



National Service & Legislative Headquarters
807 Maine Avenue SW
Washington, DC 20024-2410
tel 202-554-3501
fax 202-554-3581

**STATEMENT OF
SHANE L. LIERMANN
DEPUTY NATIONAL LEGISLATIVE DIRECTOR
OF THE DISABLED AMERICAN VETERANS
FOR THE SENATE COMMITTEE ON VETERANS' AFFAIRS
MARCH 29, 2022**

Chairman Tester, Ranking Member Moran, and Members of the Committee:

On behalf of DAV's (Disabled American Veterans) more than 1 million members, thank you for inviting us to provide testimony for the Senate Veterans' Affairs Committee hearing on the impact of the Honoring our Promise to Address Comprehensive Toxics Act of 2021 (PACT) on veterans and Department of Veterans Affairs (VA) operations.

It is poignant that today, March 29, on National Vietnam War Veterans Day, we are discussing toxic exposure legislation that will impact veterans exposed to Agent Orange. DAV strongly supports the Honoring Our PACT Act and we recognize the service and sacrifices of Vietnam veterans their families and survivors.

Mr. Chairman, we are at the precipice of a monumental event, solving the puzzle of comprehensive toxic exposure legislation for past, current and future generations of veterans exposed to environmental hazards. Collectively, we must act now as too many veterans are suffering from life-threatening illnesses, struggling with access to VA health care and benefits, and unsuccessfully navigating complex and uncaring exposure and presumptive processes.

That is why today's hearing on the Honoring Our PACT Act is so important. Our testimony will address toxic exposures' toll on veterans and their families, the timelines of previous toxic exposure legislation and actions, our recommendations to strengthen the Honoring Our PACT Act and our suggestions for VA to mitigate the increased workloads.

THE TOLL ON VETERANS AND THEIR FAMILIES

To fulfill DAV's service mission to America's injured and ill veterans and the families who care for them, DAV directly employs a corps of National Service Officers (NSOs), all of whom are themselves wartime service-connected disabled veterans, at VA regional offices (VARO) as well as other VA facilities throughout the nation. As DAV represents more than 1 million veterans and family members, we are unmistakably aware that the toll toxic exposures have had on veterans, their health, their livelihood and families, is incalculable. Below are two examples of veterans DAV represented from

two different generations, but both of whom faced great difficulty proving their toxic exposure claims for benefits.

Burn Pits

Ashley McNorrill served the United States Army as a JAG Officer and in 2005 deployed to Iraq and was assigned to Camp Victory in Baghdad. Ashley and husband David had married in 2008. Not long after, they looked to expand their family, but Ashley found herself experiencing unexplained pain and fertility problems.

In 2011, Ms. McNorrill was beginning to have severe pains in her abdomen and on her right side under her rib cage. The cause was initially thought to be endometriosis, a relatively common health condition among women that causes uterine tissue to grow outside the uterus. Doctors recommended she undergo a hysterectomy. The McNorrills then pursued adoption as a path to parenthood, and on December 2, 2011, they welcomed newborn twin boys, Cole and Fletcher, to their family.

In February 2012, when the twins were only 2 months old, Ms. McNorrill went in for a hysterectomy. During the procedure, doctors found evidence of cancer. She was ultimately diagnosed with stage 4 appendiceal cancer, a rare form of the disease occurring in only one or two cases out of 1 million.

A fellow veteran advised her to investigate toxic exposures from burn pits like the large one at Camp Victory. In 2014, the McNorrills met with a DAV National Service Officer in South Carolina to find out what options were available. It had been two years since she had become ill, and her condition was worsening. With medical bills adding up and their young children requiring care, the family was struggling financially.

DAV proceeded to piece together Ms. McNorrill's VA disability claim, pulling together evidence from her deployment to Camp Victory and providing Ashley and doctors a list of toxins from burn pits that VA no longer has posted on its website and can only be found in its Adjudication Manual.

In her claim, she noted, "there was a burn pit just a few feet across from the [dining facility], and I remember that oftentimes, while [I was] waiting in line, someone would be manning the burn pit for hours, burning whatever it was they were burning." With DAV's assistance in formulating a request for medical opinion, she was able to obtain a private medical opinion linking her appendiceal cancer to the toxins emitted from the burn pit at Camp Victory.

