Wounded Warrior Project
4899 Belfort Road, Suite 300
Jacksonville, Florida 32256
O 904.296.7350
F 904.296.7347

WOUNDED WARRIOR PROJECT®

Wounded Warrior Project

Statement for The Record

ON

The Toxic World of Presumptive Service Connection Determinations:
"Why Should Our Veterans Wait?"

December 9, 2020

Chairwoman Luria, Ranking Member Bost and distinguished members of the Committee on Veterans' Affairs, Disability Assistance and Memorial Affairs Subcommittee – thank you for the opportunity to submit the following testimony addressing the needs of veterans dealing with health illnesses as a result of exposure to toxicants while in service and the challenges associated with filing for disability compensation with the U.S. Department of Veterans Affairs (VA). Your commitment is evident through the multiple hearings, roundtables, and information sessions you have held throughout the 116th Congress on this issue.

Wounded Warrior Project (WWP) shares the same dedication to serving veterans exposed to toxicants while in service. What began in 2003 as a small group of volunteers filling backpacks with comfort items for wounded warriors has grown into what WWP is today: a robust organization of over 700 employees who deliver more than a dozen free direct programs to post-9/11 veterans across the nation. We meet our mission to honor and empower wounded, ill, and injured veterans by providing mental health support and clinical treatment, employment counseling, physical health and wellness coaching, guidance to secure VA benefits, peer connection and community engagement opportunities to the veterans, family members, caregivers, and survivors we serve. These programs, services, and connection points contribute to our organizational impact and inform our statement for the Subcommittee.

With the legacy of a decades-long endeavor to provide care and benefits for those who have suffered — or continue to suffer— from the effects of Agent Orange, we strive to ensure that today's veterans struggling to receive health care are not fighting for treatment years from now. If we do not act, we may look back wondering if we should have done more, sooner. Accordingly, our mission is focused on extending access for treatment to Service members and veterans before they become critically ill through early screening, identification of health conditions, and by investing in research that can be used to develop new forms of treatment, with the intent of expanding healthcare access to veterans suffering from toxic exposure related illnesses.

A significant number of post-9/11 Service members and veterans (like their Vietnam era counterparts) seem to be suffering from uncommon illnesses or unusually early onset of more

familiar diseases like liver cancer, skin cancer, brain cancer, respiratory illnesses, and chronic multi-symptom illness[1] [2]. It appears that exposure to contaminants such as burn pits, toxic fragments, or other hazards typically seen on overseas deployments, is emerging as a common thread among veterans who are sick, dying, or already deceased. We believe there is a causal relationship between the deployments of the last 19 years and illnesses noted above. While we are currently focused on deployment exposures, we are also aware of the challenges service members face regarding possible exposures stateside. Debates in scientific and medical communities have not reached consensus on the relationships between certain toxic exposures and presumed health outcomes which is why the issue warrants further research.

While the issues are broad — and the challenges great — we will focus on seven key topic areas WWP considers to be the most appropriate preliminary steps to move forward with a more concise and fair process regarding veteran disability claims. Currently, the barrier of entry for VA healthcare is the establishment of a VA disability rating. Because of this, our recommendations focus on issues we have seen when trying to establish a toxic exposure related disability. It is important to note however, that WWP fully supports the *Toxic Exposure in the American Military Act of 2019*, S. 4393, as it would negate the need for disability rating to access much needed healthcare at the VA.

Our recommendations are informed by daily interactions with the young veterans we serve, a diverse and robust knowledge base among our veterans service officers, work with our partners from the TEAM coalition, and from data captured using WWP's Annual Warrior Survey (AWS), which is the largest survey of the post-9/11 veteran population with over 28,000 respondents in its eleventh iteration.[3]

WWP DATA

To better understand the relationship between exposure and illnesses, WWP has invested substantial resources to understand the depth and scope of toxic exposure within our warrior population. We utilize WWP's AWS to capture data regarding our alumni and possible toxicants they were exposed to and this data helps drive our recommendations outlined in this testimony. Because data on toxic exposure on the post-9/11 veteran population is limited, we are highlighting some of the top issues found in this year's AWS report.

In the 2020 AWS, warriors were asked about personal exposure to environmental hazards such as chemical warfare agents, ionizing radiation, burn pits, or other potentially toxic substances during their military service. A majority (70.6%) of warriors reported definite exposure to hazardous chemicals, and an additional 18% reported probable exposure. Only 16.1% of these warriors said they had received treatment for their exposure at VA, an increase from the 9% reported last year **[Figure 1]**. Among warriors who reported definite or probable exposure to toxic substances, the majority indicated they were exposed to burn pits (85.7%) or sand, dust, and particulates (75.5%).

