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***STATEMENT OF***
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***FOR THE SENATE COMMITTEE ON VETERANS' AFFAIRS***
***MARCH 10, 2021***

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

Thank you for inviting DAV (Disabled American Veterans) to provide testimony for the Senate Veterans' Affairs Committee hearing on "Military Toxic Exposures: The Human Consequences of War."

Mr. Chairman, the men and women who serve are often placed in situations that have long-term health effects that will impact their individual functioning, provide industrial impairments and require physical rehabilitation and future health care. When these men and women are subjected to toxins and environmental hazards, our sense of duty to them must be heightened as many of the illnesses and diseases due to these toxic exposures may not be identified for years, even decades after they have completed their service.

That is why today's hearing on military toxic exposures and the cost to veterans and their families is so important. Our testimony will address the human costs of exposures, a brief history of the different types of toxic exposures and presumptives, critical exposure and presumptive issues and our recommendations to reform the process moving forward.

## THE HUMAN COST OF EXPOSURES

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 Department of Veterans Affairs regional offices (VARO) as well as other VA facilities throughout the nation.

Too many veterans are suffering from serious illnesses, struggling with access to VA health care and benefits, and unsuccessfully navigating complex and uncaring exposure and presumptive processes. The cost this is having on veterans, their health, their livelihood and families is incalculable. Here are just a few examples of the kinds of

challenges DAV service officers face in helping veterans exposed to toxic substances receive their earned health care and benefits.

**Contaminated Water**

In 2018, an Air Force veteran, at age 44, was diagnosed with stage IV lung cancer. She was never a smoker nor was she exposed to toxic smoke or fumes. Around that same time, her former spouse was diagnosed with pancreatic cancer. Neither had a family history of cancer; however, both were stationed at Kelly Air Force Base in Texas during a large part of the 90s.

After some research, she found a DOD report that acknowledged Perfluoro octane Sulfonate (PFOS) and Perfluorooctanoic Acid (PFOA) were found at high levels in all four ground water wells on Kelly AFB. She then established her claim for service connection for lung cancer due to the PFAS contaminated water. VA quickly denied her appeal in June 2018, as VA does not recognize this as a presumptive exposure nor that the water on Kelly AFB was contaminated.

She submitted a supplemental claim and in November 2019, VA denied her claim due to a lack of relevant evidence linking her cancer to contaminated water. She reached out to the DAV Service Office in San Antonio for an explanation of VA's denial and acknowledged she wanted to give up her case.

With DAV's assistance, she was able to obtain evidence that PFOS and PFOA could lead to serious and adverse health impacts to include cancer. She was able to obtain a private medical opinion linking her lung cancer to the contaminated water. DAV presented her appeal before a Board of Veterans' Appeals Law Judge in December 2020. Based on the evidence of record, it was determined that her lung cancer was service connected as it was related to her exposure to contaminated water at Kelly AFB. She is still receiving daily treatment for her lung cancer; however, now she is receiving 100% VA disability compensation and has access to VA health care.

**Agent Orange**

Theodore "Uncle Ted" 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 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.

Mr. Kalagian's claim for bladder cancer is currently under appeal and is awaiting a hearing with the Board of Veterans' Appeals. Although Congress was able to add bladder cancer, hypothyroidism and Parkinsonism as presumptive diseases, VA still has not released any guidance on adjudicating these claims. Even once they do, Mr. Kalagian will have to wait for his requested hearing before a decision can be made. Since this change in law is considered to be under the purview of the Agency of Original Jurisdiction (AOJ), the Board may not have jurisdiction to make a decision and refer back to the AOJ. This means Mr. Kalagian will wait longer than Vietnam veterans with pending bladder cancer claims—another example of justice delayed is justice denied.

Right now this Vietnam veteran is faced with two cancers, ischemic heart disease and diabetes, all due to his Agent Orange exposure. When his appeal is resolved and granted he will be service connected for four diseases presumptively related to Agent Orange. 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.

**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 really 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 Dec. 2, 2011, they welcomed their new sons to the world, twin boys, Cole and Fletcher.

