentence I feel is important because I think that creates restrictions that stand as a barrier to the program.

Rep. Jason Dockter We don't want any restrictions. We want to make sure we get some funding and see how the program will do without any restrictions. The report will be critical and we can address this in two years and look at funding in the future.

Rep. Gary Paur I believe the bill sponsors will be pleased with this.

Rep. Vicky Steiner I would like to thank the Senate too for their hard work and your dedication to this issue. My hope is that the program is successful, and we can look at it again next session and see what else we can do.

There was some discussion as to what the correction motion is. Rep. Dockter and Rep. Paur restated their motion and second as follows:

Rep. Jason Dockter made a motion to accede to the Senate amendments and further amend on version 13.0735.04000 and further amend on Line 5 changing \$50,000 to \$75,000 and starting on Line 9 with grants striking the whole line through Line 10.

Rep. Gary Paur seconded.

A roll vote was taken and resulted in **HOUSE ACCEDE TO SENATE AMENDMENTS AND FURTHER AMEND, 6-0.**

***THE LC OFFICE STATED THAT THE CORRECT MOTION SHOULD HAVE BEEN SENATE RECEDE FROM SENATE AMENDMENTS AND AMEND AS FOLLOWS. THE ROLL VOTE AND CONFERENCE COMMITTEE REPORT SHOWS THE CORRECTION.**

April 19, 2013

done 1/19/13

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1405

That the Senate recede from its amendments as printed on page 1171 of the House Journal and pages 849 and 850 of the Senate Journal and that Engrossed House Bill No. 1405 be amended as follows:

Page 1, line 2, remove "to authorize collections for deposit into the veterans"

Page 1, line 3, remove "postwar trust fund;"

Page 1, line 6, replace "\$25,000" with "\$50,000"

Page 1, line 10, remove "Grants awarded under this section may be used only"

Page 1, remove lines 11 through 20

Renumber accordingly

2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: House Government and Veterans Affairs

Bill/Resolution No. 1405 as (re) engrossed

Date: 4-16-13

Roll Call Vote #: _____

- Action Taken**
- HOUSE accede to Senate amendments
 - HOUSE accede to Senate amendments and further amend
 - SENATE recede from Senate amendments
 - SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) --

- Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by Senator Dever Seconded by: Senator Schaible

Representatives	Yes	No					Senators	Yes	No
Rep. Steiner	X						Senator Schaible	X	
Rep. Dockter	X						Senator Dever	X	
Rep. Paur	X						Senator Marcellais	X	

Vote Count Yes: 3 No: 3 Absent: _____

House Carrier _____ Senate Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Motion fails.

2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: House Government and Veterans Affairs

Bill/Resolution No. 1405 as (re) engrossed

Date: 4-18-13

Roll Call Vote #: _____

- Action Taken**
- HOUSE accede to Senate amendments
 - HOUSE accede to Senate amendments and further amend
 - SENATE recede from Senate amendments
 - SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) _____

- Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: Dever ^{4-17-13 am} _{4-17-13 pm} ₄₋₁₈₋₁₃ Seconded by: Schaible ^{4-17-13 am} _{4-17-13 pm} ₄₋₁₈₋₁₃

Representatives	4-17-13 am	4-17-13 pm	4-18-13	Yes	No		Senators	4-17-13 am	4-17-13 pm	4-18-13	Yes	No
Rep. Steiner	X	X	X		X		Senator Schaible	X	X	X	X	
Rep. Dockter	X	X	X		X		Senator Dever	X	X	X	X	
Rep. Paur	X	X	X		X		Senator Marcellais	X	X	X	X	

Vote Count Yes: 3 No: 3 Absent: _____

House Carrier _____ Senate Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

4000 change version to \$65,000 Delete Lines ~~9 & 10~~ 9 & 10 motion fails

2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: House Government and Veterans Affairs

Bill/Resolution No. 1405 as (re) engrossed

Date: 4-19-13

Roll Call Vote #: _____

- Action Taken**
- HOUSE accede to Senate amendments
 - HOUSE accede to Senate amendments and further amend
 - SENATE recede from Senate amendments
 - SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) 1171 ..

- Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) 1405 was placed on the Seventh order of business on the calendar

Motion Made by: Dockter Seconded by: Paur

Representatives	4-18-13 5-1-13			Yes	No		4-18-13 5-1-13			Yes	No
	4-19-13	4-19-13	4-19-13				4-19-13	4-19-13			
Rep. Steiner	X	X		X			X	X		X	
Rep. Dockter	X	X		X			X	X		X	
Rep. Paur	X	X		X			X	X		X	

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Steiner Senate Carrier Schaible

LC Number 13.01735 . 03003 of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

*Change Replace \$75,000 with \$50,000
& overstrike Line 9 starting with grant
& deleting Line 10*

REPORT OF CONFERENCE COMMITTEE

HB 1405, as engrossed: Your conference committee (Sens. Schaible, Dever, Marcellais and Reps. Steiner, Dockter, Paur) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ page 1171, adopt amendments as follows, and place HB 1405 on the Seventh order:

That the Senate recede from its amendments as printed on page 1171 of the House Journal and pages 849 and 850 of the Senate Journal and that Engrossed House Bill No. 1405 be amended as follows:

Page 1, line 2, remove "to authorize collections for deposit into the veterans"

Page 1, line 3, remove "postwar trust fund;"

Page 1, line 6, replace "\$25,000" with "\$50,000"

Page 1, line 10, remove "Grants awarded under this section may be used only"

Page 1, remove lines 11 through 20

Renumber accordingly

Engrossed HB 1405 was placed on the Seventh order of business on the calendar.

2013 TESTIMONY

HB 1405

Good morning Chairman Kasper and committee members.

For the record, my name is Wayne Trottier, representing

District 19 which is located from Northwood to Grafton/Hoople. I live in Northwood.

HB 1405 is very simple in that it appropriates \$100,000 for the bi-annium to be granted to the North Dakota Viet Nam Veterans Association.

The North Dakota Viet Nam Veterans Association is similar to the American Legion, VFW, AmVets, DAV and other veteran service organizations.

The question must be asked why this appropriation for just the Viet Nam Veterans Association.

As many of you may understand, the Viet Nam Conflict was a very contencious war. The US would never even declare war, and yet somewhere around 60,000 US soldiers died in Viet Nam.

When soldiers came home and were discharged, many soldiers were met by protestors and others that swore at them, even physically attacked them and made them feel like they were not accepted back in the United States. Remember, the majority of these soldiers were drafted into the military. They did not volunteer, but because of their service, they became absolute "PATRIOTS".

For a number of reasons, one mentioned in the previous paragraph, they did not trust our government.

The biggest reason of all for their not trusting government, I feel, is the Agent Orange issue.

Agent Orange--What is it? It is a 50-50 mixture of the chemicals, 2,4,5-T and 2,4-D. It was manufactured for the U.S. Department of Defense, primarily by Monsanto Corp and Dow Chemical.

The 2,4,5-T used to produce Agent Orange was later found to be contaminated with 2,3,7,8-tetrachlorodibenzodioxin (TCDD), an extremely toxic dioxin compound

During the Viet Nam Conflict, between 1962 and 1971, the United States military sprayed nearly 20,000 US gallons of material containing chemical herbicides and defoliants mixed with jet fuel in Vietnam, Eastern Laos and parts of Cambodia, as part of Operation Ranch Hand. The program's goal was to defoliate forested and rural land, depriving guerrillas of cover: another goal was to induce forced draft urbanization, destroying the ability of peasants to support themselves in the countryside, and forcing them to flee to the U.S. dominated cities, thus depriving the guerrillas of their rural support and food supply.

As I stated earlier, approximately 60,000 US soldiers died in this conflict. The astounding number is that approximately 400,000 have been diagnosed with Agent Orange related illnesses.

The problem now comes in. For approximately 25 years or so, the Federal government claimed there was very little affects from Agent Orange. Thousands died during this period and the normal or average medical servers were not aware of Agent Orange related illnesses. For this reason, there are a lot of Vietnam veterans who absolutely do not trust any government. However, they do know that the North Dakota Vietnam Veteran,s Assoc understands. Many times they do not even believe or trust Am Legions, VFW,s, AMVET,s, DAV,s or any service organization.

The North Dakota Vietnam Veterans Assoc is able to, and has been reaching out to many of these veterans. In doing so, many have spent a lot of time, effort and dollars in doing so. Also the assoc would like to sponsor more townhall type of meetings, as well as one on one contact.

Thank you Chairman Kasper and members of the GVA committee

There is testimony to follow that can answer a lot more specific questions. However, I would sure try to answer any questions that I can.

Good morning Mr. Chairman and committee members!

This morning I could stand before you not as the President of the North Dakota Vietnam Veterans of America, not as a National Board member of the Vietnam Veterans of America or in a \$500 suit as Mayor of Park River. I stand before you as a Vietnam Veteran that served 3 tours in Vietnam in 69, 70 and 71.

There are thousands of Vietnam veterans in North Dakota and we need your help. Agent Orange is killing Vietnam veterans daily in this state and A/O has now been detected in our children and grandchildren. They too are sick and need our help. In West Virginia, A/O has been found in 4 generations and scientists say it could follow us for 7 generations.

Most Vietnam Veterans love their country but don't trust their government, myself included. We have veterans that are sick and dying that won't go the VA. Partially because of the way we were treated when we came home and the fact that the trust factor in our government is gone.

We, (Vietnam Veterans) need to get the word out that there are now 23 known diseases for men, 13 more for the women that served AND 19 disabilities for our children.

We need more outreach to these veterans, we need advertisements in local papers, we need PSAs we need town hall meetings about awareness, all which all cost money.

It's not working the way it is, give us a chance to change the lives of hundreds of Vietnam veterans.....So what is agent orange?

What is Agent Orange?

Chemically, Agent Orange is a 1:1 mixture of two phenoxy herbicides—2,4 dichlorophenoxyacetic acid (2,4D) and 2,4,5 trichlorophenoxyacetic acid (2,4,5-T)

Both are common herbicides.

The KILLER dioxin, 2,3,7,8-tetrachlorodibenzodioxin (TCDD) “perhaps the most toxic molecule ever synthesized by man”

TCDD was “accidentally” found after the “accidental” heating of the top 2 herbicides.

It has been stated that one teaspoon of this dioxin added to the water supply of Los Angeles could kill its entire population

The spell check on my computer went crazy with all these chemicals! Dan

Agent Orange is to the Vietnam Veteran what the Holocaust was to the Jewish people during World War II.

Both groups were sprayed with chemicals with full knowledge of their government and of what these chemicals would do to human beings.

In the case of the Vietnam veterans, the final chapter is just taking longer than the government suspected.

Working for our government, Monsanto by the “accidental heating” of 2,4-D and 2,4-T (common herbicides) formed the dioxin TCDD. It has been described as “THE MOST TOXIC MOLECULE EVER SYNTHESIZED BY MAN”

Monsanto WARNED our government in 1952 not of possible side effects of this chemical BUT what this chemical would do to humans and the areas that were sprayed with TCDD. UNCLE SAM said “let’s use it!”

Thus, millions of veterans were sprayed with the chemical in Vietnam. 5 million acres of that country was sprayed with a concentration of 13 times the recommended USDA application rate for domestic use. In some areas, concentrations were hundreds of times greater than levels considered safe by the US EPA.

20 million gallons was sprayed over 30% of South Vietnam’s forests at least once in a 9-year period

3 million Vietnamese people have been affected by A/O 150,000 children have been born with birth defects. Miscarriages, stillbirths in humans and their livestock such as cattle, water buffalo and pigs has decimated their country

FYI:

Classified information from Admiral Zumwalt's report to the Dept. Of Veterans Affairs, released last week. Will go down in history as the biggest cover up/fiasco since the bombing of Pearl Harbor. It deals with all the truths and issues of Agent Orange, covered up by our government for years.

In 1991, North Dakota Vietnam Veterans of America surveyed Vietnam Veterans in North Dakota. Not many would talk with us but we found at that time 324 children that needed some type of assistance. We ran out of money so nothing was done to help them or to follow up on their issues. Our findings done with Minot State University are enclosed as number 5 in your information literature

As of 2012, there were 58,501 names on our wall. Confirmation of 8 times that many have died from the exposure of Agent Orange.

If you truly read this information today, you will understand why "We love our country but don't trust our government"

Thank-you! Submitted by Dan Stenvold

THE NORTH DAKOTA CHILDRENS ASSISTANCE PROGRAM of the
Minot State University

The Vietnam Veterans Children's Assistance Program was established in 1991 after the receipt of Agent Orange Class Assistance Program (AOCAP) funds from the Agent Orange law suit settlement agreement in Washington. That pool of funds in Washington DC was designed to fund social assistance programs in each area of the US when a proposal to do some type of assistance was written and requested funding. North Dakota's grant program was to be designed to have a lasting and strengthening impact on the Vietnam Veteran families who were identified as having a child with a any type of disability problem.

There appeared to be evidence that numerous children of Vietnam Veteran families were experiencing a variety of illnesses ranging from hearing loss, missing muscles, neurological deficits and the resultant problems with learning in school. North Dakota's Minot State University decided the best way to make a lasting impact on individuals and families of these Vietnam Veterans would be to seek out and identify Vietnam Veteran's children with any type of disability. Then apply the necessary resources available through Minot State University and Washington based assistance Through the use of social work case management efforts were made to educate, and as needed, refer to the appropriate services and treatments to restore the individual family and child to the capacity of their peers without disabilities.

This is where the North Dakota Vietnam Veterans of America came to the forefront and assisted in getting the word out to veterans around the state. Tom Rainsberry acting as the VVA lead helped to spread the movement of information across the state. The result was that in three and a half years there were 324 North Dakota children identified as needing services. The range of services were from many varied areas including information to parents and an understanding of the rights of individuals as far as schooling and the responsibilities of school systems in aiding the learning and physically disabled. In many cases the parents became able to demand the systems work with them to the letter of disability law in order to make things even for their child.

The secondary outcome of the Children's Assistance Program was the availability of Minot State University social work students who trained and worked for one year in the program. In their training they became familiar with the Vietnam Veterans and assisted families and children in need. This training of student workers produced graduate social workers with an acute knowledge of the unique needs of veteran and specifically Vietnam Veterans. Today at a point nearly 15 years later these social workers are in regular social service practice throughout North Dakota. This will continue to have a lasting effect for many years to come.

The VVA of North Dakota provided many services for the families of Vietnam Veterans to include painting houses, locating resources and assisting in a competition for finalization funding through the North Dakota Administrative Committee. This resulted in \$50,000.funding awarded to Minot State University to finalize the remaining incomplete cases.

Lastly, the resources of the Minot State University Farside computer server was used to establish the **first National VVA list serve** to help veterans learn to communicate on the internet for needed information across the entire world. In an agreement with, and working with Mokie Porter, the web address was published in the VVA Veteran and made available to professionals and veterans around the world.

In short, the success of the North Dakota Vietnam Veterans Assistance program was successful in large part due to the efforts of the North Dakota Vietnam Veterans helping with their hands and hearts to help their Brothers in need..

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Department of Veterans Affairs

Report

REPORT TO SECRETARY OF THE DEPARTMENT OF VETERANS AFFAIRS
ON THE ASSOCIATION BETWEEN ADVERSE HEALTH EFFECTS
AND EXPOSURE TO AGENT ORANGE

CLASSIFIED

CONFIDENTIAL STATUS (1)

As Reported by Special Assistant

Admiral E.R. Zumwalt, Jr. May

5, 1990



WARNING

NOT FOR PUBLICATION AND
RELEASE TO THE GENERAL PUBLIC

1. INTRODUCTION

On October 6, 1989 I was appointed as special assistant to Secretary Derwinski of the Department of Veterans Affairs to assist the Secretary in determining whether it is at least as likely as not that there is a statistical association between exposure to Agent Orange and a specific adverse health effect.

As special assistant, I was entrusted with evaluating the numerous data relevant to the statistical association between exposure to Agent Orange and the specific adverse health effects manifested by veterans who saw active duty in Vietnam. Such evaluations were made in accordance with the standards set forth in Public Law 98-542, the Veterans' Dioxin and Radiation Exposure Compensation Standards Act and 38 C.F.R. 1.17, regulations of the Department of Veterans Affairs concerning the evaluation of studies relating to health effects of dioxin and radiation exposure.

Consistent with my responsibilities as special assistant, I reviewed and evaluated the work of the Scientific Council of the Veterans' Advisory Committee on Environmental Hazards and commissioned independent scientific experts to assist me in evaluating the validity of numerous human and animal studies on the effects of exposure to Agent Orange and/or exposure to herbicides containing 2,3,7,8 tetrachlorodibenzo-para-dioxin (TCDD or dioxin). In addition, I reviewed and evaluated the protocol and standards employed by government sponsored studies to assess such studies' credibility, fairness and consistency with generally accepted scientific practices.

After reviewing the scientific literature related to the health effects of Vietnam Veterans exposed to Agent Orange as well as other studies concerning the health hazards of civilian exposure to dioxin contaminants, I conclude that there is adequate evidence for the Secretary to reasonably conclude that it is at least as likely as not that there is a relationship between exposure to Agent Orange and the following health problems: non—Hodgkin's lymphoma, chloracne and other skin disorders, lip cancer, bone cancer, soft tissue sarcoma, birth defects, skin cancer, porphyria cutanea tarda and other liver disorders, Hodgkin's disease, hematopoietic diseases, multiple myeloma, neurological defects, auto—immune diseases and disorders, leukemia, lung cancer, kidney cancer, malignant melanoma, pancreatic cancer, stomach cancer, colon cancer, nasal/pharyngeal/esophageal cancers, prostate cancer, testicular cancer, liver cancer, brain cancer, psychosocial effects and gastrointestinal diseases.

I further conclude that the Veterans' Advisory Committee on Environmental Hazards has not acted with impartiality in its review and assessment of the scientific evidence related to the association of adverse health effects and exposure to Agent Orange.

In addition to providing evidence in support of the conclusions stated above, this report provides the Secretary with a review of the scientific, political and legal efforts that have occurred over the last decade to establish that Vietnam Veterans who have been exposed to Agent Orange are in fact entitled to compensation for various illnesses as service-related injuries.

II. AGENT ORANGE USAGE IN VIETNAM

Agent Orange was a 50:50 mixture of 2,4-D and 2,4,5-T. The latter component, 2,4,5-T, was found to contain the contaminant TCDD or 2,3,7, 8-tetrachlorodibenzo-para-dioxin (i.e. dioxin), which is regarded as one of the most toxic chemicals known to man.¹

From 1962 to 1971 the United States military sprayed the herbicide Agent Orange to accomplish the following objectives: 1) defoliate jungle terrain to improve observation and prevent enemy ambush; 2) destroy food crops; and 3) clear Vegetation around military installations, landing zones, fire *base* camps, and trails²

Unlike civilian applications of the components contained in Agent Orange which are diluted in oil and water, Agent Orange was sprayed undiluted in Vietnam. Military applications were sprayed at the rate of approximately 3 gallons per acre and contained approximately 12 pounds of 2,4-D and 13.8 pounds of 2,4,5-T.³

Although the military dispensed Agent Orange in concentrations 6 to 25 times the manufacturer's suggested rate, "at that time the Department of Defense (DOD) did not consider herbicide orange toxic or dangerous to humans and took few precautions to prevent exposure to it." Yet, evidence readily suggests that at the time of its use experts knew that Agent Orange was harmful to military personnel.⁵

¹ See CDC Protocol for Epidemiologic Studies on the Health of Vietnam Veterans (November, 1983), p. 4 (The CDC Protocol also contains a literature review as of 1983 of the health effects on animals and humans exposed to herbicides and dioxin, pp. 63-78. The literature review documents health problems such as chloracne, immunological suppression, neurological and psychological effects, reproductive problems such as birth defects, carcinogenic effects such as soft tissue sarcomas, lymphomas and thyroid tumors, and various gastrointestinal disorders) ; See also General Accounting Office, "Report by the Comptroller General: Health Effects of Exposure to Herbicide Orange in South Vietnam Should Be Resolved," GAO-CED-79-22 at 2 (April 6, 1979) (hereinafter GAO Report, 1979).

Dioxin is a family of chemicals (75 in all) that does not occur naturally, nor is it intentionally manufactured by any industry. The most toxic dioxin is called 2,3,7,8 — TCDD. Dioxins are produced as byproducts of the manufacture of some herbicides (for example, 2,4, 5—T), wood preservatives made from trichlorophenals, and some germicides. Dioxins are also produced by the manufacture of pulp and paper, by the combustion of wood in the presence of chlorine, by fires involving chlorinated benzenes and biphenyls (e.g. PCBs), by the exhaust of automobiles burning leaded fuel, and by municipal solid waste incinerators

² See Bruce Myers, "Soldier of Orange: The Administrative, Diplomatic, Legislative and Litigatory Impact of Herbicide Agent Orange in South Vietnam," 8 B. C. Env't. Aff. L. Rev. 159, 162 (1979).

³ See GAO Report, 1979 at 2, 3 n.1; See also Myers, 8 B.C. Env't Aff. L. Rev., at 162. In contrast, civilian applications of 2,4,5—T varied from 1 to 4 pounds per acre.

⁴ General Accounting Office, 'Ground Troops in South Vietnam Were in Areas Sprayed with Herbicide Orange,' FPCD 80-23, p.1 (November 16, 1979).

The bulk of Agent Orange herbicides used in Vietnam were reportedly sprayed from "Operation Ranch Hand" fixed wing aircraft. Smaller quantities were applied from helicopters, trucks, riverboats, and by hand. Although voluminous records of Ranch Hand missions are contained in computer records, otherwise known as the HERBS and Service HERBs tapes, a significant, if not major source of exposure for ground forces was from non— recorded, non Ranch Hand operations.⁶ Widespread use of Agent Orange coincided with the massive buildup of U.S. military personnel in Vietnam, reaching a peak in 1969 and eventually stopping in 1971.⁷ Thus, according to an official of the then Veterans Administration, it was "theoretically possible that about 4.2 million American soldiers could have made transient or significant contact with the herbicides because of [the Ranch Hand Operation]." ⁸

⁵Letter from Dr. James R. Clary to Senator Tom Daschle (September 9, 1988). Dr. Clary is a former government scientist with the Chemical Weapons. Branch,. BW/CW Division, Air Force Armament Development Laboratory, Eglin APE, Florida. Dr. Clary was instrumental in designing the specifications for the A/A 45y-I spray tank (ADO 42) and was also the scientist who prepared the final report on Ranch Hand: Herbicide Operations in SEA, July 1979. According to Dr. Clary:

When we (military scientists) initiated the herbicide program in the 1960's, we were aware of the potential for damage due to dioxin contamination in the herbicide. We were even aware that the 'military'⁶ formulation had a higher dioxin concentration than the 'civilian' version due to the lower cost and speed of manufacture. However, because the material was to be used on the 'enemy', none of us were overly concerned. We never considered a scenario in which. our own personnel would become contaminated with the herbicide. And, if we had, we would have expected our own government to give assistance to veterans so contaminated.

See also notes 13, 73-75 and accompanying text *infra* for additional information of the manufacturer's awareness of the toxicity of Agent Orange.

⁶ Combat units, such as the 'Brown Water Navy,' frequently conducted "unofficial" sprayings of Agent Orange obtained from out of channel, and thus unrecorded sources. Additionally, as Commander, U.S. Naval Forces, Vietnam, I was aware that Agent Orange issued to Allied forces was frequently used on unrecorded missions.

⁷ GAO Report 1979, *supra* note 1, at 29. See also note 82 and accompanying text *infra* for a discussion of the correlation between the spraying of Agent Orange and the hospitalization of Vietnam soldiers for disease and non-battle related injuries.

⁸ House Comm. on Veteran's Affairs, 95th Cong., 2d Sess., Herbicide "Agent Orange". Hearings before the Subcommittee on Medical Facilities and Benefits, (Oct. 11, 1978) (Statement of Maj. Sen. Garth Dettinger USAF, Deputy Surgeon General USAF at 12).

A. REASONS FOR PHASE OUT

Beginning as early as 1968, scientists, health officials, politicians and the military itself began to express concerns about the potential toxicity of Agent Orange and its contaminant dioxin to humans. For instance, in February 1969 The Bionetics Research Council Committee ("BRC") in a report commissioned by the United States Department of Agriculture found that 2,4,5-T showed a "significant potential to increase birth defects."⁹ Within four months after the BRC report, Vietnamese newspapers began reporting significant increases in human birth defects ostensibly due to exposure to Agent Orange.¹⁰

By October, 1969, the National Institute of Health confirmed that 2,4,5—T could cause malformations and stillbirths in mice, thereby prompting the Department of Defense to announce a partial curtailment of its Agent Orange spraying.¹¹

By April 15, 1970, the public outcry and mounting scientific evidence caused the Surgeon General of the United States to issue a warning that the use of 2,4,5-T might be hazardous to "our health".¹²

On the same day, the Secretaries of Agriculture, Health Education and Welfare, and the Interior, stirred by the publication of studies that indicated 2,4,5-T was a teratogen (i.e. caused birth defects), jointly announced the suspension of its use around lakes, ponds, ditch banks, recreation areas and homes and crops intended for human consumption.¹³ The Department of Defense simultaneously announced its suspension of all uses of Agent Orange.¹⁴

⁹ Myers at 166.

