United States Senate
WASHINGTON, DC 20510-4504

December 6, 2023

The Honorable Denis McDonough
Secretary
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

Dear Secretary McDonough,

As you know, Congress passed The PACT Act last year, providing a comprehensive expansion of VA health care and benefits to Veterans exposed to toxic substances. Although we can never fully compensate for the harm caused to veterans exposed to toxins in combat, we are grateful for your hard work serving the needs of our nation's veterans who served our country with honor and distinction. While the PACT Act was a crucial first step in getting health care and benefits to veterans who need it most, we are concerned that many veterans with legitimate claims to service-related illnesses are still denied the benefits they are owed.

It has come to our attention that thousands of veteran Nuclear Weapons Technicians (NWTs), exposed to occupational radiation, who served in close physical proximity to radiological material in nuclear weapons maintenance bays, storage structures, compartments, rooms, torpedo rooms, vaults and other areas where live nuclear weapons were stored, maintained, tested, inspected, or transported, during the Cold War period (September 2, 1945 to December 26, 1991)[1] have developed chronic cancers as a result of their Intrinsic Radiation (INRAD) exposure to ionizing radiation sometimes referred to as "Occupational Exposure."[2] Currently, these veterans are having their claims blanketly denied due to the VA's adjudication process. A Department of Veterans Affairs Memorandum from June 2017 states that all claims relating to occupational radiation exposure can be ruled "not likely" unless the claim file includes a service document or letter indicating at least 100 mSv (10 rem) of recorded radiation exposure.[3]

This method of adjudication needs to be revised for three reasons. First, due to improper filing and lost records, many former NWTs do not have access to their DD form 1141 (Record of Occupational Exposure to Ionizing Radiation). Secondly, DD form 1141 only records exposure readings captured by a servicemember's Thermoluminescent Dosimeter (TLD), not accounting for instances when the TLD was faulty, not worn, or a servicemember's leadership didn't record a reading on the DD form 1141. Finally, the service members' TLD only measures exposure to

[1] 1998 National Defense Authorization Act

[2] VA Memorandum, June 21, 2017. Review of Compensation Claims from Veterans Exposed to "Occupational Radiation."

[3] Ibid

gamma, x-ray, and beta radiation.[4] The service members' TLD did not detect exposure to neutron radiation or exposure to alpha particles through inhalation or ingestion.

According to the Environmental Protection Agency (EPA), "If alpha-emitters are inhaled, swallowed, or get into the body through a cut, the alpha particles can damage sensitive living tissue. The way these large, heavy particles cause damage makes them more dangerous than other types of radiation. The ionizations they cause are very close together - they can release all their energy in a few cells. This results in more severe damage to cells and DNA."[5]

Additionally, the DOD indicates that "In most cases… neutrons emitted from shielded sources are comparable with natural background readings at distances greater than 10 meters."[6] However, "shielding neutron radiation requires thick layers of materials rich in hydrogen, such as water or concrete."[7] During the Cold War period, NWTs frequently worked in close proximity to live nuclear weapons without radiation dose monitoring or appropriate shielding. As such, it is impossible to say with certainty the amount of radiation they were exposed to. However, there can be no doubt that many of their daily tasks, including physical handling of radioactive items, cleaning of loose radioactive materials, and removal of radioactive particles, resulted in exposure, inhalation, and absorption of hazardous materials due to work conducted well within the 10-meter distance required to meet background reading levels. According to the inverse square law, exposures from a single point of emission at a distance of twelve inches would be 1,024 times greater than exposure at a distance of 10-meters from the source of emission. Further, during the Cold War period, DOD had little guidance or safety protocols to limit exposure via time, distance, and shielding. DOD didn't begin the process of establishing As Low as Reasonably Achievable (ALARA) standards until the publication of DOD Instruction 6055.08 on March 31, 1989,[8] with the first branch of the military publishing ALARA standards and procedures on October 29, 1990.[9]

Due to the hazardous nature of the tasks NWTs conducted, poor data collection, and lack of sufficient safety protocols, we can conclude that NWTs were likely exposed to ionizing radiation at levels many times greater than records and current measurement standards for VA benefits account for. And yet, numerous veteran claims have been denied based on service records that showed no exposure to ionizing radiation despite verified records of nuclear weapons handling.

It is morally unacceptable to deny veterans benefits based on these unreliable and incomplete records, given what we now know about radiation exposure that we didn't during the Cold War era. To our minds, we have no choice but to presume that veterans who developed a disease outlined in 38 CFR §3.309 (d)(2) did so as a result of their military service.

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[4] Alexander, George A. 2016. Radiation Decontamination, *Ciottone's Disaster Medicine (Second Edition)*, Pages 519-523. https://www.sciencedirect.com/science/article/pii/B9780323286657000844

[5] "Radiation Basics | US EPA." 2023. US EPA. July 18, 2023. https://www.epa.gov/radiation/radiation-basics#:~:text=Alpha%20particles%20pose%20no%20direct,they%20are%20inhaled%20or%20swallowed.

[6] DOD Nuclear Matters Handbook 2020 (revised) Ch. 11 pp.134

[7] Ibid

[8] DOD Instruction 6055.08, March 31, 1989

[9] AFR 122-28, October 29, 1990

In response to a request for information dated October 11, 2023, VA indicated that it is "currently reviewing development requirements under 38 CFR §3.309(d) and §3.311 to identify opportunities for process improvement and to mitigate unnecessary barriers to granting disability compensation benefits for radiation-exposed Veterans." Additionally, between 2009 and 2016 VA processed 2749 claims regarding ionizing radiation exposure. Of those, 66% resulted in "not likely" opinions indicating the affected population of veterans left out by existing policy is small and would have a minimal impact on VAs capacity to provide necessary care.[10]

Last year, Congress gave you the authority in Public Law 117-168 §202(a) to establish presumptions of service connections for toxic-exposed veterans,[11] so, to ensure that past, current, and future claims relating to occupational radiation exposure by Cold War-era NWTs are rightfully granted, we urge you to exercise your authority under Public Law 117-168 §202(a) to establish a presumption of service connection based on toxic exposer to iodizing radiation for NWT's who served during the Cold War period as defined by the 1998 National Defense Authorization Act.[12] Further we urge you to engage in rulemaking to include NWTs who served during the Cold War period as a "radiation risk activity" under 38 CFR §3.309(d).

We would be happy to work with you to find a solution to this issue and ensure that all veterans who have been exposed to toxins, including radiation, receive the benefits they need. If you have any questions, please reach out to [masked by TSOSP]@sanders.senate.gov.

Sincerely,

Bernard Sanders
United States Senator

Peter Welch
United States Senator

Mazie K. Hirono
United States Senator

[10] VA Memorandum, June 21, 2017. Review of Compensation Claims from Veterans Exposed to "Occupational Radiation."

[11] Public Law 117-168

[12] 1998 National Defense Authorization Act