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 their 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, Ms. McNorrill died in March 2016 due to the cancer, leaving behind her husband to raise their two boys alone.

Although these three veterans were able to be successful in obtaining VA disability benefits for diseases related to toxic exposures, thousands more are not. Some toxic exposures have resultant presumptive processes with associated diseases and others do not, which complicates the claims processes as exemplified by two of the veteran's cases above. To know which exposures are considered presumptively-associated with certain health conditions and which are not, let's examine of brief history of those exposures and presumptives.

## BRIEF HISTORY OF TOXIC EXPOSURES AND PRESUMPTIVES

In order to navigate forward, we must look back at the impact of chemical and toxic exposures thrust upon our military service members. In all of the instances noted below, the U.S. Government or Department of Defense (DOD) exposed military service members to toxins without being fully aware of the immediate or long-term health effects.

### 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. The U.S. service members were intentionally exposed to mustard agents or Lewisite, from mild (a drop of agent on the arm in "patch" tests) to quite severe (repeated gas chamber trials, sometimes without protective clothing).

Not until 1991, over seventy years from mustard gas use in WWI and over fifty years from the secret testing in WWII, did the VA provide guidelines for establishing claims related to these exposures. In 1992, VA requested a study from the National Institute of Medicine (IOM), currently the National Academy of Medicine. The report, "Veterans at Risk: The Health Effects of Mustard Gas and Lewisite," was issued in 1993 and prompted an update to the regulatory provision in 1993 and 1994.

**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 forty 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 twenty-five years after the last exposures from the atmospheric testing.

**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. The purpose was to strip the thick jungle canopy that could conceal opposition forces, to destroy crops that those forces might depend on, and to clear tall grasses and bushes from the perimeters of U.S. base camps and outlying fire-support bases. 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 thirty years after the use of Agent Orange began and twenty years after the end of spraying.

## Persian Gulf War, Undiagnosed Illnesses & Infectious Diseases

In response to the invasion of Kuwait by Iraq in August 1990, the United States led a coalition of 34 countries in Operation Desert Shield in the Persian Gulf. This was followed by Operation Desert Storm, which began in January 1991 and ended with a cease-fire in April 1991. Almost 700,000 U.S. troops were deployed to the Persian Gulf region during the height of the buildup.

Thousands returned home and began suffering from a number of serious illnesses considered related to smoke and petroleum from over 750 oil-well fires, depleted uranium, insecticides, burn pits, vaccinations including anthrax, and potentially the nerve agents, sarin and cyclosarin, as well as sand and dust particles and local environmental air pollution.

The Persian Gulf War Veterans Act of 1998, codified in title 38, United States Code, § 1118, was established to associate the numerous health effects known as Persian Gulf Illnesses, which includes unexplained chronic multisystem illnesses and symptoms. These presumptive conditions were established in less than 10 years from the first day of exposure. Subsequently, VA extended them to those who served in Operations Enduring Freedom and Iraqi Freedom.

In 2010, via regulatory rulemaking, VA added infectious diseases endemic to these areas as presumptives for service connection. Those diseases are: Brucellosis; Campylobacter jejuni; Coxiella burnetii (Q fever); Malaria; Mycobacterium tuberculosis; Nontyphoid Salmonella; Shigella; Visceral leishmaniasis; West Nile virus.

## 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.

Although these conceded toxic exposures have established presumptive processes for them, as noted, in several instances it took over 50 years to recognize the exposures and establish presumptive disease related thereto. Next, we will discuss those exposures that do not have presumptive processes, which have all been pending for multiple years.

## Fort McClellan toxins

Fort McClellan, located in Anniston, Alabama, became an Army installation in 1917, during World War I. After World War II until the base closed in 1999, it was home to the Chemical Corps and Chemical Weapons School for the United States Army. In 1953, Fort McClellan conducted “Operation Top Hat,” which used military personnel to test exposure and decontamination methods that included sulfur mustard and nerve agents and in 1962, Fort McClellan added the Biological Radiological Agency.

From 1929 to 1971, a Monsanto chemical plant operated south of Fort McClellan in Anniston. Airborne polychlorinated biphenyls (PCBs) from the plant entered into the environment and the surrounding community was exposed.