¹⁰ *Id.* While birth defects did significantly increase in Saigon, critics contend that Saigon was not an area where the preponderance of defoliation missions were flown and argue that such increases were due primarily to the influx of U.S. medical personnel who kept better records of birth defects. Subsequent studies in Vietnam confirm the incidence of increased birth defects among civilian populations exposed to Agent Orange. *See e.g.* Phuong, et. al. "An Estimate of Reproductive Abnormalities in Women Inhabiting Herbicide Sprayed and Non-herbicide Sprayed Areas in the South of Vietnam, 1952-1981" 18 *Chemosphere* 843-846 (1989) (significant statistical difference between hydatidiform mole and congenital malformations between populations potentially exposed and not exposed to TCDD); Phuong, et. al., "An Estimate of Differences Among Women Giving Birth to Deformed Babies and Among Those with Hydatidiform Mole Seen at the OB-GYN Hospital of Ho Chi Minh City in the South of Vietnam," 18 *Chemosphere* 801-803 (1989) (statistically significant connection between frequency of the occurrence of congenital abnormalities and of hydatidiform moles and a history of phenoxyherbicide exposure); Huong, et. al., "An Estimate of the Incidence of Birth Defects, Hydatidiform Mole and Fetal Death in Utero Between 1952 and 1985 at the OB-GYN Hospital of Ho Chi Minh City, Republic of Vietnam," 18 *Chemosphere* 805-810 (1989) (sharp increase in the rate of fetal death in utero, hydatidiform mole (with or without choriocarcinoma) and congenital malformations from the pre 1965-1975 period, suggesting possible association to phenoxyherbicide exposure).

¹¹ Myers at 167

¹² *Id.*

B. HEALTH STUDIES

As Agent Orange concerns grew, numerous independent studies were conducted between 1974 and 1983 to determine if a link exists between certain cancerous diseases, such as non-Hodgkin's lymphoma and soft-tissue sarcomas, and exposure to the chemical components found in Agent Orange. These studies suggested just such a link.

In 1974, for example, Dr. Lennart Hardell began a study which eventually demonstrated a statistically significant correlation between exposure to pesticides containing dioxin and the development of soft tissue sarcomas.¹⁵

In 1974, Axelson and Sundell reported a two—fold increase of cancer in a cohort study of Swedish railway workers exposed to a variety of herbicides containing dioxin contaminants.¹⁶

By 1976, the Occupational Safety and Health Administration, established rigorous exposure criteria for workers working with 2,4, 5-T.¹⁷

¹³ Id. Although Dow Chemical Company, the primary manufacturer of 2,45-T and 2,4-D, denied this teratogenicity, Dow's own tests confirmed that when dioxin was present in quantities exceeding production specifications, birth defects did occur. See J. McCullough, Herbicides: Environmental Health Effects: Vietnam and the Geneva Protocol: Developments During 1979, 13 (1970) (Congressional Research Report No. UG 447, 70—303SP). Pressure from industry subsequently led to some relaxation of the limits placed on the 2,4,5—T and 2,4—D. The only current uses for these chemicals in the United States are on rice, pastures, rangelands and rights of way.

¹⁴ Id. at 167. See also Dow Chemical v. Ruckelshaus, 477 F.2d 1317, 1319 (8th Cir. 1973) (secretaries announcement quoted in the opinion).

¹⁵ Hardell, L. and Sandstrom, A. "Case—control Study: Soft Tissue Sarcomas and Exposure to Phenoxyacetic Acids or Chlorophenols," 39 Brit. J. Cancer, 711—717 (1979). See also note 89 infra for the confirming results of follow-up studies by Hardell and others.

¹⁶ Axelson and Sundell, "Herbicide Exposure, Mortality and Tumor Incidence: An Epidemiological Investigation on Swedish Railroad Workers," 11 Work Env't. Health 21-28 (1974).

¹⁷ U.S. Occupational Safety and Health Administration (1976), Air Contaminants; U.S. Code, Federal Register 29, Part 1910.93 at p. 27

In 1977 the International Agency for Research on Cancer (IARC), while cautioning that the overall data was inconclusive, reported numerous anomalies and increased mortality rates in animals and humans exposed to 2,4-D or 2,4,5-T.¹⁸

In 1978, the Environmental Protection Agency issued an emergency suspension of the spraying of 2,4,5-T in national forests after finding "a statistically significant increase in the frequency of miscarriages" among women living near forests sprayed with 2,4,5-T.¹⁹

¹⁸ With regard to 2,4-D, the IARC found the following anomalies: elevated levels of cancer in rats; acute and short-term oral toxicity in mice, rabbits, guinea pigs and rats—death, stiffness in the extremities, incoordination, stupor, myotonia, and other physical abnormalities; in monkeys, injections caused nausea, vomiting, lethargy, muscular incoordination and head droop, fatty degeneration of the liver, spleen, kidneys and heart; foetal anomaly increases in some species; post-birth death rates increased in some species; higher mortality rates and morphological alterations in pheasant embryos and their chicks when spraying took place under simulated field conditions; higher mortality rates in rat pups in a 3 generation exposure; gene mutation after exposure to high concentrations; chromosomal aberrations when cultured human lymphocytes were exposed; increased frequency of aberrant metaphases (2 to 4 times) in mice exposed to toxic concentrations.

In humans the IARC found that: a 23 year old farming student, a suicide, had 6 grams of 2,4-D in his body, acute congestion of all organs, severe degeneration of ganglion cells in the central nervous system; 3 cases of peripheral neuropathy in humans sprayed with 2,4-D with initial symptoms of nausea, vomiting, diarrhea, swelling and aching of feet and legs with latency, in individual cases, paresthesia in the extremities, pain in the legs, numbness and aching of fingers and toes, swelling in hand joints, flaccid parapheresis; similar case reports in agriculture workers sprayed by 2,4-D; workers associated with 2,4-D developed symptoms of somnolence, anorexia, gastralgia, increased salivation, a sweet taste in the mouth, a sensation of drunkenness, heaviness of the legs and hyperacusea, rapid fatigue, headache, loss of appetite, pains in the region of liver and stomach, weakness, vertigo, hypotension, bradycardia, dyspeptic symptoms, gastritis, liver disfunction, changes in metabolic processes.

With regard to 2,4,5-Vs effect on animals the IARC found: it can increase the frequency of cleft palates in some strains of mice; fetal growth retardation may also be observed; cystic kidneys were observed in two strains of mice; in purest available form, it induced some fetal effects and skeletal anomalies in rats as well as behavioral abnormalities, changes in thyroid activity and brain serotonin levels in the progeny; increases in intrauterine deaths and in malformations in rats; fetal death and teratogenic effects in Syrian golden hamsters; chromosomal abnormalities.

The IARC reported in 1977 with respect to 2,4,5-T's effects on humans that: workers exposed at a factory in the USSR had skin lesions, acne, liver impairment, and neurasthenic syndrome; similar findings were reported by Jerasneh, et al (1973, 1974) in a factory in Czechoslovakia which in 1965-68 produced 76 cases of chloracne, 2 deaths from bronchogenic cancers. Some workers had porphyria cutanea tarda, uroporphyrinuria, abnormal liver tests, severe neurasthenia, depression syndrome, peripheral neuropathy; in a 1975 accident in West Virginia, 228 people were affected. Symptoms included chloracne, melanosis, muscular aches and pains, fatigue, nervousness, intolerance to cold; 4 workers of 50 affected in a similar accident in the Netherlands in 1963 died within 2 years and at least 10 still had skin complaints 13 years later.

¹⁹ June 1979 Congressional Hearings before House Commerce Committee. Subcommittee on Oversight and Investigations, quoted in "Human Disease Linked to Dioxin: Congress Calls for 2,4,5-T Ban After Dramatic Herbicide Hearings", 28 Bioscience 454 (August 1979). This study, otherwise known as the Alsea Study, has been cited as showing the first correlation between 2,4,5-T (and presumably its TCDD contaminant) and teratogenic effects in humans.

In 1980, another provocative mortality study of workers involved in an accident at an industrial plant which manufactured dioxin compounds suggested that exposure to these compounds resulted in excessive deaths from neoplasms of the lymphatic and hematopoietic tissues.²⁰

On September 22, 1980, the U.S. Interagency Work Group to Study the Long-term Health Effects of Phenoxy Herbicides and Contaminants concluded "that despite the studies' limitations, they do show a correlation between exposure to phenoxy acid herbicides and an increased risk of developing soft-tissue tumors or malignant lymphomas."²¹

To be sure, there remain skeptics who insist that the studies failed in one respect or another to establish a scientifically acceptable correlation.²² Yet, it can fairly be said that the general attitude both within and outside the scientific community was, and continues to be increasing concern over the mounting evidence of a connection between certain cancer illnesses and exposure to dioxins.

²⁰ Zack and Suskind, "The Mortality Experience of Workers Exposed to TCDD in a Trichlorophenol Process Accident," 22 *Journal of Medicine* 11—14 (1980).

²¹ See U.S. Interagency Workgroup to Study the Long-Term Health Effects of Phenoxy Herbicides and Contaminants (September 22, 1980) (executive summary).

²² See...e.g. "The Weight of the Evidence on the Human Carcinogenicity of 2,4—D" (January 1990) (This report, sponsored by the National Association of Wheat Growers Foundation and a grant from the Industry Task Force II on 2,4—D Research Data, an association of manufacturers and commercial formulators of 2,4—D, concluded that the toxicological data on 2,4-D does not provide a strong basis for predicting that 2,4-D is carcinogenic to humans. Nevertheless, the panel reviewing the evidence did conclude that "evidence indicates that it is possible that exposure to 2,4-D can cause cancer in humans.").

²³ By October 1, 1983, 9170 veterans filed claims for disabilities that they alleged were caused by exposure to Agent Orange. The VA denied compensation to 7709 claimants on the grounds that the claimed diseases were not service connected. Only one disease was deemed associated with service related exposure to Agent Orange, a skin condition known as chloracne. See House Report No. 98-592, reprinted in *U.S.Code Cong. & Adm. News*, 98th Cong. 2d Sess., 1984, at 4452. See also Nehmer v. U.S. Veterans Administration, 712 F.Supp. 1404, 1407 (1989).

III. VETERANS' DIOXIN AND RADIATION EXPOSURE COMPENSATION STANDARDS ACT OF 1984

With the increasing volume of scientific literature giving credence to the belief of many Vietnam Veterans that exposure to Agent Orange during their military service was related to their contraction of several debilitating diseases -- particularly non-Hodgkin's lymphoma, soft tissue sarcoma ("STS") (malignant tumors that form in muscle fat, or fibrous connective tissue) and porphyria cutanea tarda ("PCT") (deficiencies in liver enzymes) -- Vietnam Veterans rightfully sought disability compensation from the Veterans Administration ("VA").

The VA determined, however, that the vast majority of claimants were not entitled to compensation since they did not have service connected illnesses.²³ As a consequence, Congress attempted to alter dramatically the process governing Agent Orange disability claims through passage of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act of 1984 (hereinafter the "Dioxin Standards Act")²⁴ To ensure that the VA provided disability compensation to veterans exposed to herbicides containing dioxin while serving in Vietnam,²⁵ Congress authorized the VA to conduct rulemaking to determine those diseases that were entitled to compensation as a result of a service--related exposure to Agent Orange.²⁶

In promulgating such rules, the Dioxin Standards Act required the VA to appoint a Veterans' Advisory Committee on Environmental Hazards (the "Advisory Committee") -- composed of experts in dioxin, experts in epidemiology, and interested members of the public -- to review the scientific literature on dioxin and submit periodic recommendations and evaluations to the Administrator of the²⁷ Such experts were directed to evaluate the scientific evidence pursuant to regulations promulgated by the VA, and thereafter to submit recommendations and evaluations to the Administrator of the VA on whether "sound scientific or medical evidence" indicated a connection to exposure to Agent Orange and the manifestation of various diseases.²⁸

²⁴ Veterans' Dioxin and Radiation Exposure Compensation Standards Act, Pub. L. 98—542, Oct. 24, 1984, 98 Stat. 2727 (hereinafter the Dioxin Standards Act). In passing the Act Congress found that Vietnam Veterans were "deeply concerned about possible long term health effects of exposure to herbicides containing dioxin,"(Section 2 (1)), particularly since "(t)here is scientific and medical uncertainty regarding such long—term adverse health effects." (Section 2 (2)). In responding to this uncertainty, Congress mandated that "thorough epidemiological studies of the health effects experienced by veterans in connection with exposure . to herbicides containing dioxin" be conducted, (Section 2(4)), especially in light of the fact that "[t]here is some evidence that chloracne, porphyria cutanea tarda, and soft tissue sarcoma are associated with exposure to certain levels of dioxin as found in some herbicides." (Section 2 (5)).

²⁵ *Id.* at Section 3.

²⁶ *Id.* at Section 5.

²⁷ *Id.* at Section 6.

²⁸ *Id.* at Section 5.

In recognition of the uncertain state of scientific evidence and the inability to make an absolute causal connection between exposure to herbicides containing dioxin and affliction with various rare cancer diseases,²⁹ Congress mandated that the VA Administrator resolve any doubt in favor of the veteran seeking compensation. As stated in the Dioxin Standards Act:

It has always been the policy of the Veterans Administration and is the policy of the United States, with respect to individual claims for service connection of diseases and disabilities, that when, after consideration of all the evidence and material of record, there is an approximate balance of positive and negative evidence regarding the merits of an issue material to the determination of a claim, the benefit of the doubt in resolving each such issue shall be given to the claimant.³⁰

A. NEHMER V. U.S. VETERANS ADMINISTRATION

Despite Congressional intent to give the veteran the benefit of the doubt, and in direct opposition to the stated purpose of the Dioxin Standards Act to provide disability compensation to Vietnam Veterans suffering with cancer who were exposed to Agent Orange, the VA continued to deny compensation improperly to over 31,000 veterans with just such claims. In fact, in promulgating the rules specified by Dioxin Standards Act, the VA not only confounded the intent of the Congress, but directly contradicted its- own established practice of granting compensable service-connection status for diseases on the lesser showing of a statistical association, promulgating instead the more stringent requirement that compensation depends on establishing a cause and effect relationship.³¹

Mounting a challenge to the regulations, Veterans groups prosecuted a successful legal action which found that the VA had "both imposed an impermissibly demanding test for granting service connection for various diseases and refused to give the veterans the benefit of the doubt in meeting the demanding standard." Nehmer v. U.S. Veterans Administration, 712 F. Supp. 1404, 1423 (1989) (emphasis in original). rAs a result, the court invalidated the VA's Dioxin regulation which denied service connection for all diseases other than chloracne; ordered the VA to amend its rules; and further ordered that the Advisory Committee reassess its recommendations in light of the court's order.³²

²⁹ See Nehmer v. U.S. Veterans Admin., 712 F. Supp. 1404, 1408. (N.D. Cal. (1989). wherein the court found after reviewing the legislative history of the Act "that Congress intended service connection to be granted on the basis of "increased risk of incidence" or a "significant correlation" between dioxin and various diseases," rather than on the basis of a casual relationship.

³⁰ See Dioxin Standards Act at Section 2 (23).

³¹ See e.g. 38 C.F.R. 3.310(b) (compensation granted for cardiovascular diseases incurred by veterans who suffered amputations of legs or feet); Nehmer at 1418.

The significance of the distinction between a statistical association and a cause and effect relationship is in the burden of proof that the veteran must satisfy in order to be granted benefits. A statistical association "means that the observed coincidence in variations between exposure to the toxic substance and the adverse health effects is unlikely to be a chance occurrence or happenstance," whereas the cause and effect relationship "describes a much stronger relationship between exposure to a particular toxic substance and the development of a particular disease than 'statistically significant association' does." Nehmer, 712 F.Supp. at 1416. (Continued on page 11)

Thus, on October 2, 1989, the VA amended 38 C.F.R. Part 1, which among other things set forth various factors for the Secretary and the Advisory Committee to consider in determining whether it is "at least as likely as not" that a scientific study shows a "significant statistical association" between a particular exposure to herbicides containing dioxin and a specific adverse health effect.³³ Equally important, the regulation permits the Secretary to disregard the findings of the Advisory Committee, as well as the standards set forth at 38 C.F.R. § 1.17 (d) and determine in his own judgment that the scientific and medical evidence supports the existence of a "significant statistical association" between a particular exposure and a specific disease. 38 C.F.R. § 1.17 (f).

The Secretary recently exercised his discretionary authority under this rule when he found a significant statistical association between exposure to Agent Orange and non—Hodgkin's lymphoma, notwithstanding the failure of his own Advisory Committee to recommend such action in the face of overwhelming scientific data.³⁴

³¹ (Continued from Page 10.) Thus, the regulation promulgated by the VA established an overly burdensome standard by incorporating the causal relationship test within the text of the regulation itself. 38 C.F.R. 1.3311(d) ("[s]ound scientific and medical evidence does not establish a cause and effect relationship between dioxin exposure" and any diseases except some cases of chloracne) (emphasis added).

³² Nehmer, 712 F. Supp at 1423.

³³ 38 C.F.R. 1.17 (b) & (d). 38 C.F.R. 1.17 states:

(a) From time to time, the Secretary shall publish evaluations of scientific or medical studies relating to the adverse health effects of exposure to a herbicide containing 2,3,7,8 tetrachlorodibenzo-p-dioxin (dioxin) and/or exposure to ionizing radiation in the "Notices" section of the Federal Register.

(b) Factors to be considered in evaluating scientific studies include:

(1) Whether the study's findings are statistically significant and replicable. (2)

Whether the study and its findings have withstood peer review.

(3) Whether the study methodology has been sufficiently described to permit replication of the study. (4)

Whether the study's findings are applicable to the veteran population of interest.

(5) The views of the appropriate panel of the Scientific Council of the Veteran' Advisory Committee on Environmental Hazards.

(c) When the Secretary determines, based on the evaluation of scientific or medical studies and after receiving the advice of the Veteran's Advisory Committee on Environmental Hazards and applying the reasonable doubt doctrine as set forth in paragraph (d) (1) of this section, that a significant statistical association exists between any disease and exposure to a herbicide containing dioxin or exposure to ionizing radiation, 3.311a or 3.311b of this title, as appropriate, shall be amended to provide guidelines for the establishment of service connection.

(d) (1) For purposes of paragraph (c) of this section a "significant statistical association" shall be deemed to exist when the relative weights of valid positive and negative studies permit the conclusion that it is at least as likely as not that the purported relationship between a particular type of exposure and a specific adverse health effect exists.

(2) For purposes of this paragraph a valid study is one which:

(i) Had adequately described the study design and methods of data collection, verification and analysis;

(ii) Is reasonably free of biases, such as selection, observation and participation biases; however, if biases exist, the investigator has acknowledged them and so stated the study's conclusions that the biases do not intrude upon those conclusions; and

(iii) Has satisfactorily accounted for known confounding factors. (Continued on page 12)

B. THE WORK OF THE VETERANS' ADVISORY COMMITTEE ON ENVIRONMENTAL HAZARDS

To assess the validity and competency of the work of the Advisory Committee, I asked several impartial scientists to review the Advisory Committee transcripts. Without exception, the experts who reviewed the work of the Advisory Committee disagreed with its findings and further questioned the validity of the Advisory Committee's review of studies on non—Hodgkin's lymphomas .

For instance, a distinguished group at the Fred Hutchinson Cancer Research Institute in Seattle, Washington, upon reviewing the Advisory Committee transcripts, concluded "that it is at east., as likely as not that there is a significant association (as defined by the Secretary of Veterans Affairs) between (exposure to phenoxy acid herbicides and non-Hodgkin's lymphoma.)" ³⁵ This same group further asserts that the Committee's work was "not sensible" and "rather unsatisfactory" in its review and classification of the various studies it reviewed. Additionally, these scientists regarded Dr. Lathrop's views as "less than objective" and felt that the possibility exists that "his extreme views (e.g., in respect to the role of dose--response testing) may have unduly affected the Committee's work." Finally, the Hutchinson scientists argue that the issue of chemical-specific effects, in which animal studies have been sufficient to demonstrate the carcinogenicity of dioxin, is an important factor "not well considered by the Committee." (emphasis in original)

³³ *(Continued from Page 11)* (3) For purposes of this paragraph a valid positive study is one which satisfies the criteria in paragraph (d) (2) of this section and whose findings are statistically significant at a probability level of .05 or less with proper accounting for multiple comparisons and subgroups analyses.

(4) For purposes of this paragraph a valid negative study is one which satisfies the criteria in paragraph (d) (2) of this section and has sufficient statistical power to detect an association between a particular type of exposure and a specific adverse health effect if such an association were to exist.

(e) For purposes of assessing the relative weights of valid positive and negative studies, other studies affecting epidemiological assessments including case series, correlational studies and studies with insufficient statistical power as well as key mechanistic and animal studies which are found to have particular relevance to an effect on human organ systems may also be considered.

(f) Notwithstanding the provisions of paragraph (d) of this section, a "significant statistical association" may be deemed to exist between a particular exposure and a specific disease if, in the Secretary's judgment, scientific and medical evidence on the whole supports such a decision.

³⁴ After reviewing numerous scientific studies, at least four of which were deemed to be valid positive in demonstrating the link . between exposure to herbicides containing dioxin and non--Hodgkin's lymphoma, the Advisory Committee still concluded that:

The Committee does not find the evidence sufficient at the present time to conclude that there is a significant statistical association between exposure to phenoxy acid herbicides and non—Hodgkin's lymphoma. However, the Committee cannot rule out such an association.

The Secretary should be interested to note that a new mortality study positively confirms that farmers exposed to herbicides containing 2,4-D have an increased risk of developing non-Hodgkin's lymphoma. See Blair, "Herbicides and Non-Hodgkin's Lymphoma: New Evidence From a Study of Saskatchewan Farmers," 82 Journal of the National Cancer Institute 575--582 (1990).

³⁵ Letter to Admiral Zumwalt from Dr. Robert W. Day, Director of the Fred Hutchinson Cancer Research Center of Seattle, Washington (Feb. 20, 1990).

A second reviewer of the Committee's work, Dr. Robert Hartzman (considered one of the U.S. Navy's top medical researchers), effectively confirms the views of the Hutchinson group. Dr. Hartzman states that "the preponderance of evidence from the papers reviewed [by the Advisory Committee] weighs heavily in favor of an effect of Agent Orange on increased risk for non—Hodgkin's lymphoma."³⁶ Dr. Hartzman also attests that: an inadequate process is being used to evaluate scientific publications for use in public policy. The process uses scientific words like 'significant at the 5% level' and a committee of scientists to produce a decision about a series of publications. But in reality, the Committee was so tied by the process, that a decision which should have been based on scientific data was reduced to vague impressions... Actually, if the reading of the rules of valid negative found in the transcript is correct ('a valid negative must be significant at the $p=.05$ level' that is statistically significant on the negative side) none of the papers reviewed are valid negatives.³⁷

A third reviewing team, Dr. Jeanne Hager Stellman, PhD (Physical Chemistry) and Steven D. Stellman, PhD (Physical Chemistry), also echo the sentiments expressed by the Hutchinson Group and Dr. Hartzman on the validity of the Committee's proceedings and conclusions. In fact, the Stellmans' detailed annotated bibliography and assessment of numerous cancer studies relevant to herbicide exposure presents a stunning indictment of the Advisory Committee's scientific interpretation and policy judgments regarding the link between Agent Orange and Vietnam Veterans.³⁸

A fourth reviewer, a distinguished scientist intimately associated with government sponsored studies on the effects of exposure to Agent Orange, states the same conclusions reached by the other reviewers:

The work of the Veterans' Advisory Committee on Environmental Hazards, as documented in their November 2, 1989 transcript, has little or no scientific merit, and should not serve as a basis for compensation or regulatory decisions of any sort...

My analysis of the NHL articles reviewed by the committee reveals striking patterns which indicate to me that it is much more likely than not that a statistical association exists between NHL and herbicide exposure.

As these various reviewers suggest, the Advisory Committee's conclusions on the relationship between exposure to Agent Orange and non—Hodgkin's lymphoma were woefully understated in light of the clear evidence demonstrating a significant statistical association between NHL and exposure to phenoxy acid herbicides such as Agent Orange.

³⁶ Letter to Admiral Zumwalt from Dr. R.J. Hartzman Capt. MC USN (March 7, 1990).

³⁷ Id. at p.3

³⁸ See Stellman & Stellman, "A Selection of Papers with Commentaries Relevant to the Science Interpretation and Policy: Agent Orange and Vietnam Veterans," (March 1, 1990) . See also note 51 and accompanying text infra for additional discussion of the Stellmans' work.

Perhaps more significant than the Committee's failure to make such obvious findings is the distressing conclusion of the independent reviewers that the Committee's process is so flawed as to be useless to the Secretary in making any determination on the effects of Agent Orange. From a mere reading of Committee transcripts, these reviewers detected overt bias in the Committee's evaluation of certain studies. In fact, some members of the Advisory Committee and other VA officials have, even before reviewing the evidence, publicly denied the existence of a correlation between exposure to dioxins and adverse health effects.⁴⁰ This blatant lack of impartiality lends credence to the suspicion that certain individuals may have been unduly influenced in their evaluation of various studies. Furthermore, such bias among Advisory committee members suggests that the Secretary should, in accordance with the Dioxin Standards Act, appoint new personnel to the Advisory Committee.

III. THE CDC STUDIES

Were the faulty conclusions, flawed methodology and noticeable bias of the Advisory Committee an isolated problem, correcting the misdirection would be more manageable. But, experience with other governmental agencies responsible for specifically analyzing and studying the effects of exposure to Agent Orange strongly hints at a discernible pattern, if not outright governmental collaboration, to deny compensation to Vietnam Veterans for disabilities associated with exposure to dioxin .

A case in point is the Centers for Disease control ("CDC") . As concerns grew following the first studies of human exposure to Agent Orange, Congress commissioned a large scale epidemiological study to determine the potential health effects for Vietnam Veterans exposed to Agent Orange. Initially, this study was to be conducted by the VA itself. When evidence surfaced, however, of the VA's footdragging in commencing the study (and initial disavowal of any potential harm from exposure to Agent Orange), Congress transferred the responsibility for the study to the CDC in 1983. ⁴¹

Unfortunately, as hearings before the Human Resources and Intergovernmental Relations Subcommittee on July 11, 1989 revealed, the design, implementation and conclusions of the CDC study were so ill conceived as to suggest that political pressures once again interfered with the kind of professional, unbiased review Congress had sought to obtain.⁴²

³⁹ A copy of the anonymous reviewer's analysis can be made available for the Secretary's personal inspection and review. In another paper, this same source stated: "I estimate that the Vietnam Veterans are experiencing a 40% to 50% increase in sarcomas and non-Hodgkin's lymphoma rates."