[1] https://pubmed.ncbi.nlm.nih.gov/28045798/
[2] https://www.mcclatchydc.com/article236421513.html
[3] https://www.woundedwarriorproject.org/mission/annual-warrior-survey

Additionally, we were able to separate types of exposures from those who deployed from those who had not. Warriors who have not deployed, or deployed but not to a combat area, most commonly reported being exposed to occupational hazards (such as industrial solvents, asbestos). The majority of warriors who deployed to a combat area reported being exposed to burn pits (91%) followed by sand, dust, and particulates (78%) **[Figure 2]**. For those warriors with self-reported toxic exposure, the top illnesses reported were muscle and joint pain (87.5%) and sleep disturbances (85.6%), followed by neurological problems (40.4%) and chronic fatigue syndrome (35.8%) **[Figure 3]**.

Disability Claim Process

The current process for obtaining VA disability compensation for disabilities stemming from exposures to toxicants requires: (1) providing evidence that an exposure occurred during service and (2) proving a nexus between an individual's current diagnosed disability and their service. If a veteran can prove toxicant exposure but cannot prove nexus, then their disability claim will likely be denied. Additionally, if an individual can prove that a toxicant is the reason for why they are currently ill, but cannot verify exposure to the toxicant was as a result of their service, their claim will also likely be denied. Proving nexus and exposure during service is essential to establishing service-connection for a veteran's toxic exposure-related illness. Considerable barriers for those attempting to prove exposure and nexus, including:

- Lack of information
- Time lapse between exposure and illnesses
- Lack of scientific evidence regarding the role specific chemicals may play in the development of illness
- Reluctance in setting precedence regarding exposure
- Reluctance to use the findings of federally funded research regarding toxic exposure and its impact on health
- Complications with proving nexus between exposure and illness
- Complications with proving exposure during service

Lack of Information

The general lack of information regarding an individual's past exposure to toxicants is not entirely unexpected. Currently, each Service branch is required to track exposures to toxicants, yet standards have not been entirely consistent across branches over the past two decades. This lack of uniformity continues to hinder the individual branch's efforts to track and address a growing health crisis. Identifying commonalities between exposures from unit-to-unit and branch-to-branch has grown more difficult. Moreover, there are startling differences between record-keeping when one considers how National Guard records are maintained. Many National Guardsmen and Guardswomen are regularly activated on Federal orders and deployed around the world, yet few have well-maintained records related to these deployments.

To address these challenges, we recommend the Department of Defense (DoD) work to standardize toxic exposure data collection practices. Without a standardized process of data collection, we can never hope to appropriately develop uniform and consistent benefits claims based off a Service member's history, regardless of when and where they served.

Fortunately for Service members and veterans suffering from toxic-exposure related illnesses, nine years ago DoD developed the Individual Longitudinal Exposure Record (ILER) system. We believe ILER can be part of the long-term answer to gaps in knowledge – such as confirmed exposure locations – regarding toxic-exposure related illnesses among Service members and veterans.

ILER is a web-based application developed between DoD and VA that can assist in determining the linkage between individuals and possible toxic exposures while serving in the military. ILER can research and cross-reference multiple DoD toxic exposure databases to develop a Service member's exposure history. DoD has been proactive in reaching out to the veteran and military communities to answer questions and identify concerns from key stakeholders. The system is impressive, and we sincerely appreciate the work that DoD has done to demonstrate the system to the community. Additionally, VA has been helpful in obtaining ILER documents for veterans who are considered end of life, which has helped WWP assist these warriors with their VA benefit claims. We are grateful to the office that helps us obtain these records and know that with more resources they can be better positioned to meet the rising need to fulfill requests for ILER documents. If current trends prevail, such requests will only become increasingly necessary.

This system is currently accessible to DoD clinicians, VA clinicians, VA claims adjudicators, and VA/DoD medical researchers. Anyone with access to the database has the ability to download a PDF file containing a Service member's historical exposure, a possible connection between exposures and different medical complications and potential illnesses that may arise due to these exposures, high-risk indicators, and the ability to cross-reference other Service members from a unit that might also be exposed. This system is useful to researchers attempting to find and isolate specific control groups and beneficial to Service members and veterans undergoing treatment.

While ILER has the potential to provide lifesaving information, it is currently unavailable for use by anyone outside the DoD or VA. Allowing Service members, veterans, and their non-VA health care providers the ability to identify possible exposure risk factors – before or during treatment – could mean the difference between life and death. Currently, the process for a veteran to obtain his or her record is to file a Freedom of Information Act (FOIA) request through DoD's Defense Health Agency (DHA). These requests often take months to fulfill and generally lack all the information that exists in a Service member's record due to lack of training on the system or lack of information in the database. Alternatively, at present it is possible for a veteran to obtain permission from VA to release the information to a private health care provider, but not directly to the veteran. However, the process for a veteran to request VA share ILER information with a private health care provider is not clear. We find this barrier to health information unnecessary and counterproductive, especially when access to these records could be the difference between proving service connection or not, or between receiving health care from

VA or not. Additionally, while VA claims adjudicators have access to the system, Veteran Service Organization (VSO) service officers do not, limiting the tools available and thus their ability to fully represent veterans is diminished. We recommend that Congress consider directing DoD and VA to develop a portal that allows individuals to download their own ILER information.