Although the base closed in 1999, the 2005 National Academy of Medicine, formerly the Institute of Medicine, Report, “Contaminants in the Subsurface: Source Zone Assessment and Remediation,” recognized that both the groundwater and soil were contaminated. There were 67 different disposal sites on Fort McClellan containing volatile organic compounds (VOCs) trichloroethylene (TCEs), PCBs, semi-volatile organic compound (SVOCs), pesticides, explosives, heavy metals (Pb), unexploded ordinance (UXO), radioactive sources, and non-stockpile chemical materials.

The Veterans Health Administration (VHA), via its website, has noted the existence of the toxic chemicals used at Fort McClellan and that potential exposures could have included, but are not limited to, the following: Radioactive compounds (cesium-137 and cobalt-60) used in decontamination training activities in isolated locations on base; chemical warfare agents (mustard gas and nerve agents) used in decontamination testing activities in isolated locations on base; Airborne PCBs from the Monsanto plant in Anniston.

While VA does acknowledge these potential exposures, it does not recognize any adverse health conditions associated with military service at Fort McClellan. Despite the fact that exposure to high levels of these compounds has been shown to cause a variety of adverse health effects in humans and laboratory animals, VA has arbitrarily determined that there is no evidence of exposures to those magnitudes having occurred at Fort McClellan.

## Contaminated water by PFAs

The acronym ‘‘PFAS’’ relates to perfluoroalkyl and polyfluoroalkyl substances that are man-made chemicals with at least one fully fluorinated carbon atom. PFAS chemicals are found in many products, such as clothing, carpets, fabrics for furniture, adhesives, paper packaging for food, and heat-resistant/non-stick cookware. They are also present in fire-fighting foams (or aqueous film forming foam; AFFF) used by both civilian and military firefighters. They do not break down in the environment, and because they are used in the manufacturing of so many products, they are widespread internationally.

In the 1970s, DOD began using AFFF to fight fuel fires. The release of these chemicals into the environment during training and emergency responses is a major source of PFAS contamination of ground water on military bases.

In 2018, DOD examined 524 installations for two of the most prevalent PFAS chemicals in AFFF, perfluorooctane sulfonate, or PFOS, and perfluorooctanoic acid, or PFOA, and found 401 locations with some level of contamination. Twenty-four of those locations had drinking water contamination at levels higher than the Environmental Protection Agency's lifetime health advisory of 70 parts per trillion. In September 2019, the Environmental Working Group revealed that 90 more current and former Army and Army National Guard installations had levels of ground or drinking water contamination than previously indicated.

In March 2020, DOD released new data showing that more than 600 military sites have been contaminated with PFAS, far more than previously disclosed.

**Toxic exposures at Karshi-Khanabad**

Karshi-Khanabad Air Base, known as K2, is a former Soviet air base in southeastern Uzbekistan that shares a border with northern Afghanistan. Over 15,000 U.S. service members were deployed to the U.S. established Camp Stronghold Freedom at K2, which was used to support combat missions from 2001 to 2005.

While it was a Soviet air base, K2 contained chemical weapons, enriched uranium and soil saturated with fuels and other solvents that formed a “black goo.” Air samples at the base found elevated levels of tetrachloroethylene as well as the residuals of chemical weapons including cyanide in the showers. Other health assessment tests found the base had elevated levels of volatile organic compounds and total petroleum hydrocarbons (TPH) were detected at numerous locations throughout Stronghold Freedom. A 2002 assessment recommended not to dig “into soil contaminated with jet fuel, but those areas were populated with tents soldiers slept in and aircraft hangars, according to the declassified document. In the same year, another DOD health risk assessment found between 50 and 75 percent of personnel at Stronghold Freedom would be exposed to elevated levels of TPH.

A 2015 U.S. Army study found that veterans exposed at K2 have a 500% increased likelihood of developing cancer to include malignant melanoma and neoplasms of the lymphatic and hematopoietic tissues.