After a lengthy claims and appeals process, VA ultimately granted service connection for her cancer and established a permanent and total VA disability rating. Shortly after receiving her decision, in March 2016, Ms. McNorrill died due to the cancer, leaving behind her husband to raise their two boys alone.

Agent Orange

Theodore Kalagian, of Tennessee, honorably served the United States Army in Vietnam and was discharged in 1973. When he reached out to DAV in 2014, Mr. Kalagian was struggling with his multiple diseases related to Agent Orange and facing a reduction in his benefits.

Mr. Kalagian filed a claim for bladder cancer due to Agent Orange in 2007 and VA denied it quickly as it was not a presumptive disease. He later developed diabetes mellitus, ischemic heart disease, and hypertension. VA also denied his hypertension as it is not a recognized presumptive disease. In 2014, when he reached out to DAV, VA was proposing to reduce the rating for the severity of his ischemic heart disease. With DAV's assistance he was able to maintain his benefits. In 2017, the veteran again filed a claim for his bladder cancer, was denied, and filed a Supplemental Claim. During this time, he developed prostate cancer, another presumptive disease for Agent Orange. With DAV assistance, his claim for prostate cancer was subsequently granted.

Right now, this Vietnam veteran is faced with two cancers, ischemic heart disease and diabetes, all due to his Agent Orange exposure. In addition he has hypertension, which VA has refused to acknowledge as a presumptive disease to Agent Orange, although it has the highest level of positive scientific association.

These veterans and thousands like them, have been suffering far too long without their earned benefits and access to VA health care. Unfortunately, given the history of military toxic exposures and our country's often excessively slow reactions, it has become necessary to use presumptions to ensure we provide justice to veterans and their families. But even the process of creating presumptions has taken far too long, demonstrating the need to adopt comprehensive legislation and a new framework now.

TIME IS NOT ON VETERANS' SIDE

Even prior to World War I, veterans have been exposed to hazardous environments. We must revisit these exposures and the time it took our nation to react so that we do not continue to repeat these tragedies and truly appreciate the moment we have before us.

Mustard Gas and Lewisite

During World War II (WWII), both the Axis and Allies produced millions of tons of chemical weapons and had made massive preparations for their use. The U.S. established secret research programs to develop better chemical and toxic weapons and better methods of protecting against these poisons. At the end of WWII, over 60,000 U.S. service members had been used as human test subjects. At least 4,000 of these active military service members had participated in tests conducted with high concentrations of mustard agents or Lewisite in gas chambers or in field exercises over contaminated ground areas.

Not until 1991, over **70 years** after mustard gas use in WWI and over **50 years** after the secret testing in WWII, did the VA provide guidelines for establishing claims related to these exposures.

Radiation Exposure

Some of the first atomic veterans were service members who were sent to Hiroshima and Nagasaki to assist in clean-up. Approximately 255,000 troops were involved in the occupation of Hiroshima and Nagasaki. From 1946 to 1962, the United States conducted about 200 atmospheric nuclear tests. Approximately 400,000 service members were present during these atmospheric tests, whether as witnesses to the tests themselves or as post-test cleanup crews. Sworn to secrecy, many of these service members never told anyone about what they witnessed. If they told anyone that they were involved in these nuclear tests, they could have been fined up to \$10,000 and tried for treason.

On October 24, 1984, **nearly 40 years** after the exposure, the Veterans' Dioxin and Radiation Exposure Compensation Standards Act was enacted to ensure compensation to veterans and their survivors for disabilities or deaths related to exposure to ionizing radiation during atmospheric nuclear testing or the occupation of Hiroshima and Nagasaki. In May 1988, new statutory provisions expanded compensation on a presumptive basis for other radiation-exposed veterans who developed specific diseases, over **25 years** after the last exposures from the atmospheric testing.

However, not all veterans who have been exposed to radiation in the line of duty have the same recognition. That's why the Honoring Our PACT Act would expand the recognized radiation-risk activities for those veterans who participated in cleanup operations at Palomares, Spain and Thule, Greenland, nearly **60 years** after exposure and Enewetak Atoll, **40 years** after the exposure.