Granting access to ILER data is only one step to overcoming the lack of information. A complete understanding of how to interpret toxic exposure data – and gaps therein – will prove important to VA claims adjudicators. When individuals access the ILER database, there is a small disclaimer indicating that lack of information found in the system does not indicate that a veteran was NOT exposed. As noted above, each military branch collects toxic exposure information differently. We are concerned that differences in methods of data collection, while originating in their own valid contexts, may to lead to denial of benefits and in turn, healthcare.

It is therefore imperative that VA claims adjudicators do not use the ILER system as a means of denying claims when sufficient information does not exist within ILER to corroborate a veteran's claimed exposure. We recommend Congress set clear guidelines on how VA can use the ILER system when processing a VA claim for possible exposure. Additionally, we look forward to working with the Veteran Benefits Administration (VBA) on learning how claims adjudicators are being trained to access the system and interpret the information, and on how they intend to provide guidance in the Veterans Benefits Administration, Adjudication Procedure Manual (Manual), M21-1.

We are aware that increasing access to the ILER system was included in this year's National Defense Authorization Act (NDAA). Section 9105, *Access of Veterans to Individual Longitudinal Exposure Record*, will require the Secretary of Veterans Affairs to develop an online porter for veterans to access their ILER record. We are thankful that Congress has heard our calls and granted veterans access to their ILER file. Once the NDAA is passed and signed into law, we look forward to working with the VA on how the portal is designed and accessed by veterans.

In summary, we recommend:

- *DoD work on standardizing toxic exposure data collection practices*
- *Congress consider directing DoD and VA to develop a portal to allow individuals to download their own ILER information*
- *Congress set clear guidelines on how VA can use the ILER system when processing a VA claim for exposure*

<u>Time lapse between exposure and illnesses</u>

As is the case with Vietnam veterans, we have seen that the onset of toxic exposure-related illnesses can occur many years after the initial exposure. As noted in the 2018 National Center for Biotechnology Information report, "The Association between Toxic Exposures and Chronic Multisymptom Illness in Veterans of the Wars of Iraq and Afghanistan," participants

who had symptoms had deployment 4.8 years earlier.[4] The difficulty in identifying a timeline from exposure to the onset of illness is due to an untold number of variables regarding the health of the subject, the type of exposure element, and genetic predispositions. For example, an individual exposed to extremely high levels of ionized radiation could have symptoms much sooner than of someone exposed to low, but long, dosses of burn pit fumes. Unfortunately, the greater time between military service and initial onset of the illness, the more difficult it becomes to prove that the illness was due to military service. This still holds true for Vietnam veterans exposed to Agent Orange. We are still finding illnesses that have now been medically linked to herbicide exposures like Agent Orange, where the onset of the illness did not occur until later in life.

Because of a lack of available medical evidence and a history of not applying scientific research that has not been formally adopted by the VA in considering cases, it can be extremely difficult for a veteran to prove an illness was the result of toxic exposure in service. While it might be possible to prove or disprove exposures to certain illnesses in the future, veterans should not be required to wait for benefits or health care simply because of a refusal to consider research and scientific evidence – which already exists in some cases – sufficient to establish a legal presumption for a relationship between a toxicant and an illness. While we acknowledge that the lapse of time between service separation and the earliest documentation of current disability is a factor for consideration in deciding a service connection claim,[5] for toxic exposure claims, WWP encourages VA to focus on the nature of each individual veteran's service and likely exposure history. As provided in 38 U.S.C. § 1154 pertaining to the consideration given to time, place, and circumstances of service, and 38 C.F.R. § 3.304(c), (d) and (f), pertaining to the development of evidence in connection with claims for service connection, to include combat-related disabilities and mental health disabilities, we believe VA should seek to obtain evidence that may corroborate a veteran's theory of toxic exposure in a way that is similar to how VA verifies allegations of mental health stressors or exposure to ionizing radiation.

It is well established that exposure to different toxicants can cause lifelong health issues for veterans. Unfortunately, establishing proof of relation to service often requires years of research and takes many veterans falling ill, and sometimes dying, before such a link may be accepted by the scientific community. WWP generally supports evidence-based policies but emphasizes that time can work against veterans when it comes to identifying the risk to their lives. We hope to see the policy for developing legal presumptions for toxic exposure-related illnesses change based on the rapidly growing body of research and data already addressing toxicants and the role they play in health and wellness.

In summary, we recommend:

- *Change VA's policy for developing legal presumptions for toxic exposure-related illnesses based on the rapidly growing body of research and data already addressing toxicants and the role they play in health and wellness*

[4] https://pubmed.ncbi.nlm.nih.gov/28045798/
[5] *See Maxson v. Gober*, 230 F.3d 1330 (Fed. Cir. 2000).