**Airborne Hazards and Open Burn Pits**

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 acknowledged the vast use of burn pits to dispose of nearly all forms of waste. Several studies have indicated that veterans were exposed to burned waste products including, but not limited to: plastics, metal/aluminum cans, rubber, chemicals (such as paints, solvents), petroleum and lubricant products, munitions and other unexploded ordnance, wood waste, medical and human waste, and incomplete combustion by-products. The pits did not effectively burn the volume of waste generated, and smoke from the burn pit blew over bases and penetrated all living areas/quarters.

DOD has performed air sampling at Joint Base Balad, Iraq and Camp Lemonier, Djibouti. Most of the air samples have not shown individual chemicals that exceed military exposure guidelines. 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).

Although the National Academies of Science, Engineering, and Medicine (National Academies), has conducted two separate reports on burn pits and airborne hazards over the past ten years, they have yet to identify any diseases with a positive scientific association.

Understanding these current toxic exposures and presumptive processes is necessary to be able to identify the obstacles and barriers veterans face in trying to establish service connection for conditions potentially related to their military service and access to health care. Our focus is to identify these issues and provide solutions.

## Critical Exposure and Presumptive Issues

DAV believes we are at a critical juncture in toxic exposures and many of the resultant presumptive processes. For most veterans, establishing service connection for a disease related to toxic exposures is their gateway to VA health care, disability compensation and ancillary benefits; however, when VA does not recognize the exposures, or have requirements on the Secretary or protections for veterans, they must struggle to establish direct service connection for their exposures and wait decades for their exposures and resultant scientifically associated diseases acknowledged by the VA.

### Exposures not recognized

Millions of veterans exposed to burn pits and airborne hazards, the nerve, biological and toxic materials at Ft. McClellan, PFAS contaminated water at over 600 military installations, and the thousands at Karshi-Khanabad all must establish direct service connection claims as VA has failed to recognize their exposure to these hazards and the specific toxins with resultant presumptive processes.

In many cases, it has taken VA decades to recognize exposures and obtain scientific evidence of diseases associated. Veterans suffering with life-threatening diseases simply do not have any more time. Congress and VA must take action now to, at least, recognize and concede their exposures to toxins from burn pits, Ft. McClellan, PFAS contaminated water, and at K2.

This concept, for concession of exposure, is outlined in S. 437, the Veterans Burn Pit Exposure Recognition Act. If VA concedes veterans exposure to the specific toxins of burn pits, PFAS contaminated water or K2, veterans would have certain barriers removed in establishing direct service connection for these diseases. If the VA cannot grant based on the evidence of record, it would then request a medical opinion if the conceded exposure is “at least as likely as not” the cause of the claimed disease or disability. This does not require any additional science and can be implemented into law right now while additional scientific studies and evidence is gathered to look at possibly establishing presumptive diseases.

As exemplified by the fact that these four exposures do not yet have the requisite scientific association with diseases to establish presumptives, there are serious flaws with current presumptive processes and linking of associated diseases.

**Radiation Risk Activities**

It has been decades since Congress or VA has recognized additional radiation risk activities. This is a crucial element to the presumptive process for radiation exposed veterans. In order to establish service connection for a radiation disease, veterans must have participated in a recognized radiation risk activity.

Currently the VA does not recognize participation in the clean-up of Palomares, Spain for the period of January 17, 1966, to March 31, 1967, as a radiation risk activity. On January 17, 1966, a U.S. B-52G bomber collided with a KC-135 tanker during mid-air refueling. As a result of the mid-air collision, the non-nuclear explosives of two of the four hydrogen bombs carried by the bomber, detonated upon impact with the ground and ignited the pyrophoric plutonium, producing a cloud that was dispersed by a 30-knot wind. Approximately 650 acres were contaminated with radioactive material. As part of the U.S effort, active service members participated in the clean-up.

VA currently recognizes those veterans who participated in nuclear testing on Enewetak Atoll from 1951 to 1959 as participating in a radiation risk activity. However, in March 1977, the United States began decontamination of Enewetak and built a concrete dome to deposit radioactive soil and debris. Approximately 6,000 military service members participated in the cleanup project. VA does not accept the cleanup of Enewetak Atoll from January 1, 1977, to December 31, 1980, as a radiation risk activity.

