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Report on Environmental Conditions

Benjamin v. Molina, 75 Civ. 3073 (LAP) Progress Report, January–April 2023

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I. INTRODUCTION

The Office of Compliance Consultants (“OCC”) is authorized to monitor the Defendants’—the City of New York’s (“NYC”) and the NYC Department of Correction’s (“DOC” or the “Department”)—compliance with the Court’s mandates contained in various orders: the Order re: Fire Safety, dated November 13, 1998; the Order on: Environmental Conditions (the “Environmental Order”), dated April 26, 2001; the Order re: Testing and Repair of Ventilation Systems (the “Ventilation Order”), dated November 14, 2003; the Amended Supplementary Order re: Repair and Renovation of Ventilation Systems (the “Am. Supp. Ventilation Order”), dated February 11, 2009; the Amended Order re: Lighting Conditions (the “Am. Lighting Order”), dated October 7, 2010; the “so ordered” Stipulation concerning withdrawal of sanitation motions and steps to improve sanitation (the “Sanitation Stipulation”), dated October 14, 2010; the Supplemental Order re: Construction Projects Required by Amended Supplementary Ventilation Order, dated October 20, 2011; the Second Supplemental Order re: Construction Projects Required by Amended Supplementary Ventilation Order, dated December 18, 2012; the Order re: Ventilation Reports, dated November 18, 2021; the Order re: Monthly Ventilation Report Schedule, dated May 23, 2022; and the Order re: Ventilation Certification, also dated May 23, 2022.

This report summarizes the status of sanitation, heating and ventilation, lighting, and fire safety within various New York City jails as reviewed by OCC during January–April 2023 (the “monitoring period”). A summary of complaints reported to OCC by The Legal Aid Society’s Prisoners’ Rights Project (“LAS” or “Plaintiffs,” sometimes “Plaintiffs’ counsel”) conclude this report. As required by the Revised Order re: Timetable for Submission of OCC Progress Reports, dated January 14, 2021, a draft of this report was circulated to the parties for review and

comment. The Court granted the Defendants’ request for an extension to the deadline to provide OCC with the parties’ comments to the draft report, which changed the deadline from June 5, 2023 to June 12, 2023. In accordance with longstanding practice, the parties’ comments to the draft report (respectively “Defs.’ resp.” and Pltfs.’ resp.”) are incorporated into and appended to this final version of the report. Before discussing monitoring observations and compliance, OCC must note a positive change evinced in the Defendants’ comments. There seems to be a shift away from excuses and unsupported justifications together with a move toward collaboration and solutions, which will hopefully continue. Plaintiffs’ counsel also observed a shift in the Defendants’ approach but is less optimistic: “Defendant’s counsel has expressed hope that we can finally begin to move towards compliance. We are eager to engage with the Department to do so, but its recent actions in other arenas give us reason for skepticism.” (footnote omitted). Pltfs.’ resp.at 1.

II. MONITORING OBSERVATIONS

A. Sanitation

1. DOC Sanitation Reports

a. Defendants’ Obligations

The Department’s Environmental Health Officers and Public Health Sanitarians are required to inspect and report on the sanitation conditions within the jails. An Environmental Health Officer is a specially trained captain who conducts regular sanitation inspections of common areas at a designated facility and is required to “submit . . . reports of all such inspections, including a description of any ameliorative actions taken, planned[,] or recommended.” *Id.* at ¶ 3c. The Environmental Order requires Environmental Health Officers to “make a thorough inspection of the entire institution in the course of the week and [to] make

more frequent inspections when necessary to respond to particular problems—e.g., inmate complaints.” ¶ 3b. The Environmental Health Officers are trained by the Department’s Environmental Health Unit, which is staffed by Public Health Sanitarians who are themselves required to complete “weekly inspections of all facilities as well as weekly reports of deficiencies” and “provide reports on a regular basis to [OCC] with respect to environmental conditions that are the subject of [the Environmental] Order.” *Id.* ¶ 4. Generally, an Environmental Health Officer inspects the assigned facility over the course of one week and a Public Health Sanitarian inspects the facility over one month.

b. Defendants’ Performance

During this monitoring period, OCC received redacted Public Health Sanitarian (“PHS”) reports and Environmental Health Officer (“EHO”) reports from the Environmental Health Unit (“EHU”) intermittently from January 6, 2023–April 27, 2023. The PHS reports consisted of inspections conducted December 12, 2022–April 14, 2023 and the EHO reports consisted of inspections conducted November 14, 2022–March 25, 2023. The PHS reports are batched and submitted as a work week’s individual inspections of intake and living areas carried out on a specified date. The EHO reports, in comparison, are not comprised of individual inspection areas, but include several areas on each inspection report, dated for a specific date or several dates depending on the facility, and submitted as a batch for a calendar week. The PHS and EHO reports are provided to OCC as selected pages from larger reports instead of complete reports since certain of the inspections involve matters or locations that are not currently subject to *Benjamin* monitoring. For example, OCC does not monitor staff areas, clinics and medical locations, and pantries; apparently, some of the report pages provided to OCC are redacted or omitted for the same reason.

The PHS and EHO reports, collectively, should provide a snapshot of the conditions observed by the Sanitarians and Officers at a given time and aid in the ongoing assessment of the sanitation conditions within the jails; however, reports were not submitted for some facilities for certain weeks. Per the EHU, this is due to “staffing challenges/post being shift reduced.” Beyond the staffing issues, as raised repeatedly by OCC, the PHS and EHO reports are formatted differently and there are significant reporting differences among the individual facilities in the EHO reports. Consequently, it is difficult to discern violations, locations, and dates in the latter reports, with the reporting covering multiple areas in a day in some facilities versus one week in others. The facility reporting practices also indicate varying skill levels among the Officers indicating some may need additional training in conducting inspections.¹ These factors make it unfeasible to undertake a comprehensive review and, further, the EHO reports are not formatted for *Benjamin* compliance rating, which would take an inordinate amount of time for OCC to reformat and calculate compliance based on these reports. Moreover, the extensive variability in what is reported by the EHOs and how, means that adequate data is simply not available for review and inclusion in the compliance calculations. Given the wide-ranging formatting differences between the PHS and EHO reports, OCC has used the PHS reports to calculate *Benjamin* compliance while using a combination of the PHS and EHO reports to summarize inspection findings. In so doing, inspection periods are presented as a calendar week—the way

¹ In a recent meeting between the parties and OCC, a representative of the Department condoned lower standards for the EHOs, referring to the fact that they are not trained sanitarians, like the Public Health Sanitarians. However, the captains who are Environmental Health Officers are trained by the Department’s Environmental Health Unit, which is staffed by expert sanitarians. There really is no excuse for the EHO reports to exhibit the deficiencies they do. Plaintiffs demand that the Department institute immediate, and regularly repeated, training for EHOs to ensure consistency among their reporting.

Pltfs.’ resp. at 3.

they are in the most complete EHO reports—to cover the variability caused by reports that also use a work week range and a single day and date.

c. Defendants' Compliance

The Court requires that “[s]hower facilities, janitors’ closets, laundry areas, and toilets, washbasins, sinks and other personal hygiene and sanitation facilities . . . be thoroughly cleaned and sanitized at least once daily and more often if necessary.” Environmental Order at ¶ 11a.² The Department has removed most laundry areas, but the other types of hygiene/sanitation facilities remain and are present in intake and living areas. “Every living area (cells, dormitory, and modular sleeping areas, and showers/bathrooms and dayrooms in each of these units) shall be thoroughly cleaned and sanitized each week.” Environmental Order at ¶ 11c.

The Defendants are not in substantial compliance with the Court’s sanitation mandates. Eighty percent with zero housekeeping management observations is the agreed upon minimum compliance percentage for the Department to meet accepted sanitation standards in intake and living areas.³ OCC’s analysis of the PHS reports indicates the EHU determined 68% of intake and living areas were compliant during the monitoring period. (The intake and living areas that were reviewed by OCC during this monitoring period were identified on Att. 1 to the draft of this report.) There is a final step in the calculation of compliance rates, which the Defendants

² This provision of the Environmental Order also requires that showers be power washed with a bleach solution on a quarterly basis. By Order re: Power Washing, dated December 14, 2010, the Court suspended this mandate and permitted the Department to steam clean or use less-damaging measures in an effort to preserve tile work. During this monitoring period, EMTC initially required that the showers be power washed in 3 Upper, 4 Main, 4 Upper, 5 Lower, 6 Lower, 8 Main, 9 Main, 9 Upper, and 11 Lower. Apparently, the EHU addressed this situation and the facility prepared its schedule for steam cleaning instead.

³ After considerable discussion, [the parties’ experts and OCC’s expert] adopted the 80% score with no sanitation management citations as the scoring criteria to determine a units (sic) pass or failure. The Department felt that a housekeeping score of 80% was easily achievable. The group felt that no sanitation management issues should exist, as these constitute the highest threat to human health.

2013 Environmental Health Inspections for New York City Jail Facilities at Rikers Island at 3.

disagree with and have not implemented, so the Department’s reported compliance does not incorporate the triggering of management violations based on the frequency of Unclean to Sight, Surfaces (not) Smooth and Easily Cleanable, and Organic Soil Accumulations in a unit.⁴ “[O]ver 2 times in any one unit is evidence of a general failure in following cleaning procedures prior to the sanitation step.” *2013 Environmental Health Inspections for New York City Jail Facilities at Rikers Island* at 7.

- 56% of the passing inspections were in areas found to be unclean to sight three–eight times during the inspection. Unclean to Sight findings include the presence of loose filth and garbage; dust and dirt accumulation; soiling of touch points and/or high (common) touch surfaces; soiled bed frames and dayroom furnishings; soiled utility (janitor’s) closet; and soil imbedded at transition areas such as edges of spalled tile, floor to wall junctions, door jambs and furnishing floor anchors.
- 25% of the passing inspections were in areas found to have organic soil accumulations three times during the inspection. Findings of Organic Soil Accumulations in Wet and Moist Areas include organic debris accumulation in and around toilets, urinals, utility sinks, lavatories and showers; drain screens not cleaned of hair and debris; partially occluded drains resulting in temporary pooling of water; and chronic pooling of water and/or presence of chronically wet walking surfaces.
- 46% of the passing inspections were in areas with surfaces that were found to be not smooth and easily cleanable three–five times during the inspection. Surfaces [not] Smooth and Easily Cleanable include structural surfaces in poor repair, porous, [or]

⁴ For Plaintiffs’ counsel, this “is a sobering reminder that the Department’s abysmal sanitation compliance ratings appear higher than they are.” Pltfs.’ resp. at 2. “Thus, OCC’s already unacceptable conclusion, based on its review of PHS reports, that 68% of intake and living areas were compliant during the monitoring period, is inflated.” (citation omitted). *Id.*

uneven/irregular/jagged. For example: wall-floor junctions not smooth, rounded, or sealed; cracks, joints, and tile grouting not sealed or in good repair. Beds and/or dayroom furnishings in poor repair.