Lack of scientific evidence regarding the role specific chemicals may play in the development of illnesses

While some information exists showing Service members' exposure to different toxicants, one of the challenges facing the current generation of veterans is the difficulty in meeting VA's scientific thresholds for association between the illnesses and the toxicants to which they were exposed. This is particularly true for burn pit exposure, in large part, due to the vast array of materials that were incinerated in burn pits in places like Iraq and Afghanistan including, but not limited to: munitions, paints and solvents, petroleum products, oils, lubricants, plastics and rubber. As explored in depth by VA's Research Advisory Committee (RAC) on Gulf War Veterans Illnesses and the DoD Directed Medical Research Program, much is already known about the types of chemicals Service members have been exposed to who served in the 1990 - 1991 Gulf War.[6] For example, in the case of burn pits used in the Gulf War, jet fuel was a common accelerant, but others were used as well. Research suggests that Service members exposed to burn pits were also likely to be exposed simultaneously to other hazards including fumes from military ground vehicles and aircraft, as well as depleted uranium and other radioactive materials. They were also likely exposed to indigenous environmental hazards such as the local urban pollution and desert sands and dust.

Now, after nearly two decades of fighting the War on Terror in various locations across Southwest Asia, and other parts of the world, Service members have been exposed to different toxicants to varying degrees at different times. All these factors create a constellation of toxic exposure factors that are difficult to simulate in scientific testing. Because of this, it is nearly impossible to do testing on impact to exposure since everyone was exposed to so many different toxicants, at different levels, for different periods of time. Unfortunately, the lack of evidence, the difficulty in establishing quantifiable scientific data, and the ever-evolving nature of military exposures to toxicants means that scientific research is limited in scope and takes years to compile.

This is in contrast to studies involving the specific herbicides known to have been deployed in Vietnam. In the case of Vietnam veterans, we have a better understanding of the toxicants to which Service members were exposed and can more easily determine how those exposures impacted the health outcomes of those individuals thanks to decades of research. As the Vietnam conflict and veterans associated with that conflict have been at the vanguard of toxic exposure research, their generation became responsible for the development of the methods and standards for creating regulatory provisions for toxic exposure. In scientific studies linking herbicides to certain illnesses experienced by Vietnam veterans, findings of limited or suggestive evidence of associating have historically been sufficient to grant presumptive service connection. Since exposure to burn pits and other environmental hazards during the current conflicts are perhaps more complicated in determining who was exposed to what, when, where, and to what levels, it may be even more difficult than it has been in the past to establish association between exposure to specific toxicants, or even specific sources of multiple toxicants such as burns pits, and the illnesses veterans are now experiencing. Therefore, WWP does not believe that the evidentiary standard for establishing presumptive service connection should be raised higher for the current generation of veterans than it has been for previous generations, and we would not

[6] https://www.ncbi.nlm.nih.gov/books/NBK355352/

support legislation intended to exclude limited or suggestive evidence of association from triggering VA determinations on whether to grant such presumptions.

In the 2011 Institute of Medicine (IOM) report entitled *Long-Term Health Consequences of Exposure to Burn Pits in Iraq and Afghanistan*, IOM recognized many of the challenges in meeting the scientific thresholds for association between illnesses and the toxicants.[7] In this report, IOM recommended a cohort study be conducted using retrospective estimates of burn pit exposure in Service members from first deployment and then studying their long-term health effects prospectively. In the 2020 report by the National Academy of Medicine (NAM) entitled *Respiratory Health Effects of Airborne Hazards Exposures in the Southwest Asia Theater of Military Operations*[8], NAM endorsed IOM's approach but recommended the range of exposures studied should not be limited to burn pits and should include all measurable airborne contaminants present in theater. WWP would support such a study in the hopes that it would create a better understanding of the wide range of toxic exposures on the modern battlefield, and how those exposures might be linked to the illnesses experienced by post-9/11 veterans.

In summary, we recommend:

- *Congress not increase the evidentiary standard for establishing presumptive service connection*
- *Congress establish a study on the effects of toxicants but not one limited to burn pits*

Reluctance in setting precedence regarding exposure

We have identified that one of the biggest challenges veterans face when filing claims for toxic exposure-related illnesses is in the development of evidence during the claims adjudication process. Although tools such as ILER and the Joint Services Records Research Center (JSRRC) exist to assist with a veteran's claim, VA is not required to use them. For example, VA is permitted but not required to use JSRRC, which enables VA to research official military unit records and data bases for information which may verify the causal incident described by a veteran in a disability claim and would corroborate alleged exposure locations. When a claim is submitted to a VA regional office, the regional office determines whether to request JSRRC information. The M21-1's guidance for toxic exposure development does not currently provide for such development through the JSRRC or similar entities. Instead, it instructs that a claims developer must ask the claimant to provide at least some general information about the exposure event, send a development letter or telephone the veteran if he/she fails to provide sufficient information regarding exposure and/or the disability claimed because of such exposure, and develop for service treatment records and any VA and/or private medical records that are noted

[7] https://www.nap.edu/catalog/13209/long-term-health-consequences-of-exposure-to-burn-pits-in-iraq-and-afghanistan
[8] https://www.nationalacademies.org/our-work/respiratory-health-effects-of-airborne-hazards-exposures-in-the-southwest-asia-theater-of-military-operations

by the claimant.[9] We urge VA to consider adding development provisions and information on the ILER report to this M21-1 section..