## Persian Gulf Illness Concerns

The Persian Gulf War Veterans Act of 1998, codified at 38 U.S.C. § 1118, originally had time-required actions by the Secretary. However, those requirements expired on October 1, 2011, as the date was not reauthorized for the future. All of this means there are no current time requirements on the Secretary to act on recommendations made by the National Academies in reference to additional diseases related to toxic exposures. This authority needs to be reauthorized by Congress.

It is extremely important to note that per 38 C.F.R. § 3.317, the delimiting date to claim disabilities under this presumptive process is December 31, 2021. We need congressional oversight to ensure VA extends this date so veterans still have access to presumptive service connection for these exposures. Furthermore, we are concerned there are no future reports required by the National Academies unless directed individually by the VA.

## Agent Orange Exposure Concerns

When the Agent Orange Act of 1991 was passed into law, it contained requirements for action by the Secretary when a report and recommendations from the National Academies was received. This section of the statute included a date to discontinue this requirement. It was reauthorized several times; however, this part of the Agent Orange Act, 38 U.S.C. § 1116, expired on October 1, 2015. This means, the Secretary no longer has a required time frame for actions on recommended diseases to be added as a presumptive to Agent Orange.

The lack of the time-required action is having a negative impact on veterans and their families. The National Academies report of 2016 established that there is positive scientific association between Agent Orange exposure and the diseases, bladder cancer, hypothyroidism, and Parkinsonism. However, the Office of Management and Budget (OMB) stated that former Secretary Shulkin did not have the authority under the statute to add additional diseases followed by VA noting they needed a higher level of association and more science to add the three diseases. We thank the Senate for taking the lead on this issue and getting these three diseases added into law. However, this unnecessary delay could have been avoided.

In 2018, the National Academies reported that hypertension and monoclonal gammopathy of unspecified significance (MGUS) had their highest level of positive scientific association. Yet, VA previously stated they needed to wait on two additional pending studies before they could make a decision on these two diseases. We are calling on the Senate Veterans' Affairs Committee to again take the lead on these two additional presumptives for Agent Orange exposure.

DOD has acknowledged that Agent Orange was used at several Thailand bases during the Vietnam War. This exposure is not recognized via statute or VA regulation. It is only mentioned in the VA Adjudication Manual and is overly restrictive and concedes

exposure to only those with occupational specialties on the perimeter of the bases. We need Congress to enact legislation to codify that exposure and expand it to all U.S. service members stationed on Thailand military bases during Vietnam.

### Camp Lejeune Contaminated Water Concerns

The Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012 established 15 different conditions where the exposed military personnel and their families were eligible to seek treatment at VA health facilities at no cost.

The conditions identified for cost-free health care were esophageal cancer, lung cancer, breast cancer, bladder cancer, kidney cancer, leukemia, multiple myeloma, myelodysplastic syndromes, renal toxicity, hepatic steatosis, female infertility, miscarriage, scleroderma, neurobehavioral effects, and non-Hodgkin's lymphoma.

In 2017, the VA implemented regulatory provisions for presumptive service connection for service members who served an aggregate of 30 days at Camp Lejeune from August 1, 1953 to December 31, 1987. The water supply was contaminated with the volatile organic compounds (VOC) trichloroethylene (TCE), perchloroethylene (PCE), benzene and vinyl chloride.

We are concerned with the regulatory requirement of 30 days of aggregate service at Camp Lejeune. VA stated in 2016, "VA experts agree that there is no science to support a specific minimum exposure level for any of the conditions." VA notes in multiple instances that the 30-day requirement is to keep consistency with the requirement for health care but does not assert that there is a scientific basis or legal requirement for the 30-day period.

The regulation added only eight diseases for presumptive service connection and not all fifteen. To confound the matter, the regulation does not require any future studies on the water contamination to consider any additional disease. We urge Congress to enact legislation to remove the 30-day requirement, add all 15 conditions to the presumptive list and establish future studies and reports on diseases potentially related to these exposures.

DAV acknowledges this critical point of toxic exposures and presumptive processes as we cannot afford further delays for the men and women subjected to toxins and environmental hazards. Our veterans and their families are asked to pay the high and horrific human costs of toxic exposures.