Were the final step applied to the PHS inspections, the Defendants' compliance would be significantly lower; nonetheless, the Defendants have demonstrated improved compliance, particularly in intake areas. This improvement is noteworthy given the long-standing difficulties the Department has with cleaning intake areas. "The Department ascribes this improvement to the fact that EHU supervisors continue to encourage the facilities' managers to ensure that sanitation trainings are conducted on a regular basis." Defs.' resp. at 2-3.

Intake Areas

Compliance ratings ranged from 66.67⁵—to 100.00⁶ in the intake areas of AMKC, EMTC, GRVC, NIC, RMSC, RNDC, VCBC, and WF. Of the ten intake areas inspected during this monitoring period, the EHU found that six demonstrated compliance during every inspection—GRVC Main Intake and Segregation Intake, NIC Main Intake, RNDC Intake, VCBC Intake, and WF Main Intake—an increase from two during the prior monitoring period. The NIC Main Intake and the RNDC Intake also passed all inspections during the prior monitoring period. The EMTC Intake passed only one inspection during this monitoring period. The AMKC Main Intake and RMSC Intake passed some of their respective inspections and failed the others. Overall, the GRVC Segregation Intake and VCBC Intake have demonstrated the most improvement, having failed all inspections during the prior monitoring period.

⁵ EMTC Intake 1/8/2023–1/14/2023—an increase from 64.58 (VCBC) during the prior monitoring period.

⁶ (NIC Annex Intake 1/8/2023–1/14/2023, 1/22/2023–1/28/2023, 1/29/2023–2/4/2023, and 2/5/2023–2/11/2023—an increase from 97.37 (RNDC) during the prior monitoring period.

It should be noted that were the EHO findings incorporated into the overall compliance findings, the foregoing results would be different. For example, as illustrated immediately below, the GRVC Segregation Intake would have failed most of its inspections due to management issues such as a repeated lack of cleaning chemicals, namely Gentle Scrub and mold and mildew cleaner, and procedures not being followed resulting in missing personal protective equipment (goggles and gloves) and cleaning supplies (scouring pads and sponges).

GRVC Segregation Intake Inspections

	LOCATION	OBSERVATION	FINDING CATEGORY	
<i>Week of:</i> 1/1/2023 - 1/7/2023 FAIL	common area	dirty corridor floor, dirty wall	unclean to sight	EHO
	janitor's closet	dirty floor, dirty slop sink	unclean to sight	EHO
	janitor's closet	goggles not provided, gloves not provided	management violation: procedures not followed	EHO
	janitor's closet	scouring pads not provided, sponges not provided	management violation: procedures not followed	EHO
	janitor's closet	Gentle Scrub not provided	management violation: lack of cleaning chemicals	EHO
	janitor's closet	mold & mildew cleaner not provided	management violation: lack of cleaning chemicals	EHO
	shower area	missing wall tiles (work order resubmitted 1/5/23 – pending)	surfaces not smooth and easily cleanable	EHO
<i>Week of:</i> 1/8/2023 - 1/14/2023 FAIL	common area	no cause for action	n/a	PHS
	janitor's closet	dirty slop sink, dirty wall, dirty holders, dirty corners	unclean to sight	PHS
	janitor's closet	dirty vent	ventilation	PHS
	janitor's closet	dirty floor, dirty slop sink, dirty wall, dirty equipment organizer	unclean to sight	EHO
	janitor's closet	goggles not provided, gloves not provided	management violation: procedures not followed	EHO
	janitor's closet	scouring pads not provided, sponges not provided	management violation: procedures not followed	EHO
	janitor's closet	Gentle Scrub not provided	management violation: lack of cleaning chemicals	EHO
	janitor's closet	mold & mildew cleaner not provided	management violation: lack of cleaning chemicals	EHO
	pen cell #12	vent clogged with paint	ventilation	PHS
	pen cell #12	no cause for action	n/a	PHS
	pen cell #13	dirty wall, dirty sink, dirty corners, dirty junctions, dirty window screens	unclean to sight	PHS
	pen cell #4	no cause for action	n/a	PHS
	shower area	missing wall tiles (Repeat 9), rusty floor drains (Repeat 4)	surfaces not smooth and easily cleanable	PHS

	LOCATION	OBSERVATION	FINDING CATEGORY	
Week of: 1/15/2023 - 1/21/2023 FAIL	janitor's closet	dirty slop sink, dirty wall, dirty equipment organizer	unclean to sight	EHO
	janitor's closet	goggles not provided, gloves not provided	management violation: procedures not followed	EHO
	janitor's closet	scouring pads not provided, sponges not provided	management violation: procedures not followed	EHO
	janitor's closet	Gentle Scrub not provided	management violation: lack of cleaning chemicals	EHO
	janitor's closet	mold & mildew cleaner not provided	management violation: lack of cleaning chemicals	EHO
Week of: 1/22/2023 - 1/28/2023 FAIL	common area	dirty wall, dirty floor	unclean to sight	EHO
	janitor's closet	dirty slop sink, dirty wall, dirty equipment organizer	unclean to sight	EHO
	janitor's closet	goggles not provided, gloves not provided	management violation: procedures not followed	EHO
	janitor's closet	scouring pads not provided, sponges not provided	management violation: procedures not followed	EHO
	janitor's closet	Gentle Scrub not provided	management violation : lack of cleaning chemicals	EHO
	janitor's closet	mold & mildew cleaner not provided	management violation: lack of cleaning chemicals	EHO
	shower area	missing wall tiles (work order resubmitted 1/5/23 – pending)	surfaces not smooth and easily cleanable	EHO
Week of: 1/29/2023 - 2/4/2023 PASS	common area	dirty wall, dirty floor	unclean to sight	EHO
	janitor's closet	dirty slop sink, dirty wall, dirty equipment organizer	unclean to sight	EHO
	shower area	missing wall tiles (work order resubmitted 1/5/23 – pending)	surfaces not smooth and easily cleanable	EHO
Week of: 2/5/2023 - 2/11/2023 PASS	common area	dirty wall, dirty corners, dirty junctions, dirty door frames	unclean to sight	PHS
	common area	dirty wall, dirty floor	unclean to sight	EHO
	janitor's closet	dirty sink, dirty holders, dirty floor, dirty junctions	unclean to sight	PHS
	janitor's closet	dirty slop sink, dirty wall, dirty equipment organizer	unclean to sight	EHO
	pen cell #11	dirty light shield, dirty corners, dirty junctions	unclean to sight	PHS
	pen cell #13	no cause for action	n/a	PHS
	pen cell #6	dirty sink, dirty corners, dirty junctions, dirty light shields	unclean to sight	PHS
	shower area	broken wall tiles, rust on wall	surfaces not smooth and easily cleanable	PHS
	shower area	missing wall tiles (work order resubmitted 1/5/23 – pending)	surfaces not smooth and easily cleanable	EHO
Week of: 2/12/2023 - 2/18/2023 PASS	shower area	missing wall tiles (work order submitted 1/5/23 – pending)	surfaces not smooth and easily cleanable	EHO
	janitor's closet	dirty slop sink, dirty wall, dirty equipment organizer	unclean to sight	EHO
Week of: 2/19/2023 - 2/25/2023	janitor's closet	dirty slop sink, dirty walls, dirty equipment organizer	unclean to sight	EHO
	common	dirt build-up on corridor floor	unclean to sight	EHO

	LOCATION	OBSERVATION	FINDING CATEGORY	
FAIL	area			
	shower area	missing wall tiles (work order submitted 2/5/23 – pending)	surfaces not smooth and easily cleanable	EHO
	janitor's closet	dirty goggles, dirty gloves	management violation: procedures not followed	EHO
	janitor's closet	scouring pads not provided, sponges not provided	management violation: procedures not followed	EHO
	janitor's closet	Gentle Scrub not provided	management violation: lack of cleaning chemicals	EHO
	janitor's closet	mold & mildew remover not provided	management violation: lack of cleaning chemicals	EHO
<i>Week of: 2/26/2023 - 3/4/2023</i> FAIL	janitor's closet	dirty floor, dirty slop sink, dirty wall, dirty equipment organizer	unclean to sight	EHO
	janitor's closet	goggles not provided, gloves not provided	management violation: procedures not followed	EHO
	janitor's closet	scouring pads not provided, sponges not provided	management violation: procedures not followed	EHO
	janitor's closet	Gentle Scrub not provided	management violation: lack of cleaning chemicals	EHO
	janitor's closet	mold and mildew cleaner not provided	management violation: lack of cleaning chemicals	EHO

Per the Defendants' response to the draft of this report (at 3), in explanation of the foregoing, "the EHO inspections are conducted more frequently and make observations more temporal in nature." However, that is precisely the reason that the EHO inspections should be integrated into the compliance determination. They give a more everyday overview of sanitation in the facilities.

Living Areas

In living areas, compliance ratings ranged from 57.89⁷ to 96.08⁸ in AMKC, EMTC, GRVC, NIC, RMSC, RNDC, VCBC, and WF. Of the 217 living areas reviewed for compliance, the EHU found 90 were compliant during every inspection and assessed the remaining 127 as noncompliant during one or more inspections. (Forty-four of the latter areas failed every

⁷ AMKC Quad Lower 13, 4/9/2023–4/15/2023—no change from 57.89 (AMKC Quad Upper 8) during the prior monitoring period.

⁸ RNDC 2 Central South, 2/5/2023–2/11/2023—an increase from 94.74 in the same housing area during the prior monitoring period.

inspection.) Throughout the monitoring period, living areas were documented to be generally unsanitary, with dirty janitor's closets, insufficient cleaning products, missing cleaning equipment, poorly maintained ventilation, and uncorrected deficiencies despite submitted and resubmitted work orders.

Vacant Cells

The Defendants, additionally, remain noncompliant in cleaning and maintaining vacant cells in accordance with the Court's mandate that '[e]very cell shall be thoroughly cleaned and sanitized upon becoming vacant, shall be kept clean of garbage and debris while vacant, and shall be inspected prior to re-occupancy to ensure that it is cleaned and sanitized.'

Environmental Order at ¶ 11c. To effectuate the court's order, the Department requires:

The vacant cell shall be cleaned and sanitized on the tour it becomes vacant or early in the next tour if the cell is vacated late in the tour. The vacant cells shall be maintained in a clean and sanitary manner. If necessary, the vacant cell shall be cleaned and sanitized a second time. For instance, if the floor becomes dirty or the ledges become dusty, the cell must be cleaned again.

DOC Directive 3901R-B, Housekeeping Procedures, at 9. OCC reviewed the observations and findings related to 383 vacant cells and an additional 86 inspections of vacant cells by the EHOs wherein the specific cell was not identified. Of the 383 vacant cells, 41 were inspected twice and 5 were inspected three times, resulting in 429 inspections during which 63 (15%) were compliant.⁹ The remaining 366 (or 85%) inspections found deficiencies including organic soil accumulations, uneven and not easily cleanable surfaces, unclean and unsanitary conditions, ventilation issues, and vermin indicators. It is unknown how many vacant cells were inspected during the 86 vacant cell inspections documented by the EHOs, but in all instances, the finding

⁹ Five of the cells inspected twice were clean during both inspections and one of the cells inspected three times was clean during all inspections.

was unclean to sight. The vacant cell observations and findings were appended as Att. 2 to the draft of this report. Plaintiffs’ counsel observes that the “rating of 15% compliance is generous—if the analysis included the unidentified unclean cells *and* if the Department followed the sanitation standards to which it agreed, that percentage would be much lower.” Pltfs.’ resp. at 2. Plaintiffs are correct and the Department does not dispute its performance in this area, noting the “EHU continues to communicate the importance of cleaning the vacant cells as per the written protocol.” Defs.’ resp. at 3.