At times, we have also seen a reluctance in applying presumptive disability regulations as currently outlined. For example,38 U.S.C. § 1117 and 38 C.F.R. § 3.317, which pertain to the Southwest Asia service areas, provide legal presumptions to reduce the evidentiary burden for claims involving service connection for "undiagnosed illness," as well as for three chronic multisymptomatic illnesses (functional gastrointestinal disorders such as irritable bowel syndrome (IBS), chronic fatigue syndrome, and fibromyalgia). The presumption requires only that there be (1) evidence verifying Southwest Asia (SWA) service, and (2) evidence of a current diagnosis of one of the chronic multisymptomatic illnesses or an undiagnosed illness, manifested to a compensable degree (with 6 months of continuous symptoms) at any time following separation from service. Theoretically, unless there is evidence to the contrary, a grant of service connection should be automatic if these two conditions are met, and there should not be a need for a nexus opinion to obtained, as is traditionally the case.

However, evidentiary development for an undiagnosed illness or for a chronic multisymptomatic illness often includes request for a Gulf War Exam and nexus opinion, and is an unnecessary examination for those veterans who are alleging SWA service or application of 38 C.F.R. §3.317. We rarely see a Gulf War examiner or general VA examiner offer an opinion that addresses specific toxic exposure identified by the veteran in their claim. Instead, we regularly see that a nexus opinion is requested for cases that involve a presumptive condition, despite the applicability of 38 C.F.R. § 3.317, or that no opinion is provided that addresses a toxic exposure claim outside of the applicability of 38 C.F.R. §3.317. In essence, we have observed over-development for claims in which the legal presumption of 38 C.F.R. § 3.317 is applied, and mis-development or under-development for claims in which a veteran asserts toxic exposure caused his or her disability without claiming an undiagnosed or chronic multisymptom illness.

Therefore, we hope to see a more comprehensive review of toxic exposure claims for the purposes of evidence development with better guidance on how to make examination requests and verify exposures. We also hope to see an update to M21-1 with recommended toxic exposure development through the JSRRC and other entities, along with federal agencies that have already performed toxic exposure-related health research, such as the Environmental Protection Agency (EPA) and the Centers for Disease Control (CDC) Agency for Toxic Substances and Disease Registry (ATSDR). We encourage VA to provide more detailed guidance for its claims developers on evaluating evidence that supports a claim based on toxic exposure. Additionally, we recommend that VA regional offices become familiar with and consider soliciting medical opinions or evidence in support of veterans claims from the War Related Illness and Injury Study Centers (WRIISC). WRIISC is the main research arm of the Veterans Health Administration, which we believe should be engaged to aid with the development of evidence pertaining to toxic exposure-related claims for disability compensation.

[9] https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va_ssnew/help/customer/locale/en-US/portal/554400000001018/content/554400000033326/M21-1-Part-IV-Subpart-ii-Chapter-1-Section-I-Developing-Claims-for-Service-Connection-SC-Based-on-Other-Exposure-Types?query=toxic%20exposure#5

Moreover, in *Combee v. Brown* , the United States Court of Appeals for the Federal Circuit held that when a veteran is found not to be entitled to a regulatory presumption of service connection for a given disability the claim must nevertheless be reviewed to determine whether service connection can be established on a direct basis. *Combee v. Brown*, 34 F.3d 1039, 1043-1044 (Fed.Cir.1994), reversing in part *Combee v. Principi*, 4 Vet. App. 78 (1993). We ask that VA incorporate the holding of *Combee* into the applicable provisions of the M21-1 for toxic exposure and send a clear message that toxic exposure claims receive proper development under all theories of entitlement, including direct service connection and presumptive service connection.

Finally, WWP believes that the differential treatment of Afghanistan service to SWA service in the context of toxic exposure is an outdated and arbitrary distinction. As outlined in 38 C.F.R. § 3.317, the "Southwest Asia Theater of Operations" includes service in Iraq, Kuwait, Saudi Arabia, the neutral zone between Iraq and Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, the Red Sea, and the airspace above these locations. As per the holding of *Cox v. McDonald*, 28 Vet. App. 318 (2016), Afghanistan is generally not included in the Southwest Asia Theater of Operations. However, Section 3.317 includes a presumption of service connection for certain infectious diseases that manifest in veterans who served in Afghanistan.

Here, the statute and regulations distinguish between the Gulf and Afghanistan on some exposures, when it is clear that the illnesses related to toxic exposure, including burn pits, depleted uranium, sand, dust, and various chemical agents, are prevalent in both areas. We ask that consideration be given to the inclusion of Afghanistan service as Gulf War service for the application of all of the provisions contained in 38 C.F.R. § 3.317.