## REFORMS TO THE PRESUMPTIVE PROCESS

As we have outlined, there are several major concerns over critical exposure and presumptive issues and the inconsistencies that lead to delayed VA actions, which negatively impacts veterans in trying to establish entitlement to their earned benefits including VA health care. Below are DAV's recommendations for reforming the current

presumptive processes, which could be included into one new consistent streamlined framework.

1. **Establish Access to VA Health Care**

   Establishing a service-connected disability is often the gateway for veterans to access VA health care and benefits. However, the lack of access to VA health care for those exposed to toxins including burn pits, PFAS contaminated water and the hazards at K2, who have not yet established a service-connected disability, is a major concern.

   DAV supports amendment to title 38, United States Code, Section 1710 that would include VA health care for toxic exposures, to include burn pits, Ft. McClellan exposures, PFAS contaminated water and K2 veterans.

2. **Establish Concession of Exposure**

   When veterans have been exposed to toxins and current science and medical evidence fails to provide diseases or illnesses, they cannot use the presumptive process to establish service connection for their illnesses. So prior to the establishment of a presumptive process or disease list, the concession of exposure can provide an avenue to establish service connection for access to VA benefits and VA health care.

   A concession of exposure would still require a veteran to provide a diagnosis of a current condition; however, by conceding veterans who served in areas with known toxins, veterans would not have to provide personal evidence of exposure. This will still require veterans to have a medical opinion linking the condition to the exposure. By conceding their exposure to the known toxins, a physician will now have a better ability to provide a medical opinion as the toxins of exposure are known.

   We are urging Congress to establish the concession of exposure for burn pits and it can be applied to all current and future toxic exposures and not require veterans to wait for the scientific community or the VA.

3. **Requiring VA to Apply the Court's Holdings in *Combee* Whenever Applicable**

   Currently when the VA adjudicates a claim that associates a disease to a toxic exposure, but the disease is not one of the recognized presumptive diseases, the claim is usually denied. One of the most common reasons for this denial is that the disease is not listed as a presumptive. However, there is a means for this type of claim to be established based on direct service connection, as determined by the U.S. Court of Federal Appeals. In their decision of *Combee v. Brown*, 34 F.3d 1039, 1042 (Fed. Cir.

1994); they held that notwithstanding the presumption provisions, a claimant is not precluded from establishing service connection with proof of direct causation.

While this precedent has existed since 1994, most VA regional offices fail to apply this legal standard. Additionally, some people in VBA (who have appeared before Congress on behalf of VBA) fail to acknowledge or understand *Combee* when discussing the presumptive process. Many claims based on a toxic exposure for a disease not recognized as a presumptive can be resolved quickly based on *Combee* and would not add to the backlog of pending appeals.

4. **Statutorily Require Future Studies on Toxic Exposures**

Not all of the presumptives have requirements for future studies to be conducted for reviewing and potentially adding new diseases to the established presumptive diseases lists. In multiple reports, the National Academies has stated that additional scientific research and new medical processes continue to change. Therefore, in order to ensure that diseases are properly associated with toxic exposures, any new presumptive process should have a requirement for new reports every two years.

5. **Time Requirement for Action from the Secretary.**

As noted above, the statutory provisions that required the Secretary to respond and take actions on the recommendations from the National Academies have expired. While Congress has the ability to reauthorize the law, or directly add presumptions, no such action has been taken in recent years. This lack of statutory mandate, unfortunately, resulted in no action by VA on the recommendations on three presumptive diseases from 2016 and required Congressional action.

In closing, we are at the critical crossroads of the horrific costs of toxic exposures and a presumptive process that is inconsistent and lacking flexibility moving forward. It is clear that veterans need a way of establishing service connection for diseases related to toxins now and not wait for the scientific community or VA's bureaucratic processes. We recommend reforms to the presumptive process, which should include access to VA health care, a concession of exposure, and time-required actions by the VA.

Mr. Chairman, this concludes my testimony on behalf of DAV. We stand ready to engage with the Committee on toxic exposures and reforming the presumptive processes.