Janitor’s Closets

As noted above, the court requires the janitors’ closets to “be thoroughly cleaned and sanitized at least once daily and more often if necessary.” Environmental Order at ¶ 11a. OCC reviewed the observations and findings during 886 inspections carried out by the PHS and the EHO of janitor’s closets in AMKC, EMTC, GRVC, NIC, RMSC, RNDC, VCBC, and WF. (All discussions of janitor’s closets include alternate locations such as sanitation supply cabinets and “A” stations (housing area control rooms) with regard to the storage of supplies.) There were no deficiencies in the janitor’s closets during 178 inspections (20%). During the remaining inspections, there were 1,684 occurrences of deficiencies in the violation categories listed in the table below. To be clear, the frequencies in the table do not necessarily represent distinct observations. In some cases, multiple observations are counted as one instance, for example:

- the large hole in the wall *and* rusted ceiling in the AMKC Quad Lower 1 janitor’s closet during the week of 3/19/2023 - 3/25/2023 is counted as one instance of surfaces not smooth and easily cleanable;

- mildew on the wall *and* mildew on the ceiling of the GRVC 19B janitor’s closet during the week of 1/22/2023 - 1/28/2023 is counted as one instance of organic soil accumulations; and
- the dirty floor, dirty drains, dirty walls, *and* dirty shelves in the RMSC Building 4 janitor’s closet during the week of 2/26/2023 - 3/04/2023 is counted as one instance of unclean to sight.

The observation within each violation category in the table below was specified on Att. 3 to the draft of this report.

VIOLATION CATEGORY	FREQUENCY
cleaning and sanitizing procedures not followed	351
absence of training materials or instructional postings in critical housekeeping areas (this listing of single observations is a subset of “cleaning and sanitizing procedures not followed” that has been carved out from that category, which requires at least two observations to be triggered)	8
lack of adherence to established policies and procedures (this listing of single observations is a subset of “cleaning and sanitizing procedures not followed” that has been carved out from that category, which requires at least two observations to be triggered)	81
lack of cleaning chemicals	106
organic soil accumulations	137
chronic pooling of water/chronically wet walking surfaces (this grouping is a subset of organic soil accumulations that has been carved out of that category to distinguish observances that do not include mold and mildew or other organic accumulations as observed during the inspections)	14
presence of malodors	9
unclean to sight	361
ventilation	109
vermin	26
surfaces not smooth and easily cleanable	362
inadequate water facilities	5
inadequate cleaning equipment and equipment station	65
inadequate lighting	50

The Department incorporated the court’s mandates into its directives decades ago (e.g., 3901R-B Housekeeping Procedures, which superseded 3901R-A, dated 01/01/2002)¹⁰ and established protocols to achieve compliance; however, the long-established policies and procedures are not being adhered to as evidenced by the 498 instances of unclean to sight and organic soil accumulations during the inspections of janitor’s closets during this monitoring period. These findings signal that basic cleaning and sanitizing are not taking place as required and exemplify what OCC’s former expert sanitarian, Eugene Pepper, described as a “critical failure by the institution . . . the failure to properly clean (Unclean to Sight and Organic Soil Accumulations).” The first step in any sanitation operations (sic). This step is basically a soap and water step! This is a failure in procedure.” *2013 Environmental Health Inspections for New York City Jail Facilities at Rikers Island* at 7. In the decade since Mr. Pepper’s report was promulgated, the findings still hold true. Moreover, sanitizing of the janitor’s closets could not occur. “If dirt, dust, grime or mildew remains on a surface, the sanitizer will not be able to successfully sanitize the surface during the sanitizing step. If any dirt, dust, grime or mildew remains on a surface, the surface is not clean.” DOC Cleaning and Sanitizing Manual at 1.

¹⁰ Each housing area shall have a well-ventilated janitor closet with an operable light that is free of mold and mildew. Janitor closets shall be equipped with an adequate supply of cleaning equipment and supplies. The required cleaning equipment includes mops, brooms, dust pans, mop buckets with wringer, sponges, scrub brushes, and any other equipment deemed necessary. Sanitation chemicals shall be secured in the janitor closet, or a supply closet. The cleaning chemicals may only be secured in a locked cabinet in the “A” station if there is no janitor closet in the housing area. The cleaning chemicals shall include a general cleaner, a disinfectant, mildew cleaner, and a cleaner without grit. The janitor closet shall be equipped with a sink or a sink shall be near the janitor closet. The janitor closet shall be secured at all times.

DOC Directive 3901R-B Housekeeping Procedures at 9.

The Environmental Order (at ¶ 11f–g) further requires:

Each housing area shall have an adequately ventilated [janitor’s] closet equipped with a sink, or accessible to a sink, and shall have an adequate supply of cleaning implements and supplies, accessible to all detainees, so that each detainee can clean his cell daily and so that common areas of the housing blocks can also be cleaned. All cleaning implements shall be cleaned thoroughly after each use and stored in a clean, adequately ventilated place.

As with the cleaning and sanitizing requirements, the Department similarly incorporated these requirements into its directives only to have the policies and procedures largely ignored including the simple requirement for “an adequately ventilated closet.” In addition to the instances of mold and mildew included in the organic soil accumulations category, the lack of adequately ventilated janitor’s closets is demonstrated through circumstances such as those immediately below.

INSPECTION OBSERVATION	FACILITY	AREA	WEEK OF
"completely occluded" ceiling vent	AMKC	West 18 Upper B	1/22/2023 - 1/28/2023
			2/12/2023 - 2/18/2023
"completely occluded" ceiling vent (Repeat)	AMKC	West 18 Upper B	3/12/2023 - 3/18/2023
clogged vent	AMKC	Dorm 1 Upper	3/12/2023 - 3/18/2023
clogged wall vent	GRVC	11A	1/15/2023 - 1/21/2023
		11B	1/1/2023 - 1/7/2023
			1/15/2023 - 1/21/2023
			1/22/2023 - 1/28/2023
			1/29/2023 - 2/4/2023
			1/8/2023 - 1/14/2023
			2/19/2023 - 2/25/2023
			2/26/2023 - 3/4/2023
			2/5/2023 - 2/11/2023
partially clogged ceiling vent	RNDC	Mod 4 Lower North	3/19/2023 - 3/25/2023
	AMKC	West 17 Upper B	1/29/2023 - 2/4/2023
partially clogged ceiling vent (Repeat 5)	AMKC	Mod 1 Upper B	1/15/2023 - 1/21/2023
partially occluded ceiling vent (Repeat 1)	AMKC	West 17 Upper B	2/19/2023 - 2/25/2023
partially occluded ceiling vent (Repeat 10)	EMTC	Intake	3/26/2023 - 4/1/2023
partially occluded ceiling vent (Repeat 3)	EMTC	Intake	2/5/2023 - 2/11/2023
partially occluded ceiling vent (Repeat 4)	EMTC	Intake	2/12/2023 - 2/18/2023
partially occluded ceiling vent (Repeat 5)	EMTC	Intake	2/19/2023 - 2/25/2023
partially occluded ceiling vent (Repeat 6)	EMTC	Intake	2/26/2023 - 3/4/2023
partially occluded ceiling vent (Repeat 7)	EMTC	Intake	3/5/2023 - 3/11/2023
partially occluded ceiling vent (Repeat 8)	EMTC	Intake	3/12/2023 - 3/18/2023
partially occluded ceiling vent (Repeat 9)	EMTC	Intake	3/19/2023 - 3/25/2023
partially occluded ceiling vent	EMTC	Intake	1/8/2023 - 1/14/2023
partially occluded ceiling vent (Repeat 1)	EMTC	Intake	1/15/2023 - 1/21/2023

Defendants state, “OCC was [] critical of the ventilation in the closets, noting 17 examples of clogged vents to varying degrees (13 of the 17 were “partially” occluded). In busy housing areas, there will always be some accumulation of dust on vents; the Department has (sic) not believe that these instances materially affect the ventilation.” Defs.’ resp. at 4. Defendants have misread the table. There are actually 27 observations noted above, and the first 13—48%—represent *completely* occluded/clogged vents! It is further clarified that 10 of the 14 remaining observations were repeated observations of partially occluded vents, not in a busy housing area, but in the EMTC Intake—an area for which the Defendants have continuously failed to provide required Airflow Reading Reports and Intake Airflow Deficiency Reports as discussed in the section of this report that discusses compliance with this Court’s ventilation orders.

Regarding the Court’s mandates on supplies and equipment, the Department did not provide “an adequate supply of cleaning implements and supplies” in over 600 instances and the equipment was not “cleaned thoroughly after each use and stored in a clean, adequately ventilated place.” The cleaning equipment required to be on hand by the Department “includes mops, brooms, dust pans, mop buckets with wringer, sponges, scrub brushes, and any other equipment deemed necessary.” DOC Directive 3901-RB, Housekeeping Procedures, at 9. Sponges, green scrubbing/scouring pads, gloves, and goggles were the most widely reported as not being provided among supplies and implements. Defendants “note that these items are typically in use during the day, and are routinely replenished in the course of the day.” Defs.’ resp. at 4. However, OCC finds this argument unavailing as the PHS or EHO conducting the inspection would certainly notice cleaning in progress (or at the very least, anticipate it) and not deem the items as “missing” or “not provided” as reported in hundreds of instances and quite often in the same area. “[C]leaning chemicals shall include a General Cleaner, a disinfectant,

mildew cleaner, and a cleaner without grit.” DOC Directive 3901-RB, Housekeeping Procedures, at 9. A cleaner without grit (Gentle Scrub) and mildew remover were the most widely reported as not provided among cleaning chemicals. The Gentle Scrub is used “to clean the sink, urinal, bath tub, and toilet” and upon application to the surface being cleaned “must be manually scrubbed with a green pad or scrub brush” and scrubbed again “during the rinsing process.” DOC Cleaning and Sanitizing Manual at 3. The mildew remover must “be applied to shower/bathroom surfaces” and also requires scrubbing with a green pad or scrub brush. *Id.* at 1. Without scrubbing pads, brushes, and cleaning chemicals, effective cleaning and sanitizing cannot occur. “Sanitizer must only be applied to clean surfaces” and is the step that “removes disease-causing organisms from the surface.” *Id.* at 3. The Department provides General Cleaner, sanitizing solution, and floor cleaner via a dispenser¹¹ (as shown in the pictures immediately below); however, the General Cleaner and sanitizer container were sometimes found to be “completely empty” during inspections. (Aside from lacking chemicals, the Diversey dispensers are often inoperable and require repair or replacement, as discussed later in this report.)