⁴⁰ For instance, Dr. Lawrence B. Hobson (Director, Office of Environmental Medicine, Veterans Health Services and Research Administration), claims that TCDD 'presents no threat from the exposures experienced by the veterans and the public at large,' and virtually accuses scientists who find that such health effects do exist to be nothing more than witch doctors. See Hobson, 'Dioxin and Witchcraft' presented at the 5th International Symposium on Chlorinated Dioxins and Related Compounds (September 1985) .

⁴¹ See 135 Congressional Record, Statement of Senator Tom Daschle (November 21, 1989); See also Agent Orange Hearings at p.37.

⁴² Oversight Review of CDC's Agent Orange Study: Hearing Before the Human Resources and Intergovernmental Relations Subcommittee of the Committee on Government Operations House of Representatives, 101st Cong., 1st Sess. at p. 71 and 330 (1989) [hereinafter cited as Agent Orange Hearing].

The Agent Orange validation study, for example, a study of the long—term health effects of exposures to herbicides in Vietnam, was supposedly conducted to determine if exposure could, in fact, be estimated.⁴³ After four years and approximately \$63 million in federal funds, the CDC concluded that an Agent Orange exposure study could not be done based on military records.⁴⁴ This conclusion was based on the results of blood tests of 646 Vietnam Veterans which ostensibly demonstrated that no association existed between serum dioxin levels and military— based estimates of the likelihood of exposure to Agent Orange.⁴⁵ Inexplicably, the CDC then used these "negative" findings to conclude that not only could an exposure study not even be done, but that the "study" which was never even conducted proves that Vietnam Veterans were never exposed to harmful doses of Agent Orange.

Even more disturbing, when the protocol for this "study" and the blood test procedures were examined further, there appeared to be a purposeful effort to sabotage any chance of a meaningful Agent Orange exposure analysis. For , the original protocol for the Agent Orange exposure study understandably called for subject veterans to be tracked by company level location.⁴⁶ By tracking company level units of 200 men, rather than battalions of 1,000 men, the location of men in relation to herbicide applications would be known with greater precision, thereby decreasing the probability that study-subjects would be misclassified as having been or not been exposed to Agent Orange.

However, in 1985 the CDC abruptly changed the protocol to have battalions, rather than companies, serve as the basis for cohort selection and unit location.⁴⁷ By the CDC's own admission, changing the protocol to track veterans on the broader battalion basis effectively diluted the study for the simple reason that many of the 1,000 men in a battalion were probably not exposed to Agent Orange. Why then did the CDC change the protocol in 1985?

⁴³ Id. at 37; See also, Protocol for Epidemiologic Studies of the Health of Vietnam Veterans, Centers for Disease Control, Public Health Service, U.S. Department of Health and Human Services (November, 1983).

⁴⁴ Agent Orange Hearings at 13 (Statement of Dr. Vernon Houk).

⁴⁵ Id. at 12—13.

⁴⁶ Id. at 41.

⁴⁷ Id. at 38.

According to Dr. Vernon Houk, Director of the Center for Environmental Health and Injury control, the department within the CDC responsible for conducting the Agent Orange study, the protocol was changed because the CDC concluded that company—specific records were unreliable and contained too many gaps of information. As a result, military records could simply not be used to assess exposure.⁴⁸

Richard Christian, the former director of the Environmental Study Group of the Department of Defense ("ESG") testified that not only was this conclusion false, but that he had personally informed the CDC that adequate military records existed to identify company—specific movements as well as spray locations.⁴⁹ Furthermore, in a February 1985 report to the Congressional Office of Technology Assessment, the CDC reported that in analyzing 21 of 50 detailed computer HERBs tapes developed by the ESG on company movements that it was possible to correlate the exposure data to areas sprayed with Agent Orange with consistent results.⁵⁰ Indeed, a peer reviewed study sponsored by the American Legion conclusively demonstrated that such computerized data could be used to establish a reliable exposure classification system essential to any valid epidemiologic study of Vietnam Veterans.⁵¹

⁴⁸ Agent Orange Hearing: Testimony of Dr. Vernon Houk at 38-40 and 69. Dr. Houk sports an unbounded skepticism for the health hazards of dioxin. He recently endorsed the lessening of the dioxin dumping standard in the State of Georgia at a rate 500 times more lenient than EPA recommended guidelines. See Letter from Dr. Vernon N. Houk to Leonard Ledbetteber, Commissioner Georgia Department of Natural Resources (November 27, 1989).

⁴⁹ Agent Orange Hearing, Testimony of Richard Christian at 41.

⁵⁰ Interim Report, Agent Orange Study: Exposure Assessment: Procedures and Statistical Issues. See Also American Legion Magazine Special Issue, "Agent Orange" (1990) at p. 12.

⁵¹ Agent Orange Hearing 155-220 (Testimony of Steven and Jeanne Stellman); American Legion and Columbia University Vietnam Experience Study, Environmental Research (December, 1988).

In addition to altering the protocol from company units to battalions, the CDC further diluted the study by changing the protocol on the length of time study subjects were to have served in Vietnam. Whereas the original protocol required subjects to have served a minimum of 9 months in combat companies, the CDC reduced the minimum to 6 months. Furthermore, the CDC eliminated from consideration all veterans who served more than one tour in Vietnam. Finally, while the original protocol called only for subjects who served in Vietnam from 1967 to 1968, the years that Agent Orange spraying was at its height, the CDC added an additional 6 months to this time period. The net effect of these various changes was seriously to dilute the possibility that study subjects would have been exposed to Agent Orange, which in turn would impair any epidemiological study's ability to detect increases in disease rate.⁵²

Although the above referenced problems cast serious suspicion on the work of the CDC, perhaps its most controversial action was to determine unilaterally that blood tests taken more than 20 years after a veteran's service in Vietnam were the only valid means of determining a veteran's exposure to Agent Orange. In addition, Dr. Houk further "assumed" that the half-life for dioxin in the blood was seven years.⁵³ When the underlying data for Houk's assumptions were recently reviewed, however, 11 percent of the blood tests were invalid (i.e. study subjects had higher values of dioxin in their blood in 1987 than in 1982 even though the subjects had no known subsequent exposure to dioxin) and the half lives of dioxin in the remaining study subjects ranged from a low of 2 to a high of 740 years!⁵⁴ Yet despite this tremendous variance in the data and the high incidence of false results, Houk and the CDC concluded, rather remarkably, that a large scale exposure study was simply not possible since "negative" blood tests appeared to "confirm" that study subjects were not even exposed to Agent Orange.

⁵² Agent Orange Hearing at 46-49. This "dilution effect" is considered the classic flaw in epidemiological study design. Most epidemiologists would try to optimize the chances of observing an effect by including, rather than excluding, the subjects who are most likely to have been exposed to the suspected disease causing agent. This statistical ability to observe an effect if one is present is generally referred to as the "statistical power" of a given study.

When the CDC chose to generalize exposure to Agent Orange to groups of veterans who were less likely, rather than more likely, to be exposed, the power of the study was diluted. For example, if we assume that 1 out of every 5 men who served in Vietnam was exposed to Agent Orange, any possible effects of the exposure will be diluted when the 4 non-exposed men are averaged in. If we assume further that exposure to Agent Orange caused a doubling of the incidence of cancers among the 20% of men exposed, the effect would largely be obscured since 80% of the group being studied would not have been sprayed with Agent Orange and would thus have a normal background rate of cancer. Consequently, only exceptionally large increases in the cancer rate would be discovered and or reach statistical significance in a study group so diluted from the outset. See Agent Orange Hearing at 149 (Testimony of John F. Sommer, Jr., Director National Veterans Affairs and Rehabilitation commission the American Legion).

See also Agent Orange Legislation and Oversight: Hearing Before the Committee on Veterans' Affairs, United States Senate, 100th Cong., (May 12, 1988) (Testimony of Dr. Joel Nichalek) at pp. 65, 66 and 668.

⁵³ Agent Orange Hearing at 59. Dr. Houk's assumption was based on a study of only 36 former Ranch Handlers (members of "Operation Ranch Hand," the Air Force herbicide defoliation program) who had volunteered blood samples in 1982 and 1987.

⁵⁴ American Legion Magazine Reprint "Agent Orange" at 12 See also Agent Orange Hearing at p. 67 (testimony of Dr. Houk revealed that the senior-statistician on the Agent Orange project believed that the dioxin blood analysis was so flawed there is a substantial likelihood that there is no correlation between the exposure scores and the blood levels).

Such conclusions are especially suspect given the fact that scientists have consistently cautioned against the use of blood tests as the sole basis for exposure classification. Although blood and adipose tissue tests can be used to confirm that Vietnam veterans were heavily exposed to Agent Orange and the contaminant dioxin⁵⁵, even the CDC's own researchers have unequivocally stated that "much more has to be learned about the kinetics of dioxin metabolism and half-life before current levels can be used to fully explain historic levels of exposure."⁵⁶

While the CDC's changes in protocol have been "justified", however unreasonably, on the basis of "scientific" explanations⁵⁷, what cannot be justified is the evidence of political interference in the design, implementation and drafting of results of the CDC study by Administration officials rather than CDC scientists. As early as 1986, the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce documented how untutored officials of the Office of Management and Budget (OMB) interfered with and second-guessed the professional judgments of agency scientists and multidisciplinary panels of outside peer review experts effectively to alter or forestall CDC research on the effects of Agent Orange, primarily on the grounds that "enough" dioxin research had already been done.⁵⁸ These Agent Orange Hearings revealed additional examples of political interference in the CDC's Agent Orange projects by members of the White House Agent Orange Working Group.⁵⁹

Dr. Philip S. Landrigan, the former Director of the Environmental Hazards branch at the CDC, upon discovering the various irregularities in CDC procedures concluded that the errors were so egregious as to warrant an independent investigation not only of the methodology employed by the CDC in its validation study, but also a specific inquiry into what actually transpired at the Center for Environmental Health of the CDC.⁶⁰

⁵⁵ See Kahn, "Dioxins and Dibenzofurans in Blood and Adipose Tissue of Agent Orange Exposed Vietnam Veterans and Matched Controls," 259 Journal of the American Medical Association 1661 (1988). This report found that "Vietnam veterans who were heavily exposed to Agent Orange. exceeded matched control subjects in both blood, and adipose tissue levels of 2,3,7, 8-tetrachlorodibenzo-p- dioxin (TCDD) but not in the levels of the 12 other 2,3,7,8-substituted dioxins and dibenzofurans that were detected. Since only TCDD among these compounds was present in Agent Orange but all are present in the population of the industrialized world, it is likely that the elevated TCDD levels arose from wartime exposure."

⁵⁶ Patterson, "Levels of Polychlorinated Dibenzofurans and Dibenzofurans in Workers Exposed to 2,3,7,8 --tetrachlorodibenzo-p--dioxin,," 16 American Journal of Industrial Medicine 135, 144 (1989).

⁵⁷ See generally, Agent Orange Hearing (Testimony of Dr. Vernon Houk) at 44-50.

⁵⁸ OMB Review of CDC Research: Impact of the Paperwork Reduction Act; A Report Prepared for the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, 99th Cong. 2nd Sess. (October 1986).

⁵⁹ See Agent Orange Hearing at 49-54 (Testimony of Dr. Vernon Houk).

⁶⁰ Agent Orange Hearing at 229 and 330

With these suspicions in mind, it should come as no surprise that those familiar with the CDC's work found little credence in the conclusions reached by the CDC in its recently released Selected Cancers Study. Even though the CDC has previously stated that it believes exposure to Agent Orange is impossible to assess, it found no difficulty in reporting to the press upon the release of the Selected Cancers Study that exposure to Agent Orange does not cause cancer. This conclusion was reached despite the fact that the CDC made no effort to determine, through military records or blood/adipose tissue tests, if study subjects were, indeed, exposed to dioxins; nor did the CDC attempt to verify exposure to Agent Orange of those study subjects who actually contracted cancerous diseases. In fact, according to scientists who have made preliminary reviews of the CDC's findings, the statistical power of any one cancer grouping, with the exception of non-Hodgkin's lymphoma, was so low as to make any conclusion virtually impossible.

IV. RANCH HAND STUDY

Unfortunately, political interference in government sponsored studies associated with Agent orange has been the norm, not the exception. In fact, there appears to have been a systematic effort to suppress critical data or alter results to meet preconceived notions of what alleged scientific studies were meant to find.⁶¹ As recently as March 9, 1990 Senator Daschle disclosed compelling evidence of additional political interference in the Air Force Ranch Hand study, a separate government sponsored study meant to examine the correlation between exposure to Agent Orange and harmful health effects among Air Force veterans who participated in Agent Orange spraying missions under Operation Ranch Hand. As Senator Daschle explained:

In January 1984, the scientists in charge of the Ranch Hand Study issued a draft baseline morbidity report that described some very serious health problems in the Ranch Hand veterans and stated that the Ranch Handers, by a ratio of five to one, were generally less well than the veterans in the control group. The opening sentence of the draft report's conclusion was clearly stated: "It is incorrect to interpret this baseline study as 'negative.'

After the Ranch Hand Advisory Committee, which operates under the White House Agent Orange Working Group of the Domestic Policy Council, got its hands on the document, the final report was changed in some very important ways. Most notably, the table and exposition explaining that the Ranch Handers were generally less well than the controls was omitted, and the final conclusion was altered substantially. The statement that the baseline study was not negative was completely omitted and the study was described as "reassuring."⁶²

⁶¹ See generally Agent Orange Nearing; Congressional Record, S 2550 (March 9, 1990); Congressional Record, (November 21, 1989) (Statements of Senator Thomas Daschle).

⁶² See Congressional Record S 2550 (March 9, 1990)

By altering the study's conclusion, opponents of Agent Orange compensation were able to point to "irrefutable proof" that Agent Orange is not a health problem: if those veterans most heavily exposed to Agent Orange did not manifest any serious health problems, they argued, then it could safely be deduced that no veteran allegedly exposed to Agent Orange in smaller doses could have health problems. Yet, when Senator Daschle questioned Air Force scientists on why discrepancies existed between an Air Force draft of the Ranch Hand Study and the final report actually released to the press, the answers suggested not merely disagreements in data evaluation, but the perpetration of fraudulent conclusions. In a word, the major premise was badly flawed.

For example, in 1987 Ranch Hand scientists confirmed to Senator Daschle that an unpublished birth defects report shows that birth defects among Ranch Hand children are double those of children in the control group and not "minor" as originally reported in 1984.⁶³

This increase in birth defects takes on added significance when one considers that the original CDC birth defects study, which found no increase in birth defects, merely examined birth defects as reported on birth certificates, rather than as reported by the child's parent or physician. The CDC never recorded hidden birth defects, such as internal organ malformations and other disabilities that only became apparent as the child developed. Consequently, it is very likely that the CDC's negative findings on birth defects were also vastly understated.⁶⁴

In addition to elevated birth defects, Ranch Handers also showed a significant increase in skin cancers unrelated to overexposure to the sun as originally suggested in the 1984 report. Air Force scientists also admitted that Air Force and White House Management representatives were involved in scientific decisions in spite of the study's protocol which prohibited such involvement.⁶⁵

On February 23, 1990, the Air Force released a follow-up morbidity report on the Ranch Handers. That report, "1987 Followup Examination Results," described statistically significant increases in health problems among Ranch Handers including: all cancers — skin and systemic combined, both verified and suspected; skin cancers alone; hereditary and degenerative neurological diseases and other problems.

⁶³ Congressional Record, (November 21, 1989) (Statement of Senator Thomas Daschle).

⁶⁴ The CDC birth defects study was confined to Vietnam Veterans located in the Atlanta, Georgia region. The study was not an Agent Orange birth defects study since no effort was made to determine whether the veterans had even been exposed to Agent orange. See notes 10 and 18 supra for additional information on birth defects.

⁶⁵ Congressional Record, S 2551 (March 9, 1990) (Statement of Senator Daschle).

The Air Force-concluded, however, that these and other problems cannot necessarily be related to Agent Orange/dioxin exposure, as they do not always show a "dose-response" relationship — particularly since the exposure index used in the data analysis "is not a good measure of actual dioxin exposure."⁶⁶

With this conclusion, the Air Force for the first time officially acknowledged that the conclusions reached in its original 1984 Ranch Hand study are not simply moot, but that the Ranch Hand study is not, at this date, an Agent Orange study at all since dioxin exposure could not be determined reliably in the first place. In other words, the Air Force could just as easily have concluded that the health problems associated with the Ranch Handers were not necessarily related to eating beer nuts.

For the Air Force to have made the statement in 1990 of no evidence of a link between exposure to Agent Orange and the cancer problems experienced by Ranch Handers is, as Senator Daschle notes, "patently false."⁶⁷ Although not yet conclusive, what the Ranch Hand and CDC studies demonstrate is that there is evidence of a link between health problems and dioxin exposures which may become definitive when a new and reliable exposure index is used to evaluate the data.

As stated by Dr. James Clary, one of the scientists who prepared the final Ranch Hand report:

The current literature on dioxin and non--Hodgkin's lymphoma and soft tissue sarcoma can be characterized by the following:

1. It underestimates (reduced risk estimates) the effect of dioxins on human tissue systems. As additional studies are completed we can expect to see even stronger correlations of dioxin exposure and NHL/STS.
2. Previous studies were not sensitive enough to detect small, but statistically significant increases in NHL/STS. As time progresses, and additional evidence is forthcoming, it will be increasingly difficult for anyone to deny the relationship between dioxin exposure and NHL/STS

⁶⁶ Wolfe, St. al., Air Farce Health Study and Epidemiologic Investigation of Health Effects in Air Force Personnel Following Exposure to Herbicides (Feb. 1990) at p. vi.

⁶⁷ Congressional Record 5. 2551 (March 9, 1990). See also Letter from Maj. Gen. James G. Sanders, U.S.A.F. Deputy Surgeon General to Senator Thomas Daschle (February 23, 1990).

⁶⁸ Letter from Dr. James Clary to Senator Tom Daschle (September 9, 1988).

V. INDEPENDENT STUDIES

Shamefully, the deception, fraud and political interference that has characterized government sponsored studies on the health effects of exposure to Agent Orange and/or dioxin has not escaped studies ostensibly conducted by independent reviewers, a factor that has only further compounded the erroneous conclusions reached by the government.

For instance, recent litigation against the Monsanto corporation revealed conclusive evidence that studies conducted by Monsanto employees to examine the health effects of exposure to dioxin were fraudulent. These same fraudulent studies have been repeatedly cited by government officials to deny the existence of a relationship between health problems and exposure to Agent Orange. According to court papers:

Zack and Gaffey, two Monsanto employees, published a mortality study purporting to compare the cancer death rate amongst the Nitro workers who were exposed to Dioxin in the 1949 explosion with the cancer death rate of unexposed workers. The published study concluded that the death rate of the exposed worker was exactly the same as the death rate as the unexposed worker. However, Zack and Gaffey deliberately and knowingly omitted 5 deaths from the exposed group and took 4 workers who had been exposed and put these workers in the unexposed group, serving, of course, to decrease the death rate in the exposed group and increase the death rate in the unexposed group. The exposed group, in fact, had 18 cancer deaths instead of the reported 9 deaths (P1. Ex. 1464), with the result that the death rate in the exposed group was 65% higher than expected (emphasis in original)⁶⁹.

Similarly, recent evidence also suggests that another study heavily relied upon by those opposed to Agent Orange compensation to deny the existence of a link between dioxin and health effects was falsified. Three epidemiologic studies and several case report studies about an 1953 industrial accident in which workers at a BASF plant were exposed to dioxins concluded that exposure to TCDD did not cause human malignancies.⁷⁰ A reanalysis of the data that comprised the studies, all of which was supplied by

⁶⁹ Brief of Plaintiffs-appellees in Kemner. et. al. v. Monsanto Company, No. 5--88--0420 (5th Dist., Illinois Appellate Court) (Oct. 3, 1989) (as the facts were proven at trial, the appeal only considered appealable matters of law). Plaintiff's brief refers to Zack and Gaffey, "A Mortality Study of Workers Employed at the Monsanto Company Plant in Nitro, WV, man Environmental Risks of Chlorinated Dioxins and Related Compounds (1983) pp. 575--591. It should be noted that the Advisory Committee classified this report as "negative" in evaluating compensation for NHL

The brief also states that another study of the workers exposed in the 1949 accident was also fraudulent (e.g. R.R. Suskind and V.S. Hertzberg, "Human Health Effects of 2,4,5-T and Its Toxic Contaminants," Journal of the American Medical Association, Vol. 251, No. 18 (1984) pgs. 2372-2380.) The study reported only 14 cancers in the exposed group and 6 cancers in the unexposed group. Trial records conclusively demonstrated, however, that there were 28 cancers in the group that had been exposed to dioxins, as opposed to only 2 cancers in the unexposed group.

⁷⁰ See e.g. Thiess, Frentzel-Beyme, Link, "Mortality Study of Persons Exposed to Dioxin in a Trichlorophenol Process Accident that occurred in the BASF AG on November 17, 1953", 3 American Journal of Industrial Medicine 179--189 (1982)

the BASF company itself, revealed that some workers suffering from chloracne (an acknowledged evidence of exposure to dioxin) had actually been placed in the low--exposed or non--exposed cohort groups. Additionally, 20 plant supervisory personnel, not believed to have been exposed, were placed in the exposed group.

When the 20 supervisory personnel were removed from the exposed group, thereby negating any dilution effect, the reanalysis revealed statistically significant increases in cancers of the respiratory organs (lungs, trachea, etc.) and cancers of the digestive tract.⁷¹ According to the scientist who conducted this study, "t)his analysis adds further evidence to an association between dioxin exposure and human malignancy."⁷²

Recent evidence also reveals that Dow Chemical, a manufacturer of Agent Orange was aware as early as 1964 that TCDD was a byproduct of the manufacturing process. According to Dow' s then medical director, Dr. Benjamin Holder, extreme exposure to dioxins could result in "general organ toxicity" as well as "psychopathological" and "other systemic" problems.⁷³ In fact, a recent expert witness who reviewed Dow Chemical corporate documents on behalf of a plaintiff injured by exposure to dioxin who successfully sued Dow⁷⁴ states unequivocally that "the manufacturers of the chlorophenoxy herbicides have known for many years about the adverse effects of these materials on humans who were exposed to them."⁷⁵

⁷¹ Friedemann Rohleder, "Dioxins and Cancer Mortality Reanalysis of the BASF Cohort," presented at the 9th International Symposium on Chlorinated Dioxins and Related Compounds, Toronto, Ontario (Sept. 17-22, 1989). BASF recently published a study in an attempt to refute the allegations that the original studies related to the accident were fraudulent. See Zobier, Messerer & Huber, "Thirty Four Year Mortality Follow Up of BASF Employees, 62 Occupational Environmental Health 139-157, (Oct.19, 1989). While the company states that "there was no significant increase in deaths from malignant neoplasms," the study does conclude that:

There was, however, a significant excess for all cancers combined among the chloracne victims 20 or more years after initial exposure when an excess would be most likely to occur. In addition, there is the notable finding on one case of liver cancer without cirrhosis in a worker with an exceptionally high level of TCDD in the blood.

Id. at 155. See also id. at 139 ("In general, our results do not appear to support a strong association between cancer mortality and TCDD, but they do suggest that some hazard may have been produced.) (emphasis added) and 149 ("Although TCDD blood levels were available for only 5 of the 10 subjects, the three highest levels were found in subjects with liver cancer, leucosis and Merckell--cell carcinoma of the skin.").

⁷² Wanchinski, "New Analysis Links Dioxin to Cancer," New Scientist, (Oct. 28, 1989) p. 24.

⁷³ See L. Casten, Patterns of Secrecy: Dioxin and Agent Orange (1990) (unpublished manuscript detailing the efforts of government and industry to obscure the serious health consequences of exposure to dioxin).

⁷⁴ Peteet v. Dow Chemical Co., 868 F.2d 1428 (5th Cir. 1989) cert...denied 110 S.Ct. 328 (1989).

⁷⁵ Letter from Daniel Teitelbaum, M.D., P.C. to Admiral E.R. Zumwalt, Jr. (April 18, 1990). Dr Teitelbaum additionally states: What I do think...may bear on the Agent Orange issue, is the fact that in review of Dow's 2,4-D documentation I found that there are significant concentrations of potentially carcinogenic materials present in 2,4-D which have never been made known to the EPA, FDA, or to any other agency. Thus, in addition to the problem of the TCDD which, more likely than not, was present in the 2,4,5--T component of Agent Orange, the finding of other dioxins and closely related furans and xanthenes in the 2,4--D formulation was of compelling interest to me.

VI. CURRENT SCIENCE ON HEALTH EFFECTS OF HERBICIDES AND DIOXIN

Despite its poor record in carrying out its responsibility to ascertain the health effects of exposure to Agent Orange, the CDC has been candid in some of its findings. As early as 1983, for instance, the CDC stated in the protocol of its proposed Agent Orange Studies "(t)hat the herbicide contaminant TCDD is considered to be one of the most toxic components known. Thus any interpretation of abnormal findings related to 2,4,5—T must take into consideration the presence of varying or undetermined amounts of TCCD." ⁷⁶

In 1987, after first being leaked by the New York Times, a VA mortality study was released indicating a 110 percent higher rate of non-Hodgkin's lymphoma in Marines who served in heavily sprayed areas as compared with those who served in areas that were not sprayed. ⁷⁷ The study also found a 58 percent higher rate of lung cancer among the same comparative groups. ⁷⁸

Also in 1987, a second VA study found a suggestive eight-fold increase in soft tissue sarcoma among veterans most likely to have been exposed to Agent Orange. ⁷⁹

⁷⁶ CDC Protocol, see note 1 supra The CDC went on to state that a wide variety of health effects have been observed following the administration of TCDD to experimental animals including soft tissue sarcomas and lymphoma, nasal and nasopharyngeal cancers, birth defects, changes in thymus and lymphoid tissues, and other numerous cancers. Additionally, the CDC acknowledged the toxic effects of occupational exposure to dioxin, including evidence that exposure "may be associated with an increased risk of soft tissue sarcoma and lymphoma" and perhaps nasal and nasopharyngeal cancers.

