

Blue Water Navy Vietnam Veterans and The Agent Orange Act of 1991



NACVSO Annual Conference, Cleveland, Ohio

By Ed Ball, Military Veterans Advocacy, Deputy COS of Research

www.militaryveteransadvocacy.org

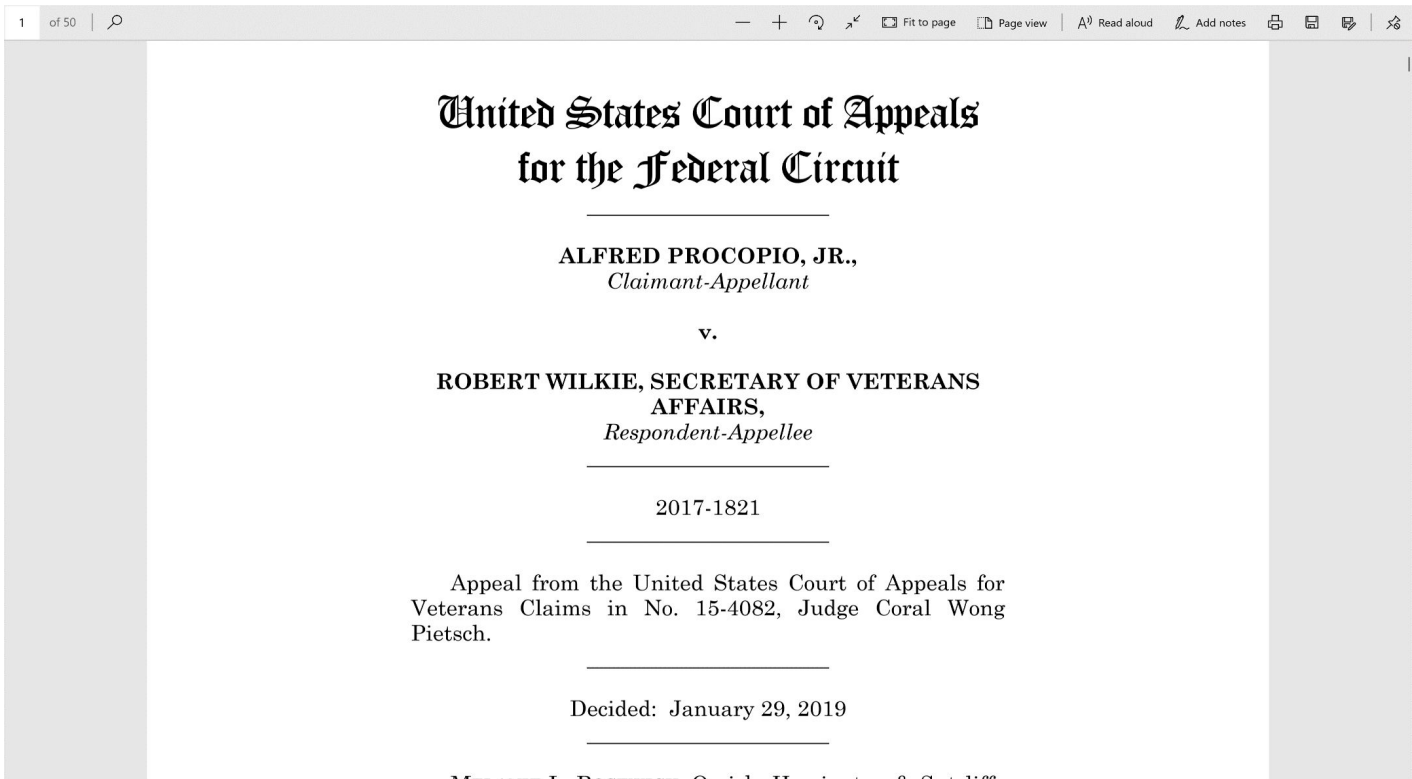
Who are we?

- Military Veterans Advocacy – John B. Wells, Esq., of Slidell, Louisiana
- Vietnam era Blue Water Navy veteran and retired Chief Engineer.
- Brought you **Procopio v Wilkie**
- Blue Water Navy Association – Commander Mike Yates, and over 3,000 Blue Water Navy veterans/widows seeking their VA Benefits.

Walking through the Procopio v Wilkie decision from MVA Inc.