Agent Orange

The U.S. program, code-named Operation Ranch Hand, sprayed more than 20 million gallons of various herbicides over Vietnam, Cambodia and Laos from 1961 to 1971. At the time of the spraying, 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD), the most toxic form of dioxin, was an unintended contaminant generated during the production of 2,4,5-T and so was present in the herbicide known as Agent Orange.

After their service, many Vietnam veterans were developing multiple illnesses and fatal diseases. It was not until the Veterans' Dioxin and Radiation Exposure Compensation Standards Act of 1984 that VA recognized presumptive service connection for an illness related to Agent Orange. In 1991, the Agent Orange Act became public law, **nearly 30 years** after the use of Agent Orange began and 20 years after the end of spraying.

Unfortunately, not all of the harmful diseases resulting from Agent Orange exposure nor all the locations of exposures have been covered yet. The Honoring Our PACT Act would add hypertension and monoclonal gammopathy of undetermined significance (MGUS) as presumptive diseases. Including hypertension is an immensely vital provision. This is in concurrence with the National Academies of Science, Engineering and Medicine report of 2018 that assigns the highest level of positive association between hypertension and Agent Orange exposure.

Veterans exposed to Agent Orange have an increased risk of developing hypertension more so than veterans not exposed and more so than the civilian population. Studies have shown that Agent Orange exposed veterans develop hypertension at an earlier age, at a higher rate and at a more serious degree than those not exposed. Plainly speaking, these veterans are placed at an increased risk of negative health impacts and death due to hypertension than those never exposed.

Additionally, the bill would expand conceded Agent Orange exposure in Thailand, Laos, Cambodia, Guam, American Samoa and Johnston Atoll. All of these actions would come **over 50 years** after the first exposures.

Contaminated Water at Camp Lejeune

From the 1950s through the 1980s, people living or working at the U.S. Marine Corps Base Camp Lejeune, North Carolina, were exposed to drinking water contaminated with industrial solvents, benzene, and other chemicals. The Caring for Camp Lejeune Families Act of 2012 recognized exposure and treatment for veterans and family members for 15 specific diseases.

In 2017, by regulation, the VA Secretary established eight presumptive diseases for active duty, reservists, and National Guard members who were stationed at Camp Lejeune for 30 aggregate days. These presumptives were established **over 60 years** from the first date of exposure and **30 years** after the date of last exposure. But just last year we learned of contaminated water in Hawaii; how long will those exposed veterans have to wait?

Airborne Hazards, Open Burn Pits and Particulate Matter

Veterans who served in Southwest Asia during the first Persian Gulf War as well as those serving in those locations, including Afghanistan after 9/11, have been exposed to the large scale use of burn pits. DOD has performed air sampling at Joint Base Balad, Iraq and Camp Lemonier, Djibouti. The air sampling performed at Balad and discussed in an unclassified 2008 assessment tested and detected all of the following: (1) Particulate matter; (2) Polycyclic Aromatic Hydrocarbons (PAH); (3) Volatile Organic Compounds; and (4) Toxic Organic Halogenated Dioxins and Furans (dioxins).

In August 2021, the VA announced three presumptive diseases, sinusitis and rhinitis, due to exposure to particulate matter. This includes veterans who served in the Southwest Asia theater of operations beginning August 2, 1990, to the present; or Afghanistan, Uzbekistan, Syria, or Djibouti beginning September 19, 2001, to the present. While VA has announced new presumptive diseases to be added, it still has been **over 30 years** since the Persian Gulf War and **over 20 years** since Afghanistan and almost **20 years** since the start of Operation Iraqi Freedom.

VA has recently announced the addition of nine new presumptive diseases for particulate matter exposure. These rare cancers of the respiratory systems are a welcome addition and we look forward to VA considering new diseases in the near future.

Unfortunately, there are many other generations of veterans who still have not had their exposures recognized and received access to VA health care or benefits, based on their exposures. We shall never forget the veterans who served at Fort McClellan, those exposed to lethal toxins in Uzbekistan, those who participated in radiation-risk activities, and those exposed to per-and polyfluoroalkyl substances (PFAS) at over 600 military installations.

As a nation, we have responded too slowly to provide health care and benefits for previous and current veterans. We have the opportunity now and we must get it right for the past, current and future generations of veterans exposed to toxins. We must get it correct, but, time is not on veterans' side, we need everyone committed to solve the puzzle and concentrate on the most comprehensive toxic exposure legislation that is before us. In comparison to the previous veteran exposures and our actions today, how will this historic moment be remembered?