¹¹ A dispenser shall be provided in the janitor’s closet to dispense the general cleaner, the disinfectant, and a neutral floor cleaner. The neutral floor cleaner shall be used only on the shower floor. The concentrated chemical shall be installed in the dispenser. The dispenser shall be secured once the concentrated chemical are placed in the dispenser and at all times thereafter. The work detail shall dial the dispenser to the chemical that is to be utilized. The dial shall be set to the general cleaner, the disinfectant, or the neutral floor cleaner. The work detail shall push the button and the dispenser shall dispense the diluted chemical at the proper use concentration. There is no need for the inmate work detail to add water to the solution in the bucket. The inmate work detail member shall then begin cleaning in accordance with the directions in the Cleaning and Sanitizing Manual.

DOC Directive 3901R-B, Housekeeping Procedures, at 10.



The only aspect of the Court's order that the Department substantially complied with is providing a sink or access to a sink.

i. Benjamin Inspection Protocol

During PHS inspections, compliance is assessed in eleven categories, discussed below, using a binary scoring method of “0” if the location meets accepted standards or requirements and “1” if the location does not in the particular category. This binary system means that a score can be placed in the applicable field only if an assessment was made. Scoring a location in a category for which it was not assessed skews the compliance rating and makes it inaccurate. (The effect is similar when non-*Benjamin* locations (such as staff areas and clinics and medical locations) are included in inspections for this litigation.) An example of the inspection form is included, immediately below, for reference. The sum of scores of each location in an intake or housing area is then calculated to produce a component trend score, for which “reduced sampling scoring must be 3 or less for the housing component to be considered to have met sanitary standards or requirements on all rows except the General, Day Room Furnishings, and Dormitory Bed rows which must be 2 or less.”

The compliance percentages are automatically calculated when the electronic inspection reporting form is used because the formula is embedded in the form, an Excel spreadsheet. Manually, the compliance percentages can be calculated as follows:

$$\frac{\text{the sum of the component trend scores}}{\text{the count of scores}} - 1$$

The compliance percentage must be 80.00 or higher for an intake or living area to be compliant; however, if there is at least one observation of cleaning and sanitizing procedures not being followed, lack of cleaning chemicals, inadequate cleaning equipment and equipment sanitation, or inadequate water facilities, the area fails the inspection, regardless of score. An example of this protocol is seen in the sample inspection form below: the area’s housekeeping compliance is 81.36%, but it does not pass the inspection because cleaning and sanitizing procedures were not followed in at least one instance.

NEW YORK CORRECTION DEPARTMENT NEW YORK CITY JAILS
Facility Name: _____
Date of Inspection: _____

Unit: _____
Type: _____

Unit Component	Management/Sanitation					Housekeeping					Component Trend Score	Inspection Notes (Place X in box)	
	Cleaning & Sanitizing Procedures Followed	Lack of Cleaning Chemicals	Inadequate Cleaning Equip & Equip Sanitation	Adequate Water Facilities Provided	Presence of Vermin or Indicator Organisms	Unclean to Sight	Organic Soil Accumulations	Surfaces Smooth & Easily Cleanable	Presence of Odors	Inadequate Lighting			Ventilation
GENERAL	1	0	0	0	0							1	
Showers						1	0	1	0	0	0	2	
Toilet Area						1	0	0	0	0	0	1	
Day Room (general)						0	0	0	0	0	0	0	
Day Room (toilet)						1	0	1	0	1	0	3	
Day Room (furnishings)						0	0	0				0	
Utility/Janitor Room						0	0	0	0	1	0	1	
Storage						0	0	0	0	0	0	0	
Cell (Cell # :)												0	
Cell (Cell # :)												0	
Cell (Cell # :)												0	
Cell (Cell # :)												0	
Sleeping Area (General)						0	0	0	0	0		0	
Dormitory Beds						1	0	0				1	
Common Area						1	0	0	1	0	0	2	
UNIT COMPONENT TOTALS:	1	0	0	0	1	4	0	3	0	2	0		
Management/Sanitation Compliance Score:	1.00	Scoring: Met Met standard or requirements. X= see inspection notes											
Housekeeping Compliance Percentage:	81.36%	1= Does not meet accepted standards or requirements. 0= Meets accepted standards or requirements.											
Housekeeping Compliance:	YES	Blank = Not Applicable											
Total Unit Compliance:	NO	Component Trend Score: Reduced Sampling scoring must be 3 or less for the housing component to be considered to have met sanitary standards or requirements on all rows except the General, Day Room Furnishings, and Dormitory Bed rows which must be 2 or less.											

Note: Housekeeping passes with >80 % but Unit fails on sanitation

ii. Discussion of Findings

Inspections conducted during this monitoring period recorded thousands of violations distributed across all facilities as relayed through the categories listed in the table immediately below. The details of the violations within each category are specified in the discussion or were provided to the parties as attachments to the draft of this report. (Two subsets of the Cleaning and Sanitizing Procedures (not) Followed category are carved out from the overall category in the table to give added specificity to the violations observed during the inspections. Similarly, two subsets of Organic Soil Accumulations are carved out of that category to differentiate the chronically wet observations and partially occluded/clogged drains from those of mold and mildew or other such accumulations.) The inspection observations and findings are discussed in terms of the housekeeping inspection matrix developed by the expert sanitarians.

VIOLATION CATEGORY
cleaning and sanitizing procedures not followed
*lack of adherence to established policies and procedures
*absence of training materials or instructional postings in critical housekeeping areas
lack of cleaning chemicals
inadequate cleaning equipment and equipment station
inadequate water facilities
presence of vermin
unclean to sight
organic soil accumulations
**chronic pooling of water/chronically wet walking surfaces
**partially occluded/clogged drains
surfaces not smooth and easily cleanable
inadequate lighting
presence of malodors
ventilation

*finding is a subset of the “cleaning and sanitizing procedures (not) followed” category, which requires more than one observation to trigger a management violation

**finding is a subset of organic soil accumulations

The following evaluative housekeeping criteria, taken directly from the sanitation inspection training material, are used to assess compliance during sanitation inspections and apply to all the PHS inspections undertaken during this monitoring period, but the discussion details are limited to the inspections surveyed by OCC. The following discussion also includes findings from inspections conducted by EHOs, who do not use the *Benjamin* inspection protocol during inspections; however, their observations fit within the discussion categories and as with the PHS inspections do not represent all inspections undertaken during the current monitoring period. A note about repeat observations: the recording of repeated observations is not chronological throughout this report partly because such observations are not always accurately recorded and some observations that span monitoring periods are noted with a higher observation count.

ADMINISTRATIVE and MANAGERIAL OBSERVATIONS – The following five management categories apply to all areas, and at least one observation of any of the first four causes the area to fail the inspection.

1. CLEANING AND SANITIZING PROCEDURES (NOT) FOLLOWED

- a) uniform sanitary procedures as detailed in policies and procedures not followed
- b) cleaning frequency inadequate to maintain proper sanitation
- c) policy is inadequate to address soiling of the unit
- d) no evidence of training of inmates to housekeeping policy
- e) disposable gloves and other personal protective equipment not available, provided or used as per manufacturer's label requirements and/or institutional policy

Verification of these criteria is by indicating two or more of the following:

- lack of adherence to established policies and procedures
- no notation in unit log (schedule or frequency)
- absence of training materials or instructional postings in critical housekeeping areas
- direct chemical test of finished disinfectant solution
- negative responses to inmate and/or staff interviews

The failure by the Department to achieve substantial compliance with the sanitation orders is the clearest indicator that cleaning and sanitizing procedures are not being followed.

For example, “dirt build-up” and “excessive mildew” would not be found at the frequencies observed during the inspections if cleaning and sanitizing were taking place three times daily as required by DOC Directive 3901R-B;¹² however, such conditions are discussed later in this report within the Unclean to Sight and Organic Soil Accumulations categories. Among other things, the instant section expands on the insufficiency of cleaning supplies and implements as introduced in the “Janitor’s Closets” section earlier in this report. There were hundreds of instances during which the Department’s cleaning and sanitizing policies and procedures were not followed (details provided as Att. 4 to the draft report), with sanitation implements and equipment (including but not limited to brooms, dust pans, mops, mop wringers, buckets, sponges, scrub brushes and other types of brushes), not being provided for the clean and sanitary upkeep of intake and living areas. Per the DOC Cleaning and Sanitizing Manual, safety glasses (referred to colloquially as “goggles”) and gloves are required to be worn particularly when using the sanitizer, per the manufacturer’s instructions; yet goggles were not available during 155 inspections and gloves were, likewise, not available during 138 inspections.

Uniform cleaning and sanitizing procedures such as manually scrubbing surfaces with a green scouring pad or a scrub brush could not be sufficiently followed in the areas where those

¹² “The Department disagrees with this conclusion.” Defs.’ resp. at 4. Bewilderingly, Defendants claim that “were there to be less than the three mandated cleanings a day—it would be readily apparent to the housing area captain or unit manager.” *Id.* The fact that living areas are not clean is what should be “readily apparent” for as noted throughout this report and plainly stated in the Department’s Cleaning and Sanitizing Manual, “If any dirt, dust, grime or mildew remains on a surface, the surface is not clean.” What is more, Defendants allege “What may account for discrepancies is the reality that some [detainee work] crews are simply more conscientious than others in keeping their housing areas clean.” Defs.’ resp. at 4. This should be unacceptable for it underscores the discussion in this section and is a blatant example of a failure to follow the procedures as detailed in the Cleaning and Sanitizing Manual, which provides step-by-step instructions on how to clean various areas. If areas are visibly unclean then the procedures in the Manual are not being followed; moreover, “[t]he Deputy Warden for Administration shall ensure that the Tour Commander and the Area Captains conduct thorough tours of inspection in his or her areas of responsibility to ensure that all cleaning schedules are adhered to [and] *all cleaning is performed in accordance with the CLEANING AND SANITIZING MANUAL. . .*” (emphasis added). Directive #3901R-B, Housekeeping Procedures, at 3. Clearly, ongoing and repeated observations of “dirt build-up” (unclean to sight) and “excessive mildew” (organic soil accumulations) indicate that the policies and procedures are not being followed by the detainee work crews, Area Captains, Tour Commanders, and Deputy Wardens for Administration.

items were missing, in part, because the supplies are necessary for cleaning. “Manual scrubbing with a scrub brush or green pad is essential to effectively clean the surface.” DOC Cleaning and Sanitizing Manual at 2. Further, the inability to clean as required, adversely affected the ability to remove mildew and sanitize surfaces. For example, to remove mildew, the procedure states: “Manually scrub the surface with a green pad or scrub brush, and rinse the surface with clean water by manually scrubbing the surface.” *Id.* at 1. And as noted earlier in this report, sanitizing, likewise, could not occur: “If dirt, dust, grime or mildew remains on a surface, the sanitizer will not be able to successfully sanitize the surface during the sanitizing step. If any dirt, dust, grime or mildew remains on a surface, the surface is not clean.” *Id.* Green pads were missing during 131 inspections and scrub brushes during 91 inspections. “The Department acknowledges that there was a supply issue with the wooden diamond shape scrubbing brush. Most vendors no longer carry these. The storehouse has since changed to another type of scrubbing brush.” Defs.’ resp. at 4. OCC appreciates the Defendants’ explanation, but the lack of supplies was not limited to scrub brushes and the deficiencies were allowed to continue across monitoring periods as the PAR (periodic automatic replenishment) levels were not replenished for months at a time in several living areas.