- On 07 December 2018, an En Banc hearing was conducted at the Federal Circuit Courts for Veterans Appeals.
- **PROCOPIO V. WILKIE – ORAL ARGUMENT**
Raises purpose of Pro Veterans Canon, UN Convention and Law of the Sea 1958/1982 and The Agent Orange Act of 1991 Congressional intentions.

<http://www.cafc.uscourts.gov/node/24150>



**United States Court of Appeals
for the Federal Circuit**

ALFRED PROCOPIO, JR.,
Claimant-Appellant

v.

**ROBERT WILKIE, SECRETARY OF VETERANS
AFFAIRS,**
Respondent-Appellee

2017-1821

Appeal from the United States Court of Appeals for
Veterans Claims in No. 15-4082, Judge Coral Wong
Pietsch.

Decided: January 29, 2019

<http://www.cafc.uscourts.gov/sites/default/files/opinions-orders/17-1821.Opinion.1-29-2019.pdf>

What is the Territorial Sea?

□ A footnote from the Federal Circuit Courts decision says it best:

"In 1982, the United Nations Convention on the Law of the Sea ("UNCLOS") echoed the 1958 Convention, stating "[t]he sovereignty of a coastal State extends . . . to an adjacent belt of sea, described as the territorial sea," having a breadth "not exceeding 12 nautical miles." Part II, arts. 2, 3, 1833 U.N.T.S. 397, 400 (Dec. 10, 1982)."

What is the Territorial Sea?

□ UNCLOS 1982 Part II Article 2:

Article 2

Legal status of the territorial sea, of the air space over the territorial sea and of its bed and subsoil

□ 1. The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.

UNCLOS 1982 Part II art 2

continued:

- 2. This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil.
- 3. The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law.

https://www.un.org/depts/los/convention_agreements/texts/unclos/closindx.htm

UNCLOS Part II, art. 3

- ▣ *Article 3*
- ▣ *Breadth of the territorial sea*
- ▣ Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, **measured from baselines** determined in accordance with this Convention.

UNCLOS Part II, art 7.

□ *Article 7*

□ *Straight baselines*

- 1. In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.

United States Ocean Policy – Statement by President Reagan on March 10, 1983;

- ...In this respect, the United States will recognize the rights of other states in the waters off their coasts, as reflected in the Convention, so long as the rights and freedoms of the United States and others under international law are recognized by such coastal states.

https://www.gc.noaa.gov/documents/031083-reagan_ocean_policy.pdf

Where to Find Coordinates for RVN Straight Baseline

- Limits in the Seas No. 99 Straight Baselines Vietnam

<https://drive.google.com/open?id=1oMY0gWRzdKCET18QQCCuXDLov6qyvtZi>

- H.R. 299 Blue Water Navy Vietnam Veterans Act of 2019

<https://www.congress.gov/bill/116th-congress/house-bill/299/text>

RVN Straight Baseline

	Latitude North	Longitude East
At Hon Nhan Island, Tho Chu Archipelago Kien Giang Province	9°15.0'	103°27.0'
At Hon Da Island southeast of Hon Khoai Island Minh Hai Province	8°22.8'	104°52.4'
At Tai Lon Islet, Con Dao Islet in Con Dao-Vung Toa Special Sector	8°37.8'	106°37.5'
At Bong Lai Islet, Con Dao Islet	8°38.9'	106°40.3'
At Bay Canh Islet, Con Dao Islet	8°39.7'	106°42.1'
At Hon Hai Islet (Phu Qui group of islands) Thuan Hai Province	9°58.0'	109°5.0'
At Hon Doi Islet, Thuan Hai Province	12°39.0'	109°28.0'
At Dai Lanh point, Phu Khanh Province	12°53.8'	109°27.2'
At Ong Can Islet, Phu Khanh Province	13°54.0'	109°21.0'
At Ly Son Islet, Nghia Binh Province	15°23.1'	109° 9.0'
At Con Co Island, Binh Tri Thien Province	17°10.0'	107°20.6'