⁷⁷ Breslin, et. al. "Proportionate Mortality Study of U.S. Army and U.S. Marine Corps Veterans of the Vietnam War," Veterans Administration (1987).

⁷⁸ Id. Some scientists, including the Advisory Committee have attempted to denigrate these significant findings on the basis that Army personnel did not show similar results. The explanation for this lack of comparative Army findings is directly attributable to the dilution effect caused by including logistics personnel as part of the Army study. Marines were studied as a separate group. The Marine's logistical support personnel (i.e. the Navy), were not included. Thus, the increased cancers among Marines were clearly associated with field exposure to Agent Orange.

The Army study, on the other hand, combined field personnel with personnel on logistics assignments who were unlikely to have been exposed to Agent Orange. As a result, the Army findings were drastically diluted. Additionally, Army personnel generally engaged the enemy and returned to base, whereas Marines consistently remained in areas presumably sprayed by Agent Orange to provide medical, health and engineering assistance to the local population. Such "pacification" efforts gave Marines additional opportunities to be exposed to dioxins.

⁷⁹ Kang, et. al., "Soft-Tissue Sarcoma and Military Service in Vietnam: A Case Control Study," 79 Journal of the National Cancer Institute 693 (October, 1987). The increases were not statistically significant as reported. Nonetheless, the results are remarkable.

A proportionate mortality study of deaths in pulp and paper mill workers in New Hampshire from 1975 to 1985 showed that one or more of the exposures experienced by such workers (dioxin is a byproduct of pulp and paper production) posed a "significant risk" for cancers of the digestive tract and lymphopoietic tissues .⁸⁰

Another case control study of farmers in Hancock County, Ohio, showed a "statistically significant" rise in Hodgkin's disease and non-Hodgkin's lymphoma. Although the study speculates that exposure to phenoxy herbicides may be the cause of such elevated cancers, the study recognizes that, given the size of its cohort, the only credible conclusion that can be drawn is that it "adds to the growing body of reports linking farming and malignant lymphoma, particularly NHL." ⁸¹

A study of disease and non—battle injuries among U.S. Marines in Vietnam from 1965 to 1972 showed a significantly higher rate of first hospitalizations for Marines stationed in Vietnam as opposed to Marines stationed elsewhere, particularly for neoplasms, diseases of the blood and blood forming organs and diseases of the circulatory and respiratory systems.⁸² Of particular significance is the fact that the rate of first hospitalization for disease and non—battle injuries among Vietnam personnel rose steadily, reaching a peak in 1969, while the rate of non—Vietnam personnel remained relatively constant.⁸³ This rise in hospitalization for non—combat injuries coincides exactly with the increased use of Agent Orange, reaching a peak in 1969, and declining thereafter until its elimination in 1971.

⁸⁰ E . Schwartz, "A Proportional Mortality Ratio of Pulp and Paper Mill Workers in New Hampshire," 45 British Journal of Industrial Medicine, 234—238 (1988).

⁸¹ Dubrow, Paulson & Indian, "Farming and Malignant Lymphoma in Hancock county, Ohio," 45 British Journal of Industrial Medicine 25—28 (1988).

⁸² Palinkas & Coben, "Disease and Non—Battle Injuries Among U.S. Marines in Vietnam, 153 Military Medicine 150 (March, 1988).

⁸³ Id. at 151. It should be noted that the year of greatest combat activity, as measured by the number of personnel wounded in action, 1968, had the smallest disease and non-battle injury vs. wounded in action ratio. Id. at 152.

In a recently published article entitled "2,4--D, 2,4,5 --T, and 2,3,7,8 --TCDD: An Overview", the authors acknowledge that at least three weaknesses in research related to dioxins are sufficient to cast doubt on the validity of any study.⁸⁴ The authors report that while the data on soft tissue sarcoma and phenoxy acids are too inconsistent to allow for any comment at this time, there is evidence of a strong association between STS and the suspect chemicals in 2 of the 8 studies analyzed in their article. Furthermore, the birth defect studies analyzed "suggest that adverse reproductive effects can be caused by (dioxin) .⁸⁵

Recent studies in Vietnam continue to show statistically significant reproductive anomalies and birth defects among women, and children of women presumably exposed to Agent Orange spraying.⁸⁶

⁸⁴ Liliensfeld and Gallo "2,4-D, 2,4,5—T and 2,3,7,8-TCDD An Overview," Epidemiologic Review, Vol. II (1989). Three major criteria must be considered in evaluating the numerous epidemiologic studies of phenoxy herbicides and 2,3,7,8-TCDD: 1) the accuracy of exposure assessment; 2) the studies' statistical power; and 3) the adequacy of follow-up. Problems in any one of the three areas leaves the study open to criticism and subject to manipulation.

For instance, in retrospective studies, various proxies of exposure to herbicides and 2,3,7,8,—TCDD have been used such as military service in Vietnam or residence in an area in which the herbicides were sprayed. The weakness in such an approach is that unless the proxy corresponds to exposure, the "exposed group" is diluted with the individuals who have NOT been exposed, thereby reducing the magnitude of the strength of the association. In fact, such reduction may be of such a degree as to preclude detection of any of a serum marker for 2,3,7,8-TCDD by Kahn may provide the means of identifying persons who have been exposed.

Furthermore, studies concerning Agent Orange have nearly all been conducted in the past decade. This 10 year latency period is generally thought to be insufficient for mzzany cancers to be clinically detected .

⁸⁵ Id.

⁸⁶ See note 10 supra. It should be noted that as early as 1977 information about Agent Orange's potential for genetic damage was known to the VA. For example, a "NOT FOR RELEASE" VA document expressly noted Agent Orange's "high toxicity" and "its effect on newborn, deformed children— similar to the thalidomide situation." See L. Casten, Patterns of Secrecy note 73 supra at Department of Veteran Affairs p.4. Similarly, in March of 1980, Senator Tom Daschle and Rep. David Bonior received an anonymous memorandum written on VA stationery which stated:

chemical agents 2,4,5-T and 2,4-D commonly known as Agent Orange and Agent Blue, are mutagenic and teratogenic. This means they intercept the genetic DNA message processed to an unborn fetus, thereby resulting in deformed children being born. Therefore, the veteran would appear to have no ill effects from the exposure but he would produce deformed children due to this breakage in his genetic chain.... .Agent Orange is 150,000 times more toxic than organic arsenic.

Id. See also Wolfe & Lathrop, "A Medical Surveillance Program for Scientists Exposed to Dioxins and Furans," Human and Environmental Risks of Chlorinated Dioxins and Related Compounds, 707—716 (1983) (Proceedings of International Symposium on Chlorinated Dioxins and Related Compounds, Arlington, VA, October 25—29, (1981)). The article explains the possible mechanism for paternally transmitted birth defects.

In the December 1, 1989, issue of *Cancer*, a study of the cancer risks among Missouri farmers found elevated levels of lip and bone cancer as well as nasal cavity and sinuses, prostate, non-Hodgkin's lymphoma and multiple myeloma. Smaller elevations, but elevations nonetheless, were found for cancers of the rectum, liver, malignant melanoma, kidney and leukemia. According to the authors, evidence of the cause for the elevated risks for these illnesses "may be strongest for a role of agricultural chemicals, including herbicides, insecticides and fertilizers." ⁸⁷

Both the U.S. Environmental Protection Agency (EPA) and the International Agency for Research on Cancer (IARC) have concluded that dioxin is a "probable human carcinogen." ⁸⁸

In a work entitled "Carcinogenic Effects of Pesticides" to be issued by the National Cancer Institute Division of Cancer Etiology, researchers conclude that while confirmatory data is lacking there is ample evidence to suggest that NHL, STS, colon, nasal and nasopharyngeal cancer can result from exposure to phenoxy herbicides

A just released case control study of the health risks of exposure to dioxins confirmed previous findings that exposure to phenoxyacetic acids or chlorophenols entails a statistically significant increased risk (i.e. 1.80) for soft tissue sarcoma. ⁸⁹

As recently as February 28, 1990 an additional study found that farmers exposed to various herbicides containing 2,4—D may experience elevated risks for certain cancers, particularly cancers of the stomach, connective tissue, skin, brain, prostate, and lymphatic and hematopoietic systems. ⁹⁰

⁸⁷ Brownson, et. al. "Cancer Risks Among Missouri Farmers," 64 *Cancer* 2381, 2383 (December 1, 1989) .

⁸⁸ Agency for Toxic Substances and Disease Registry, pp. 7,, 61—68, 94 reprinted in Rachel's Hazardous Waste News # 173 (March 21, 1990)

⁸⁹ Eriksson, Hardell & Adami, "Exposure to Dioxins as a Risk Factor for Soft Tissue Sarcoma: A Population--Based Case--Control study," 82 *Journal of the National Cancer Institute* 486—490 (March 21 1990) . It should be noted that in this study the median latency for phenoxyacetic acid and chlorophenols exposure was 29 and 31 years respectively, thereby suggesting that many of the veterans who are at risk have not yet manifested symptoms of STS.

⁹⁰ Blair, "Herbicides and Non-Hodgkin's Lymphoma: New Evidence From a Study of Saskatchewan Farmers," 82 *Journal of the National cancer*

This week a scientific task force, after reviewing the scientific literature related to the potential human health effects associated with exposure to phenoxyacetic acid herbicides and/or their associated contaminants (chlorinated dioxins) concluded that it is at least as likely as not that exposure to Agent Orange is linked to the following diseases: non—Hodgkin's lymphoma, soft tissue sarcoma, skin disorders/chloracne, subclinical hepatotoxic effects (including secondary coproporphyrinuria and chronic hepatic porphyria), porphyria cutanea tarda, reproductive and developmental effects, neurologic effects and Hodgkin's disease.⁹¹

On the same day that this scientific task force reported a statistically significant linkage between exposure to the dioxins in Agent Orange and various cancers and other illnesses, the Environmental Protection Agency reported that the cancer risk posed by the release of such a "potent carcinogen" as dioxin in the production of white paper products is "high enough to require tighter controls on paper mills."⁹²

CONCLUSIONS

As many of the studies associated with Agent Orange and dioxins attest, science is only at the threshold of understanding the full dimension of harmful toxic effects from environmental agents on various components of the human immune system.⁹³ In fact, a whole new discipline — immunotoxicology — has developed to explore further the effects of environmental chemicals on human health and to relate animal test results to humans.⁹⁴

⁹¹ Report of the Agent Orange Scientific Task Force of the American Legion, Vietnam Veterans of America, and the National Veterans Legal Services Project, reported by McAllister, "Viet Defoliant Linked to More Diseases, Washington Post, May 1, 1990 at AS, col. 4. The report also found that there are other disorders for which there is evidence suggesting an association with exposure to Agent Orange, but for which statistically significant evidence is not currently available. Those diseases include: leukemias, cancers of the kidney, testis, pancreas, stomach, prostate, colon hepatobiliary tract, and brain, psychosocial effects, immunological abnormalities, and gastrointestinal disorders.

⁹² Weisskopf, "EPA Seeking to Reduce Dioxin in White Paper: Cancer Risk Said to Justify Mill Restrictions," Washington Post, May 1, 1990 at AS, col. 1.

⁹³ A recent report in the Washington Post suggests that there is an inherent uncertainty in trying to measure the dangers posed by the chemicals humans eat, drink and breathe. Since human experimentation is impossible to assess the effect of varied doses of a chemical on human health, scientists are ultimately required to speculate or guess as to the health effects of a given chemical to the human body. See Measuring Chemicals' Dangers: Too Much Guesswork? Washington Post, March 23, 1990.

⁹⁴ Silbergeld & Gaisewicz, "Dioxins and the Ah Receptor," 16 American Journal of Industrial Medicine 455, 468—69 (1989).

Immunotoxicology has established, however, at a minimum that at least three classes of undesirable effects are likely occur when the immune system is disturbed by environmental exposure to chemicals such as dioxin, including: 1) immunodeficiency or suppression; 2) alteration of the host defense mechanism against mutagens and carcinogens (one theory is that the immune system detects cells altered by mutagens or other carcinogenic trigger and destroys these cells. Thus, an impaired immune system may not detect and destroy a newly forming cancer); and 3) hypersensitivity or allergy to the chemical antagonist. Because of dioxin's ability to be both an immunosuppressant and a carcinogen, as early as 1978 immunologists were suggesting that "(a) gents such as TCDD.. may be far more dangerous than those possessing only one of these properties."⁹⁵

While scientists are not in agreement, some immunotoxicologists argue that one molecule of a carcinogenic agent, like dioxin in the right place and at the right time can cause the human immune system to turn on itself, manifesting such breakdowns in the form of cancer. Indeed, even some courts have accepted this theory of causation in matters specifically related to exposure to dioxin.⁹⁶

With additional evidence from Vietnam suggesting that Agent Orange contaminants have the ability to migrate away from actual spray locations via river channels and the food chain, the opportunity for a Vietnam Veteran to have been exposed to dioxin contaminant molecules increases significantly.⁹⁷

⁹⁵ Inadvertent Modification of the Immune Response — The Effect of Foods, Drugs, and Environmental Contaminants; Proceedings at the Fourth FDA symposium; U.S. Naval Academy (August 28-30, 1978), p. 78.

⁹⁶ See Peteet V. Dow Chemical Co., 868 F.2d 1428, 1433 (5th Cir. 1989) cert denied 110 S.Ct. 328 (1989).

⁹⁷ See e.g. Schecter, et. al., "Levels of 2,3,7,8—TCDD in Silt Samples Collected Between 1985—86 From Rivers in the North and South of Vietnam," 19 Chemosphere 547—550 (1989) (suggestive findings that the predominant dioxin isomer in Agent Orange has moved into downstream rivers in the South of Vietnam); Olie, et. al., "Chlorinated Dioxin and Dibenzofuran Levels in Food and Wildlife Samples in the North and South of Vietnam," 19 Chemosphere 493-496 (1989) (food and wildlife specimens in South Vietnam had a higher relative abundance of 2,3,7,8-TCDD suggesting contamination from Agent Orange); Schecter, et · al. "Chlorinated Dioxin and Dibenzofuran Levels in Food Samples Collected Between 1985—87 in the North and South of Vietnam," 18 Chemosphere 627—634 (1989) (Agent Orange contaminants, specifically 2,3,7,8-TCDD found at relatively elevated levels in food and wildlife samples 15-25 years after environmental contamination with compound in South of Vietnam)

It cannot be seriously disputed that any large population exposed to chemical agents, such as Vietnam Veterans exposed to Agent Orange, is likely to find among its members a number who will develop malignancies and other mutagenic effects as a result of being exposed to harmful agents.

To be sure, decisions today with regard to the seriousness of Agent Orange health effects must be made while the science of immunotoxicology is in its infancy. After having evaluated and considered all of the known evidence on Agent Orange and dioxin contaminants, it is evident to me that enough is known about the current trends in the study of dioxins, and their linkage with certain cancers upon exposure, to give the exposed Vietnam Veteran the benefit of the doubt.

This benefit of the doubt takes on added credence given two separate means for determining exposure to Agent Orange — 1) HERBs and Service HERBs tapes establishing troop location for comparison with recorded Ranch Hand spraying missions; and 2) blood testing from living Veterans, to ascertain elevated dioxin levels. The inexplicable unwillingness of the CDC to utilize this data has had the effect of masking the real increase in the rate of cancers among the truly exposed. There is, in my opinion, no doubt that had either of these methods been used, statistically significant increased rates of cancer would have been detected among the Veterans for whom exposure can still be verified.

Since science is now able to conclude with as great a likelihood as not that dioxins are carcinogenic directly and indirectly through immunosuppression, and since a large proportion of those exposed to dioxin can be so ascertained, I am of the view that the compensation issue for service—related illnesses associated with exposure to Agent Orange should be resolved in favor of Vietnam Veterans in one of the two following ways:

COMPENSATION FOR SERVICE RELATED ILLNESSES

Alternative 1:

Any Vietnam Veteran, or Vietnam Veteran's child who has a birth defect, should be presumed to have a service—connected health effect if that person suffers from the type of health effects consistent with dioxin exposure and the Veteran's health or service record establishes 1) abnormally high TCDD in blood tests; or 2) the veteran's presence within 20 kilometers and 30 days of a known sprayed area (as shown by HERBs tapes and corresponding company records); or 3) the Veteran's presence at fire base perimeters or brown water operations where there is reason believe Agent Orange have- occurred.

Under this alternative compensation would not be provided for those veterans whose exposure came from TCDD by way of the food chain; silt runoff from sprayed areas into unsprayed waterways; some unrecorded U.S. or allied Agent Orange sprayings; inaccurately recorded sprayings; or sprayings whose wind drift was greater than 20 kilometers. Predictably, problems generated by the foregoing oversights, the mass of data to be analyzed as claims were filed, and the known loss of many service records would invalidate many veterans' legitimate claims

Alternative 2:

Any Vietnam Veteran or child of a Vietnam Veteran who experiences a TCDD—like health effect shall be presumed to have a service—connected disability. This alternative is admittedly broader than the first, and would provide benefits for some veterans who were not exposed to Agent Orange and whose disabilities are not presumably truly service—connected. Nevertheless, it is the only alternative that will not unfairly preclude receipt of benefits by a TCDD exposed Vietnam Veteran.

Furthermore, this alternative is consistent with the Secretary's decision regarding the Service—connection of non—Hodgkin's lymphoma, as well as legal precedent with respect to other diseases presumed by the Department of Veterans Affairs to be connected to one or more factors related to military service (i.e. veterans exposed to atomic radiation and POW's with spastic colon).

PRESUMPTIONS OF AGENT ORANGE RELATED HEALTH EFFECTS

I have also given considerable thought to which health effects are to be presumed likelier than not to be related to TCDD exposure and therefore service—connected. Any such determination must be made in light of: 1) the review of the scientific literature, including animal studies where human data does not exist or has been manipulated; 2) the inappropriate processes of the Veterans Advisory Committee on Environmental Hazards; 3) the past political manipulations of Ranch Hand and CDC studies; and 4) the recent discoveries of manipulation by scientists hired by chemical manufacturers of dioxin contaminants to evaluate the potentially best epidemiological data concerning TCDD's effects on humans.

My evaluation of the evidence has been made with just such considerations in mind. Additionally, I have conferred with several experts in the field. After evaluating all the evidence and material of record, I am convinced that there is better than "an approximate balance of positive and negative evidence" on a series of Agent Orange related health effects.

It can, in my judgment, be concluded, with a very high degree of confidence, that it is at least as likely as not that the following are caused in humans by exposure to TCDD: non—Hodgkin's lymphoma, chloracne and other skin disorders, lip cancer, bone cancer, soft tissue sarcoma, birth defects, skin cancer, lung cancer, porphyria cutanea tarda and other liver disorders, Hodgkin's disease, hematopoietic diseases, multiple myeloma, neurological defects and auto—immune diseases and disorders.

In addition, I am most comfortable in concluding that it is at least as likely as not that liver cancer, nasal/pharyngeal/esophageal cancers, leukemia, malignant melanoma, kidney cancer, testicular cancer, pancreatic cancer, stomach cancer, prostate cancer, colon cancer, brain cancer, psychosocial effects, and gastrointestinal disease are service-- connected.

I have separated the two foregoing subsets subjectively only because there is somewhat more data to support the former than the latter. Nonetheless, immunological and toxicological theory supports both subsets and fully justifies, in my view, the inclusion of both subsets of the foregoing health effects in determining a service--connected injury.

Such a resolution of the embarrassingly prolonged Agent Orange controversy would be on the order of decisions to compensate U.S. soldiers who contracted cancer after exposure to radiation from atomic tests and U.S. soldiers involved, without their knowledge, in LSD experiments. With the scientific basis now available for it to be stated with confidence that it is at least as likely as not that various health effects are related to wartime exposure to Agent Orange, there is the opportunity finally to right a significant national wrong committed against our Vietnam Veterans.

RECOMENDATIONS

1. That the Secretary undertake a prompt reevaluation of the compensation decision impacting on Vietnam Veterans exposed to Agent Orange in light of accumulating scientific evidence that discredits earlier "findings" of an insufficient linkage between dioxin contaminants in Agent Orange and rare disease, such as cancer illnesses.

2. To the extent that the Secretary deems it necessary to use the Veterans' Advisory Committee on Environmental Hazards to assist in his reevaluation, the current members should be dismissed — having demonstrated a disturbing bias in their review to date of the scientific literature related to Agent Orange and dioxin -- and new members should be appointed in accordance with Section G of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act, including persons with recognized scientific and medical expertise in fields pertinent to understanding the health effects of exposure to dioxin. The Committee meeting currently scheduled for May 16th and May 17th should be cancelled.

3. That the Secretary in making his decision regarding Agent Orange compensation for Vietnam Veterans do so on the basis of his independent evaluation of the existing scientific and medical evidence on the health effects of exposure to dioxins, as cataloged and discussed in this Report, and in full recognition that the standard to be applied -- as mandated by both Congress and the courts -- requires the resolution of doubts as to a number of cancers linked to dioxins in favor of the Vietnam Veterans.

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13.0735.02001
Title.

Prepared by the Legislative Council staff for
Representative Bellew
February 21, 2013

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1405

Page 1, line 2, after "orange" insert "; and to provide for a report to the budget section"

Page 1, line 4, after "**APPROPRIATION**" insert "**- BUDGET SECTION REPORT**"

Page 1, line 5, replace "\$100,000" with "\$25,000"

Page 1, line 9, after the period insert "Grants awarded under this section may be used only for travel and related operating expenses. The department of veterans' affairs shall provide a report to the budget section during the 2013-14 interim regarding the status of the grant program, including information on the use of the grants awarded."

Renumber accordingly

NDLA, H APP - Traeholt, Meredith

From: Sandness, Sheila M.
Sent: Saturday, February 23, 2013 8:05 AM
To: NDLA, H APP - Traeholt, Meredith
Subject: FW: Veterans' postwar trust fund

From: Sandness, Sheila M.
Sent: Tuesday, February 19, 2013 3:02 PM
To: Delzer, Jeff W.
Cc: Knudson, Allen H.
Subject: Veterans' postwar trust fund

Representative Delzer,

This email is to provide the information you requested regarding the use of funding from the postwar trust fund for programs to benefit and serve veterans. House Bill No. 1468 (2011) provided \$280,000 from the general fund, of which \$210,000 is to be used in lieu of income generated from the veterans' postwar trust fund for programs to benefit and serve veterans or their dependents, \$50,000 is for the purchase of vans to transport veterans or their dependents, and \$20,000 is for "stand down" events to coordinate benefits and provide services to needy veterans in the state. The Legislative Assembly in 2011 also amended North Dakota Century Code Section 37-14-14 relating to the veterans' postwar trust fund to provide all income earned by the veterans' postwar trust fund in a biennium is appropriated to the Administrative Committee on Veterans' Affairs on a continuing basis in the biennium following the biennium in which it was earned. Income earned by the veterans' postwar trust fund during the 2011-13 biennium will be available for benefits and services to veterans during the 2013-15 biennium. In addition to the \$210,000 provided from the general fund to be used in lieu of income generated from the veterans' postwar trust fund for programs, the Department of Veterans' Affairs has available \$64,500 of veterans' postwar trust fund income remaining from the 2009-11 biennium for a total of \$274,500 available for programs authorized by law to benefit and serve veterans or their dependents during the 2011-13 biennium.

As of February 15, 2013, the department has \$77,754 of the 2011-13 general fund appropriation remaining available. Funding from the general fund has been used as follows:

- \$210,000 appropriation for programs to benefit and serve veterans - The Administrative Committee on Veterans' Affairs has spent \$168,246 to provide grants, lodging, transportation reimbursements, and other requests.
- \$50,000 appropriation for the purchase of vans - The Administrative Committee on Veterans' Affairs has spent \$29,000 on the purchase of vans.
- \$20,000 appropriation for "stand down" events - The Administrative Committee on Veterans' Affairs has spent \$5,000 for "stand down" events.

Through February 15, 2013, the department has used \$33,467 of the \$64,500 veterans' postwar trust fund carryover from the 2009-11 biennium for requests from the Veterans' Home and \$31,033 remains available. The Administrative Committee on Veterans' Affairs has committed an additional \$16,533 of the remaining funds to the Veterans' Home for items programs to serve the veterans in the home, for a total of \$50,000 either spent or committed.

The fund balance in the veterans' postwar trust fund was \$4,453,494 as of November 2012, compared to \$4,258,156 as of June 30, 2011. Income generated by the fund that will become available to the Administrative Committee on Veterans' Affairs during the 2013-15 biennium totaled \$158,624 through November

2012. Based on income earned during the first 17 months of the current biennium, 2011-13 income that will become available for benefits during the 2013-15 biennium should exceed \$200,000.

If you have any questions or need additional information, please feel free to contact me.

Sheila M. Sandness
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Good morning Chairman Dever and committee members.

For the record, my name is Wayne Trottier, representing

District 19 which is located from Northwood to Grafton/Hoople. I live in Northwood.

HB 1405 is very simple in that it appropriates \$100,000 for the bi-annium to be granted to the North Dakota Viet Nam Veterans Association.

The North Dakota Viet Nam Veterans Association is similar to the American Legion, VFW, AmVets, DAV and other veteran service organizations.

The question must be asked why this appropriation for just the Viet Nam Veterans Association.

As many of you may understand, the Viet Nam Conflict was a very contencious war. The US would never even declare war, and yet somewhere around 60,000 US soldiers died in Viet Nam.

When soldiers came home and were discharged, many soldiers were met by protestors and others that swore at them, even physically attacked them and made them feel like they were not accepted back in the United States. Remember, the majority of these soldiers were drafted into the military. They did not volunteer, but because of their service, they became absolute "PATRIOTS".

