

April 27, 2009

Support our Agent Orange-Exposed Veterans
Become a Co-sponsor of the Agent Orange Equity Act of 2009, H.R. 2254!

Dear Colleague,

On August 16, 2006, the United States Court of Appeals for Veterans Claims (CAVC), in *Haas v. Peake*, concluded that the Department of Veterans Affairs (DVA) could not preclude a veteran who served on a ship or in an aircraft from the presumption of service connection for illnesses arising out of exposure to the herbicide and defoliant referred to as Agent Orange (AO). In response to the CAVC decision, the DVA filed an appeal with the U.S. Court of Appeals for the Federal Circuit on November 7, 2007.

After hearing oral arguments, the Federal Circuit Court issued a 2-1 panel decision on May 8, 2008 reversing the CAVC's decision in *Haas* and siding with the DVA's arbitrary regulations to require a "foot on land" occurrence in order to qualify for presumption of service connection for diseases and illnesses identified in the statute for exposure to Agent Orange during service. After denial for a rehearing by the Federal Circuit Court, Mr. Haas filed a petition for a writ of certiorari with the United States Supreme Court. On January 21, 2009, the Supreme Court denied Mr. Haas's petition and let stand the Federal Circuit's 2008 decision. This ruling perpetuates VA's misguided policy decision and denies many combat veterans, their families and survivors benefits they rightfully deserve for exposure to Agent Orange.

I support the CAVC's initial ruling because it reflects Congress' original intent to provide these veterans with benefits based on their exposure to Agent Orange and other deadly herbicides regardless of arbitrary geographic line drawing. In passing the Agent Orange related laws in 1984 and 1991, Congress made clear that it wanted to ensure that a fair and independent system was established to determine the relationship between herbicide exposure and the manifestation of certain diseases in our veterans. Congress also was concerned that exposure to Agent Orange could not be determined by tracking troop movements.

As such, my bill, the Agent Orange Equity Act of 2009 (H.R. 6562 in the 110th), would expand the eligibility for presumptive conditions to combat veterans of the Vietnam War to include Blue Water veterans, those who received the Vietnam Service Medal or the Vietnam Campaign Medal or served on Johnston Island during a specified period when undisputed evidence shows 250,000 gallons of Agent Orange leaked and contaminated the scarce water supply. Before 2002, VA relied on veterans providing evidence of receipt of the Vietnam Service Medal to allow veterans to be presumptively service-connected for diseases identified as being related to Agent-Orange exposure. Against public outcry, VA unjustifiably changed its regulations. My bill would reinstate this

practice by requiring VA to go back to this fair way of determining service-connection and equitably adjudicating these claims.

These are benefits that these veterans have earned, yet the DVA illogically refuses to acknowledge. As the dissenting judge in *Haas* concluded, “. . . VA’s refusal to apply the presumption of 38 U.S.C. 1116(a) to Haas and others similarly situated is inconsistent with the intent of the statute and . . . is based upon an unreasonable interpretation of the . . . regulation. . . .” I agree with this analysis wholeheartedly.

Time is running out for these Vietnam veterans and their families. Many have died, but several million of these veterans are still with us afflicted and dying from their Agent Orange related diseases, uncompensated for their sacrifice. There is still a chance for us to meet our obligations for these noble veterans. Please support equity for our combat veterans of Vietnam exposed to this toxic and deadly cocktail of herbicides by becoming an original co-sponsor of my bill. To be added as a cosponsor, please contact me or call or e-mail Megan Williams at x53608 or at megan.williams@mail.house.gov.

Sincerely,

BOB FILNER
Chairman
House Committee on Veterans’ Affairs
<http://veterans.house.gov>