State Department Disagreement with RVN Declarations of Sovereign Territory

January 2016

VIETNAM

SUMMARY OF CLAIMS

TYPE	DATE	SOURCE	LIMITS	NOTES
TERRITORIAL SEA	May 1977	Statement on the Territorial Sea, the Contiguous Zone, the Exclusive Economic Zone and the Continental Shelf	12nm	
	Jan 1980	Decree No. 30/C	12nm	Required prior permission for foreign warships to enter territorial sea or contiguous zone; required ships to place weapons in non-operative positions before entering territorial sea or contiguous zone; prohibited more than three warships in territorial sea at one time. <i>The U.S. did not recognize these claims. The U.S. protested in CY 1982 and conducted operational assertions in FY 1982, 1983, 1985, 1986, 1996 through 2002, and 2010 through 2012.</i>



Board of Veterans Appeals Definition of Service in RVN – Case decided 5/8/2019

- For the purposes of determining whether a veteran may be presumed to have been exposed to herbicide agents, the term “Service in the Republic of Vietnam” includes service on the landmass, inland waterways, and in the territorial sea extending 12 nautical miles from the shores of that nation.
- Not IAW UNCLOS 1982

VAOPGCADVIS 1-19

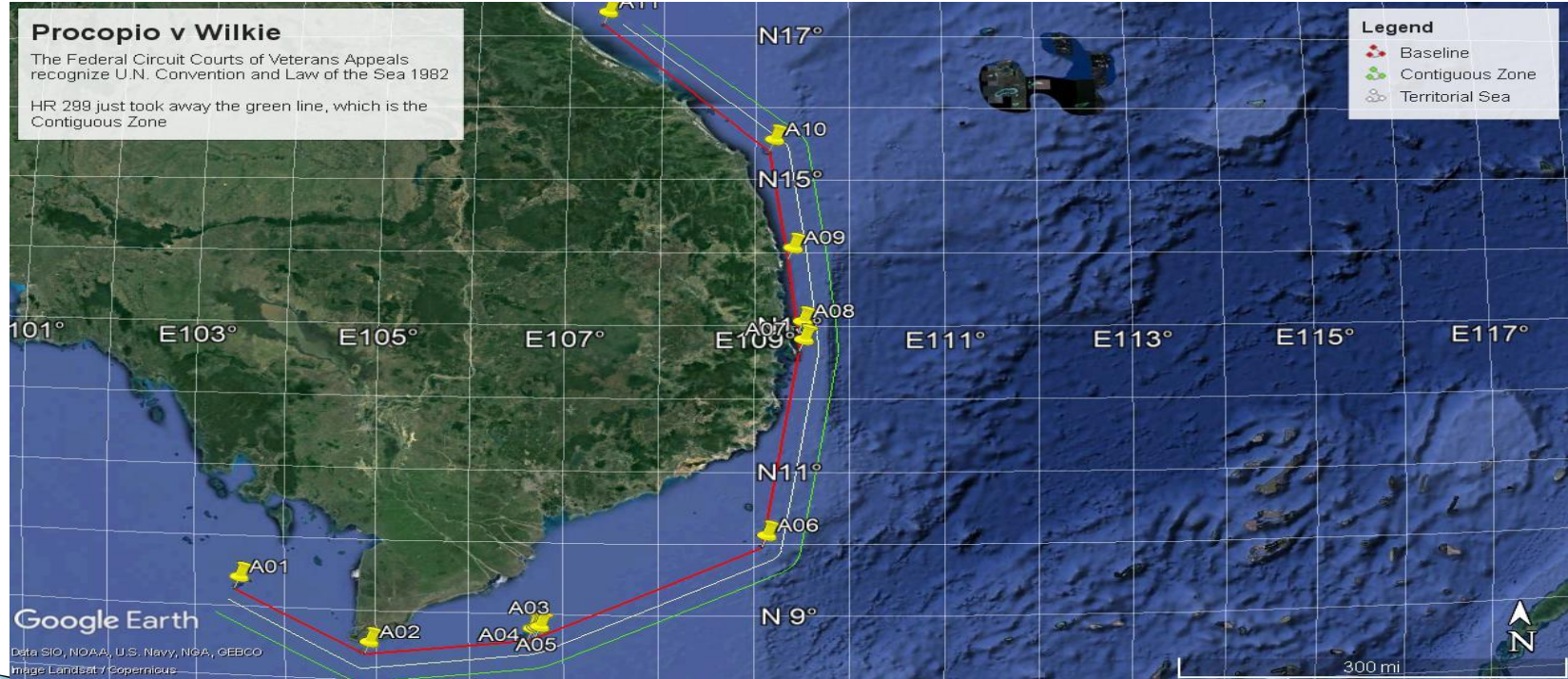
dtd Mar 29, 2019

- Page 2 VA Alleges: “The court did not address the evidence necessary to support a finding that a particular veteran served within the territorial sea of Vietnam.”
- UNCLOS Part II, arts 2, 3, and 7
- USS Intrepid CVS-11 July 1966 Deck Logs to show Alfred Procopio was indeed in the Territorial Sea of RVN, **no where near 12nm ashore.**

Procopio v Wilkie Baseline



What does Territorial Sea Look Like?