For a number of reasons, one mentioned in the previous paragraph, they did not trust our government.

The biggest reason of all for their not trusting government, I feel, is the Agent Orange issue.

Agent Orange--What is it? It is a 50-50 mixture of the chemicals, 2,4,5-T and 2,4-D. It was manufactured for the U.S. Department of Defense, primarily by Monsanto Corp and Dow Chemical.

The 2,4,5-T used to produce Agent Orange was later found to be contaminated with 2,3,7,8-tetrachlorodibenzodioxin (TCDD), an extremely toxic dioxin compound

During the Viet Nam Conflict, between 1962 and 1971, the United States military sprayed nearly 20,000 US gallons of material containing chemical herbicides and defoliants mixed with jet fuel in Vietnam, Eastern Laos and parts of Cambodia, as part of Operation Ranch Hand. The program's goal was to defoliate forested and rural land, depriving guerrillas of cover: another goal was to induce forced draft urbanization, destroying the ability of peasants to support themselves in the countryside, and forcing them to flee to the U.S. dominated cities, thus depriving the guerrillas of their rural support and food supply.

As I stated earlier, approximately 60,000 US soldiers died in this conflict. The astounding number is that approximately 400,000 have been diagnosed with Agent Orange related illnesses.

The problem now comes in. For approximately 25 years or so, the Federal government claimed there was very little affects from Agent Orange. Thousands died during this period and the normal or average medical servers were not aware of Agent Orange related illnesses. For this reason, there are a lot of Vietnam veterans who absolutely do not trust any government. However, they do know that the North Dakota Vietnam Veteran,s Assoc understands. Many times they do not even believe or trust Am Legions, VFW,s, AMVET,s, DAV,s or any service organization.

The North Dakota Vietnam Veterans Assoc is able to, and has been reaching out to many of these veterans. In doing so, many have spent a lot of time, effort and dollars in doing so. Also the assoc would like to sponsor more townhall type of meetings, as well as one on one contact.

Thank you Chairman Dever and members of the GVA committee

There is testimony to follow that can answer a lot more specific questions. However, I would sure try to answer any questions that I can.

13.0735.03001
Title.

Prepared by the Legislative Council staff for
Representative Delzer
March 6, 2013

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1405

Page 1, line 2, remove "for deposit into the veterans"

Page 1, line 3, remove "postwar trust fund"

Page 1, line 7, after the first comma insert "and from special funds derived from gifts, grants,
and donations, the sum of \$25,000, or so much of the sum as may be necessary,"

Page 1, line 16, remove "The department must deposit these"

Page 1, remove lines 17 through 20

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

This amendment provides additional authority of \$25,000 from gifts, grants, and donations for the identification of a provision of services to North Dakota veterans exposed to Agent Orange and removes the requirement that these special funds be deposited in the postwar trust fund.

Good morning Mr. Chairman and committee members!

This morning I could stand before you not as the President of the North Dakota Vietnam Veterans of America, not as a National Board member of the Vietnam Veterans of America or as the Mayor of Park River. I stand before you as a Vietnam Veteran that served 3 tours in Vietnam in 69, 70 and 71.

There are thousands of Vietnam veterans in North Dakota and we need your help. Agent Orange is killing Vietnam veterans daily in this state and A/O has now been detected in our children and grandchildren. They too are sick and need our help. In West Virginia, A/O has been found in 4 generations and scientists say it could follow us for 7 generations.

Most Vietnam Veterans love their country but don't trust their government. We have veterans that are sick and dying that won't go the VA. Partially because of the way were treated when we came home and the fact that the trust factor in our government is gone.

We, (Vietnam Veterans) need to get the word out that there are now 23 known diseases for men, 13 more for the women that served AND 19 disabilities for our children.

We need more outreach to these veterans, we need advertisements in local papers, we need PSAs we need town hall meetings about awareness, all which all cost money.

It's not working the way it is, give us a chance to change the lives of hundreds of Vietnam veterans.....So what is agent orange?

①

What is Agent Orange?

Chemically, Agent Orange is a 1:1 mixture of two phenoxy herbicides---2,4 dichlorophenoxyacetic acid (2-4D) and 2,4,5 trichlorophenoxyacetic acid (2,4,5-T).

Both are common herbicides

The KILLER DIOXIN, 2,3,7,8-tetachlorodibenzodioxin (TCDD) was “accidentally” found after the “accidental” heating of the top 2 herbicides.

It has been stated by scientists that have worked with (TCDD) that one teaspoon of this dioxin added to the water supply of Los Angles would kill it’s entire population.

2

Agent Orange is to the Vietnam Veteran what the Holocaust was to the Jewish people during World War II.

Both groups were sprayed with chemicals with full knowledge of their government and of what these chemicals would do to human beings.

In the case of the Vietnam veterans, the final chapter is just taking longer than the government suspected.

Working for our government, Monsanto by the “accidental heating” of 2,4-D and 2,4-T (common herbicides) formed the dioxin TCDD. It has been described as “THE MOST TOXIC MOLECULE EVER SYNTHESIZED BY MAN”

Monsanto WARNED our government in 1952 not of possible side effects of this chemical BUT what this chemical would do to humans and the areas that were sprayed with TCDD. UNCLE SAM said “let’s use it!”

Thus, millions of veterans were sprayed with the chemical in Vietnam. 5 million acres of that country was sprayed with a concentration of 13 times the recommended USDA application rate for domestic use. In some areas, concentrations were hundreds of times greater than levels considered safe by the US EPA.

20 million gallons was sprayed over 30% of South Vietnam’s forests at least once in a 9-year period, sprayed at 100% strength, not diluted.

3 million Vietnamese people have been affected by A/O 150,000 children have been born with birth defects. Miscarriages, stillbirths in humans and their livestock such as cattle, water buffalo and pigs has decimated their country

FYI:

Classified information from Admiral Zumwalt's report. Given to the Dept. Of Veterans Affairs, released last month, will go down in history as the biggest cover up/fiasco since the bombing of Pearl Harbor. It deals with all the truths and issues of Agent Orange, covered up by our government for 45 years. Its 37 pages long so I only brought 3 copies along.

In 1991, North Dakota Vietnam Veterans of America surveyed Vietnam Veterans in North Dakota. Not many would talk with us but we found at that time 324 children that needed some type of assistance. We ran out of money so nothing was done to help them or to follow up on their issues. Our findings done with Minot State University are enclosed as number 5 in your information literature

As of 2012, there were 58,501 names on our wall. Confirmation of 8 times that many have died from the exposure of Agent Orange.

If you truly read the information I've given you today, you will understand why "We love our country but don't trust our government"

Thank-you! Submitted by Dan Stenvold

4

THE NORTH DAKOTA CHILDRENS ASSISTANCE PROGRAM of the
Minot State University

The Vietnam Veterans Children's Assistance Program was established in 1991 after the receipt of Agent Orange Class Assistance Program (AOCAP) funds from the Agent Orange law suit settlement agreement in Washington. That pool of funds in Washington DC was designed to fund social assistance programs in each area of the US when a proposal to do some type of assistance was written and requested funding. North Dakota's grant program was to be designed to have a lasting and strengthening impact on the Vietnam Veteran families who were identified as having a child with a any type of disability problem.

There appeared to be evidence that numerous children of Vietnam Veteran families were experiencing a variety of illnesses ranging from hearing loss, missing muscles, neurological deficits and the resultant problems with learning in school. North Dakota's Minot State University decided the best way to make a lasting impact on individuals and families of these Vietnam Veterans would be to seek out and identify Vietnam Veteran's children with any type of disability. Then apply the necessary resources available through Minot State University and Washington based assistance Through the use of social work case management efforts were made to educate, and as needed, refer to the appropriate services and treatments to restore the individual family and child to the capacity of their peers without disabilities.

This is where the North Dakota Vietnam Veterans of America came to the forefront and assisted in getting the word out to veterans around the state. Tom Rainsberry acting as the VVA lead helped to spread the movement of information across the state. The result was that in three and a half years there were 324 North Dakota children identified as needing services. The range of services were from many varied areas including information to parents and an understanding of the rights of individuals as far as schooling and the responsibilities of school systems in aiding the learning and physically disabled. In many cases the parents became able to demand the systems work with them to the letter of disability law in order to make things even for their child.

The secondary outcome of the Children's Assistance Program was the availability of Minot State University social work students who trained and worked for one year in the program. In their training they became familiar with the Vietnam Veterans and assisted families and children in need. This training of student workers produced graduate social workers with an acute knowledge of the unique needs of veteran and specifically Vietnam Veterans. Today at a point nearly 15 years later these social workers are in regular social service practice throughout North Dakota. This will continue to have a lasting effect for many years to come.

The VVA of North Dakota provided many services for the families of Vietnam Veterans to include painting houses, locating resources and assisting in a competition for finalization funding through the North Dakota Administrative Committee. This resulted in \$50,000.funding awarded to Minot State University to finalize the remaining incomplete cases.

Lastly, the resources of the Minot State University Farside computer server was used to establish the **first National VVA list serve** to help veterans learn to communicate on the internet for needed information across the entire world. In an agreement with, and working with Mokie Porter, the web address was published in the VVA Veteran and made available to professionals and veterans around the world.

In short, the success of the North Dakota Vietnam Veterans Assistance program was successful in large part due to the efforts of the North Dakota Vietnam Veterans helping with their hands and hearts to help their Brothers in need..

Dan Stenvold

Subject: FW: Billboard rates.

Dan,

As per our phone conversation, below are those billboard costs you inquired about:

14' & 48' bulletins located along the interstate Hwys.

24 Month rate-single location \$610/month-Non-illuminated.

24 Month rate 2 locations \$580/month per sign. Non-illuminated.

These would work well for your campaign. Let me know if you have any other questions. These rates do include the production costs.

Leo Ness

Billboard Sales Manager



1606 16th Ave SW

Jamestown ND 58401

Phone 701.952.4256

24 month single rate=\$14,640. Sign would be between Bismarck and Fargo on I-29

24 month, 2 locations,\$13,920 X2=\$27,840...one between Fargo and Bismarck on I-94, the other between Fargo and Grand Forks on I-29.. There is also a rate for Hwy. 2 between Minot and Williston.

⑦

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Department of Veterans Affairs

Report

REPORT TO SECRETARY OF THE DEPARTMENT OF VETERANS AFFAIRS

ON THE ASSOCIATION BETWEEN ADVERSE HEALTH EFFECTS

AND EXPOSURE TO AGENT ORANGE

CLASSIFIED

CONFIDENTIAL STATUS (1)

As Reported by Special Assistant

Admiral E.R. Zumwalt, Jr. May

5, 1990



NOT FOR PUBLICATION AND
RELEASE TO THE GENERAL PUBLIC

1. INTRODUCTION

On October 6, 1989 I was appointed as special assistant to Secretary Derwinski of the Department of Veterans Affairs to assist the Secretary in determining whether it is at least as likely as not that there is a statistical association between exposure to Agent Orange and a specific adverse health effect.

As special assistant, I was entrusted with evaluating the numerous data relevant to the statistical association between exposure to Agent Orange and the specific adverse health effects manifested by veterans who saw active duty in Vietnam. Such evaluations were made in accordance with the standards set forth in Public Law 98-542, the Veterans' Dioxin and Radiation Exposure Compensation Standards Act and 38 C.F.R. 1.17, regulations of the Department of Veterans Affairs concerning the evaluation of studies relating to health effects of dioxin and radiation exposure.

Consistent with my responsibilities as special assistant, I reviewed and evaluated the work of the Scientific Council of the Veterans' Advisory Committee on Environmental Hazards and commissioned independent scientific experts to assist me in evaluating the validity of numerous human and animal studies on the effects of exposure to Agent Orange and/or exposure to herbicides containing 2,3,7,8 tetrachlorodibenzo-para-dioxin (TCDD or dioxin). In addition, I reviewed and evaluated the protocol and standards employed by government sponsored studies to *assess* such studies' credibility, fairness and consistency with generally accepted scientific practices.

After reviewing the scientific literature related to the health effects of Vietnam Veterans exposed to Agent Orange as well as other studies concerning the health hazards of civilian exposure to dioxin contaminants, I conclude that there is adequate evidence for the Secretary to reasonably conclude that it is at least as likely as not that there is a relationship between exposure to Agent Orange and the following health problems: non—Hodgkin's lymphoma, chloracne and other skin disorders, lip cancer, bone cancer, soft tissue sarcoma, birth defects, skin cancer, porphyria cutanea tarda and other liver disorders, Hodgkin's disease, hematopoietic diseases, multiple myeloma, neurological defects, auto—immune diseases and disorders, leukemia, lung cancer, kidney cancer, malignant melanoma, pancreatic cancer, stomach cancer, colon cancer, nasal/pharyngeal/esophageal cancers, prostate cancer, testicular cancer, liver cancer, brain cancer, psychosocial effects and gastrointestinal diseases.

I further conclude that the Veterans' Advisory Committee on Environmental Hazards has not acted with impartiality in its review and assessment of the scientific evidence related to the association of adverse health effects and exposure to Agent Orange.

In addition to providing evidence in support of the conclusions stated above, this report provides the Secretary with a review of the scientific, political and legal efforts that have occurred over the last decade to establish that Vietnam Veterans who have been exposed to Agent Orange are in fact entitled to compensation for various illnesses as service-related injuries.

II. AGENT ORANGE USAGE IN VIETNAM

Agent Orange was a 50:50 mixture of 2,4-D and 2,4,5-T. The latter component, 2,4,5-T, was found to contain the contaminant TCDD or 2,3,7, 8-tetrachlorodibenzo-para-dioxin (i.e. dioxin), which is regarded as one of the most toxic chemicals known to man.¹

From 1962 to 1971 the United States military sprayed the herbicide Agent Orange to accomplish the following objectives: 1) defoliate jungle terrain to improve observation and prevent enemy ambush; 2) destroy food crops; and 3) clear Vegetation around military installations, landing zones, fire *base* camps, and trails²

Unlike civilian applications of the components contained in Agent Orange which are diluted in oil and water, Agent Orange was sprayed undiluted in Vietnam. Military applications were sprayed at the rate of approximately 3 gallons per acre and contained approximately 12 pounds of 2,4-D and 13.8 pounds of 2,4,5-T.³

Although the military dispensed Agent Orange in concentrations 6 to 25 times the manufacturer's suggested rate, "at that time the Department of Defense (DOD) did not consider herbicide orange toxic or dangerous to humans and took few precautions to prevent exposure to it." Yet, evidence readily suggests that at the time of its use experts knew that Agent Orange was harmful to military personnel.⁵

¹ See CDC Protocol for Epidemiologic Studies on the Health of Vietnam Veterans (November, 1983), p. 4 (The CDC Protocol also contains a literature review as of 1983 of the health effects on animals and humans exposed to herbicides and dioxin, pp. 63-78. The literature review documents health problems such as chloracne, immunological suppression, neurological and psychological effects, reproductive problems such as birth defects, carcinogenic effects such as soft tissue sarcomas, lymphomas and thyroid tumors, and various gastrointestinal disorders) ; See also General Accounting Office, "Report by the Comptroller General: Health Effects of Exposure to Herbicide Orange in South Vietnam Should Be Resolved," GAO-CED-79-22 at 2 (April 6, 1979) (hereinafter GAO Report, 1979).

Dioxin is a family of chemicals (75 in all) that does not occur naturally, nor is it intentionally manufactured by any industry. The most toxic dioxin is called 2,3,7,8 — TCDD. Dioxins are produced as byproducts of the manufacture of some herbicides (for example, 2,4, 5—T), wood preservatives made from trichlorophenals, and some germicides. Dioxins are also produced by the manufacture of pulp and paper, by the combustion of wood in the presence of chlorine, by fires involving chlorinated benzenes and biphenyls (e.g. PCBs), by the exhaust of automobiles burning leaded fuel, and by municipal solid waste incinerators

² See Bruce Myers, "Soldier of Orange: The Administrative, Diplomatic, Legislative and Litigatory Impact of Herbicide Agent Orange in South Vietnam," 8 B.C. Env't. Aff. L. Rev. 159, 162 (1979).

³ See GAO Report, 1979 at 2, 3 n.1; See also Myers, 8 B.C. Env't Aff. L. Rev. at 162. In contrast, civilian applications of 2,4,5—T varied from 1 to 4 pounds per acre.

⁴ General Accounting Office, 'Ground Troops in South Vietnam Were in Areas Sprayed with Herbicide Orange,' FPCD 80-23, p.1 (November 16, 1979).

The bulk of Agent Orange herbicides used in Vietnam were reportedly sprayed from "Operation Ranch Hand" fixed wing aircraft. Smaller quantities were applied from helicopters, trucks, riverboats, and by hand. Although voluminous records of Ranch Hand missions are contained in computer records, otherwise known as the HERBS and Service HERBs tapes, a significant, if not major source of exposure for ground forces was from non— recorded, non Ranch Hand operations.⁶ Widespread use of Agent Orange coincided with the massive buildup of U.S. military personnel in Vietnam, reaching a peak in 1969 and eventually stopping in 1971.⁷ Thus, according to an official of the then Veterans Administration, it was "theoretically possible that about 4.2 million American soldiers could have made transient or significant contact with the herbicides because of [the Ranch Hand Operation]."⁸

⁵Letter from Dr. James R. Clary to Senator Tom Daschle (September 9, 1988). Dr. Clary is a former government scientist with the Chemical Weapons Branch, BW/CW Division, Air Force Armament Development Laboratory, Eglin AFB, Florida. Dr. Clary was instrumental in designing the specifications for the A/A 45y-1 spray tank (ADO 42) and was also the scientist who prepared the final report on Ranch Hand: Herbicide Operations in SEA, July 1979. According to Dr. Clary:

When we (military scientists) initiated the herbicide program in the 1960's, we were aware of the potential for damage due to dioxin contamination in the herbicide. We were even aware that the 'military'⁶ formulation had a higher dioxin concentration than the 'civilian' version due to the lower cost and speed of manufacture. However, because the material was to be used on the 'enemy', none of us were overly concerned. We never considered a scenario in which our own personnel would become contaminated with the herbicide. And, if we had, we would have expected our own government to give assistance to veterans so contaminated.

See also notes 13, 73-75 and accompanying text *infra* for additional information of the manufacturer's awareness of the toxicity of Agent Orange.

⁶ Combat units, such as the 'Brown Water Navy,' frequently conducted "unofficial" sprayings of Agent Orange obtained from out of channel, and thus unrecorded sources. Additionally, as Commander, U.S. Naval Forces, Vietnam, I was aware that Agent Orange issued to Allied forces was frequently used on unrecorded missions.

⁷ GAO Report 1979, *supra* note 1, at 29. See also note 82 and accompanying text *infra* for a discussion of the correlation between the spraying of Agent Orange and the hospitalization of Vietnam soldiers for disease and non-battle related injuries.

⁸ House Comm. on Veteran's Affairs, 95th Cong., 2d Sess., Herbicide "Agent Orange". Hearings before the Subcommittee on Medical Facilities and Benefits, (Oct. 11, 1978) (Statement of Maj. Sen. Garth Dettinger USAF, Deputy Surgeon General USAF at 12).

A. REASONS FOR PHASE OUT

Beginning as early as 1968, scientists, health officials, politicians and the military itself began to express concerns about the potential toxicity of Agent Orange and its contaminant dioxin to humans. For instance, in February 1969 The Bionetics Research Council Committee ("BRC") in a report commissioned by the United States Department of Agriculture found that 2,4,5-T showed a "significant potential to increase birth defects."⁹ Within four months after the BRC report, Vietnamese newspapers began reporting significant increases in human birth defects ostensibly due to exposure to Agent Orange.¹⁰

By October, 1969, the National Institute of Health confirmed that 2,4,5—T could cause malformations and stillbirths in mice, thereby prompting the Department of Defense to announce a partial curtailment of its Agent Orange spraying.¹¹

By April 15, 1970, the public outcry and mounting scientific evidence caused the Surgeon General of the United States to issue a warning that the use of 2,4,5-T might be hazardous to "our health".¹²

On the same day, the Secretaries of Agriculture, Health Education and Welfare, and the Interior, stirred by the publication of studies that indicated 2,4,5-T was a teratogen (i.e. caused birth defects), jointly announced the suspension of its use around lakes, ponds, ditch banks, recreation areas and homes and crops intended for human consumption.¹³ The Department of Defense simultaneously announced its suspension of all uses of Agent Orange.¹⁴

⁹ Myers at 166.

¹⁰ Id. While birth defects did significantly increase in Saigon, critics contend that Saigon was not an area where the preponderance of defoliation missions were flown and argue that such increases were due primarily to the influx of U.S. medical personnel who kept better records of birth defects. Subsequent studies in Vietnam confirm the incidence of increased birth defects among civilian populations exposed to Agent Orange. See e.g. Phuong, et. al. "An Estimate of Reproductive Abnormalities in Women Inhabiting Herbicide Sprayed and Non-herbicide Sprayed Areas in the South of Vietnam, 1952-1981" 18 Chemosphere 843-846 (1989) (significant statistical difference between hydatidiform mole and congenital malformations between populations potentially exposed and not exposed to TCDD); Phuong, et. al., "An Estimate of Differences Among Women Giving Birth to Deformed Babies and Among Those with Hydatidiform Mole Seen at the OB-GYN Hospital of Ho Chi Minh City in the South of Vietnam," 18 Chemosphere 801-803 (1989) (statistically significant connection between frequency of the occurrence of congenital abnormalities and of hydatidiform moles and a history of phenoxyherbicide exposure); Huong, et. al., "An Estimate of the Incidence of birth Defects, Hydatidiform Mole and Fetal Death in Utero Between 1952 and 1985 at the OB-GYN Hospital of Ho Chi Minh City, Republic of Vietnam," 18 Chemosphere 805-810 (1989) (sharp increase in the rate of fetal death in utero, hydatidiform mole (with or without choriocarcinoma) and congenital malformations from the pre 1965-1975 period, suggesting possible association to phenoxyherbicide exposure).

¹¹ Myers at 167

¹² Id.

B. HEALTH STUDIES

As Agent Orange concerns grew, numerous independent studies were conducted between 1974 and 1983 to determine if a link exists between certain cancerous diseases, such as non-Hodgkin's lymphoma and soft-tissue sarcomas, and exposure to the chemical components found in Agent Orange. These studies suggested just such a link.

In 1974, for example, Dr. Lennart Hardell began a study which eventually demonstrated a statistically significant correlation between exposure to pesticides containing dioxin and the development of soft tissue sarcomas.¹⁵

In 1974, Axelson and Sundell reported a two—fold increase of cancer in a cohort study of Swedish railway workers exposed to a variety of herbicides containing dioxin contaminants.¹⁶

By 1976, the Occupational Safety and Health Administration, established rigorous exposure criteria for workers working with 2,4, 5-T.1¹⁷

¹³ Id. Although Dow Chemical Company, the primary manufacturer of 2,45-T and 2,4-D, denied this teratogenicity, Dow's own tests confirmed that when dioxin was present in quantities exceeding production specifications, birth defects did occur. See J. McCullough, Herbicides: Environmental Health Effects: Vietnam and the Geneva Protocol: Developments During 1979, 13 (1970) (Congressional Research Report No. UG 447, 70—303SP). Pressure from industry subsequently led to some relaxation of the limits placed on the 2,4,5—T and 2,4—D. The only current uses for these chemicals in the United States are on rice, pastures, rangelands and rights of way.

¹⁴ Id. at 167. See also Dow Chemical v. Ruckelshaus, 477 F.2d 1317, 1319 (8th Cir. 1973) (secretaries announcement quoted in the opinion).

¹⁵ Hardell, L. and Sandstrom, A. "Case—control Study: Soft Tissue Sarcomas and Exposure to Phenoxyacetic Acids or Chlorophenols," 39 Brit. J. Cancer, 711—717 (1979). See also note 89 infra for the confirming results of follow-up studies by Hardell and others.

¹⁶ Axelson and Sundell, "Herbicide Exposure, Mortality and Tumor Incidence: An Epidemiological Investigation on Swedish Railroad Workers," 11 Work Env't. Health 21-28 (1974).

¹⁷ U.S. Occupational Safety and Health Administration (1976), Air Contaminants; U.S. Code, Federal Register 29, Part 1910.93 at p. 27

In 1977 the International Agency for Research on Cancer (IARC), while cautioning that the overall data was inconclusive, reported numerous anomalies and increased mortality rates in animals and humans exposed to 2,4-D or 2,4,5-T.¹⁸

In 1978, the Environmental Protection Agency issued an emergency suspension of the spraying of 2,4,5-T in national forests after finding "a statistically significant increase in the frequency of miscarriages" among women living near forests sprayed with 2,4,5-T.¹⁹

¹⁸ With regard to 2,4-D, the IARC found the following anomalies: elevated levels of cancer in rats; acute and short-term oral toxicity in mice, rabbits, guinea pigs and rats—death, stiffness in the extremities, incoordination, stupor, myotonia, and other physical abnormalities; in monkeys, injections caused nausea, vomiting, lethargy, muscular incoordination and head droop, fatty degeneration of the liver, spleen, kidneys and heart; foetal anomaly increases in some species; post-birth death rates increased in some species; higher mortality rates and morphological alterations in pheasant embryos and their chicks when spraying took place under simulated field conditions; higher mortality rates in rat pups in a 3 generation exposure; gene mutation after exposure to high concentrations; chromosomal aberrations when cultured human lymphocytes were exposed; increased frequency of aberrant metaphases (2 to 4 times) in mice exposed to toxic concentrations.

In humans the IARC found that: a 23 year old farming student, a suicide, had 6 grams of 2,4-D in his body, acute congestion of all organs, severe degeneration of ganglion cells in the central nervous system; 3 cases of peripheral neuropathy in humans sprayed with 2,4-D with initial symptoms of nausea, vomiting, diarrhea, swelling and aching of feet and legs with latency, in individual cases, paresthesia in the extremities, pain in the legs, numbness and aching of fingers and toes, swelling in hand joints, flaccid parapheresis; similar case reports in agriculture workers sprayed by 2,4-D; workers associated with 2,4-D developed symptoms of somnolence, anorexia, gastralgia, increased salivation, a sweet taste in the mouth, a sensation of drunkenness, heaviness of the legs and hyperacusea, rapid fatigue, headache, loss of appetite, pains in the region of liver and stomach, weakness, vertigo, hypotension, bradycardia, dyspeptic symptoms, gastritis, liver disfunction, changes in metabolic processes.