Item	PAR Levels	Quantity
Diversey General Cleaner 15	1 bottle in dispenser – Extra concentrated chemical shall not be stored in housing area.	
Diversey Virex 256	1 bottle in dispenser – Extra concentrated chemical shall not be stored in housing area.	
Diversey Stride Neutral Floor Cleaner	1 bottle in dispenser – Extra concentrated chemical shall not be stored in housing area.	
Mop buckets with wringers		2
Mop heads and sticks		2
Brooms		2
Dust pan		1
Sponges		4
Green scouring pads		6
Corcraft Mold and Mildew Cleaner		1 bottle
Gentle Scrub Cleaner Without Grit		1 bottle
Garbage can with tight fitting lid		2
Scrub brushes (held in hand)		2
Deck brushes (long handled)		2

Source: NYC DOC Cleaning and Sanitizing Manual

The Department’s PAR level replenishment policy requires “[t]he Correction Officer [to] notify the Area Captain if less than the par (sic) levels of sanitation supplies are present in the janitor closet. If the EHO is not available to replenish the supplies, the Area Captain shall notify the Tour Commander. The Tour Commander shall ensure that the supplies were replenished.”

Id. at 20. At all times, the designated quantity of each item shall be available in each janitor’s closet and if the closet is shared by two areas, the quantities must be doubled. The Department’s cleaning and sanitizing procedures were not followed at any all level of its command.

As noted above in this category’s criteria, the determination that an inspected area is not following the cleaning and sanitizing procedures requires at least two indicators during an inspection and single instances do not trigger the overall category of Cleaning and Sanitizing Procedures (not) Followed. Nonetheless, individual instances are violations of the *Benjamin* sanitation orders and, as such, are noted herein and examples are listed in the table immediately below (along with the observations that triggered the subcategory), resulting in the absence of training materials in critical housekeeping areas and the repeated and ongoing lack of adherence to established policies and procedures.

INSPECTION OBSERVATION	FACILITY	AREA	WEEK OF
3/4 filled Milcide spray bottle on floor	EMTC	11 Lower	1/29/2023 - 2/4/2023
garbage bags corridor	RMSC	4 South A/B	1/1/2023 - 1/7/2023
missing deck sticks	EMTC	10 Upper	1/22/2023 - 1/28/2023
			1/29/2023 - 2/4/2023
		12 Upper	1/15/2023 - 1/21/2023
		4 Upper	1/22/2023 - 1/28/2023
missing yellow bucket	EMTC	6 Main	1/15/2023 - 1/21/2023
no sanitation manual	EMTC	8 Lower	1/22/2023 - 1/28/2023
no sanitation poster located	AMKC	Dorm 1 Upper	3/12/2023 - 3/18/2023
		Dorm 2 Upper	3/12/2023 - 3/18/2023
no yellow sponge	AMKC	West 19 Lower B	1/15/2023 - 1/21/2023
			1/8/2023 - 1/14/2023
1/2 filled Milcide spray bottle on floor	RMSC	Bldg. 2	2/26/2023 - 3/4/2023
1/4 filled Milcide spray bottle hanging on partition	EMTC	6 Upper	3/5/2023 - 3/11/2023
broken broom stick	EMTC	11 Upper	2/26/2023 - 3/4/2023
		4 Main	2/26/2023 - 3/4/2023
		9 Lower	2/26/2023 - 3/4/2023
broom missing	GRVC	10B	1/29/2023 - 2/4/2023
cleaning supplies and cleaning agents not provided	AMKC	West 17 Lower B	2/5/2023 - 2/11/2023
		West 18 Upper A	2/5/2023 - 2/11/2023
covered light shield	AMKC	Quad Upper 2	1/8/2023 - 1/14/2023
		Quad Upper 3	1/8/2023 - 1/14/2023
		Quad Upper 4	1/8/2023 - 1/14/2023
	RNDC	5 Lower North	1/15/2023 - 1/21/2023
deck brush missing from closet	GRVC	10B	1/1/2023 - 1/7/2023
			1/15/2023 - 1/21/2023
			1/22/2023 - 1/28/2023
			1/8/2023 - 1/14/2023
			2/19/2023 - 2/25/2023
		2A	1/1/2023 - 1/7/2023
			1/15/2023 - 1/21/2023
			1/22/2023 - 1/28/2023
			1/8/2023 - 1/14/2023
			2/19/2023 - 2/25/2023
dirty buckets	GRVC	13A	2/5/2023 - 2/11/2023
dirty mop bucket and wringer	GRVC	9A	2/5/2023 - 2/11/2023
dirty mop bucket wringer	GRVC	15A	1/29/2023 - 2/4/2023
		3B	1/29/2023 - 2/4/2023
		7B	1/29/2023 - 2/4/2023
dirty mop wringer	RNDC	Mod 3 Upper North	1/15/2023 - 1/21/2023
dirty mop wringer bucket	GRVC	8A	1/29/2023 - 2/4/2023
dirty yellow sponges on sink counter not in Virex solution	RNDC	Mod 3 Upper South	1/15/2023 - 1/21/2023
Diversey dispenser door open and unlocked with chemicals inside (Repeat1)	RMSC	3 South B	2/12/2023 - 2/18/2023
Diversey dispenser missing Stride label at upper right compartment	AMKC	Dorm 1 Top	3/19/2023 - 3/25/2023
Diversey dispenser unlocked and open with chemicals	RMSC	3 South B	3/19/2023 - 3/25/2023
dust pan not provided	GRVC	3A	1/15/2023 - 1/21/2023
			1/22/2023 - 1/28/2023
			2/26/2023 - 3/4/2023
		3B	1/15/2023 - 1/21/2023
			1/22/2023 - 1/28/2023

INSPECTION OBSERVATION	FACILITY	AREA	WEEK OF
			2/26/2023 - 3/4/2023
dust pans not provided	GRVC	3A	2/19/2023 - 2/25/2023
		3B	2/19/2023 - 2/25/2023
equipment unorganized	VCBC	3AA	2/12/2023 - 2/18/2023
full Milcide spray bottle hanging on bed frame	RMSC	4 East B	3/19/2023 - 3/25/2023
full Milcide spray bottle on floor	EMTC	7 Upper	3/12/2023 - 3/18/2023
	RMSC	4 South A	3/12/2023 - 3/18/2023
goggles missing	GRVC	10A	1/29/2023 - 2/4/2023
goggles missing from closet	GRVC	8B	1/22/2023 - 1/28/2023
			2/19/2023 - 2/25/2023
goggles not provided	GRVC	17A	1/1/2023 - 1/7/2023
			1/15/2023 - 1/21/2023
			1/22/2023 - 1/28/2023
			1/8/2023 - 1/14/2023
			2/19/2023 - 2/25/2023
			2/26/2023 - 3/4/2023
goggles without elastic bands (Repeat1)	RMSC	5 South B	3/12/2023 - 3/18/2023
janitor's closet unkept	AMKC	Quad Upper 10	2/19/2023 - 2/25/2023
missing deck brush	EMTC	11 Lower	2/19/2023 - 2/25/2023
	GRVC	10B	2/26/2023 - 3/4/2023
		2A	2/26/2023 - 3/4/2023
missing deck stick	EMTC	6 Lower	2/26/2023 - 3/4/2023
missing deck sticks	EMTC	4 Upper	2/12/2023 - 2/18/2023
missing gloves	EMTC	12 Upper	2/19/2023 - 2/25/2023
missing goggles	EMTC	10 Main	2/19/2023 - 2/25/2023
		7 Lower	2/19/2023 - 2/25/2023
missing one long-handled deck brush	RMSC	3 East B	2/12/2023 - 2/18/2023
missing one long-handled deck brush (Repeat1)	EMTC	4 Main	2/12/2023 - 2/18/2023
missing one push broom	AMKC	Quad Lower 4	3/19/2023 - 3/25/2023
missing one scrub brush	EMTC	Intake	1/15/2023 - 1/21/2023
missing scrub brushes	RMSC	2 South B	1/22/2023 - 1/28/2023
missing Spanish sanitation poster	RMSC	Bldg. 10	3/5/2023 - 3/11/2023
missing Spanish sanitation poster (Repeat1)	RMSC	Bldg. 4	1/1/2023 - 1/7/2023
missing Spanish sanitation poster (Repeat2)	RMSC	Bldg. 2	2/26/2023 - 3/4/2023
missing Spanish sanitation poster (Repeat3)	RMSC	Bldg. 4	2/26/2023 - 3/4/2023
missing two brooms	GRVC	4B	2/26/2023 - 3/4/2023
missing two deck brushes	GRVC	4A	2/26/2023 - 3/4/2023
missing two long-handled deck brushes	RMSC	2 South A	1/22/2023 - 1/28/2023
missing yellow gloves	EMTC	8 Main	2/26/2023 - 3/4/2023
no long-handled deck brushes	RMSC	1 East A	2/19/2023 - 2/25/2023
no sanitation manual	AMKC	Quad Upper 14	2/26/2023 - 3/4/2023
	RMSC	2 South A	3/19/2023 - 3/25/2023
		3 South B	1/22/2023 - 1/28/2023
		Bldg. 10	1/22/2023 - 1/28/2023
no sanitation poster	RMSC	2 South A	1/22/2023 - 1/28/2023
no scrub brushes	EMTC	Intake	1/8/2023 - 1/14/2023
	RMSC	4 South B	2/12/2023 - 2/18/2023
no scrub brushes (Repeat2)	EMTC	Intake	2/5/2023 - 2/11/2023
no scrub brushes (Repeat3)	EMTC	Intake	2/12/2023 - 2/18/2023
no Spanish sanitation poster	RMSC	Bldg. 2	2/5/2023 - 2/11/2023
no Spanish sanitation poster (Repeat2)	RMSC	Bldg. 4	2/5/2023 - 2/11/2023
one broom missing	GRVC	10A	2/5/2023 - 2/11/2023

INSPECTION OBSERVATION	FACILITY	AREA	WEEK OF
one broom missing from closet	GRVC	8A	1/1/2023 - 1/7/2023
			1/15/2023 - 1/21/2023
			1/8/2023 - 1/14/2023
only one scrub brush	RMSC	Intake	1/1/2023 - 1/7/2023
sponge on toilet seat	AMKC	Quad Lower 7	3/26/2023 - 4/1/2023
two deck brushes missing from closet	GRVC	4A	2/19/2023 - 2/25/2023
two Milcide spray bottles (one empty and one 1/2 filled) on floor	RMSC	Bldg. 4	1/1/2023 - 1/7/2023

In the discussions of the next two categories in this section, it is shown that even if the scrub brushes, pads, etc., were available, cleaning chemicals were not available and the required Diversey chemical dispenser was not repaired for months at a time when broken.