USS Intrepid CVS-11 deck log closest to shore:

- USS Intrepid CVS-11 19 Jul 1966
- **0800** 09 00N 107 11E 3.83nm inside baseline 52.64nm from Mekong Delta Region
- 1104 Assumed tactical command USS Black DD-666 1114 First line on deck USS Manatee AO-58 1149 Detached the USS Southerland DD-743 1159 Breakaway [AO-58] complete
- **1200** 09 10N 107 06.5E 15.50nm inside baseline 41.83nm from Mekong Delta Region 1415 Commenced receiving stores [USS Castor AKS-1] 1434 Completed transfer of stores
- **2000** 08 56N 106 21E 20.24nm inside baseline 26.80nm from Mekong Delta Region

USS Intrepid CVS-1 1 July 1966 Deck Logs

- The entire month was plotted and located here:

<https://drive.google.com/open?id=1RiztMZ4s3dxKumo65QSuyA4IT3VJplil>

- USS Intrepid CVS-1 1 July 1966 NARA online:
<https://catalog.archives.gov/id/6004433>

AFEM/VSM Awarded	Blue Water Navy Ship	# Crew	Date/Time of Posit	Lat/Long	Naval Gunfire Support Missions	Market Time Dates	VA Ships Presumptive List Remarks
Prepared by: RMC(SW) Ed Ball, edball40@gmail.com (937) 710-5377 not for sale, strictly for public use only							
First Section is known Dixie/Yankee Station ships, Second Section is those known to provide NGFS Support (in zone), Final Section is Coastal Patrol Ships (in zone)							
199	May 65; Nov 65-Feb 66;	USS Bache DD-470	273	29Dec65 1659	USS Kawishiwi AO-146 Unrep		
200	Dec 65 - Jun 66; Dec 66 - Jun 67; Jan - Jun 69; Jun-Nov 71; Oct 72-Mar 73;	USS Bainbridge DLGN-25	475	15Aug71 2200	16 41.13N 107 57.09E 5.01nm seaward of baseline and 16.85nm from shore	Dead Reckoning Plotting between 1200 and 2000 positions	
201	Apr 75;	USS Barbour County LST-1195	562				LST (Landing Tank Ship)
202	Apr 68; Jun 68; Nov-Dec 68; Jan-May 69;	USNS Barrett T-AP-196	2219				carried US Army 2nd Transportation Company to Qui Nhon during Aug 1965 and transported additional troops to Vietnam from April to December 1968 and January to March 1969
203	Nov-Dec 65;	USS Barry DD-933	324	31Jan66 0830	USS Topeka CLG-8 joined TG 76.6 DD-933 provided NGFS in Operation Double Eagle		operated on Saigon River during December 1965
204	May 63; Aug-Oct 64; Jan-Mar 67;	USS Bauer DE-1025	173				

New

- My Drive
- Computers
- Shared with me
- Recent
- Starred
- Trash
- Backups

Storage
 9.2 GB of 15 GB used
[UPGRADE STORAGE](#)