With regard to 2,4,5-T's effect on animals the IARC found: it can increase the frequency of cleft palates in some strains of mice; fetal growth retardation may also be observed; cystic kidneys were observed in two strains of mice; in purest available form, it induced some fetal effects and skeletal anomalies in rats as well as behavioral abnormalities, changes in thyroid activity and brain serotonin levels in the progeny; increases in intrauterine deaths and in malformations in rats; fetal death and teratogenic effects in Syrian golden hamsters; chromosomal abnormalities.

The IARC reported in 1977 with respect to 2,4,5-T's effects on humans that: workers exposed at a factory in the USSR had skin lesions, acne, liver impairment, and neurasthenic syndrome; similar findings were reported by Jerasneh, et al (1973, 1974) in a factory in Czechoslovakia which in 1965-68 produced 76 cases of chloracne, 2 deaths from bronchogenic cancers. Some workers had porphyria cutanea tarda, uroporphyrinuria, abnormal liver tests, severe neurasthenia, depression syndrome, peripheral neuropathy; in a 1975 accident in West Virginia, 228 people were affected. Symptoms included chloracne, melanosis, muscular aches and pains, fatigue, nervousness, intolerance to cold; 4 workers of 50 affected in a similar accident in the Netherlands in 1963 died within 2 years and at least 10 still had skin complaints 13 years later.

¹⁹ June 1979 Congressional Hearings before House Commerce Committee, Subcommittee on Oversight and Investigations, quoted in "Human Disease Linked to Dioxin: Congress Calls for 2,4,5-T Ban After Dramatic Herbicide Hearings", 28 Bioscience 454 (August 1979). This study, otherwise known as the Alsea Study, has been cited as showing the first correlation between 2,4,5-T (and presumably its TCDD contaminant) and teratogenic effects in humans.

In 1980, another provocative mortality study of workers involved in an accident at an industrial plant which manufactured dioxin compounds suggested that exposure to these compounds resulted in excessive deaths from neoplasms of the lymphatic and hematopoietic tissues.²⁰

On September 22, 1980, the U.S. Interagency Work Group to Study the Long-term Health Effects of Phenoxy Herbicides and Contaminants concluded "that despite the studies' limitations, they do show a correlation between exposure to phenoxy acid herbicides and an increased risk of developing soft-tissue tumors or malignant lymphomas."²¹

To be sure, there remain skeptics who insist that the studies failed in one respect or another to establish a scientifically acceptable correlation.²² Yet, it can fairly be said that the general attitude both within and outside the scientific community was, and continues to be increasing concern over the mounting evidence of a connection between certain cancer illnesses and exposure to dioxins.

²⁰ Zack and Suskind, "The Mortality Experience of Workers Exposed to TCDD in a Trichlorophenol Process Accident," 22 *Journal of Medicine* 11—14 (1980).

²¹ See U.S. Interagency Workgroup to Study the Long-Term Health Effects of Phenoxy Herbicides and Contaminants (September 22, 1980) (executive summary).

²² See...e.g. "The Weight of the Evidence on the Human Carcinogenicity of 2,4—D" (January 1990) (This report, sponsored by the National Association of Wheat Growers Foundation and a grant from the Industry Task Force II on 2,4—D Research Data, an association of manufacturers and commercial formulators of 2,4—D, concluded that the toxicological data on 2,4-D does not provide a strong basis for predicting that 2,4-D is carcinogenic to humans. Nevertheless, the panel reviewing the evidence did conclude that "evidence indicates that it is possible that exposure to 2,4-D can cause cancer in humans.").

²³ By October 1, 1983, 9170 veterans filed claims for disabilities that they alleged were caused by exposure to Agent Orange. The VA denied compensation to 7709 claimants on the grounds that the claimed diseases were not service connected. Only one disease was deemed associated with service related exposure to Agent Orange, a skin condition known as chloracne. See House Report No. 98-592, reprinted in *U.S.Code Cong. & Adm. News*, 98th Cong. 2d Sess., 1984, at 4452. See also Nehmer v. U.S. Veterans Administration, 712 F.Supp. 1404, 1407 (1989).

III. VETERANS' DIOXIN AND RADIATION EXPOSURE COMPENSATION STANDARDS ACT OF 1984

With the increasing volume of scientific literature giving credence to the belief of many Vietnam Veterans that exposure to Agent Orange during their military service was related to their contraction of several debilitating diseases -- particularly non-Hodgkin's lymphoma, soft tissue sarcoma ("STS") (malignant tumors that form in muscle fat, or fibrous connective tissue) and porphyria cutanea tarda ("PCT") (deficiencies in liver enzymes) -- Vietnam Veterans rightfully sought disability compensation from the Veterans Administration ("VA").

The VA determined, however, that the vast majority of claimants were not entitled to compensation since they did not have service connected illnesses.²³ As a consequence, Congress attempted to alter dramatically the process governing Agent Orange disability claims through passage of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act of 1984 (hereinafter the "Dioxin Standards Act")²⁴ To ensure that the VA provided disability compensation to veterans exposed to herbicides containing dioxin while serving in Vietnam,²⁵ Congress authorized the VA to conduct rulemaking to determine those diseases that were entitled to compensation as a result of a service--related exposure to Agent Orange.²⁶

In promulgating such rules, the Dioxin Standards Act required the VA to appoint a Veterans' Advisory Committee on Environmental Hazards (the "Advisory Committee") -- composed of experts in dioxin, experts in epidemiology, and interested members of the public -- to review the scientific literature on dioxin and submit periodic recommendations and evaluations to the Administrator of the²⁷ Such experts were directed to evaluate the scientific evidence pursuant to regulations promulgated by the VA, and thereafter to submit recommendations and evaluations to the Administrator of the VA on whether "sound scientific or medical evidence" indicated a connection to exposure to Agent Orange and the manifestation of various diseases.²⁸

²⁴ Veterans' Dioxin and Radiation Exposure Compensation Standards Act, Pub. L. 98—542, Oct. 24, 1984, 98 Stat. 2727 (hereinafter the Dioxin Standards Act). In passing the Act Congress found that Vietnam Veterans were "deeply concerned about possible long term health effects of exposure to herbicides containing dioxin,"(Section 2 (1)), particularly since "(t)here is scientific and medical uncertainty regarding such long—term adverse health effects." (Section 2 (2)). In responding to this uncertainty, Congress mandated that "thorough epidemiological studies of the health effects experienced by veterans in connection with exposure . to herbicides containing dioxin" be conducted, (Section 2(4)), especially in light of the fact that "[t]here is some evidence that chloracne, porphyria cutanea tarda, and soft tissue sarcoma are associated with exposure to certain levels of dioxin as found in some herbicides." (Section 2 (5)).

²⁵ Id. at Section 3.

²⁶ Id. at Section 5.

²⁷ Id. at Section 6.

²⁸ Id. at Section 5.

In recognition of the uncertain state of scientific evidence and the inability to make an absolute causal connection between exposure to herbicides containing dioxin and affliction with various rare cancer diseases,²⁹ Congress mandated that the VA Administrator resolve any doubt in favor of the veteran seeking compensation. As stated in the Dioxin Standards Act:

It has always been the policy of the Veterans Administration and is the policy of the United States, with respect to individual claims for service connection of diseases and disabilities, that when, after consideration of all the evidence and material of record, there is an approximate balance of positive and negative evidence regarding the merits of an issue material to the determination of a claim, the benefit of the doubt in resolving each such issue shall be given to the claimant.³⁰

A. NEHMER V. U.S. VETERANS ADMINISTRATION

Despite Congressional intent to give the veteran the benefit of the doubt, and in direct opposition to the stated purpose of the Dioxin Standards Act to provide disability compensation to Vietnam Veterans suffering with cancer who were exposed to Agent Orange, the VA continued to deny compensation improperly to over 31,000 veterans with just such claims. In fact, in promulgating the rules specified by Dioxin Standards Act, the VA not only confounded the intent of the Congress, but directly contradicted its- own established practice of granting compensable service-connection status for diseases on the lesser showing of a statistical association, promulgating instead the more stringent requirement that compensation depends on establishing a cause and effect relationship.³¹

Mounting a challenge to the regulations, Veterans groups prosecuted a successful legal action which found that the VA had "both imposed an impermissibly demanding test for granting service connection for various diseases and refused to give the veterans the benefit of the doubt in meeting the demanding standard." Nehmer v. U.S. Veterans Administration, 712 F. Supp. 1404, 1423 (1989) (emphasis in original). rAs a result, the court invalidated the VA's Dioxin regulation which denied service connection for all diseases other than chloracne; ordered the VA to amend its rules; and further ordered that the Advisory Committee reassess its recommendations in light of the court's order.³²

²⁹ See Nehmer v. U.S. Veterans Admin., 712 F. Supp. 1404, 1408. (N.D. Cal. (1989). wherein the court found after reviewing the legislative history of the Act "that Congress intended service connection to be granted on the basis of "increased risk of incidence" or a "significant correlation" between dioxin and various diseases," rather than on the basis of a casual relationship.

³⁰ See Dioxin Standards Act at Section 2 (23).

³¹ See e.g. 38 C.F.R. 3.310(b) (compensation granted for cardiovascular diseases incurred by veterans who suffered amputations of legs or feet); Nehmer at 1418.

The significance of the distinction between a statistical association and a cause and effect relationship is in the burden of proof that the veteran must satisfy in order to be granted benefits. A statistical association "means that the observed coincidence in variations between exposure to the toxic substance and the adverse health effects is unlikely to be a chance occurrence or happenstance," whereas the cause and effect relationship "describes a much stronger relationship between exposure to a particular toxic substance and the development of a particular disease than 'statistically significant association' does." Nehmer, 712 F.Supp. at 1416. (Continued on page 11)

Thus, on October 2, 1989, the VA amended 38 C.F.R. Part 1, which among other things set forth various factors for the Secretary and the Advisory Committee to consider in determining whether it is "at least as likely as not" that a scientific study shows a "significant statistical association" between a particular exposure to herbicides containing dioxin and a specific adverse health effect.³³ Equally important, the regulation permits the Secretary to disregard the findings of the Advisory Committee, as well as the standards set forth at 38 C.F.R. § 1.17 (d) and determine in his own judgment that the scientific and medical evidence supports the existence of a "significant statistical association" between a particular exposure and a specific disease. 38 C.F.R. § 1.17 (f).

The Secretary recently exercised his discretionary authority under this rule when he found a significant statistical association between exposure to Agent Orange and non—Hodgkin's lymphoma, notwithstanding the failure of his own Advisory Committee to recommend such action in the face of overwhelming scientific data.³⁴

³¹ (Continued from Page 10) Thus, the regulation promulgated by the VA established an overly burdensome standard by incorporating the causal relationship test within the text of the regulation itself. 38 C.F.R. 1.3.311(d) ("[s] ound scientific and medical evidence does not establish a cause and effect relationship between dioxin exposure" and any diseases except some cases of chloracne) (emphasis added).

³² Nehmer, 712 F. Supp at 1423.

³³ 38 C.F.R. 1.17 (b) & (d). 38 C.F.R. 1.17 states:

(a) From time to time, the Secretary shall publish evaluations of scientific or medical studies relating to the adverse health effects of exposure to a herbicide containing 2,3,7,8 tetrachlorodibenzo-p-dioxin (dioxin) and/or exposure to ionizing radiation in the "Notices" section of the Federal Register.

(b) Factors to be considered in evaluating scientific studies include:

(1) Whether the study's findings are statistically significant and replicable. (2)

Whether the study and its findings have withstood peer review.

(3) Whether the study methodology has been sufficiently described to permit replication of the study. (4)

Whether the study's findings are applicable to the veteran population of interest.

(5) The views of the appropriate panel of the Scientific Council of the Veteran' Advisory Committee on Environmental Hazards.

(c) When the Secretary determines, based on the evaluation of scientific or medical studies and after receiving the advice of the Veteran's Advisory Committee on Environmental Hazards and applying the reasonable doubt doctrine as set forth in paragraph (d) (1) of this section, that a significant statistical association exists between any disease and exposure to a herbicide containing dioxin or exposure to ionizing radiation, 3.311a or 3.311b of this title, as appropriate, shall be amended to provide guidelines for the establishment of service connection.

(d) (1) For purposes of paragraph (c) of this section a "significant statistical association" shall be deemed to exist when the relative weights of valid positive and negative studies permit the conclusion that it is at least as likely as not that the purported relationship between a particular type of exposure and a specific adverse health effect exists.

(2) For purposes of this paragraph a valid study is one which:

(i) Had adequately described the study design and methods of data collection, verification and analysis;

(ii) Is reasonably free of biases, such as selection, observation and participation biases; however, if biases exist, the investigator has acknowledged them and so stated the study's conclusions that the biases do not intrude upon those conclusions; and

(iii) Has satisfactorily accounted for known confounding factors. (Continued on page 12)

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B. . THE WORK OF THE VETERANS' ADVISORY COMMITTEE ON ENVIRONMENTAL HAZARDS

To assess the validity and competency of the work of the Advisory Committee, I asked several impartial scientists to review the Advisory Committee transcripts. Without exception, the experts who reviewed the work of the Advisory Committee disagreed with its findings and further questioned the validity of the Advisory Committee's review of studies on non—Hodgkin's lymphomas .

For instance, a distinguished group at the Fred Hutchinson Cancer Research Institute in Seattle, Washington, upon reviewing the Advisory Committee transcripts, concluded "that it is at east., as likely as not that there is a significant association (as defined by the Secretary of Veterans Affairs) between (exposure to phenoxy acid herbicides and non-Hodgkin's lymphoma.)" ³⁵ This same group further asserts that the Committee's work was "not sensible" and "rather unsatisfactory" in its review and classification of the various studies it reviewed. Additionally, these scientists regarded Dr. Lathrop's views as "less than objective" and felt that the possibility exists that "his extreme views (e.g., in respect to the role of dose--response testing) may have unduly affected the Committee's work." Finally, the Hutchinson scientists argue that the issue of chemical-specific effects, in which animal studies have been sufficient to demonstrate the carcinogenicity of dioxin, is an important factor "not well considered by the Committee." (emphasis in original)

³³ *(Continued from Page 11)* (3) For purposes of this paragraph a valid positive study is one which satisfies the criteria in paragraph (d) (2) of this section and whose findings are statistically significant at a probability level of .05 or less with proper accounting for multiple comparisons and subgroups analyses.

(4) For purposes of this paragraph a valid negative study is one which satisfies the criteria in paragraph (d) (2) of this section and has sufficient statistical power to detect an association between a particular type of exposure and a specific adverse health effect if such an association were to exist.

(e) For purposes of assessing the relative weights of valid positive and negative studies, other studies affecting epidemiological assessments including case series, correlational studies and studies with insufficient statistical power as well as key mechanistic and animal studies which are found to have particular relevance to an effect on human organ systems may also be considered.

(f) Notwithstanding the provisions of paragraph (d) of this section, a "significant statistical association" may be deemed to exist between a particular exposure and a specific disease if, in the Secretary's judgment, scientific and medical evidence on the whole supports such a decision.

³⁴ After reviewing numerous scientific studies, at least four of which were deemed to be valid positive in demonstrating the link . between exposure to herbicides containing dioxin and non--Hodgkin's lymphoma, the Advisory Committee still concluded that:

The Committee does not find the evidence sufficient at the present time to conclude that there is a significant statistical association between exposure to phenoxy acid herbicides and non—Hodgkin's lymphoma. However, the Committee cannot rule out such an association.

The Secretary should be interested to note that a new mortality study positively confirms that farmers exposed to herbicides containing 2,4-D have an increased risk of developing non-Hodgkin's lymphoma. See Blair, "Herbicides and Non-Hodgkin's Lymphoma: New Evidence From a Study of Saskatchewan Farmers," 82 Journal of the National Cancer Institute 575--582 (1990).

³⁵ Letter to Admiral Zumwalt from Dr. Robert W. Day, Director of the Fred Hutchinson Cancer Research Center of Seattle, Washington (Feb. 20, 1990).

A second reviewer of the Committee's work, Dr. Robert Hartzman (considered one of the U.S. Navy's top medical researchers), effectively confirms the views of the Hutchinson group. Dr. Hartzman states that "the preponderance of evidence from the papers reviewed [by the Advisory Committee] weighs heavily in favor of an effect of Agent Orange on increased risk for non—Hodgkin's lymphoma."³⁶ Dr. Hartzman also attests that: an inadequate process is being used to evaluate scientific publications for use in public policy. The process uses scientific words like 'significant at the 5% level' and a committee of scientists to produce a decision about a series of publications. But in reality, the Committee was so tied by the process, that a decision which should have been based on scientific data was reduced to vague impressions... Actually, if the reading of the rules of valid negative found in the transcript is correct ('a valid negative must be significant at the p=.05 level' that is statistically significant on the negative side) none of the papers reviewed are valid negatives.³⁷

A third reviewing team, Dr. Jeanne Hager Stellman, PhD (Physical Chemistry) and Steven D. Stellman, PhD (Physical Chemistry), also echo the sentiments expressed by the Hutchinson Group and Dr. Hartzman on the validity of the Committee's proceedings and conclusions. In fact, the Stellmans' detailed annotated bibliography and assessment of numerous cancer studies relevant to herbicide exposure presents a stunning indictment of the Advisory Committee's scientific interpretation and policy judgments regarding the link between Agent Orange and Vietnam Veterans.³⁸

A fourth reviewer, a distinguished scientist intimately associated with government sponsored studies on the effects of exposure to Agent Orange, states the same conclusions reached by the other reviewers:

The work of the Veterans' Advisory Committee on Environmental Hazards, as documented in their November 2, 1989 transcript, has little or no scientific merit, and should not serve as a basis for compensation or regulatory decisions of any sort...

My analysis of the NHL articles reviewed by the committee reveals striking patterns which indicate to me that it is much more likely than not that a statistical association exists between NHL and herbicide exposure.

As these various reviewers suggest, the Advisory Committee's conclusions on the relationship between exposure to Agent Orange and non—Hodgkin's lymphoma were woefully understated in light of the clear evidence demonstrating a significant statistical association between NHL and exposure to phenoxy acid herbicides such as Agent Orange.

³⁶ Letter to Admiral Zumwalt from Dr. R.J. Hartzman Capt. MC USN (March 7, 1990).

³⁷ *Id.* at p.3

³⁸ See Stellman & Stellman, "A Selection of Papers with Commentaries Relevant to the Science Interpretation and Policy: Agent Orange and Vietnam Veterans," (March 1, 1990) . See also note 51 and accompanying text *infra* for additional discussion of the Stellmans' work.

Perhaps more significant than the Committee's failure to make such obvious findings is the distressing conclusion of the independent reviewers that the Committee's process is so flawed as to be useless to the Secretary in making any determination on the effects of Agent Orange. From a mere reading of Committee transcripts, these reviewers detected overt bias in the Committee's evaluation of certain studies. In fact, some members of the Advisory Committee and other VA officials have, even before reviewing the evidence, publicly denied the existence of a correlation between exposure to dioxins and adverse health effects.⁴⁰ This blatant lack of impartiality lends credence to the suspicion that certain individuals may have been unduly influenced in their evaluation of various studies. Furthermore, such bias among Advisory committee members suggests that the Secretary should, in accordance with the Dioxin Standards Act, appoint new personnel to the Advisory Committee.

III. THE CDC STUDIES

Were the faulty conclusions, flawed methodology and noticeable bias of the Advisory Committee an isolated problem, correcting the misdirection would be more manageable. But, experience with other governmental agencies responsible for specifically analyzing and studying the effects of exposure to Agent Orange strongly hints at a discernible pattern, if not outright governmental collaboration, to deny compensation to Vietnam Veterans for disabilities associated with exposure to dioxin .

A case in point is the Centers for Disease control ("CDC") . As concerns grew following the first studies of human exposure to Agent Orange, Congress commissioned a large scale epidemiological study to determine the potential health effects for Vietnam Veterans exposed to Agent Orange. Initially, this study was to be conducted by the VA itself. When evidence surfaced, however, of the VA's footdragging in commencing the study (and initial disavowal of any potential harm from exposure to Agent Orange), Congress transferred the responsibility for the study to the CDC in 1983.⁴¹

Unfortunately, as hearings before the Human Resources and Intergovernmental Relations Subcommittee on July 11, 1989 revealed, the design, implementation and conclusions of the CDC study were so ill conceived as to suggest that political pressures once again interfered with the kind of professional, unbiased review Congress had sought to obtain.⁴²

³⁹ A copy of the anonymous reviewer's analysis can be made available for the Secretary's personal inspection and review. In another paper, this same source stated: "I estimate that the Vietnam Veterans are experiencing a 40% to 50% increase in sarcomas and non--Hodgkin's lymphoma rates."

⁴⁰ For instance, Dr. Lawrence B. Hobson (Director, Office of Environmental Medicine, Veterans Health Services and Research Administration), claims that TCDD 'presents no threat from the exposures experienced by the veterans and the public at large,' and virtually accuses scientists who find that such health effects do exist to be nothing more than witch doctors. See Hobson, 'Dioxin and Witchcraft' presented at the 5th International Symposium on Chlorinated Dioxins and Related Compounds (September 1985) .

⁴¹ See 135 Congressional Record, Statement of Senator Tom Daschle (November 21, 1989); See also Agent Orange Hearings at p.37.

⁴² Oversight Review of CDC's Agent Orange Study: Hearing Before the Human Resources and Intergovernmental Relations Subcommittee of the Committee on Government Operations House of Representatives, 101st Cong., 1st Sess. at p. 71 and 330 (1989) [hereinafter cited as Agent Orange Hearing].

The Agent Orange validation study, for example, a study of the long—term health effects of exposures to herbicides in Vietnam, was supposedly conducted to determine if exposure could, in fact, be estimated.⁴³ After four years and approximately \$63 million in federal funds, the CDC concluded that an Agent Orange exposure study could not be done based on military records.⁴⁴ This conclusion was based on the results of blood tests of 646 Vietnam Veterans which ostensibly demonstrated that no association existed between serum dioxin levels and military— based estimates of the likelihood of exposure to Agent Orange.⁴⁵ Inexplicably, the CDC then used these "negative" findings to conclude that not only could an exposure study not even be done, but that the "study" which was never even conducted proves that Vietnam Veterans were never exposed to harmful doses of Agent Orange.

Even more disturbing, when the protocol for this "study" and the blood test procedures were examined further, there appeared to be a purposeful effort to sabotage any chance of a meaningful Agent Orange exposure analysis. For , the original protocol for the Agent Orange exposure study understandably called for subject veterans to be tracked by company level location.⁴⁶ By tracking company level units of 200 men, rather than battalions of 1,000 men, the location of men in relation to herbicide applications would be known with greater precision, thereby decreasing the probability that study-subjects would be misclassified as having been or not been exposed to Agent Orange.

However, in 1985 the CDC abruptly changed the protocol to have battalions, rather than companies, serve as the basis for cohort selection and unit location.⁴⁷ By the CDC's own admission, changing the protocol to track veterans on the broader battal ion basis effectively diluted the study for the simple reason that many of the 1,000 men in a battalion were probably not exposed to Agent Orange. Why then did the CDC change the protocol in 1985?

⁴³ *Id.* at 37; See also, Protocol for Epidemiologic Studies of the Health of Vietnam Veterans, Centers for Disease Control, Public Health Service, U.S. Department of Health and Human Services (November, 1983).

⁴⁴ Agent Orange Hearings at 13 (Statement of Dr. Vernon Houk).

⁴⁵ *Id.* at 12—13.

⁴⁶ *Id.* at 41.

⁴⁷ *Id.* at 38.

According to Dr. Vernon Houk, Director of the Center for Environmental Health and Injury control, the department within the CDC responsible for conducting the Agent Orange study, the protocol was changed because the CDC concluded that company—specific records were unreliable and contained too many gaps of information. As a result, military records could simply not be used to assess exposure.⁴⁸

Richard Christian, the former director of the Environmental Study Group of the Department of Defense ("ESG") testified that not only was this conclusion false, but that he had personally informed the CDC that adequate military records existed to identify company—specific movements as well as spray locations.⁴⁹ Furthermore, in a February 1985 report to the Congressional Office of Technology Assessment, the CDC reported that in analyzing 21 of 50 detailed computer HERBs tapes developed by the ESG on company movements that it was possible to correlate the exposure data to areas sprayed with Agent Orange with consistent results.⁵⁰ Indeed, a peer reviewed study sponsored by the American Legion conclusively demonstrated that such computerized data could be used to establish a reliable exposure classification system essential to any valid epidemiologic study of Vietnam Veterans.⁵¹

⁴⁸ Agent Orange Hearing: Testimony of Dr. Vernon Houk at 38-40 and 69. Dr. Houk sports an unbounded skepticism for the health hazards of dioxin. He recently endorsed the lessening of the dioxin dumping standard in the State of Georgia at a rate 500 times more lenient than EPA recommended guidelines. See Letter from Dr. Vernon N. Houk to Leonard Ledbetteber, Commissioner Georgia Department of Natural Resources (November 27, 1989).

⁴⁹ Agent Orange Hearing, Testimony of Richard Cheristian at 41.

⁵⁰ Interim Report, Agent Orange Study: Exposure Assessment: Procedures and Statistical Issues. See Also American Legion Magazine Special Issue, "Agent Orange" (1990) at p. 12.

⁵¹ Agent Orange Hearing 155-220 (Testimony of Steven and Jeanne Stellman); American Legion and Columbia University Vietnam Experience Study, Environmental Research (December, 1988).

