



Vietnam Veterans of America, Inc.  
1224 M Street, NW  
Washington, DC 20005-5183

(202) 628-2700  
(202) 628-5880 fax

In Service to America

August 26, 1993

Dr. Susan H. Mather, Chair  
NAS Agent Orange Report Review Panel  
ACMD for Environmental Medicine and  
Public Health  
Department of Veterans Affairs

Dear Dr. Mather:

This letter is intended to offer comments on the direction we believe Secretary Brown should take in responding to the findings of the NAS Agent Orange Review Panel. First of all we are heartened by the immediate actions already taken by Secretary Brown to authorize disability compensation for Hodgkins disease and Porphyria Cutanea Tarda in addition to those diseases already authorized for compensation. The steps he has taken to crossmatch the Agent Orange Registry with individuals who may or may not have filed a claim for either of these disabilities but who are known by the VA to be afflicted by these added diseases are also encouraging.

As we have stated in the August 4, 1993 hearing of the House Committee on Veterans Affairs, the Secretary should also authorize for disability compensation purposes those diseases identified by the NAS panel in the category it delineated as diseases with "limited/suggestive" evidence of an association between exposure to herbicides and disease. These are Respiratory cancers (lung, larynx and trachea), prostate cancer and multiple myeloma. These diseases fall within the language, meaning and intent of P.L. 102-4 such that the Secretary can and should authorize disability compensation since there is as much evidence as not of an association between exposure and these diseases.

Having said this, we are keenly aware of the VA's historic position of insisting on establishment of a clear cause/effect relationship between exposure and disease prior to authorizing compensation. We are also acutely suspicious of residual biases on the part of senior career VA officials who have been responsible for authoring this historic VA position and who we believe still

hold it in spite of subsequently-resolved Nehmer litigation and the plain language and intent of PL. 102-4. The VA's historic posture on cause/effect relationships has been laid to rest by litigation and statue as untenable, but we fear the continuation of this bias and its possible interjection into the decision options presented to the Secretary.

From the perspective of Vietnam Veterans of America -- an organization having relentlessly and often successfully pressed for resolution of the Agent Orange issue since the beginning by petitioning the VA, the Congress and courts -- 60 days are more than what are needed for reaching a conclusion that compensation should be available for the diseases in the "limited suggestive" category outlined by the NAS report. The 60 days being consumed by the VA for purposes of further evaluation of the NAS work should properly be used to determine how many and specifically which of the diseases in the "inadequate/insufficient to determine" and "limited/suggestive of no association" should be authorized for compensation.

Moreover, we strongly recommend that the decisions made by Secretary Brown at the conclusion of the 60 day evaluation period reflect a dispassionate assessment by his NAS Agent Orange Report Review Panel. A dispassionate assessment of those findings made by the NAS should yield decisions to compensate all those diseases most closely fitting the authorizing criteria for awarding disability compensation set forth by the statute and its intent as articulated by the authors of the enabling legislation.

In this connection, we urge your careful attention to the analysis supplied to VA General Council Mary Lou Keener on August 24, by Mark Venuti of the National Veterans Legal Services Project (NVLSP). In this analysis the requirements of the law and the discretion conferred upon the Secretary by the law are meshed with the findings in the NAS report. In particular we commend to your attention NVLSP's discussion of "credible evidence" and what factors the law instructs the Secretary to take into consideration. The NVLSP analysis in our view accurately construes what Congress intended the Secretary to consider in making decisions on disability compensation for additional diseases. Under the circumstances we believe the metal of the Secretary's Brown's panel and ultimately that of the Secretary's decisions will be seen in the depth of analysis accompanying those decisions. If, for example, the VA makes decisions based on interpretation of the statute and its intent differing from that of NVLSP, a detailed justification of VA's interpretation of the law must accompany the decisions made. To do less would ignore Secretary Brown's stated policy of taking the input of the veterans community seriously into consideration.

In conclusion, please accept our apologies for the lateness of these comments. The NAS report was released on the eve of our national convention, and the Secretary's first meeting of August 5, with the veterans groups took place during the period of our national convention in Norfolk, Virginia and we learned only yesterday of an invitation to present our recommendations in writing.

Sincerely,



Paul S. Egan  
Executive Director

cc: Mary Lou Keener