My Drive > Deck Logs

Name	Owner	Last modified	File size
USS White Plains AFS-4 02 Sep 1970.pdf	me	May 27, 2019 me	660 KB
USS White Plains AFS-4 10 Aug 1970.pdf	me	May 27, 2019 me	305 KB
USS Castor AKS-1 21 May 1966.pdf	me	May 27, 2019 me	612 KB
USS White Plains AFS-4 09 Aug 1970.pdf	me	May 27, 2019 me	665 KB
USS White Plains AFS-4 08 Aug 1970.pdf	me	May 27, 2019 me	610 KB
USS White Plains AFS-4 07 Aug 1970.pdf	me	May 27, 2019 me	641 KB
USS Castor AKS-1 20 May 1966.pdf	me	May 26, 2019 me	676 KB
USS Noa DD-841 15 May 1969.pdf	me	May 26, 2019 me	854 KB
USS Robison DDG-12 03 Jan 1967.pdf	me	May 25, 2019 me	2 MB
USS White Plains AFS-4 06 Aug 1970.pdf	me	May 25, 2019 me	666 KB
USS White Plains AFS-4 05 Aug 1970.pdf	me	May 25, 2019 me	655 KB
USS White Plains AFS-4 02 Aug 1970.pdf	me	May 25, 2019 me	651 KB
USS Castor AKS-1 19 May 1966.pdf	me	May 25, 2019 me	642 KB
USS Castor AKS-1 18 May 1966.pdf	me	May 24, 2019 me	629 KB
USS Castor AKS-1 17 May 1966.pdf	me	May 23, 2019 me	645 KB

NAVPERS-719 (REV. 10-64)

DECK LOG - REMARKS SHEET

(13-2) (33) 015-227122

USS Caster (AKS-1) ZONE DESCRIPTION -8(H) DATE Saturday 21 May 1966
 (Day) (Date) (Month)

AT/PASSAGE FROM Da Nang Harbor, Vietnam TO HONG KONG ACC

POSITION	ZONE	TIME
0800		
L _____	BY _____	
λ _____	BY _____	

POSITION	ZONE	TIME
1200		
L <u>16-54N</u>	BY <u>2</u>	
λ <u>107-58E</u>	BY <u>2</u>	

POSITION	ZONE	TIME
2000		
L <u>18-01N</u>	BY <u>2</u>	
λ <u>107-34E</u>	BY <u>2</u>	

LEGEND:
1-CELESTIAL
2-ELECTRONIC
3-VISUAL
4-D. R.

REMARKS

00-04 Anchored in Da Nang Harbor, Vietnam in 7 fathoms of water mud bottom with 40 fathoms of chain to the port anchor. On the following anchorage bearings: Observatory Light 089° Left tangent breakwater 135°. Ships present include U.S.S. Tombigbee (AOG-11) U.S.S. Jerome County (LS1648) and various merchant and district craft. SOPA is commanding officer U.S.S. Caster (AKS-1)

J. D. Dettigrew LTJG, SC, USN

04-08 Anchored as before. 0445 USS TOMBIGBEE (AOG-11) GOT UNDERWAY AND STOOD OUT OF THE HARBOR. 0701 USS JTE ALE TG STOOD INTO THE HARBOR.

J. M. Conrath LTJG, USNR

08-12 Underway Anchored as before. 0810 set the special sea and anchor detail. 0834 commenced bearing in the anchor. 0832 underway, towing various courses at various speeds while clearing DANANG Harbor. 0903 secured the special sea and anchor detail. Set course 339°T speed 15.1 kts enroute to rendezvous with USS KITTY HAWK (CVR-63). 0941 cut 15°

Naval Gunfire Support Ships off RVN will always operate their NGFS missions inside 12nm of shore.

5"/38 gunmounts on destroyers

- Range with 55.18 lbs. (25.03 kg) AAC Mark 49 (792 mps)
- 10° 9,506 yards (8,692 m) or 5.4 miles
- 15° 11,663 yards (10,665 m) or 6.6 mi
- 20° 13,395 yards (12,248 m) or 7.6 mi
- 25° 14,804 yards (13,537 m) or 8.4 mi
- 30° 15,919 yards (14,556 m) or 9.04 mi
- 35° 16,739 yards (15,298 m) or 9.5 mi
- 40° 17,240 yards (15,764 m) or 9.79 mi
- 45° 17,392 yards (15,903 m) or 9.88 mi
- AA Ceiling 37,200 feet (11,887 m) or 21.136 mi (Anti Aircraft=AA)



Excel ribbon: Font (Arial, 12, Bold, Italic, Underline), Paragraph, Styles, Tables, Lists, Windows, Help