In addition to altering the protocol from company units to battalions, the CDC further diluted the study by changing the protocol on the length of time study subjects were to have served in Vietnam. Whereas the original protocol required subjects to have served a minimum of 9 months in combat companies, the CDC reduced the minimum to 6 months. Furthermore, the CDC eliminated from consideration all veterans who served more than one tour in Vietnam. Finally, while the original protocol called only for subjects who served in Vietnam from 1967 to 1968, the years that Agent Orange spraying was at its height, the CDC added an additional 6 months to this time period. The net effect of these various changes was seriously to dilute the possibility that study subjects would have been exposed to Agent Orange, which in turn would impair any epidemiological study's ability to detect increases in disease rate.⁵²

Although the above referenced problems cast serious suspicion on the work of the CDC, perhaps its most controversial action was to determine unilaterally that blood tests taken more than 20 years after a veteran's service in Vietnam were the only valid means of determining a veteran's exposure to Agent Orange. In addition, Dr. Houk further "assumed" that the half-life for dioxin in the blood was seven years.⁵³ When the underlying data for Houk's assumptions were recently reviewed, however, 11 percent of the blood tests were invalid (i.e. study subjects had higher values of dioxin in their blood in 1987 than in 1982 even though the subjects had no known subsequent exposure to dioxin) and the half lives of dioxin in the remaining study subjects ranged from a low of 2 to a high of 740 years!⁵⁴ Yet despite this tremendous variance in the data and the high incidence of false results, Houk and the CDC concluded, rather remarkably, that a large scale exposure study was simply not possible since "negative" blood tests appeared to "confirm" that study subjects were not even exposed to Agent Orange.

⁵² Agent Orange Hearing at 46-49. This "dilution effect" is considered the classic flaw in epidemiological study design. Most epidemiologists would try to optimize the chances of observing an effect by including, rather than excluding, the subjects who are most likely to have been exposed to the suspected disease causing agent. This statistical ability to observe an effect if one is present is generally referred to as the "statistical power" of a given study.

When the CDC chose to generalize exposure to Agent Orange to groups of veterans who were less likely, rather than more likely, to be exposed, the power of the study was diluted. For example, if we assume that 1 out of every 5 men who served in Vietnam was exposed to Agent Orange, any possible effects of the exposure will be diluted when the 4 non-exposed men are averaged in. If we assume further that exposure to Agent Orange caused a doubling of the incidence of cancers among the 20% of men exposed, the effect would largely be obscured since 80% of the group being studied would not have been sprayed with Agent Orange and would thus have a normal background rate of cancer. Consequently, only exceptionally large increases in the cancer rate would be discovered and or reach statistical significance in a study group so diluted from the outset. See Agent Orange Hearing at 149 (Testimony of John F. Sommer, Jr., Director National Veterans Affairs and Rehabilitation commission the American Legion).

See also Agent Orange Legislation and Oversight: Hearing Before the Committee on Veterans' Affairs, United States Senate, 100th Cong., (May 12, 1988) (Testimony of Dr. Joel Nichalek) at pp. 65, 66 and 668.

⁵³ Agent Orange Hearing at 59. Dr. Houk's assumption was based on a study of only 36 former Ranch Handers (members of "Operation Ranch Hand," the Air Force herbicide defoliation program) who had volunteered blood samples in 1982 and 1987.

⁵⁴ American Legion Magazine Reprint "Agent Orange" at 12 See also Agent Orange Hearing at p. 67 (testimony of Dr. Houk revealed that the senior-statistician on the Agent Orange project believed that the dioxin blood analysis was so flawed there is a substantial likelihood that there is no correlation between the exposure scores and the blood levels).

Such conclusions are especially suspect given the fact that scientists have consistently cautioned against the use of blood tests as the sole basis for exposure classification. Although blood and adipose tissue tests can be used to confirm that Vietnam veterans were heavily exposed to Agent Orange and the contaminant dioxin⁵⁵, even the CDC's own researchers have unequivocally stated that "much more has to be learned about the kinetics of dioxin metabolism and half-life before current levels can be used to fully explain historic levels of exposure."⁵⁶

While the CDC's changes in protocol have been "justified", however unreasonably, on the basis of "scientific" explanations⁵⁷, what cannot be justified is the evidence of political interference in the design, implementation and drafting of results of the CDC study by Administration officials rather than CDC scientists. As early as 1986, the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce documented how untutored officials of the Office of Management and Budget (OMB) interfered with and second-guessed the professional judgments of agency scientists and multidisciplinary panels of outside peer review experts effectively to alter or forestall CDC research on the effects of Agent Orange, primarily on the grounds that "enough" dioxin research had already been done.⁵⁸ These Agent Orange Hearings revealed additional examples of political interference in the CDC's Agent Orange projects by members of the White House Agent Orange Working Group.⁵⁹

Dr. Philip S. Landrigan, the former Director of the Environmental Hazards branch at the CDC, upon discovering the various irregularities in CDC procedures concluded that the errors were so egregious as to warrant an independent investigation not only of the methodology employed by the CDC in its validation study, but also a specific inquiry into what actually transpired at the Center for Environmental Health of the CDC.⁶⁰

⁵⁵ See Kahn, "Dioxins and Dibenzofurans in Blood and Adipose Tissue of Agent Orange Exposed Vietnam Veterans and Matched Controls," 259 Journal of the American Medical Association 1661 (1988). This report found that "Vietnam veterans who were heavily exposed to Agent Orange, exceeded matched control subjects in both blood, and adipose tissue levels of 2,3,7, 8-tetrachlorodibenzo-p-dioxin (TCDD) but not in the levels of the 12 other 2,3,7,8-substituted dioxins and dibenzofurans that were detected. Since only TCDD among these compounds was present in Agent Orange but all are present in the population of the industrialized world, it is likely that the elevated TCDD levels arose from wartime exposure."

⁵⁶ Patterson, "Levels of Polychlorinated Dibenzo-p-dioxins and Dibenzofurans in Workers Exposed to 2,3,7,8-tetrachlorodibenzo-p-dioxin," 16 American Journal of Industrial Medicine 135, 144 (1989).

⁵⁷ See generally, Agent Orange Hearing (Testimony of Dr. Vernon Houk) at 44--50.

⁵⁸ OMB Review of CDC Research: Impact of the Paperwork Reduction Act; A Report Prepared for the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, 99th Cong. 2nd Sess. (October 1986).

⁵⁹ See Agent Orange Hearing at 49-54 (Testimony of Dr. Vernon Houk).

⁶⁰ Agent Orange Hearing at 229 and 330

With these suspicions in mind, it should come as no surprise that those familiar with the CDC's work found little credence in the conclusions reached by the CDC in its recently released Selected Cancers Study. Even though the CDC has previously stated that it believes exposure to Agent Orange is impossible to assess, it found no difficulty in reporting to the press upon the release of the Selected Cancers Study that exposure to Agent Orange does not cause cancer. This conclusion was reached despite the fact that the CDC made no effort to determine, through military records or blood/adipose tissue tests, if study subjects were, indeed, exposed to dioxins; nor did the CDC attempt to verify exposure to Agent Orange of those study subjects who actually contracted cancerous diseases. In fact, according to scientists who have made preliminary reviews of the CDC's findings, the statistical power of any one cancer grouping, with the exception of non-Hodgkin's lymphoma, was so low as to make any conclusion virtually impossible.

IV. RANCH HAND STUDY

Unfortunately, political interference in government sponsored studies associated with Agent orange has been the norm, not the exception. In fact, there appears to have been a systematic effort to suppress critical data or alter results to meet preconceived notions of what alleged scientific studies were meant to find.⁶¹ As recently as March 9, 1990 Senator Daschle disclosed compelling evidence of additional political interference in the Air Force Ranch Hand study, a separate government sponsored study meant to examine the correlation between exposure to Agent Orange and harmful health effects among Air Force veterans who participated in Agent Orange spraying missions under Operation Ranch Hand. As Senator Daschle explained:

In January 1984, the scientists in charge of the Ranch Hand Study issued a draft baseline morbidity report that described some very serious health problems in the Ranch Hand veterans and stated that the Ranch Handers, by a ratio of five to one, were generally less well than the veterans in the control group. The opening sentence of the draft report's conclusion was clearly stated: "It is incorrect to interpret this baseline study as 'negative.'

After the Ranch Hand Advisory Committee, which operates under the White House Agent Orange Working Group of the Domestic Policy Council, got its hands on the document, the final report was changed in some very important ways. Most notably, the table and exposition explaining that the Ranch Handers were generally less well than the controls was omitted, and the final conclusion was altered substantially. The statement that the baseline study was not negative was completely omitted and the study was described as "reassuring."⁶²

⁶¹ See generally Agent Orange Nearing; Congressional Record, S 2550 (March 9, 1990); Congressional Record, (November 21, 1989) (Statements of Senator Thomas Daschle).

⁶² See Congressional Record S 2550 (March 9, 1990)

By altering the study's conclusion, opponents of Agent Orange compensation were able to point to "irrefutable proof" that Agent Orange is not a health problem: if those veterans most heavily exposed to Agent Orange did not manifest any serious health problems, they argued, then it could safely be deduced that no veteran allegedly exposed to Agent Orange in smaller doses could have health problems. Yet, when Senator Daschle questioned Air Force scientists on why discrepancies existed between an Air Force draft of the Ranch Hand Study and the final report actually released to the press, the answers suggested not merely disagreements in data evaluation, but the perpetration of fraudulent conclusions. In a word, the major premise was badly flawed.

For example, in 1987 Ranch Hand scientists confirmed to Senator Daschle that an unpublished birth defects report shows that birth defects among Ranch Hand children are double those of children in the control group and not "minor" as originally reported in 1984.⁶³

This increase in birth defects takes on added significance when one considers that the original CDC birth defects study, which found no increase in birth defects, merely examined birth defects as reported on birth certificates, rather than as reported by the child's parent or physician. The CDC never recorded hidden birth defects, such as internal organ malformations and other disabilities that only became apparent as the child developed. Consequently, it is very likely that the CDC's negative findings on birth defects were also vastly understated.⁶⁴

In addition to elevated birth defects, Ranch Handers also showed a significant increase in skin cancers unrelated to overexposure to the sun as originally suggested in the 1984 report. Air Force scientists also admitted that Air Force and White House Management representatives were involved in scientific decisions in spite of the study's protocol which prohibited such involvement.⁶⁵

On February 23, 1990, the Air Force released a follow-up morbidity report on the Ranch Handers. That report, "1987 Followup Examination Results," described statistically significant increases in health problems among Ranch Handers including: all cancers — skin and systemic combined, both verified and suspected; skin cancers alone; hereditary and degenerative neurological diseases and other problems.

⁶³ Congressional Record, (November 21, 1989) (Statement of Senator Thomas Daschle).

⁶⁴ The CDC birth defects study was confined to Vietnam Veterans located in the Atlanta, Georgia region. The study was not an Agent Orange birth defects study since no effort was made to determine whether the veterans had even been exposed to Agent orange. See notes 10 and 18 supra for additional information on birth defects.

⁶⁵ Congressional Record, S 2551 (March 9, 1990) (Statement of Senator Daschle).

The Air Force-concluded, however, that these and other problems cannot necessarily be related to Agent Orange/dioxin exposure, as they do not always show a "dose-response" relationship — particularly since the exposure index used in the data analysis "is not a good measure of actual dioxin exposure." ⁶⁶

With this conclusion, the Air Force for the first time officially acknowledged that the conclusions reached in its original 1984 Ranch Hand study are not simply moot, but that the Ranch Hand study is not, at this date, an Agent Orange study at all since dioxin exposure could not be determined reliably in the first place. In other words, the Air Force could just as easily have concluded that the health problems associated with the Ranch Handers were not necessarily related to eating beer nuts.

For the Air Force to have made the statement in 1990 of no evidence of a link between exposure to Agent Orange and the cancer problems experienced by Ranch Handers is, as Senator Daschle notes, "patently false."⁶⁷ Although not yet conclusive, what the Ranch Hand and CDC studies demonstrate is that there is evidence of a link between health problems and dioxin exposures which may become definitive when a new and reliable exposure index is used to evaluate the data.

As stated by Dr. James Clary, one of the scientists who prepared the final Ranch Hand report:

The current literature on dioxin and non--Hodgkin's lymphoma and soft tissue sarcoma can be characterized by the following:

1. It underestimates (reduced risk estimates) the effect of dioxins on human tissue systems. As additional studies are completed we can expect to see even stronger correlations of dioxin exposure and NHL/STS.
2. Previous studies were not sensitive enough to detect small, but statistically significant increases in NHL/STS. As time progresses, and additional evidence is forthcoming, it will be increasingly difficult for anyone to deny the relationship between dioxin exposure and NHL/STS

⁶⁶ Wolfe, St. al., Air Farce Health Study and Epidemiologic Investigation of Health Effects in Air Force Personnel Following Exposure to Herbicides (Feb. 1990) at p. vi.

⁶⁷ Congressional Record 5. 2551 (March 9, 1990). See also Letter from Maj. Gen. James G. Sanders, U.S.A.F. Deputy Surgeon General to Senator Thomas Daschle (February 23, 1990).

⁶⁸ Letter from Dr. James Clary to Senator Tom Daschle (September 9, 1988).

V. INDEPENDENT STUDIES

Shamefully, the deception, fraud and political interference that has characterized government sponsored studies on the health effects of exposure to Agent Orange and/or dioxin has not escaped studies ostensibly conducted by independent reviewers, a factor that has only further compounded the erroneous conclusions reached by the government.

For instance, recent litigation against the Monsanto corporation revealed conclusive evidence that studies conducted by Monsanto employees to examine the health effects of exposure to dioxin were fraudulent. These same fraudulent studies have been repeatedly cited by government officials to deny the existence of a relationship between health problems and exposure to Agent Orange. According to court papers:

Zack and Gaffey, two Monsanto employees, published a mortality study purporting to compare the cancer death rate amongst the Nitro workers who were exposed to Dioxin in the 1949 explosion with the cancer death rate of unexposed workers. The published study concluded that the death rate of the exposed worker was exactly the same as the death rate as the unexposed worker. However, Zack and Gaffey deliberately and knowingly omitted 5 deaths from the exposed group and took 4 workers who had been exposed and put these workers in the unexposed group, serving, of course, to decrease the death rate in the exposed group and increase the death rate in the unexposed group. The exposed group, in fact, had 18 cancer deaths instead of the reported 9 deaths (P1. Ex. 1464), with the result that the death rate in the exposed group was 65% higher than expected (emphasis in original)⁶⁹.

Similarly, recent evidence also suggests that another study heavily relied upon by those opposed to Agent Orange compensation to deny the existence of a link between dioxin and health effects was falsified. Three epidemiologic studies and several case report studies about an 1953 industrial accident in which workers at a BASF plant were exposed to dioxins concluded that exposure to TCDD did not cause human malignancies.⁷⁰ A reanalysis of the data that comprised the studies, all of which was supplied by

⁶⁹ Brief of Plaintiffs-appellees in Kemner. et. al. v. Monsanto Company, No. 5--88--0420 (5th Dist., Illinois Appellate Court) (Oct. 3, 1989) (as the facts were proven at trial, the appeal only considered appealable matters of law). Plaintiff's brief refers to Zack and Gaffey, "A Mortality Study of Workers Employed at the Monsanto Company Plant in Nitro, WV., man Environmental Risks of Chlorinated Dioxins and Related Compounds (1983) pp. 575--591. It should be noted that the Advisory Committee classified this report as "negative" in evaluating compensation for NHL

The brief also states that another study of the workers exposed in the 1949 accident was also fraudulent (e.g. R.R. Suskind and V.S. Hertzberg, "Human Health Effects of 2,4,5-T and Its Toxic Contaminants," Journal of the American Medical Association, Vol. 251, No. 18 (1984) pgs. 2372-2380.) The study reported only 14 cancers in the exposed group and 6 cancers in the unexposed group. Trial records conclusively demonstrated, however, that there were 28 cancers in the group that had been exposed to dioxins, as opposed to only 2 cancers in the unexposed group.

⁷⁰ See e.g. Thiess, Frentzel-Beyme, Link, "Mortality Study of Persons Exposed to Dioxin in a Trichlorophenol Process Accident that occurred in the BASF AG on November 17, 1953", 3 American Journal of Industrial Medicine 179--189 (1982)

the BASF company itself, revealed that some workers suffering from chloracne (an acknowledged evidence of exposure to dioxin) had actually been placed in the low--exposed or non--exposed cohort groups. Additionally, 20 plant supervisory personnel, not believed to have been exposed, were placed in the exposed group.

When the 20 supervisory personnel were removed from the exposed group, thereby negating any dilution effect, the reanalysis revealed statistically significant increases in cancers of the respiratory organs (lungs, trachea, etc.) and cancers of the digestive tract.⁷¹ According to the scientist who conducted this study, "t)his analysis adds further evidence to an association between dioxin exposure and human malignancy."⁷²

Recent evidence also reveals that Dow Chemical, a manufacturer of Agent Orange was aware as early as 1964 that TCDD was a byproduct of the manufacturing process. According to Dow's then medical director, Dr. Benjamin Holder, extreme exposure to dioxins could result in "general organ toxicity" as well as "psychopathological" and "other systemic" problems.⁷³ In fact, a recent expert witness who reviewed Dow Chemical corporate documents on behalf of a plaintiff injured by exposure to dioxin who successfully sued Dow⁷⁴ states unequivocally that "the manufacturers of the chlorphenoxy herbicides have known for many years about the adverse effects of these materials on humans who were exposed to them."⁷⁵

⁷¹ Friedemann Rohleder, "Dioxins and Cancer Mortality Reanalysis of the BASF Cohort," presented at the 9th International Symposium on Chlorinated Dioxins and Related Compounds, Toronto, Ontario (Sept. 17-22, 1989). BASF recently published a study in an attempt to refute the allegations that the original studies related to the accident were fraudulent. See Zobier, Messerer & Huber, "Thirty Four Year Mortality Follow Up of BASF Employees, 62 Occupational Environmental Health 139-157, (Oct.19, 1989). While the company states that "there was no significant increase in deaths from malignant neoplasms," the study does conclude that:

There was, however, a significant excess for all cancers combined among the chloracne victims 20 or more years after initial exposure when an excess would be most likely to occur. In addition, there is the notable finding on one case of liver cancer without cirrhosis in a worker with an exceptionally high level of TCDD in the blood.

Id. at 155. See also id. at 139 ("In general, our results do not appear to support a strong association between cancer mortality and TCDD, but they do suggest that some hazard may have been produced.) (emphasis added) and 149 ("Although TCDD blood levels were available for only 5 of the 10 subjects, the three highest levels were found in subjects with liver cancer, leucosis and Merckel—cell carcinoma of the skin.").

⁷² Wanchinski, "New Analysis Links Dioxin to Cancer," New Scientist, (Oct. 28, 1989) p. 24.

⁷³ See L. Casten, Patterns of Secrecy: Dioxin and Agent Orange (1990) (unpublished manuscript detailing the efforts of government and industry to obscure the serious health consequences of exposure to dioxin).

⁷⁴ Peteet v. Dow Chemical Co., 868 F.2d 1428 (5th Cir. 1989) cert...denied 110 S.Ct. 328 (1989).

⁷⁵ Letter from Daniel Teitelbaum, M.D., P.C. to Admiral E.R. Zumwalt, Jr. (April 18, 1990). Dr Teitelbaum additionally states: What I do think...may bear on the Agent Orange issue, is the fact that in review of Dow's 2,4-D documentation I found that there are significant concentrations of potentially carcinogenic materials present in 2,4-D which have never been made known to the EPA, FDA, or to any other agency. Thus, in addition to the problem of the TCDD which, more likely than not, was present in the 2,4,5--T component of Agent Orange, the finding of other dioxins and closely related furans and xanthenes in the 2,4--D formulation was of compelling interest to me.

VI. CURRENT SCIENCE ON HEALTH EFFECTS OF HERBICIDES AND DIOXIN

Despite its poor record in carrying out its responsibility to ascertain the health effects of exposure to Agent Orange, the CDC has been candid in some of its findings. As early as 1983, for instance, the CDC stated in the protocol of its proposed Agent Orange Studies "(t)hat the herbicide contaminant TCDD is considered to be one of the most toxic components known. Thus any interpretation of abnormal findings related to 2,4,5-T must take into consideration the presence of varying or undetermined amounts of TCDD."⁷⁶

In 1987, after first being leaked by the New York Times, a VA mortality study was released indicating a 110 percent higher rate of non-Hodgkin's lymphoma in Marines who served in heavily sprayed areas as compared with those who served in areas that were not sprayed.⁷⁷ The study also found a 58 percent higher rate of lung cancer among the same comparative groups.⁷⁸

Also in 1987, a second VA study found a suggestive eight-fold increase in soft tissue sarcoma among veterans most likely to have been exposed to Agent Orange.⁷⁹

⁷⁶ CDC Protocol, see note 1 supra The CDC went on to state that a wide variety of health effects have been observed following the administration of TCDD to experimental animals including soft tissue sarcomas and lymphoma,¹ nasal and nasopharyngeal cancers, birth defects, changes in thymus and lymphoid tissues, and other numerous cancers. Additionally, the CDC acknowledged the toxic effects of occupational exposure to dioxin, including evidence that exposure "may be associated with an increased risk of soft tissue sarcoma and lymphoma" and perhaps nasal and nasopharyngeal cancers.

⁷⁷ Breslin, et. al. "Proportionate Mortality Study of U.S. Army and U.S. Marine Corps Veterans of the Vietnam War," Veterans Administration (1987).

⁷⁸ Id. Some scientists, including the Advisory Committee have attempted to denigrate these significant findings on the basis that Army personnel did not show similar results. The explanation for this lack of comparative Army findings is directly attributable to the dilution effect caused by including logistics personnel as part of the Army study. Marines were studied as a separate group. The Marine's logistical support personnel (i.e. the Navy), were not included. Thus, the increased cancers among Marines were clearly associated with field exposure to Agent Orange.

The Army study, on the other hand, combined field personnel with personnel on logistics assignments who were unlikely to have been exposed to Agent Orange. As a result, the Army findings were drastically diluted. Additionally, Army personnel generally engaged the enemy and returned to base, whereas Marines consistently remained in areas presumably sprayed by Agent Orange to provide medical, health and engineering assistance to the local population. Such "pacification" efforts gave Marines additional opportunities to be exposed to dioxins.

⁷⁹ Kang, et. al., "Soft-Tissue Sarcoma and Military Service in Vietnam: A Case Control Study," ⁷⁹ Journal of the National Cancer Institute 693 (October, 1987). The increases were not statistically significant as reported. Nonetheless, the results are remarkable.

A proportionate mortality study of deaths in pulp and paper mill workers in New Hampshire from 1975 to 1985 showed that one or more of the exposures experienced by such workers (dioxin is a byproduct of pulp and paper production) posed a "significant risk" for cancers of the digestive tract and lymphopoietic tissues .⁸⁰

Another case control study of farmers in Hancock County, Ohio, showed a "statistically significant" rise in Hodgkin's disease and non-Hodgkin's lymphoma. Although the study speculates that exposure to phenoxy herbicides may be the cause of such elevated cancers, the study recognizes that, given the size of its cohort, the only credible conclusion that can be drawn is that it "adds to the growing body of reports linking farming and malignant lymphoma, particularly NHL." ⁸¹

A study of disease and non—battle injuries among U.S. Marines in Vietnam from 1965 to 1972 showed a significantly higher rate of first hospitalizations for Marines stationed in Vietnam as opposed to Marines stationed elsewhere, particularly for neoplasms, diseases of the blood and blood forming organs and diseases of the circulatory and respiratory systems.⁸² Of particular significance is the fact that the rate of first hospitalization for disease and non—battle injuries among Vietnam personnel rose steadily, reaching a peak in 1969, while the rate of non—Vietnam personnel remained relatively constant.⁸³ This rise in hospitalization for non—combat injuries coincides exactly with the increased use of Agent Orange, reaching a peak in 1969, and declining thereafter until its elimination in 1971.

⁸⁰ E. Schwartz, "A Proportional Mortality Ratio of Pulp and Paper Mill Workers in New Hampshire," 45 British Journal of Industrial Medicine, 234—238 (1988).

⁸¹ Dubrow, Paulson & Indian, "Farming and Malignant Lymphoma in Hancock county, Ohio," 45 British Journal of Industrial Medicine 25—28 (1988).

⁸² Palinkas & Coben, "Disease and Non—Battle Injuries Among U.S. Marines in Vietnam, 153 Military Medicine 150 (March, 1988).

⁸³ *Id.* at 151. It should be noted that the year of greatest combat activity, as measured by the number of personnel wounded in action, 1968, had the smallest disease and non-battle injury vs. wounded in action ratio. *Id.* at 152.

In a recently published article entitled "2,4--D, 2,4,5 --T, and 2,3,7,8 --TCDD: An Overview", the authors acknowledge that at least three weaknesses in research related to dioxins are sufficient to cast doubt on the validity of any study.⁸⁴ The authors report that while the data on soft tissue sarcoma and phenoxy acids are too inconsistent to allow for any comment at this time, there is evidence of a strong association between STS and the suspect chemicals in 2 of the 8 studies analyzed in their article. Furthermore, the birth defect studies analyzed "suggest that adverse reproductive effects can be caused by (dioxin) .⁸⁵

Recent studies in Vietnam continue to show statistically significant reproductive anomalies and birth defects among women, and children of women presumably exposed to Agent Orange spraying.⁸⁶

⁸⁴ Lilienfeld and Gallo "2,4-D, 2,4,5—T and 2,3,7,8-TCDD An Overview," Epidemiologic Review, Vol. II (1989). Three major criteria must be considered in evaluating the numerous epidemiologic studies of phenoxy herbicides and 2,3,7,8-TCDD: 1) the accuracy of exposure assessment; 2) the studies' statistical power; and 3) the adequacy of follow-up. Problems in any one of the three areas leaves the study open to criticism and subject to manipulation.

