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Admitted to practice:  
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Hon. Robert Wilkie  
Secretary of Veterans Affairs  
810 Vermont Ave. NW  
Washington, DC 20420

Re: Request for Rulemaking 38 C.F.R. § 3.307 and M21-1 Manual

Dear Mr. Secretary:

Pursuant to 5 U.S.C. § 553(e), request that you issue rules recognizing the presumption of Agent Orange exposure to veterans serving on Guam from January 9, 1962 through December 31, 1980 and on Johnston Island from January 1, 1972 until September 30, 1977.

The recent GAO report was unable to confirm the presence of Agent Orange on the island although there are sworn affidavits to the effect that it was there. They did confirm that at least one ship carrying Agent Orange docked in Guam. Unfortunately there are no records showing whether any of the barrels were offloaded or whether the herbicide was ever shipped by other means to the island. Routine destruction protocols at the time resulted in many documents being destroyed.

As confirmed by other scientific studies, the GAO found that the chemical 2,4,5-T was present on Guam. A by-product of this chemical contained is the lethal 2,3,7,8-TCDD otherwise known as dioxin. This was present in commercial herbicides as well as the tactical herbicides which was widely used on Guam until at least 1980. This was confirmed by the Draft Environmental Impact Statement for the Disposal and Reuse of Surplus Navy Property Identified in the Guam Land Use Plan published in 1994.

Most of the discussion surrounding veteran exposure has centered on tactical herbicides. The inclusion of 2,4,5-T in commercial herbicides makes this a difference without distinction. It is the exposure to 2,4,5-T and its dioxin by-product, while on active duty in the armed forces, that is relevant. Whether that exposure came from Agent Orange, another tactical herbicide or a commercial herbicide is of no moment. The name of the agent is not the determining factor. It is the chemical composition. If military personnel were exposed to this chemical, and it appears that they were, any disease or disorder flowing from that chemical component should be service connected pursuant to 38 U.S.C. § 1113(b). While many veterans who served on Guam felt that they were exposed to Agent Orange, we must not obsess with that term. The important thing is that they were exposed to herbicides with toxic components. That is sufficient to trigger coverage.

Exposure on Johnston Island is even clearer. Johnston Island consists of four small uninhabited atolls covering 1.03 square miles in the Pacific Ocean. During and after World War II, it was the site of United States military facilities. It was downwind of the fallout from several atmospheric nuclear tests. Additionally, it was a storage site for Agent Orange drums between 1972 and 1977. The herbicide was disposed at sea during the summer of 1977. However, during the storage period, corrosion caused significant leakage which seeped into the grounds. Military personnel stationed on the island were exposed to the leakage during the storage and disposal phases. Between 1990 and 1993 incineration of chemical weapons occurred on the island. Significant cleanup occurred in 2002. The last military left the island in 2004. Since then it has been designated a wildlife refuge.

While only a small number of veterans were stationed on this atoll, contamination was rampant. There is no question, scientific or otherwise, concerning the island and its environmental toxicity. A presumption of exposure to herbicide would affect only a small number of people. MVA estimates approximately 2000 personnel were stationed there during the storage period with decreasing number thereafter.

MVA suggests that the Secretary can and should use his rule making authority to provide a presumption of exposure to herbicides on Guam and Johnston Island as delineated in the attached proposal

Sincerely,



John B. Wells  
Commander USN (Retired)  
Executive Director

**Proposed Additions to 38 C.F.R. § 3.307**

3.307(a)(6)(vi)

A veteran who, during active military, naval, or air service, served on the island of Guam, or within the harbors and territorial seas of that island during the period beginning on January 9, 1962, and ending on July 31, 1980, shall be presumed to have been exposed during such service to a herbicide agent, within the scope of this Part, unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service.

3.307(a)(6)(vii)

A veteran who, during active military, naval, or air service, served on Johnston atoll or on a ship that called at that atoll during the period beginning on January 1, 1972, and ending on September 30, 1977, shall be presumed to have been exposed during such service to a herbicide agent, within the scope of this Part, unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service.