As we have described, it is a significant struggle to provide evidence that establishes that toxic exposure caused an illness. Under the current system, it is incumbent upon under-resourced and ill veterans to prove that they had toxic exposures, and that the toxic exposures caused their current disabilities. Without similar legal presumptions as those afforded by 38 C.F.R. 3.307 and 3.309 (chronic, tropical, or prisoner-of-war related disease, disease associated with exposure to certain herbicide agents, or disease associated with exposure to contaminants in the water supply at Camp Lejeune), 3.311 (ionizing radiation exposure), and 3.317 (SW Asia exposures), this is a herculean task. The veteran's need to deal with cancers, rare blood disorders, and other serious illnesses hinder efforts to prove exposure. It is a significant battle for many veterans whose claims may only receive proper development following years of appeals at the Board of Veterans' Appeals or beyond. For many, waiting is not a viable option because their health conditions are so critical and serious. It is our hope that VA helps mitigate this wait by providing proper development guidance and adopting legal presumptions now, when they can be most impactful to a veteran's life.

In summary, we recommend:

- *VA add development provisions to the M21-1 section outlining when to request additional toxic exposure related information from JSRRC and the ILER report*

- *VA regional offices become familiar with and consider soliciting medical opinions or evidence in support of veterans claims from the War Related Illness and Injury Study Centers (WRIISC)*
- *VA incorporate the holding of Combee into the applicable provisions of the M21-1 for toxic exposure*
- *Congress and VA consider the inclusion of Afghanistan service as Gulf War service for the application of all of the provisions contained in 38 C.F.R. § 3.317*

Reluctance to use the findings of federally funded research regarding toxic exposure and its impact on health

It remains unclear what the evidentiary standards are for establishing a presumptive disability for a certain toxicant are. On December 10, 2019, the Committee on Veterans' Affairs Subcommittee on Disability Assistance and Memorial Affairs held a roundtable discussion with VSO and VA representatives. This roundtable focused on Per- and polyfluoroalkyl substances and Perfluorooctanoic acid (PFAS/PFOA) exposure on Service members and the evidence required to establish a presumptive disability.

During that roundtable discussion, VA indicated that there were no studies regarding PFAS/PFOA that showed a link to cancers and other illnesses. When presented with various federal agency studies that find PFAS/PFOA exposure can cause cancers, VSOs were told that the studies required needed to be federally-mandated studies and that studies conducted on large mammal subjects were not adequate. VA indicated that the study needed to be a federal study on human subjects in order establish a positive nexus between PFAS/PFOA illnesses. Since testing these toxicants on human subjects raises ethical and legal considerations that may eliminate the possibility of an in-depth study, the requirement noted by VA seems unattainable and therefore impossible for the VSO/MSO community and researchers to prove nexus between a specific chemical and an illness.

The development of scientific research to support VA claims is an issue that Congress is long-familiar with and has provided legislation for regarding Agent Orange, Blue Water Navy Veterans, and Camp Lejeune. Our hope is for VA to become proactive in establishing presumptive service connection for post-Vietnam toxic exposures by adopting Federal research that is already available, both to save costs and save lives. In our current information and data-driven era where medical advancements and scientific knowledge grows at an exponential rate, we look to VA to harness such information to help best serve veterans.

In summary, we recommend:

- *VA become proactive in establishing presumptive service connection for post-Vietnam toxic exposures by adopting Federal research that is already available*

Complications with proving exposure and nexus between exposure and illness

Proving exposure to a toxicant during service is, at times, complicated due to lack of information regarding specific toxicants in areas, lack of available documentation of movement orders, and an abundance of variables that complicate date and time verification of an individual during deployment. As outlined in this testimony, this is a common issue with all types of exposures. Currently the process of proving an individual was exposed to a toxicant can be difficult due to lack of data or evidence of troop movements and/or toxicants used in specific areas.

One of the more difficult correlation between toxicants and illness to prove is related to effects of exposure to burn pits, in part, because of the different toxicants associated with burn pits, the limited data and information on what was burned in these pits, how much of the burn pit was in use, and how far it was from where soldiers lived, ate, and exercised. Currently, VA does not provide a presumption of service connection for diseases related to burn pit exposure. Veterans must assert direct service connection for diseases and illnesses related to burn pit exposure. This requires veterans to provide sufficient evidence of burn pit exposure, the list of toxins emitted from the burn pit, and a statement of nexus between the exposure to toxins and their current disability which is difficult to do.

The *Veterans Burn Pit Exposure Recognition Act of 2019* (S. 2950) would concede exposure to burn pits for any veteran who served in locations recognized by the VA Airborne Hazards and Open Burn Pit Registry. It would also concede exposure to specific toxicants, as currently accepted by VA in their adjudication manual. If the evidence is not sufficient for VA to grant the claim, the bill requires VA to request a medical opinion to address the association of the veteran's claimed disease to the known toxicants.

