

United States Senate

WASHINGTON, DC 20510

February 4, 2015

Mr. Robert McDonald
Secretary
United States Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

Dear Secretary McDonald,

We write to bring your attention to the Institute of Medicine's ("IOM") January 9, 2015, report on exposure to Agent Orange by veterans who served on Fairchild UC-123 *Provider* ("C-123") aircraft post-Vietnam. The report, commissioned by the Department of Veterans Affairs ("VA"), stated "with confidence" that these veterans were exposed to potentially dangerous levels of dioxin. Given IOM's recent finding, we ask that you use your authority to provide a presumption of service connection for C-123 veterans who flew or worked on planes that carried and sprayed Agent Orange and to revisit past and existing related claims.

During the Vietnam War's Operation Ranch Hand, the Air Force used approximately 30 C-123s to spray Agent Orange and other herbicides over Vietnam. Though never properly decontaminated, these planes remained in the fleet until 1982. An estimated 1500-2100 personnel who served on these planes were the subject of IOM's recent report. It found, "with confidence," that these personnel were exposed to toxic levels of Agent Orange and other herbicides as a result of the failure to adequately sterilize the aircraft.

Despite (1) multiple Air Force reports going back to 1979 showing that the C-123s were contaminated, (2) numerous expert opinions from inside and outside the government suggesting these veterans were exposed to Agent Orange and other toxins, and (3) a judge's order stopping the resale of these C-123s because the planes were a "danger to public health," the VA to-date has doggedly insisted there is no possibility that post-Vietnam era C-123 veterans might have been exposed to dangerous levels of Agent Orange. It also has denied all but one of the C-123 veterans' claims for benefits.

The VA's position has been disappointing. In a June 7, 2013, response to an inquiry from Senator Richard Burr, then-Secretary of Veterans Affairs Eric Shinseki provided a fact sheet that concluded, "(1) any residual TCDD (dioxin) [the carcinogenic element in Agent Orange herbicide] in the Operation Ranch Hand aircraft had solidified and is unable to enter the human body in any significant amount, and (2) there is no scientific evidence that a Veteran's presence in an aircraft containing solidified TCDD can lead to adverse long-term health effects." Further investigation was impossible due to the fact that the Air Force destroyed all the remaining C-123s before additional testing could be conducted.

Because of mounting independent scientific evidence concluding that these veterans were exposed to dangerous levels of dioxin, the VA ultimately contracted with IOM to review the available data. On January 9, 2015, IOM issued its final report. The IOM committee concluded that C-123 flight crews “*were exposed* when working in the ORH C-123s and so *experience some increase in their risk* of a variety of adverse [health] responses.” (Emphasis in original). The IOM’s report also “*emphatically*” refuted the VA’s long-standing argument that residual TCDD in the C-123s posed no risk for veterans, noting instead that it is “accepted in the field of exposure science” that the TCDD contamination “persist[ed] long after the[] [aircrafts’] use” during the Vietnam War, and that Air Force reservists serving on those planes were exposed to TCDD and herbicides “through multiple routes.”

We hope IOM’s findings will allow C-123 veterans finally to receive the benefits they have earned. However, our offices remain concerned about the VA’s ability to provide these individuals with consistent, fair access to critical services. For instance, the VA has repeatedly told some of our offices that it did not have a “blanket policy” of denying C-123 veterans’ claims. Each claim, they assured us, was “evaluated on a case-by-case basis to determine if the available evidence support[ed] a service connection on a facts-found basis.” However, at least one VA denial letter stated, “The VA and DOD have specifically provided guidance that such secondary [Agent Orange] exposure cannot be granted service connection, to include working on planes that carried or sprayed . . . the herbicide” This discrepancy raises questions about the accuracy and validity of information provided to some of our offices, and the knowledge within the VA about VA policy towards these veterans. This is why we are bringing the IOM’s findings to your attention.

It is our desire to see that C-123 veterans who suffer today because of service-related exposure to Agent Orange receive the help they need. To speed the award of benefits, we ask that you provide a presumption of service connection for these veterans. Further, we ask that the VA immediately review all claims, including those that have been denied and are under appeal, made by C-123 veterans for post-Vietnam exposure to Agent Orange. Finally, we ask that the VA proactively cooperate with the Department of Defense to contact all veterans who served on C-123s used to spray Agent Orange and other covered herbicides during the war and notify them that they may be eligible for benefits.

We thank you for your attention to this matter. We look forward to working with you to make sure the C-123 vets receive the benefits they deserve.

Sincerely,



Jeffrey A. Merkley
United States Senator



Richard Burr
United States Senator



Ron Wyden
United States Senator



Michael Bennet
United States Senator



Elizabeth Warren
United States Senator



Richard Blumenthal
United States Senator