THE HONORING OUR PACT ACT

DAV supports H.R. 3967, the Honoring Our PACT Act, which passed the House on March 3, 2022. It is the most comprehensive toxic exposure bill ever voted out of the House. We thank the Committee for all of the individual bipartisan toxic exposure bills that created the COST of War Act. All of these tremendous efforts led to it being reported out by the Committee.

An estimated 3.5 million veterans have been exposed to burn pits and even more have been exposed to Agent Orange, radiation, and contaminated water. Many are struggling without access to VA health care and benefits, the Honoring Our PACT Act addresses many of those issues. This bill would:

- Provide health care based on toxic exposures;
- Add 23 burn pit and toxic exposure-related diseases;
- Add hypertension as a presumptive disease associated with Agent Orange exposure;
- Concede exposure to burn pits and toxic environments;

- Provide a new framework for establishing presumptive diseases in the future;
- Expand radiation-risk activities to include veterans who participated in radiation cleanup at Enewetak Atoll, Palomares, Spain and Thule, Greenland as radiation-exposed veterans;
- Include Thailand, Cambodia, Laos, Guam, American Samoa and Johnston Atoll as conceded locations for Agent Orange Exposure; and
- Require registries for veterans who served at Ft. McClellan and for those exposed to PFAS chemicals.

DAV acknowledges this critical juncture and the need for expeditious actions; however, we are committed to getting this correct for today's and tomorrow's veterans. Therefore, we are providing the following recommendations to strengthen certain sections of the current legislative offering.

Access to VA Health Care

We applaud section 103, expansion of health care for specific categories of toxic-exposed veterans and veterans supporting certain overseas contingency operations. It aims to provide priority group 6 health care for toxic-exposed veterans. DAV has been advocating for years for the expansion of health care eligibility for combat veterans from five to 10 years. We are very appreciative of the inclusion of section 111, expansion of period of eligibility for health care for certain veterans of combat service.

However, section 103, as presented, will have a 10-year complete phase-in period based on periods of service, while section 111 will provide additional eligibility and a one-year open enrollment for those outside of the expansion from five to 10 years, we are concerned that there will be gaps where exposed veterans will find themselves. We understand that these provisions were included to mitigate the volume of new enrollees to not overwhelm the resources of the Veterans Health Administration (VHA). Veterans with serious life-threatening conditions should have immediate access to VHA.

We recommend the health care access requirements as noted in S. 927, the Toxic Exposure in the American Military or TEAM Act. It would provide immediate parity for toxic and burn pit exposed veterans with the same eligibility for veterans exposed to Agent Orange, radiation and the hazards in the Persian Gulf as noted in title 38, United States Code, § 1710.

Formal Advisory Committee on Toxic Exposure

DAV agrees with the addition of a formal advisory committee to assist with determining exposures and potential presumptive diseases, as noted in section 202, improvements to ability of Department of Veterans Affairs to establish presumptions of service connection based on toxic exposure. This section does not include an independent scientific panel or an independent stakeholder advisory committee.

The TEAM Act includes a separate scientific review entity and we prefer those concepts. Veterans should not rely solely on VA or other federal agencies for scientific reviews. Independent agencies or groups, to include the National Academies of Science, Engineering and Medicine and similar entities should be included in any medical or scientific evaluations. We recommend the inclusion of an independent scientific review contingency.

Acknowledgement of exposure to toxins

We are pleased to see the addition of several provisions from the Veterans Burn Pits Exposure Recognition Act (S. 437, H.R. 2436.). This will greatly aid veterans in establishing direct service connection if their specific diseases or condition is not listed as a presumptive disease. However, we have concerns that the list of 50 toxins associated with burn pit exposure that VA already accepts as noted in their fact sheet to examiners, were excluded from the Honoring Our PACT Act, section 302.

The provisions states that the Secretary shall establish and maintain a list that contains an identification of one or more such substances, chemicals, and airborne hazards as the Secretary, in collaboration with the Secretary of Defense, may determine appropriate. We adamantly believe there must be an accepted list of toxins for them to work from and not solely rely on the VA's decision on toxins. Again, they already have accepted a list of 50 toxins.