Wounded Warrior Project supports S. 2950 as it would remove one of the seven identified complications when attempting to file benefits for burn pit related illnesses. Our recommendation would be to continue future legislation that concedes exposure to specific toxicants as they are discovered.

Additionally, proving a nexus between exposure and illness can be increasingly difficult as the types of exposures are identified. WWP realizes that a barrier to care at VA, for health issues believed to be from toxic exposures, is proving an illness is related to service and as a result of toxic exposure. In order to fill gaps in research about the relationships between burn pits and other toxic exposures and specific illnesses, WWP recommends establishing a study by the National Academy of Medicine on burn pits and other contaminants that might have affected Service members deployed Outside Continental United States. While the National Academy of Medicine has performed reports in the past, the reports consistently listed "Limited statistical power—Small sample size in many of the studies prevents the detection of associations " as a reason for not being able to connect exposure and illness. Access to the ILER data should help address this problem. We recommend this report cover current research, identification of the negative effects of exposure from burn pits and other contaminants, an estimate of how many Service members might have been affected, possible ways to develop a "High Risk" list using

the ILER system, and what Congress, the federal government, and the VSO/MSO community can do to assist these Service members and veterans.

Additionally, new epidemiological data on the entire post-9/11 cohort should be collected to understand exposures and current short and long-term health problems related to their military service. WWP would also like to see an in-depth report on the DoD Periodic Occupational and Environmental Monitoring Summary (POEMS). These reports have a vast amount of data regarding environmental exposures in Afghanistan and Iraq. Conducting a report that can capture this data in a way that promotes informed legislative action is critical for future progress on this issue.

In summary, we recommend:

- *Congress pass S. 2950, the Veterans Burn Pit Exposure Recognition Act of 2019*
- *Congress continue future legislation that establishes exposure to specific toxicants as they are discovered*

Summary and Closing

Wounded Warrior Project's mission is to honor and empower wounded, ill, and injured veterans, service members, and their families. Unfortunately, through our AWS data, our national benefits team, and our collaboration with the TEAM Coalition, we have seen an increase in health complications for a young population that should be generally healthy. We cannot ignore obvious correlation between certain toxic exposures and illnesses with no reasonable explanation for onset.

Currently, we do not have the resources to adequately assist all veterans with severe forms of toxic exposure related illnesses. While we do what we can with our benefits team, our Independence Program, and other WWP warrior facing programs, access to healthcare is still the number one need for those suffering from toxic exposure related illnesses. We feel that while we debate on access to benefits, the most critical need is to pass legislation, such as the *Toxic Exposure in the American Military Act of 2019*, which will allow veterans who deployed access the VA healthcare system.

Regarding benefits and toxic exposure related illnesses, we recommend that Congress and the VA focus on the seven complications addressed in this testimony. It is important to note that this is only a starting point. Toxic exposure related illnesses and the establishment of benefits is a complex, and many times, extremely individualistic issue to tackle.

WWP appreciates the Committee's effort to identify and address the needs of veterans dealing with health illnesses as a result of exposure to toxicants while in service and the challenges associated with filing for disability compensation. We appreciate the invitation to submit this statement for the record and stand ready to assist in addressing these issues and any others that may arise.