2. LACK OF CLEANING CHEMICALS

- a) cleaning chemicals not provided at the unit
- b) par levels not appropriate to the unit

Verification of the deficiency is by any one of the following:

- boundary markers in inventory levels that signal replenishment is necessary not established, or,
- amount or level considered to be adequate, not maintained, or,
- absence of a standard quantity as established by policy

Despite the significant lack of cleaning chemicals, there was improvement in the provision of cleaning chemicals during this monitoring compared to the prior period. Gentle Scrub was reported missing during 44 inspections this period—a decrease from 99 during the prior period and Corcraft Mold and Mildew cleaner was missing during 39 inspections—a decrease from 112. As a reminder, the Gentle Scrub is used “to clean the sink, urinal, bath tub, and toilet” and upon application to the surface being cleaned “must be manually scrubbed with a green pad or scrub brush” and scrubbed again “during the rinsing process.” DOC Cleaning and Sanitizing Manual at 3. The mildew remover must “be applied to shower/bathroom surfaces” and as noted for the preceding category, requires scrubbing with a green pad or scrub brush. *Id.* at 1. Notwithstanding the improvement with the provision of chemicals, there was a lack of cleaning chemicals during more than 100 inspections (Att. 5 to the draft report) and without

scrubbing pads, brushes, and cleaning chemicals, effective cleaning and sanitizing cannot occur.

Again, “[s]anitizer must only be applied to clean surfaces” and is the step that “removes disease-causing organisms from the surface.” *Id.* at 3.

3. INADEQUATE CLEANING EQUIPMENT AND EQUIPMENT SANITATION

- a) cleaning equipment in poor repair or worn
- b) cleaning equipment is visibly dirty and possibly malodorous
- c) inadequate storage of housekeeping equipment
- d) cleaning equipment storage appurtenances not available for the sanitary and safe storage of mops, brooms and brushes
- e) par levels inappropriate to the facility or not established to meet cleaning needs

There were several observations recorded in this category during the inspections, consisting mostly of broken and damaged equipment and improperly stored and visibly dirty cleaning equipment (Att. 6 to the draft report). However, the examples presented here will focus principally on inoperable Diversey chemical dispensers, which is a long-standing issue.

Diversey dispensers (pictured in the “Janitor’s Closets” section of this report) house concentrated General Cleaner, Virex (sanitizing solution), and Stride (floor cleaner), which are mixed with water and used directly from the dispenser. Inoperable Diversey dispensers are sometimes categorized as a lack of cleaning chemicals, but if the dispenser is inoperable, the Department’s policy requires the Correction Officer to get chemical solutions from a nearby dispenser.

Plaintiffs’ counsel previously opined, “Even if officers know of this policy, they may be unable or unwilling to leave their housing area. And, in cases where incarcerated persons are attempting to clean a housing area, they may also be unaware that this option exists.” As with the prior monitoring period when this issue was discussed, OCC does not know to what degree this policy is followed, but includes the inoperable Diversey dispensers in the inadequate equipment category for reporting purposes. The inoperable Diversey dispensers were not repaired for

several months, sometimes spanning monitoring periods, despite work orders being submitted and resubmitted in some cases.

INSPECTION OBSERVATION	FACILITY	AREA	WEEK OF	WOS
"chemical Diversey dispenser . . . not provided"	GRVC	5B	1/29/2023 - 2/4/2023	-
"chemical Diversey dispenser . . . not provided" (Repeat 1)	GRVC	5B	3/5/2023 - 3/11/2023	-
Diversey dispenser "broken"	RNDC	Mod 2 North	2/19/2023 - 2/25/2023	-
Diversey dispenser "machine lock broken"	RMSC	Bldg. 10	1/8/2023 - 1/14/2023	-
Diversey dispenser "unavailable removed awaiting approval EHU or replacement."	GRVC	5B	2/12/2023 - 2/18/2023	-
Diversey dispenser "unavailable removed"	GRVC	5B	1/29/2023 - 2/4/2023	"awaiting approval EHU or replacement"
Diversey dispenser broken and inoperable	GRVC	4A	2/5/2023 - 2/11/2023	-
		4B	2/5/2023 - 2/11/2023	-
			3/12/2023 - 3/18/2023	-
Diversey dispenser broken and inoperable (Repeat 1)	GRVC	4A	3/12/2023 - 3/18/2023	-
Diversey dispenser door open and unlocked with chemicals inside (Repeat 1)	RMSC	3 South B	2/12/2023 - 2/18/2023	-
Diversey dispenser inoperable	AMKC	Quad Lower 13	1/8/2023 - 1/14/2023	-
	GRVC	4A	1/15/2023 - 1/21/2023	-
			1/29/2023 - 2/4/2023	-
	RNDC	Mod 1 North	2/26/2023 - 3/4/2023	-
	VCBC	2CB	2/19/2023 - 2/25/2023	-
Diversey dispenser inoperable (leaking)	VCBC	1BA	1/22/2023 - 1/28/2023	-
Diversey dispenser inoperable (Repeat)	VCBC	2CB	3/12/2023 - 3/18/2023	-
Diversey dispenser inoperable (Repeat 1)	GRVC	4B	1/15/2023 - 1/21/2023	-
Diversey dispenser without water as connection inoperable	EMTC	7 Main	1/15/2023 - 1/21/2023	1/19/2023
Diversey machine inoperable	GRVC	4A	2/5/2023 - 2/11/2023	-
		4B	2/5/2023 - 2/11/2023	-
inoperable Diversey dispenser - "water pressure comes out slow" (also inadequate water facilities)	AMKC	Quad Upper 11	2/5/2023 - 2/11/2023	WOS - date not specified

4. ADEQUATE WATER FACILITIES PROVIDED

- a) utility sink not readily available and/or accessible
- b) hot and cold water of adequate flow and pressure not provided
- c) absence of a free-flowing drain

During this monitoring period, there were five distinct instances of inadequate water facilities (not including the low water pressure in AMKC Quad Upper 11 noted in the table immediately above regarding the inoperable Diversey dispenser):

Inspection Observation	Facility	Area	Inspection Week
closet door lock inoperable	AMKC	Mod 1 Upper	2/5/2023 - 2/11/2023
"no access to janitor's closet due to broken key"	AMKC	Quad Upper 10	4/9/2023 - 4/15/2023
"no access to janitor's closet due to broken key"	AMKC	Quad Upper 12	4/9/2023 - 4/15/2023
slop sink clogged	VCBC	2CA	1/8/2023 - 1/14/2023
janitor's closet faucet broken	VCBC	2CA	2/12/2023 - 2/18/2023

It is unclear how long each condition lasted. Defendants state, “OCC notes five instances related to water supply issues in the four month monitoring period (citation removed). This is not a major concern, especially since 3 of the 5 concerned broken keys on door locks to the janitor closets, issues that can be remediated without great difficulty.” Defs.’ resp.at 5-6. Despite this nonchalant response, any attempt at providing a length of time for how long the conditions lasted is conspicuously absent. As explained in the beginning of this report, PHS inspections are conducted once each month in a particular living area, so it would take at least one month to observe changes in conditions. “The one broken faucet and one clogged sink are also amenable to prompt remediation.” *Id.* Again, there is no attempt by the Department to disclose how long the deficiencies lasted. Furthermore, all but the clogged slop sink resulted in the Diversey dispenser being unavailable for use.

5. PRESENCE OF VERMIN INCLUDING INDICATOR ARTHROPODS

Unlike the other four management categories, observations in this category do not cause an area to automatically fail inspection.

This criterion is listed under the management section because the presence of vermin or indicator organisms requires subsequent action by the correctional staff in reporting the observable condition. However, no further action on their part is necessary unless so directed. If an observation is made, that observation is informational only and does not factor into the overall unit compliance unless it remains unreported or uncorrected.

“Housekeeping Inspection Matrix” at 12. The inspections reviewed by OCC, indicated that the Sanitarians observed vermin in all facilities. There were 176 observations this monitoring period, which is an undercount as vermin indicators are not noted on the EHO reports despite their long-established duty to monitor for such indicators. Per, DOC Directive 4005R-A Environmental Health: Control of Vermin/Pest, “the Environmental Health Officer (EHO) shall ensure: a. The mandated weekly inspection of the facility occurs in a timely fashion and note any signs of vermin/pest infestation, any vermin entry points, water sources, and any other conditions conducive to harborage.” According to the Defendants, “these are actually cited in the EHO report; however, it is not included in the pages forwarded to OCC, since vermin is no longer a part of the court order.” Defs.’ resp. at 6. “DOC is willing to reconsider whether it would be more efficient to include these findings, notwithstanding the status of the Order.” *Id.* at FN2.

INSPECTION OBSERVATION	FACILITY	AREA	LOCATION	WEEK OF	WOS
"couple of fruit flies" (Repeat 3)	RNDC	Mod 3 Upper South	shower	2/26/2023 - 3/4/2023	-
"couple of live ants" by toilet	RNDC	Intake	pen #1	3/19/2023 - 3/25/2023	-
"couple of live flies"	WF	Sprung 8	common area	3/19/2023 - 3/25/2023	-
"couple of live fruit flies"	RNDC	4 Central North	cell #22 (o)	3/26/2023 - 4/1/2023	-
		Mod 4 Upper South	janitor's closet	3/19/2023 - 3/25/2023	-
"couple of live fruit flies" (Repeat 1)	RNDC	Mod 3 Upper South	shower	1/15/2023 - 1/21/2023	-
"couple of live fruit flies" (Repeat 2)	RNDC	Mod 3 Upper South	shower	2/5/2023 - 2/11/2023	-
"dead fruit flies" at toilet area	WF	Sprung 6	cell #609 (v)	2/26/2023 - 3/4/2023	-
"dead mouse inside light shield"	AMKC	Main Intake	scanning area	2/19/2023 - 2/25/2023	-
"dead water bug" on floor	RNDC	Intake	pen #3	2/26/2023 - 3/4/2023	-
"drain flies" on wall (Repeat 1), "few live fruit flies" on wall (Repeat 1)	EMTC	9 Main	shower	2/19/2023 - 2/25/2023	-
"few drain flies"	NIC	3A	shower	2/12/2023 - 2/18/2023	-

