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United States: Vietnam War veterans fight Agent Orange profiteers

Tuesday 7 November 2006, by [CHENG Eva](#) (Date first published: 4 November 2006).

Many of the 2.6 million US soldiers who served in the Vietnam War have contracted cancer and a cocktail of serious health problems that they believe to be directly linked to their exposure to the dioxin-contaminated defoliant Agent Orange. The US military sprayed Agent Orange heavily in some parts of Vietnam for 10 years during the war.

These soldiers were exposed unknowingly while executing US military orders to spray and dump the chemical or operate in an environment contaminated by it. Evidence has emerged since the end of the war that the US government was fully aware of the extreme toxicity of Agent Orange but chose not to warn its soldiers.

A November 1990 US Veteran Dispatch staff report gives a sense of just how in the dark the US soldiers in Vietnam were: “[The US ground troops] lived in the chemical mist of rainbow herbicides [Agent Orange and its family of similar herbicides]. They slept with it, drank it in their water, ate it in their food and breathed it when it dropped out of the air in a fine, white pungent mist ... Some ... used the empty Agent Orange drum for barbecue pits. Others stored watermelons and potatoes in them. Still others rigged the residue laden drum for showers.”

An encrypted warning came belatedly in 1969, after the US had sprayed Agent Orange in Vietnam for more than eight years. In an October 23 message that year from Fort Detrick, Maryland, the troops in Vietnam were urged to clean the drum containing the herbicides, particularly those containing Agent Orange. The message stated: “Using the [Agent] Orange drums for storing petroleum products without thoroughly cleaning them can result in creation of an orange aerosol when the contaminated petroleum are consumed in internal combustion engine.” Yet widespread re-use of herbicide drums by US soldiers in Vietnam to carry petrol meant that dioxin-contaminated exhaust pumped out routinely by trucks and other vehicles spread the deadly chemical far beyond the jungles.

Hundreds of thousands of Vietnam War veterans and their families have been seeking compensation to alleviate their health problems, but Washington has ignored their plea, hiding behind “sovereign immunity”. A few dozen chemical companies that supplied the chemical to the US Army have also denied responsibility, claiming that they only followed government orders.

However, the corporate profiteers now face legal challenges initiated by the US Vietnam War veterans and the Vietnamese victims over the companies’ role in devastating the lives and health of millions of people and their offspring. Dioxin is notorious for inflicting birth defects in second, or even third generations, most extensively in Vietnam where pockets of serious contamination in the environment often catch its victims unaware.

The first group of cases were initiated formally by two US veterans and are test cases that may

affect tens of thousands of former US soldiers in similar situations. Similarly, the second action — now in appeal stage — affects an estimated 4 million victims in Vietnam, though launched in the name of a few individuals. Both groups of cases are presided over by senior US district judge Jack Weinstein, who heard the contending arguments earlier this year and is expected to present his judgement shortly.

The Vietnamese victims first initiated the legal action in early 2004, but their case was dismissed by Weinstein without even a chance to present their argument.

The US veterans' case has a longer history. Since 1978, US veterans have initiated hundreds of individual and class actions against the chemical companies — three-dozen notorious corporate sharks such as Dow Chemical, Monsanto, Diamond Shamrock and Hercules. These cases were gradually consolidated into a class action in 1982 for trial in May 1984. In a surprise twist a few hours before the trial, the chemical companies agreed to a US\$180 million settlement on the basis of not admitting responsibility. This was meant to cover all veteran complainants once and forever! After some \$9 million of lawyers' fees, what was left only paid minor compensation to some 50,000 veterans who were able to demonstrate they were suffering from "total disability" before the funds dried up in 1994.

Some Agent Orange-triggered illnesses can take decades to become evident and many veterans weren't aware of the 1982 class action when it was underway. Many veterans tried to seek legal redress against the chemical companies after 1994 but were routinely dismissed by the court.

Then came the cases of Joe Isaacson and Daniel Stephenson, both US veterans in the Vietnam War who discovered they had contracted cancer in the late 1990s. An Eastern District Court ruled against the case going ahead, but this decision was reversed in November 2001 by the 2nd Circuit Court. The chemical companies appealed to the Supreme Court in February 2003 but were greeted by a rare 4-4 tied decision out of a nine-judge panel, allowing the 2nd Circuit Court decision to stand.

The ninth judge, John Paul Stevens, sat the case out without providing a reason. His son, a Vietnam War veteran, died in 1996 due to cancer.

Apart from denying responsibility, Agent Orange manufacturers for the US military also, in the face of the victims' challenge, routinely denied that dioxin was harmful to humans. But the November 1990 US Veteran Dispatch staff report revealed that Dow Chemical, even back in the 1960s, had suppressed information about the toxic hazards of dioxin from both the government and the public.

The report quoted a February 22, 1965 internal company memo that recorded a meeting of 13 executives who discussed the potential hazards of dioxin. It also quoted records of a March 1965 meeting between major US chemical companies to discuss the toxicity issue and a June 1965 Dow memo that contained warnings of the "exceptional toxicity" of dioxin and its ability to inflict systemic injury. This memo decreed that "under no circumstances" should the information be leaked outside Dow.

There is also strong evidence from as early as 1967 that the US government was aware of the toxic power of dioxin. James Clary, a US Air Force scientist in Vietnam closely involved in the Agent Orange operation, wrote in 1988 to a member of Congress: "[We] were aware of the potential for damage due to dioxin contamination in the herbicide. We were even aware that the 'military' 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."

Clary added: "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." It didn't and still doesn't.

P.S.

* From: International News, Green Left Weekly issue #689 8 November 2006.