DAV fully supports the Honoring Our PACT Act and our recommendations to strengthen this critical legislation. We cannot afford further delays for the men and women subjected to toxins and environmental hazards. This legislation would increase the number of claims submitted to VA; however, there are several authorities and steps that VA could implement to mitigate the increased workload and not further delay entitlement to the benefits these men and women have earned.

MITIGATING THE INCREASED WORKLOAD

DAV appreciates that comprehensive toxic legislation including health care and benefits, will increase the workload within VHA and VBA. Instead of limiting the legislation for those concerns, we must be focused on solutions to mitigating the increase in claims and health care. VBA currently has several authorities or policies in place that can be used to address incoming claims quickly. We suggest VBA develop a plan now that considers the following offered mitigation strategies:

- **Establish a unique End Product code for all new presumptives added by new toxic exposure legislation.** This will allow VBA to track all new presumptive cases and to facilitate their adjudication through the National Work Queue or to a new triage unit; and
- **Implement a Triage Unit to address presumptives directly.** VBA can establish a quick response triage unit that is responsible for granting any incoming claims

possible without development. Any claims that cannot be granted by the triage unit can be deferred for additional development to include VA examinations. Claims granted by the triage unit would move automatically to authorization to formally grant benefits and access to VHA; or

- **Use authorities similar to title 38, Code of Federal Regulations, section 4.28, prestabilization ratings.** VBA could grant all incoming presumptives with a set amount of disability, such as 50% or 100% for active cancers and set up a future review of the disability. This would not create an overpayment if the disability was changed at a later time; or
- **Use authorities similar to the administrative decision process.** Per VBA's adjudication manual, the Under Secretary for Benefits can designate supervisory or adjudicative personnel to make decisions about eligibility for benefits under the laws administered by VA. VBA could extend this authority to make decisions, via a special triage unit, granting eligibility to benefits for new presumptives at a more expeditious rate; or
- **Use authorities similar to the Veteran Readiness and Employment (VR&E) Service for a Memorandum Rating.** As noted in VA's adjudication manual, prior to a decision on a claim for service connection, VR&E Services can make a memorandum decision to determine whether a veteran's disabilities meet the basic entitlement to the program and grant enrollment before a final claims decision is made. VBA could use this same or similar authority to establish entitlement to benefits, ancillary benefits and health care, prior to a final decision.

These suggestions can be implemented under VBA's current authority and would not require any regulatory changes. However, if these suggestions are to be implemented, we recommend that they be codified. This will give VBA those same authorities for future presumptives or similar instances of increased workloads.

In addition, section 715 of the bill authorizes \$150 million for VBA to begin a major overhaul of IT infrastructure to process claims, including developing claims automation. These funds can be used to automate and implement the suggestions we noted above.

We urge VBA to develop a plan now that includes leveraging their existing authorities to mitigate the impact of the expected claims and workload increases due to implementation of toxic exposure legislation. While there are existing concerns about the increase of costs associated with implementation, VBA and Congress can use these strategies to lessen the blow.

As we clearly indicated at the onset of this testimony, due to our country's overly slow reactions to the negative impacts of toxic exposures, these issues were not addressed in decades when we had the opportunity to solve them. Thus, here we are in

a position that the consideration of PAYGO will limit any meaningful toxic exposure legislation.

There have been instances within the veterans' arena when PAYGO was waived, such as the 2014 Veterans Access, Choice and Accountability Act. We must accept our current situation. DAV supports waiving PAYGO for comprehensive toxic exposure legislation as it cannot truly happen otherwise. When this nation has gone to war, it has not required PAYGO, yet we now expect those cuts from veterans' benefits in order to pay for their disabilities that were due to their honorable service in defense of this nation. Toxic exposure legislation must be considered a cost of war and not hindered by PAYGO.

Mr. Chairman, we must make this historic moment count and take full advantage of the opportunity to enact thoughtful and meaningful toxic exposure legislation. However, veterans and their families can ill afford to continue to wait for decades like past generations who were exposed to mustard gas, radiation, contaminated water and Agent Orange. Noted historian C. Northcote Parkinson said, "delay is the deadliest form of denial." We must act now.

This concludes my testimony on behalf of DAV. We stand ready to engage with the Committee on toxic exposures to pass comprehensive legislation that will finally solve this puzzle for veterans of all generations.