INSPECTION OBSERVATION	FACILITY	AREA	LOCATION	WEEK OF	WOS
"few fruit flies"	AMKC	Mod 1 Upper A	shower	3/26/2023 - 4/1/2023	-
"few fruit flies" in the area	AMKC	Dorm 2 Upper	sleeping area	1/22/2023 - 1/28/2023	-
"few live drain flies"	AMKC	Quad Lower 3	showers	4/2/2023 - 4/8/2023	-
		Quad Upper 1	shower	3/19/2023 - 3/25/2023	-
		Quad Upper 18	showers	4/2/2023 - 4/8/2023	-
		West 17 Lower A	showers	4/9/2023 - 4/15/2023	-
		West 17 Upper A	showers	4/9/2023 - 4/15/2023	-
"few live drain flies" on wall	AMKC	West 18 Lower B	shower	1/29/2023 - 2/4/2023	-
	EMTC	9 Upper	shower	1/22/2023 - 1/28/2023	-
	RMSC	Main Intake	shower	2/26/2023 - 3/4/2023	-
"few live drain flies" on wall (Repeat 1)	EMTC	1 Main	shower	2/12/2023 - 2/18/2023	1/3/2023
		7 Upper	toilet area	2/19/2023 - 2/25/2023	1/26/2023
"few live fruit flies"	AMKC	Main Intake	storage	4/9/2023 - 4/15/2023	-
		Mod 1 Lower A	cell #16 (o)	2/5/2023 - 2/11/2023	-
		Mod 1 Upper B	janitor's closet	3/26/2023 - 4/1/2023	-
		Quad Lower 1	janitor's closet	1/1/2023 - 1/7/2023	-
			shower	3/19/2023 - 3/25/2023	-
		Quad Lower 17	janitor's closet	2/26/2023 - 3/4/2023	-
		Quad Lower 6	common area	3/26/2023 - 4/1/2023	-
		Quad Lower 7	cell #25 (o)	3/26/2023 - 4/1/2023	-
		Quad Upper 7	janitor's closet	3/26/2023 - 4/1/2023	-
				4/2/2023 - 4/8/2023	-
			toilet area	4/2/2023 - 4/8/2023	-
		Quad Upper 8	dayroom	4/2/2023 - 4/8/2023	-
		West 19 Upper B	shower	1/22/2023 - 1/28/2023	-
	RMSC	2 East A	shower	3/19/2023 - 3/25/2023	-
	RNDC	5 Lower South	shower	2/5/2023 - 2/11/2023	-
		Mod 3 Upper North	showers	4/9/2023 - 4/15/2023	-
"few live fruit flies" in the area	AMKC	Mod 1 Lower A	cell #15 (v)	1/15/2023 - 1/21/2023	-
"few live fruit flies" on the wall	EMTC	4 Main	toilet area	2/26/2023 - 3/4/2023	-
"few live fruit flies" on the wall (Repeat 2)	EMTC	1 Main	shower	2/26/2023 - 3/4/2023	1/3/2023
"few live fruit flies" on wall	EMTC	11 Upper	toilet area	2/19/2023 - 2/25/2023	-
"few live fruit flies" on wall (Repeat 1)	EMTC	11 Upper	shower	1/29/2023 - 2/4/2023	-
"few live fruit flies" on wall (Repeat 2)	EMTC	9 Lower	shower	2/19/2023 - 2/25/2023	-
"few live house flies"	AMKC	Quad Upper 6	dayroom	3/26/2023 - 4/1/2023	-
"fruit flies (live) in room"	RNDC	Mod 4 Upper South	janitor's closet	1/22/2023 - 1/28/2023	-
"large roaches" in shower	GRVC	13A	shower	3/19/2023 - 3/25/2023	-
"live drain flies"	EMTC	1 Main	shower	1/1/2023 - 1/7/2023	1/3/2023
"live drain flies" on wall	EMTC	7 Upper	shower	1/22/2023 - 1/28/2023	1/26/2023
			toilet area	1/22/2023 - 1/28/2023	1/26/2023
		8 Upper	toilet area	1/22/2023 - 1/28/2023	1/26/2023
"live drain flies" on wall (Repeat 1)	EMTC	8 Main	shower	1/15/2023 - 1/21/2023	1/19/2023
"live drain flies" on wall	EMTC	4 Main	shower	2/12/2023 - 2/18/2023	-
"live drain flies" on wall (Repeat 1)	EMTC	10 Lower	shower	2/19/2023 - 2/25/2023	1/27/2023; 2/24/2023
		7 Upper	shower	2/19/2023 - 2/25/2023	1/26/2023
		9 Upper	shower	2/19/2023 - 2/25/2023	-
"live drain flies" on wall (Repeat 1), "fruit flies on the wall" (Repeat 1)	EMTC	4 Main	shower	2/26/2023 - 3/4/2023	3/2/2023
"live drain flies" on wall (Repeat 2)	EMTC	10 Lower	shower	3/19/2023 - 3/25/2023	1/27/2023,

INSPECTION OBSERVATION	FACILITY	AREA	LOCATION	WEEK OF	WOS
					2/24/2023
		10 Main	shower	2/19/2023 - 2/25/2023	2/23/2023
		7 Upper	shower	3/12/2023 - 3/18/2023	1/26/2023; 3/16/2023
		9 Upper	shower	3/19/2023 - 3/25/2023	3/23/2023
"live drain flies" on wall (Repeat 3)	EMTC	6 Main	shower	2/19/2023 - 2/25/2023	-
"live drain flies" on wall (Repeat 4)	EMTC	6 Main	shower	3/5/2023 - 3/11/2023	-
"live drain flies" on wall, "live fruit flies" on wall	EMTC	6 Lower	shower	3/5/2023 - 3/11/2023	3/7/2023
"live few fruit flies"	AMKC	Quad Lower 6	cell #9 (o)	3/26/2023 - 4/1/2023	-
"live few fruit flies" (Repeat 3)	EMTC	11 Upper	shower	3/26/2023 - 4/1/2023	-
"live flies" on wall	RNDC	1 Lower South	cell #1 (o)	3/5/2023 - 3/11/2023	-
"live fruit flies"	AMKC	Main Intake	pen #4	3/5/2023 - 3/11/2023	-
			pen #5	3/5/2023 - 3/11/2023	-
			shower	3/5/2023 - 3/11/2023	-
	EMTC	2 Upper	janitor's closet	4/2/2023 - 4/8/2023	4/5/2023
		4 Upper	showers	4/2/2023 - 4/8/2023	4/5/2023
	RMSC	4 East B	shower	3/19/2023 - 3/25/2023	1/17/2023
"live fruit flies" (Repeat 1), "drain flies" on wall (Repeat 1)	EMTC	12 Main	shower	3/26/2023 - 4/1/2023	-
"live fruit flies" (Repeat 2)	AMKC	West 17 Lower A	common area	1/29/2023 - 2/4/2023	-
"live fruit flies" at sink	RNDC	1 Central South	cell #14 (o)	2/5/2023 - 2/11/2023	-
		Mod 3 Upper South	dayroom	2/26/2023 - 3/4/2023	-
"live fruit flies" in area	RNDC	4 Central North	janitor's closet	1/22/2023 - 1/28/2023	-
"live fruit flies" in room (Repeat 1)	RNDC	Mod 3 Lower South	janitor's closet	1/15/2023 - 1/21/2023	-
"live fruit flies" on dirty sponges	RNDC	Mod 3 Upper South	dayroom	1/15/2023 - 1/21/2023	-
"live fruit flies" on wall	EMTC	11 Upper	dayroom	2/19/2023 - 2/25/2023	-
			janitor's closet	1/29/2023 - 2/4/2023	-
		12 Main	shower	2/26/2023 - 3/4/2023	-
		8 Upper	shower	3/12/2023 - 3/18/2023	3/16/2023
			toilet area	3/12/2023 - 3/18/2023	3/16/2023
	RMSC	4 South A	toilet area	2/12/2023 - 2/18/2023	-
		4 South B	janitor's closet	3/12/2023 - 3/18/2023	3/13/2023
			shower	3/12/2023 - 3/18/2023	3/13/2023
"live fruit flies" on wall (Repeat 1)	EMTC	11 Upper	janitor's closet	2/19/2023 - 2/25/2023	2/24/2023
	RMSC	4 South A	toilet area	3/12/2023 - 3/18/2023	3/13/2023
"live fruit flies" on wall (Repeat 2)	EMTC	11 Upper	shower	2/19/2023 - 2/25/2023	-
"live gnats"	RNDC	Mod 2 North	toilet area	3/19/2023 - 3/25/2023	-
"live house flies"	RNDC	5 Lower North	common area	3/26/2023 - 4/1/2023	-
"live house fly" at corridor	AMKC	Quad Lower 3	common area	3/19/2023 - 3/25/2023	-
"live water bug" on floor	RNDC	5 Lower North	common area	1/15/2023 - 1/21/2023	-
		Intake	common area	2/19/2023 - 2/25/2023	-
			pen #5	2/26/2023 - 3/4/2023	-
"live water bug" on radiator	RNDC	Intake	pen #1	2/19/2023 - 2/25/2023	-
"many fruit flies"	AMKC	Dorm 1 Top	janitor's closet	2/5/2023 - 2/11/2023	-
		Mod 1 Upper A	cell #9 (o)	1/15/2023 - 1/21/2023	-
			shower	2/5/2023 - 2/11/2023	-
	NIC	Dorm 2B	shower	1/29/2023 - 2/4/2023	-
				1/8/2023 - 1/14/2023	-
"many fruit flies" (Repeat)	AMKC	Main Intake	shower	3/12/2023 - 3/18/2023	-

INSPECTION OBSERVATION	FACILITY	AREA	LOCATION	WEEK OF	WOS
"many fruit flies" in the area	AMKC	Main Intake	shower	1/15/2023 - 1/21/2023	-
"many live ants" on floor	NIC	Dorm 3	sleeping area	2/26/2023 - 3/4/2023	-
"many live fruit flies" in area	AMKC	Main Intake	storage	2/19/2023 - 2/25/2023	-
		West 17 Upper B	janitor's closet	2/19/2023 - 2/25/2023	-
	NIC	Dorm 3	shower	2/26/2023 - 3/4/2023	-
"many live fruit flies" in the area	AMKC	Mod 1 Upper B	shower	1/15/2023 - 1/21/2023	-
"one live ant" on sink	AMKC	Quad Lower 3	cell #28 (o)	3/19/2023 - 3/25/2023	-
"several dead cockroaches" in light shield (Repeat 2)	AMKC	Dorm 2 Main	common area	1/22/2023 - 1/28/2023	-
"several live fruit flies" in area	RNDC	1 Lower North	cell #21 (o)	2/26/2023 - 3/4/2023	-
		3 Central North	cell #10 (v)	2/26/2023 - 3/4/2023	-
		3 Lower North	cell #20 (o)	2/26/2023 - 3/4/2023	-
"two live cockroaches" on floor	RNDC	1 Central North	janitor's closet	2/5/2023 - 2/11/2023	-
dead flies on window ledge	RMSC	Bldg. 4	cell #22 (v)	1/1/2023 - 1/7/2023	-
dead roach in light shield	EMTC	1 Main	shower	1/1/2023 - 1/7/2023	1/3/2023
dirty sponge and dirty pad "covered with plenty of live ants", "live ants on the wall metal shelf"	RMSC	Bldg. 2	janitor's closet	2/26/2023 - 3/4/2023	-
flies in area	GRVC	3B	common area	1/8/2023 - 1/14/2023	-
gnats in area	GRVC	17A	common area	3/19/2023 - 3/25/2023	-
			janitor's closet	1/22/2023 - 1/28/2023	-
				2/12/2023 - 2/18/2023	-
		17B	shower	1/22/2023 - 1/28/2023	-
		19A	janitor's closet	1/22/2023 - 1/28/2023	-
			shower	2/12/2023 - 2/18/2023	-
		19B	janitor's closet	1/22/2023 - 1/28/2023	-
				2/12/2023 - 2/18/2023	-
			shower	2/12/2023 - 2/18/2023	-
		3B	common area	1/8/2023 - 1/14/2023	-
		9B	shower	2/26/2023 - 3/4/2023	-
		Main Intake	pen #10	1/29/2023 - 2/4/2023	-
	VCBC	2AA	toilet area	2/12/2023 - 2/18/2023	-
		2BB	toilet area	2/12/2023 - 2/18/2023	-
gnats in cell	GRVC	17B	cell #18 (o)	1/22/2023 - 1/28/2023	-
		3B	cell #7 (o)	1/8/2023 - 1/14/2023	-
		7A	cell #21 (o)	1/8/2023 - 1/14/2023	-
gnats in cell, roaches in cell	GRVC	11B	cell #35 (v)	3/19/2023 - 3/25/2023	-
gnats in closet	GRVC	3B	janitor's closet	2/5/2023 - 2/11/2023	-
		4B	janitor's closet	2/5/2023 - 2/11/2023	-
		8A	janitor's closet	3/12/2023 - 3/18/2023	-
	VCBC	1BB	janitor's closet	1/22/2023 - 1/28/2023	-
gnats in shower	GRVC	17A	shower	1/22/2023 - 1/28/2023	-
				2/12/2023 - 2/18/2023	-
	VCBC	3CB	shower	2/5/2023 - 2/11/2023	-
gnats noted in closet	GRVC	3A	janitor's closet	3/5/2023 - 3/11/2023	-
live drain flies	EMTC	6 Main	shower	1/8/2023 - 1/14/2023	-
live drain fly	NIC	Dorm 3	shower	1/8/2023 - 1/14/2023	-
live flies in corridor	RNDC	Mod 1 South	common area	2/26/2023 - 3/4/2023	-
live fruit flies	AMKC	Quad Lower 15	dayroom toilet	1/8/2023 - 1/14/2023	-
live fruit flies, live drain flies	EMTC	8 Upper	shower	1/22/2023 - 1/28/2023	1/26/2023