1	State	Military Site	Contaminant List	TCDD Y/N	Site EPA I.D.	Listing Date	Additional Information									
98							Site Progress Profile									
99							Federal Register Notice									
100																
101		Sacramento Army Depot	Yes		CA0210020780	7/22/1987	Site Listing Narrative									
102							Site Progress Profile									
103							Federal Register Notice									
104																
105		Sharpe Army Depot	Yes		CA8210020832	7/22/1987	Site Listing Narrative									
106							Site Progress Profile									
107							Federal Register Notice									
108																
109		South Bay Asbestos Area	Yes		CAD980894885	6/10/1986	Site Listing Narrative									
110							Site Progress Profile									
111							Federal Register Notice									
112																
113		Tracy Defense Depot (USARMY)	Yes	Y	CA4971520834	8/30/1990	Site Listing Narrative									
114							Site Progress Profile									
115							Federal Register Notice									
116																
117		Travis Air Force Base	Yes	Y	CA5570024575	11/21/1989	Site Listing Narrative									
118							Site Progress Profile									
119							Federal Register Notice									
120																
121		Treasure Island Naval Air Station - Hunters Point Annex	Yes		CA1170090087	11/21/1989	Site Listing Narrative									

Excel ribbon: Tables (Toxic Exposures, Diseases, References, Footnotes)



Disease										
1	Disease	Columns to use for sorting as noted in introductory			Toxins - by strength of evidence			References and Footnotes		
2		1st cat.	2nd cat.	3rd cat.	Strong	Good	Limited or Conflicting		Notes	
91	Hodgkin's Disease (lymphoma)	Onc	Heme			Chlorophenols, Phenoxyacetic acid herbicides, TCDD/Dioxins	Creosote, Ethylene oxide, Organic solvents, Pesticides: organochlorines (aldrin, DDT, lindane), Trichloroethylene (TCE)	29, 36, 84, 98, 123	In addition to groups or individual pesticides listed, pesticide exposure in applicators, manufacturers and agricultural workers has been associated with Hodgkin's lymphoma. In these situations, the individual is exposed to mixtures of pesticides or different pesticides at different times and a correlation between an individual pesticide and disease can not be made.	
92	Hormonal changes (levels of circulating sex hormones - FSH/LH, Inhibin, and/or estrogens, progesterones, and androgens)	G.U.	Endo	repro	Ethanol	2-Bromopropane, Lead; Pesticides: dibromochloropropane (DBCP), organophosphates (ethyl parathion, methamidophos), fungicides (vinclozolin); TCDD/dioxins	Atrazine, Bisphenol A, DDT, Manganese, Mercury, PBBs/PCBs, Phthalates, Styrene (females), Tobacco smoke, Toluene (males)	42, 56, 75, 80, 89, 102, 134, 143	Herbicide applicators and fungicide use in males has been associated with changes in FSH and LH serum levels.	
93	Hyperkeratosis/Hyperpigmentation	Derm			Arsenic		PCBs			
94	Hypertension	C.V.	geriatr		Carbon disulfide, Lead	Arsenic, Carbon monoxide	Cadmium, Phenoxyacetic herbicides, DDT, Methyl mercury, PCBs, TCDD, Vinyl chloride	2, 48, 51, 80, 82, 123	Arsenic in drinking water has been associated with HTN.	
95	Hypoactivity	Neuro	Psych				Cadmium, PCBs, Styrene	58,137		
96	Immune suppression	Autoimm	Allerg	Onc	Ionizing radiation	Asbestos, Benzo(a)pyrene (PAHs), Lead, Mercury, Methyl isocyanate, Nickel, Nitrogen dioxide, PBBs, PCBs, PCDDs, PCDFs; Pesticides:	Arsenic, Benzene, Beryllium, Cadmium, Chromium, Copper, Estrogens/DES, Diesel exhaust, Nitrosamines, Ozone; Pesticides: hexachlorobenzene, organotins (tributyl tin oxide, triphenyl tin oxide), phenoxyacetic herbicides (2,4-D); Platinum, Silica	22, 23, 60, 77,	Broad non-specific category that includes decreased levels of circulating antibodies, decreased levels of circulating immune cells, altered cell function, decreased immune response, decreased resistance to infection, and increased tumor susceptibility. In mice,	

Helpful References:

- [The Agent Orange Act of 1991](#)
- [BWNVVA Master List](#) – current list of Deck Logs updated daily; bookmark for updates; bottom left tab for Links of Interest
- [BWNVVA Military Contaminant Listing](#) – work in progress; bookmark for updates



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Q & A