For instance, in retrospective studies, various proxies of exposure to herbicides and 2,3,7,8,—TCDD have been used such as military service in Vietnam or residence in an area in which the herbicides were sprayed. The weakness in such an approach is that unless the proxy corresponds to exposure, the "exposed group" is diluted with the individuals who have NOT been exposed, thereby reducing the magnitude of the strength of the association. In fact, such reduction may be of such a degree as to preclude detection of any of a serum marker for 2,3,7,8-TCDD by Kahn may provide the means of identifying persons who have been exposed.

Furthermore, studies concerning Agent Orange have nearly all been conducted in the past decade. This 10 year latency period is generally thought to be insufficient for mzzany cancers to be clinically detected .

⁸⁵ Id.

⁸⁶ See note 10 supra. It should be noted that as early as 1977 information about Agent Orange's potential for genetic damage was known to the VA. For example, a "NOT FOR RELEASE" VA document expressly noted Agent Orange's "high toxicity" and "its effect on newborn, deformed children— similar to the thalidomide situation." See L. Casten, Patterns of Secrecy note 73 supra at Department of Veteran Affairs p.4. Similarly, in March of 1980, Senator Tom Daschle and Rep. David Bonior received an anonymous memorandum written on VA stationery which stated:

chemical agents 2,4,5-T and 2,4-D commonly known as Agent Orange and Agent Blue, are mutagenic and teratogenic. This means they intercept the genetic DNA message processed to an unborn fetus, thereby resulting in deformed children being born. Therefore, the veteran would appear to have no ill effects from the exposure but he would produce deformed children due to this breakage in his genetic chain.... .Agent Orange is 150,000 times more toxic than organic arsenic.

Id. See also Wolfe & Lathrop, "A Medical Surveillance Program for Scientists Exposed to Dioxins and Furans," Human and Environmental Risks of Chlorinated Dioxins and Related Compounds, 707—716 (1983) (Proceedings of International Symposium on Chlorinated Dioxins and Related Compounds, Arlington, VA, October 25—29, (1981)). The article explains the possible mechanism for paternally transmitted birth defects.

In the December 1, 1989, issue of *Cancer*, a study of the cancer risks among Missouri farmers found elevated levels of lip and bone cancer as well as nasal cavity and sinuses, prostate, non-Hodgkin's lymphoma and multiple myeloma. Smaller elevations, but elevations nonetheless, were found for cancers of the rectum, liver, malignant melanoma, kidney and leukemia. According to the authors, evidence of the cause for the elevated risks for these illnesses "may be strongest for a role of agricultural chemicals, including herbicides, insecticides and fertilizers."⁸⁷

Both the U.S. Environmental Protection Agency (EPA) and the International Agency for Research on Cancer (IARC) have concluded that dioxin is a "probable human carcinogen."⁸⁸

In a work entitled "Carcinogenic Effects of Pesticides" to be issued by the National Cancer Institute Division of Cancer Etiology, researchers conclude that while confirmatory data is lacking there is ample evidence to suggest that NHL, STS, colon, nasal and nasopharyngeal cancer can result from exposure to phenoxy herbicides

A just released case control study of the health risks of exposure to dioxins confirmed previous findings that exposure to phenoxyacetic acids or chlorophenols entails a statistically significant increased risk (i.e. 1.80) for soft tissue sarcoma.⁸⁹

As recently as February 28, 1990 an additional study found that farmers exposed to various herbicides containing 2,4—D may experience elevated risks for certain cancers, particularly cancers of the stomach, connective tissue, skin, brain, prostate, and lymphatic and hematopoietic systems."⁹⁰

⁸⁷ Brownson, et. al. "Cancer Risks Among Missouri Farmers," 64 *Cancer* 2381, 2383 (December 1, 1989) .

⁸⁸ Agency for Toxic Substances and Disease Registry, pp. 7,, 61—68, 94 reprinted in Rachel's Hazardous Waste News # 173 (March 21, 1990)

⁸⁹ Eriksson, Hardell & Adami, "Exposure to Dioxins as a Risk Factor for Soft Tissue Sarcoma: A Population--Based Case--Control study," 82 *Journal of the National Cancer Institute* 486—490 (March 21 1990) . It should be noted that in this study the median latency for phenoxyacetic acid and chlorophenols exposure was 29 and 31 years respectively, thereby suggesting that many of the veterans who are at risk have not yet manifested symptoms of STS.

⁹⁰ Blair, "Herbicides and Non-Hodgkin's Lymphoma: New Evidence From a Study of Saskatchewan Farmers," 82 *Journal of the National cancer*

This week a scientific task force, after reviewing the scientific literature related to the potential human health effects associated with exposure to phenoxyacetic acid herbicides and/or their associated contaminants (chlorinated dioxins) concluded that it is at least as likely as not that exposure to Agent Orange is linked to the following diseases: non—Hodgkin's lymphoma, soft tissue sarcoma, skin disorders/chloracne, subclinical hepatotoxic effects (including secondary coproporphyrinuria and chronic hepatic porphyria), porphyria cutanea tarda, reproductive and developmental effects, neurologic effects and Hodgkin's disease.⁹¹

On the same day that this scientific task force reported a statistically significant linkage between exposure to the dioxins in Agent Orange and various cancers and other illnesses, the Environmental Protection Agency reported that the cancer risk posed by the release of such a "potent carcinogen" as dioxin in the production of white paper products is "high enough to require tighter controls on paper mills."⁹²

CONCLUSIONS

As many of the studies associated with Agent Orange and dioxins attest, science is only at the threshold of understanding the full dimension of harmful toxic effects from environmental agents on various components of the human immune system.⁹³ In fact, a whole new discipline — immunotoxicology — has developed to explore further the effects of environmental chemicals on human health and to relate animal test results to humans.⁹⁴

⁹¹ Report of the Agent Orange Scientific Task Force of the American Legion, Vietnam Veterans of America, and the National Veterans Legal Services Project, reported by McAllister, "Viet Defoliant Linked to More Diseases," Washington Post, May 1, 1990 at AS, col. 4. The report also found that there are other disorders for which there is evidence suggesting an association with exposure to Agent Orange, but for which statistically significant evidence is not currently available. Those diseases include: leukemias, cancers of the kidney, testis, pancreas, stomach, prostate, colon hepatobiliary tract, and brain, psychosocial effects, immunological abnormalities, and gastrointestinal disorders.

⁹² Weisskopf, "EPA Seeking to Reduce Dioxin in White Paper: Cancer Risk Said to Justify Mill Restrictions," Washington Post, May 1, 1990 at AS, col. 1.

⁹³ A recent report in the Washington Post suggests that there is an inherent uncertainty in trying to measure the dangers posed by the chemicals humans eat, drink and breathe. Since human experimentation is impossible to assess the effect of varied doses of a chemical on human health, scientists are ultimately required to speculate or guess as to the health effects of a given chemical to the human body. See Measuring Chemicals' Dangers: Too Much Guesswork?" Washington Post, March 23, 1990.

⁹⁴ Silbergeld & Gaisewicz, "Dioxins and the Ah Receptor," 16 American Journal of Industrial Medicine 455, 468—69 (1989).

Immunotoxicology has established, however, at a minimum that at least three classes of undesirable effects are likely occur when the immune system is disturbed by environmental exposure to chemicals such as dioxin, including: 1) immunodeficiency or suppression; 2) alteration of the host defense mechanism against mutagens and carcinogens (one theory is that the immune system detects cells altered by mutagens or other carcinogenic trigger and destroys these cells. Thus, an impaired immune system may not detect and destroy a newly forming cancer); and 3) hypersensitivity or allergy to the chemical antagonist. Because of dioxin's ability to be both an immunosuppressant and a carcinogen, as early as 1978 immunologists were suggesting that "(a) gents such as TCDD.. .may be far more dangerous than those possessing only one of these properties."⁹⁵

While scientists are not in agreement, some immunotoxicologists argue that one molecule of a carcinogenic agent, like dioxin in the right place and at the right time can cause the human immune system to turn on itself, manifesting such breakdowns in the form of cancer. Indeed, even some courts have accepted this theory of causation in matters specifically related to exposure to dioxin.⁹⁶

With additional evidence from Vietnam suggesting that Agent Orange contaminants have the ability to migrate away from actual spray locations via river channels and the food chain, the opportunity for a Vietnam Veteran to have been exposed to dioxin contaminant molecules increases significantly.⁹⁷

⁹⁵ Inadvertent Modification of the Immune Response — The Effect of Foods, Drugs, and Environmental Contaminants; Proceedings at the Fourth FDA symposium; U.S. Naval Academy (August 28-30, 1978), p. 78.

⁹⁶ See Peteet V. Dow Chemical Co., 868 F.2d 1428, 1433 (5th Cir. 1989) cert denied 110 S.Ct. 328 (1989).

⁹⁷ See e.g. Schecter, et. al., "Levels of 2,3,7,8—TCDD in Silt Samples Collected Between 1985—86 From Rivers in the North and South of Vietnam," 19 Chemosphere 547—550 (1989) (suggestive findings that the predominant dioxin isomer in Agent Orange has moved into downstream rivers in the South of Vietnam); Olie, et. al., "Chlorinated Dioxin and Dibenzofuran Levels in Food and Wildlife Samples in the North and South of Vietnam," 19 Chemosphere 493-496 (1989) (food and wildlife specimens in South Vietnam had a higher relative abundance of 2,3,7,8-TCDD suggesting contamination from Agent Orange); Schecter, et. al. "Chlorinated Dioxin and Dibenzofuran Levels in Food Samples Collected Between 1985—87 in the North and South of Vietnam," 18 Chemosphere 627—634 (1989) (Agent Orange contaminants, specifically 2,3,7,8-TCDD found at relatively elevated levels in food and wildlife samples 15-25 years after environmental contamination with compound in South of Vietnam

It cannot be seriously disputed that any large population exposed to chemical agents, such as Vietnam Veterans exposed to Agent Orange, is likely to find among its members a number who will develop malignancies and other mutagenic effects as a result of being exposed to harmful agents.

To be sure, decisions today with regard to the seriousness of Agent Orange health effects must be made while the science of immunotoxicology is in its infancy. After having evaluated and considered all of the known evidence on Agent Orange and dioxin contaminants, it is evident to me that enough is known about the current trends in the study of dioxins, and their linkage with certain cancers upon exposure, to give the exposed Vietnam Veteran the benefit of the doubt.

This benefit of the doubt takes on added credence given two separate means for determining exposure to Agent Orange — 1) HERBs and Service HERBs tapes establishing troop location for comparison with recorded Ranch Hand spraying missions; and 2) blood testing from living Veterans, to ascertain elevated dioxin levels. The inexplicable unwillingness of the CDC to utilize this data has had the effect of masking the real increase in the rate of cancers among the truly exposed. There is, in my opinion, no doubt that had either of these methods been used, statistically significant increased rates of cancer would have been detected among the Veterans for whom exposure can still be verified.

Since science is now able to conclude with as great a likelihood as not that dioxins are carcinogenic directly and indirectly through immunosuppression, and since a large proportion of those exposed to dioxin can be so ascertained, I am of the view that the compensation issue for service—related illnesses associated with exposure to Agent Orange should be resolved in favor of Vietnam Veterans in one of the two following ways:

COMPENSATION FOR SERVICE RELATED ILLNESSES

Alternative 1:

Any Vietnam Veteran, or Vietnam Veteran's child who has a birth defect, should be presumed to have a service—connected health effect if that person suffers from the type of health effects consistent with dioxin exposure and the Veteran's health or service record establishes 1) abnormally high TCDD in blood tests; or 2) the veteran's presence within 20 kilometers and 30 days of a known sprayed area (as shown by HERBs tapes and corresponding company records); or 3) the Veteran's presence at fire base perimeters or brown water operations where there is reason believe Agent Orange have- occurred.

Under this alternative compensation would not be provided for those veterans whose exposure came from TCDD by way of the food chain; silt runoff from sprayed areas into unsprayed waterways; some unrecorded U.S. or allied Agent Orange sprayings; inaccurately recorded sprayings; or sprayings whose wind drift was greater than 20 kilometers. Predictably, problems generated by the foregoing oversights, the mass of data to be analyzed as claims were filed, and the known loss of many service records would invalidate many veterans' legitimate claims

Alternative 2:

Any Vietnam Veteran or child of a Vietnam Veteran who experiences a TCDD—like health effect shall be presumed to have a service--connected disability. This alternative is admittedly broader than the first, and would provide benefits for some veterans who were not exposed to Agent Orange and whose disabilities are not presumably truly service--connected. Nevertheless, it is the only alternative that will not unfairly preclude receipt of benefits by a TCDD exposed Vietnam Veteran.

Furthermore, this alternative is consistent with the Secretary's decision regarding the Service—connection of non—Hodgkin's lymphoma, as well as legal precedent with respect to other diseases presumed by the Department of Veterans Affairs to be connected to one or more factors related to military service (i.e. veterans exposed to atomic radiation and POW's with spastic colon).

PRESUMPTIONS OF AGENT ORANGE RELATED HEALTH EFFECTS

I have also given considerable thought to which health effects are to be presumed likelier than not to be related to TCDD exposure and therefore service--connected. Any such determination must be made in light of: 1) the review of the scientific literature, including animal studies where human data does not exist or has been manipulated; 2) the inappropriate processes of the Veterans Advisory Committee on Environmental Hazards; 3) the past political manipulations of Ranch Hand and CDC studies; and 4) the recent discoveries of manipulation by scientists hired by chemical manufacturers of dioxin contaminants to evaluate the potentially best epidemiological data concerning TCDD's effects on humans.

My evaluation of the evidence has been made with just such considerations in mind. Additionally, I have conferred with several experts in the field. After evaluating all the evidence and material of record, I am convinced that there is better than "an approximate balance of positive and negative evidence" on a series of Agent Orange related health effects.

It can, in my judgment, be concluded, with a very high degree of confidence, that it is at least as likely as not that the following are caused in humans by exposure to TCDD: non—Hodgkin's lymphoma, chloracne and other skin disorders, lip cancer, bone cancer, soft tissue sarcoma, birth defects, skin cancer, lung cancer, porphyria cutanea tarda and other liver disorders, Hodgkin's disease, hematopoietic diseases, multiple myeloma, neurological defects and auto—immune diseases and disorders.

In addition, I am most comfortable in concluding that it is at least as likely as not that liver cancer, nasal/pharyngeal/esophageal cancers, leukemia, malignant melanoma, kidney cancer, testicular cancer, pancreatic cancer, stomach cancer, prostate cancer, colon cancer, brain cancer, psychosocial effects, and gastrointestinal disease are service-- connected.

I have separated the two foregoing subsets subjectively only because there is somewhat more data to support the former than the latter. Nonetheless, immunological and toxicological theory supports both subsets and fully justifies, in my view, the inclusion of both subsets of the foregoing health effects in determining a service--connected injury.

Such a resolution of the embarrassingly prolonged Agent Orange controversy would be on the order of decisions to compensate U.S. soldiers who contracted cancer after exposure to radiation from atomic tests and U.S. soldiers involved, without their knowledge, in LSD experiments. With the scientific basis now available for it to be stated with confidence that it is at least as likely as not that various health effects are related to wartime exposure to Agent Orange, there is the opportunity finally to right a significant national wrong committed against our Vietnam Veterans.

RECOMENDATIONS

1. That the Secretary undertake a prompt reevaluation of the compensation decision impacting on Vietnam Veterans exposed to Agent Orange in light of accumulating scientific evidence that discredits earlier "findings" of an insufficient linkage between dioxin contaminants in Agent Orange and rare disease, such as cancer illnesses.
2. To the extent that the Secretary deems it necessary to use the Veterans' Advisory Committee on Environmental Hazards to assist in his reevaluation, the current members should be dismissed — having demonstrated a disturbing bias in their review to date of the scientific literature related to Agent Orange and dioxin -- and new members should be appointed in accordance with Section G of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act, including persons with recognized scientific and medical expertise in fields pertinent to understanding the health effects of exposure to dioxin. The Committee meeting currently scheduled for May 16th and May 17th should be cancelled.
3. That the Secretary in making his decision regarding Agent Orange compensation for Vietnam Veterans do so on the basis of his independent evaluation of the existing scientific and medical evidence on the health effects of exposure to dioxins, as cataloged and discussed in this Report, and in full recognition that the standard to be applied -- as mandated by both Congress and the courts -- requires the resolution of doubts as to a number of cancers linked to dioxins in favor of the Vietnam Veterans.

[Gulf War Vets Home Page.](http://www.gulfwarvets.com/ao.html)

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NORTH DAKOTA VETERANS COORDINATING COUNCIL

My name is John Jacobsen. I am a member of the Legislative Committee of the North Dakota Veterans Coordinating Council. The Coordinating Council is made up of 15 members, 3 from each of the five veterans' organizations in North Dakota.

American Legion

AMVETS

Disabled American Veterans

Veterans of Foreign Wars

Vietnam Veterans of America

It is the policy of the Coordinating Council to support legislation that will benefit the welfare of the members of the Armed Forces. The committee **MUST** concur totally, that is all 15 members must agree on the legislation to be supported or else it does not get the support.

In this case, I have been instructed to recommend to this legislative committee that a "DO PASS" on HB 1405 is supported as amended by the Veterans Coordinating Council.



STATE OF NORTH DAKOTA
OFFICE OF STATE TREASURER
Kelly L. Schmidt, State Treasurer

Attachment #1

TO: Senate GVA

FROM: Treasurer Kelly Schmidt

DATE: March 21, 2013

RE: HB 1405 - Amendment

In support of the Amendment which removes Section 2

Section 2 of Engrossed HB 1405 contains language

“Contributions and grants received for the purposes of these services are not to become part of the postwar trust fund, but are available to the department”

My office is in receipt of a letter dated May 18, 2010 from Mike Mullen, Assistant Attorney General which concludes funds may not be held separately within the Veteran’s Postwar Trust Fund. Deposits to the fund must be included as part of the principle.

(M)

**Testimony
House Bill 1405
Appropriation Committee
Senator Holmberg, Chairman
March 28, 2013 @ 10:15 AM**

Chairman Holmberg, members of the Appropriation Committee, my name is Richard Marcellais, Senator from District 9, Rolette County.

HB 1405 to provide an appropriation for the identification of and provision of services to veterans exposed to agent orange and to provide for a report to the budget section.

Our motto is: "Never again will one generation of veterans abandon another" We do not nor will not let any generation of veterans be treated the way we were when we returned home from our war. Vietnam Veterans of America (VVA) is a congressionally chartered veterans organization with about 60,000 members. There national headquarters is located in Silver Spring Md.

Our goals are to help veterans with the healthcare they were promised when they entered the service. Vietnam veterans are still being killed by the effects of "Agent Orange" there are 13 different cancers and diseases that are service connected to agent orange. PTSD (post traumatic stress disorder) a stigma of wars that has affected veterans of every war, is still huge. Nightmares, cold sweats, short temper, can't be in crowds, can't stand in lines, the list goes on and on if you suffer from any of these, you may need help. Suicides are killing veterans and active service members at a rate that is off the chart – we have to be able to talk about suicides instead of "sweeping them under the rug" and hoping they will go away on their own –THEY won't veterans of wars need help. Over 15,000 veterans from North Dakota served in Vietnam.

HB 1405 request that \$75,000 be transferred from the general fund to the Department of Veterans Affairs. So if you figure the math we are only asking for \$5 per veteran that served in Vietnam.

Thank you very much for the opportunity to appear in support of HB 1405. I will try an answer any questions the committee may have.

Attachment 1
1405
Conference
4-17-13 PM

HB 1405 Budget based on \$50,000 in appropriations

20 town hall meetings at \$1,000 per event:	\$20,000
Brochures and Flyers:	\$5,000
Transportation Costs:	\$20,000
Incidentals	\$5,000



Agent Orange Town Hall Meeting



Attachment 1
1405 conference
4-18-13
3:30pm

ORGANIZING

Form a team of 5 – 7 people. Assign each member of the team one priority task and one secondary task. This assures that no one is overwhelmed and that all objectives are met. Some tasks can be combined for efficiency. Example: Location, date & time.

TASKS

Before you do anything CONTACT Mokie Porter in the national office. 1-800-882-1316 ext. 146

- ✓ **Location** – choose a location in your area that is centrally located. This encourages the largest number of attendees.
- ✓ **Date and Time** – To maximize attendance choose a Saturday that has a minimum of competing activities in your community.
- ✓ **Speaker** – Find an individual who is familiar with the use and effects of Agent Orange. This person does not need to be a scientist but someone who has personal experience with Agent Orange. Mokie Porter at the national office can assist you with a list of knowledgeable people in your area, in addition to printed materials.
- ✓ **Moderator** – A moderator is an important element in the successful presentation of an Agent Orange Town Hall Meeting. A moderator can keep the dialogue moving and focused. This individual can also identify those who want to speak and maintain order.
- ✓ **Media** – Press Releases to all media (radio, television, print) are vital to ensuring a good turnout for the event. After the Press Release has been sent or delivered, make personal phone calls to the media (usually the Assignment Editor) and encourage them to assign a reporter/crew to the event. Don't forget to use "social networks" to spread the word. Facebook, Twitter, and the AgentOrangeZone blog are excellent resources for distribution of the information.
- ✓ **Audio/Visual** – Determine your needs and then secure the equipment such as PA, microphones, video camera, etc. Generally speaking, most venues for large groups will have their own A/V equipment but there is a cost associated with use. Check your chapter or state council for a member who is proficient with a video camera to save money.
- ✓ **Invite elected officials** – These are your representatives and they need to hear your concerns. Urge them or a senior member of their local staff to attend. You aren't able to visit their office in Washington, DC but they can and should be willing to be part of the Agent Orange Town Hall.
- ✓ **Sign-up sheet** – Everyone who attends should sign in with name, address, phone number and e-mail address. This provides a database of affected individuals and is a terrific way to continue providing information as it is developed.
- ✓ **Funding** – Nothing is free so you will need to find a sponsor or a location that is willing to "comp" the meeting space. If you choose to provide coffee or other refreshments understand that hotels typically charge \$40 - \$50 gallon for coffee in these environments. Enlist the support of your local chapter or state council to help underwrite these expenses.
- ✓ **Follow up** – One week after the event contact everyone who signs in and ask for their input on the event. Did it meet your expectations? Why or why not? Did you learn anything new? Use this resource to develop subsequent meetings and adapt the agenda to address these issues.



BIRTH DEFECTS RECOGNIZED BY THE VA AS CONNECTED TO AGENT ORANGE EXPOSURE

Spina Bifida: children born to either male or female Vietnam veterans; Spina Bifida Occulta not included

CHILDREN BORN TO FEMALE VIETNAM VETERANS

Achondroplasia: produces a type of dwarfism

Cleft Lip and Cleft Palate

Congenital Heart Disease

Congenital Talipes Equinovarus: clubfoot

Esophageal and Intestinal Atresia

Hallerman-Streiff Syndrome: premature small growth and other related defects

Hip Dysplasia

Hirschprung's Disease: congenital megacolon

Hydrocephalus Due to Aqueductal Stenosis

Hypospadias: abnormal opening in the urethra

Imperforate Anus

Neural Tube Defects

Poland Syndrome: webbed fingers

Pyloric Stenosis

Syndactyly: fused digits

Tracheoesophageal Fistula

Undescended Testicles

Williams Syndrome: thyroid defects

Not covered are conditions that are congenital malignant neoplasms, chromosomal disorders, or developmental disorders. In addition, conditions that do not result in permanent physical or mental disability are not covered.

NOTE: This list may change over time. Veterans may obtain more information on birth defects and should register all children and grandchildren with birth defects, including cancers and learning disabilities, online at www.birthdefects.org, maintained by the National Birth Defect Registry.

Hairy Cell Leukemia: a rare slow-growing chronic cancer of the blood called such because the leukemic lymphocytes have short, thin projections on their surfaces that look like hairs when examined under a microscope. Hairy cell leukemia is caused by an abnormal change in B lymphocytes (a type of white cell).

Hemangiosarcoma: a tumor derived from blood vessels and lining blood-filled spaces

Infantile Fibrosarcoma: a tumor formed as a child derived from fibrous connective tissue

Leiomyosarcoma: a tumor derived from smooth muscle

Liposarcoma: a tumor that may occur anywhere in the body consisting of irregular fat cells

Lymphangiosarcoma: a tumor derived from blood vessels

Lymphoma: a malignant tumor of the lymph nodes

Malignant Fibrous Histiocytoma: a type of tumor found in connective tissue

Malignant Giant Cell Tumor of the Tendon Sheath: a tumor found in the membrane of tendons

Malignant Glandular Schwannoma: a moderately firm malignant tumor in the glands caused by too many Schwann cells growing in a disorderly pattern

Malignant Glomus Tumor: a tumor found in the tiny nodes (glomuli) in the the nailbed, pads of fingers, toes, ears, hands, feet, and other body organs

Malignant Hemangiopericytoma: a tumor characterized by rapidly growing fat cells formed in blood vessels and lining blood-filled spaces

Malignant Mesenchymoma: a malignant tumor in the embryonic tissue or fluid

Malignant Shwannoma with Rhabdomyoblastic: a moderately firm malignant tumor found in skeletal muscle resulting from the rapid disorderly growth pattern of Schwann cells

Multiple Myeloma: cancer of specific bone marrow cells characterized by bone marrow tumors in the skeletal system

Proliferating Angioendotheliomatosis: increasing numbers of benign tumors in blood cells often causing skin discoloration

Rhabdomyosarcoma: tumors derived from skeletal muscle

Sarcoma: tumors arising in connective tissue, bone, cartilage, or muscle

Soft Tissue Sarcoma: a group of soft tissue cancers characterized by malignant tumors which develop on muscles and connective tissue, or in body fat

Synovial Sarcoma: a tumor found in the lubricating fluid surrounding joints and tendons

* Diseases with various time requirements

A current version of this guide can be viewed online at www.vva.org.

NOTE: This list may change over time. For official updates, see Title 38 Code of Federal Regulations Section 3.309(e) "Diseases associated with exposure to certain herbicide agents."