Figure 1: Environmental Hazards Exposure and Treatment

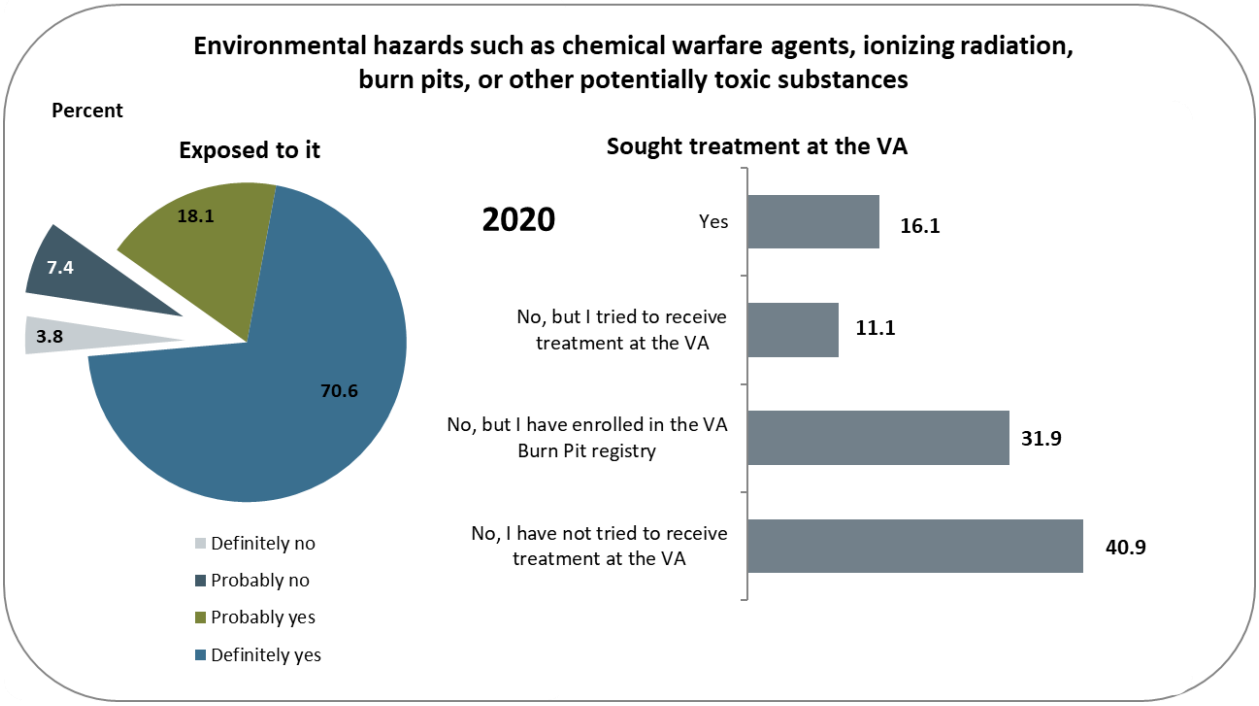

Figure 2: Sources of Environmental Hazards Exposure Among Warriors Indicating Toxic Exposure

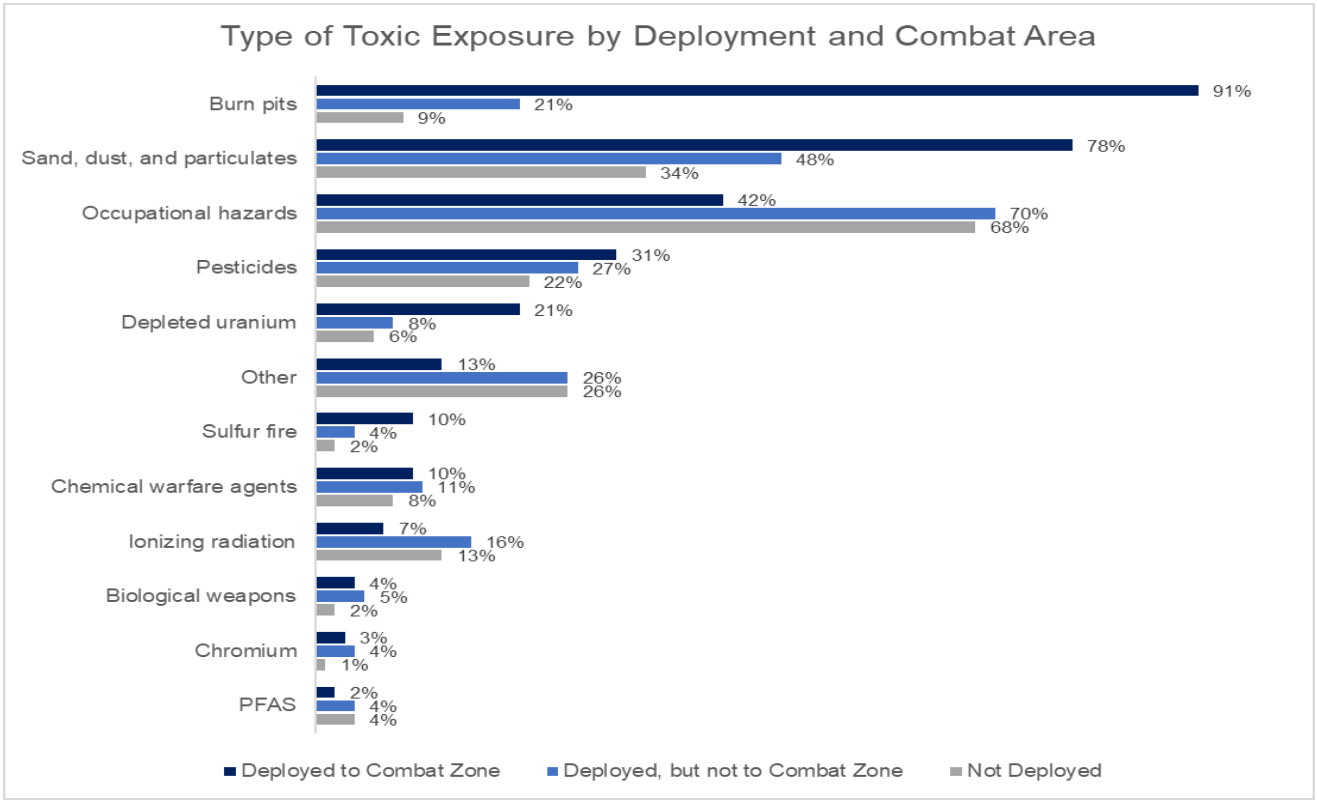

Figure 3: Symptoms and Illnesses Experienced from Environmental Hazards Exposure Among Warriors Indicating Toxic Exposure