INSPECTION OBSERVATION	FACILITY	AREA	LOCATION	WEEK OF	WOS
live roaches on wall	AMKC	Quad Upper 15	janitor's closet	1/8/2023 - 1/14/2023	-
"couple of live ants" on shelf	RNDC	1 Upper South	janitor's closet	4/2/2023 - 4/8/2023	-
"live water bug"	RNDC	5 Central North	janitor's closet	4/9/2023 - 4/15/2023	-
"few fruit flies" by slop sink	RNDC	Mod 3 Upper North	janitor's closet	4/9/2023 - 4/15/2023	-
"few live gnats" in area	AMKC	Mod 11A	showers	4/9/2023 - 4/15/2023	-
"one house fly" in area	AMKC	Quad Lower 14	cell #17 (o)	4/9/2023 - 4/15/2023	-
"mice droppings"	AMKC	Quad Lower 6	cell #12 (o)	4/9/2023 - 4/15/2023	-
			cell #13 (o)	4/9/2023 - 4/15/2023	-
			cell #15 (v)	4/9/2023 - 4/15/2023	-
			cell #31 (o)	4/9/2023 - 4/15/2023	-
		Quad Lower 7	cell #11 (o)	4/9/2023 - 4/15/2023	-
			cell #14 (v)	4/9/2023 - 4/15/2023	-
			cell #22 (v)	4/9/2023 - 4/15/2023	-
			cell #27 (v)	4/9/2023 - 4/15/2023	-
"few dead roaches" under counter	AMKC	Quad Lower 8	dayroom	4/9/2023 - 4/15/2023	-
"live drain flies" (Repeat 3)	EMTC	1 Main	showers	4/2/2023 - 4/8/2023	1/3/2023
"live drain flies" and "live fruit flies" (Repeat 4)	EMTC	1 Upper	showers	4/2/2023 - 4/8/2023	3/30/2023; 3/2/2023; 1/12/2023
"live drain flies" and "live fruit flies" (Repeat 2)	EMTC	4 Main	showers	4/2/2023 - 4/8/2023	4/5/2023; 3/2/2023
gnats noted	GRVC	7A	common area	4/2/2023 - 4/8/2023	-
		7B	common area	4/2/2023 - 4/8/2023	-
		9A	common area	4/2/2023 - 4/8/2023	-
"gnats" in area	VCBC	2AA	toilet area	4/9/2023 - 4/15/2023	-

Per, the “Inspection Matrix” (at 2) that was developed by Mr. Eugene Pepper and the parties’ experts in 2011 and currently used by the Department during its facility inspections:

This observation was included because housekeeping is a major component of integrated pest management. As such, it is integral to an effective housekeeping program. Because the actual pest eradication is coordinated by a professional pest control technician, who is not under the direct supervision of inmate management administration, it is not controlled as other components of the housekeeping program. Even though this observation is essential in the health and wellbeing of the inmates and staff, it does not factor into the compliance score, but is included as an informational component that requires immediate action when noted.

Despite not factoring into the compliance score, the continued observations of vermin and the repeated sightings in specific locations indicate an ongoing issue of noncompliance with the *Benjamin* sanitation mandates. “[T]he Department [does not] agree that vermin observations themselves are a sign of non-compliance. Many of the facilities are older structures, food is consumed there, and detainees are permitted to keep food in their cells and housing area.” Defs.’

resp. at 6. “An effective sanitation program decreases the food supply and provision of shelter necessary for the habitation of vermin and pests.” DOC Directive 4005R-A, Environmental Health: Control of Vermin/Pest, at 2. The frequency of observations of vermin in areas that are visited once per month at most, suggests an ineffective sanitation program and, ultimately, noncompliance with the *Benjamin* sanitation mandates.

HOUSEKEEPING OUTCOME OBSERVATIONS – the following six criteria are direct observations of physical housekeeping conditions.

1. Unclean to Sight:

- presence of loose filth and garbage
- dust and dirt accumulation
- soiling of touch points and/or high (common) touch surfaces
- soiled bed frames and dayroom furnishings
- soiled utility (janitor’s) closet
- soil imbedded at transition areas such as edges of spalled tile, floor to wall junctions, door jambs, and furnishing floor anchors

During this monitoring period, the observations were similar to those of prior periods and consisted principally of dirty janitor’s closets and equipment; soap scum and dirt build-up in shower areas; dirty floors, corners, and junctions; dirty walls; dirty/dusty window screens and ledges; and dirty light shields (Att. 7 to the draft of this report). Per the Department, “All floors, walls, ceilings, plumbing fixtures, and common touch surfaces shall be inspected for the presence of dirt, dust, soap scum, and/or mildew. Special attention shall be paid to light shields, vents, window ledges, and floor/wall junctions.” DOC Directive 3901R-B, Housekeeping Procedures, at 13. Further, “[a]ll floors located in common areas of the housing area shall be swept and washed three (3) times a day, and kept dry and free of hazardous materials.” *Id.* at 8. And, as required by the court and the Department’s directive, “[janitor’s] closets shall be cleaned

and sanitized once daily and more often if necessary.” *Id.* at 9. The examples listed below illustrate the observations during this monitoring period, underscoring a lack of compliance.

INSPECTION OBSERVATION	FACILITY	AREA	LOCATION	WEEK OF
"dirt build-up" in shower vestibule, soap scum on wall	GRVC	13A	shower	1/1/2023 - 1/7/2023
				1/15/2023 - 1/21/2023
				1/8/2023 - 1/14/2023
		17A	shower	1/1/2023 - 1/7/2023
				1/8/2023 - 1/14/2023
		17B	shower	1/15/2023 - 1/21/2023
		19B	shower	1/8/2023 - 1/14/2023
		9B	shower	1/15/2023 - 1/21/2023
				1/22/2023 - 1/28/2023
"dirt build-up" on floor, dirty sink	GRVC	Main Intake	shower	1/15/2023 - 1/21/2023
"dirt build-up" on floor, soap scum on wall	GRVC	19A	shower	1/15/2023 - 1/21/2023
		4A	shower	1/8/2023 - 1/14/2023
		4B	shower	1/15/2023 - 1/21/2023
				1/22/2023 - 1/28/2023
				1/8/2023 - 1/14/2023
		5A	shower	1/1/2023 - 1/7/2023
				1/8/2023 - 1/14/2023
		5B	shower	1/1/2023 - 1/7/2023
				1/8/2023 - 1/14/2023
		8A	shower	1/15/2023 - 1/21/2023
"dirt build-up" on shower wall, soap scum on shower wall,	GRVC	11B	shower	1/29/2023 - 2/4/2023
"dirt build-up" on shower stall floors, soap scum on shower stall floors		5B	shower	1/29/2023 - 2/4/2023
"old food, dirt, [and] debris on floor"; "old food dirt, [and] debris in sink"; toothpaste on wall, dirty wall, dirty corners, dirty light shield	GRVC	7B	cell #45 (v)	2/26/2023 - 3/4/2023
debris on floor	AMKC	Mod 1 Lower A	cell #16 (v)	3/26/2023 - 4/1/2023
		Quad Upper 6	cell #25 (v)	3/26/2023 - 4/1/2023
debris on floor, dirty radiator, toothpaste on ceiling	AMKC	Quad Upper 6	cell #19 (v)	3/26/2023 - 4/1/2023
debris on floor, toothpaste on wall, dirty light shield	AMKC	Quad Lower 2	cell #2 (v)	2/12/2023 - 2/18/2023
dirt and debris at corners, dirt and debris along junctions	GRVC	1A	cell #9 (v)	1/15/2023 - 1/21/2023
dirt build-up on floor (Repeat 7)	AMKC	West 17 Lower A	janitor's closet	3/26/2023 - 4/1/2023
dirt build-up on floor, soap scum on floor, dirt build-up on wall, soap scum on wall	GRVC	11B	shower	2/19/2023 - 2/25/2023
dirt build-up on floor, soap scum on walls	GRVC	13A	shower	2/19/2023 - 2/25/2023
		4A	shower	2/19/2023 - 2/25/2023
				2/26/2023 - 3/4/2023
dirt build-up on floor, soap scum on walls, soap scum on ceiling	GRVC	4B	shower	2/26/2023 - 3/4/2023
dirt build-up on floors, soap scum on walls	GRVC	13A	shower	2/26/2023 - 3/4/2023
		Main Intake	shower	2/19/2023 - 2/25/2023
dirt build-up on shower stall floors	GRVC	7A	shower	1/29/2023 - 2/4/2023
dirt build-up on stall floors, soap scum on walls	GRVC	3B	shower	2/26/2023 - 3/4/2023
		Main Intake	shower	2/26/2023 - 3/4/2023
dirt build-up on stall floors, soap scum on walls, dirt on walls, soap scum on ceiling, dirt on ceiling	GRVC	3A	shower	2/26/2023 - 3/4/2023

INSPECTION OBSERVATION	FACILITY	AREA	LOCATION	WEEK OF
dirt build-up on stall floors, soap scum on walls, soap scum on ceiling	GRVC	9A	shower	2/26/2023 - 3/4/2023
dirt build-up on vestibule floor, soap scum on floors, soap scum on shower walls	GRVC	17B	shower	2/26/2023 - 3/4/2023
dirt build-up on vestibule floor, soap scum on shower wall	GRVC	15A	shower	1/29/2023 - 2/4/2023
		9B	shower	2/26/2023 - 3/4/2023
dirt on wall, soap scum on wall, soap scum on ceiling, dirt on shower ceiling	GRVC	9A	shower	1/29/2023 - 2/4/2023
dirt on wall, soap scum on wall, soap scum on stall floors, dirt on stall floors	GRVC	3B	shower	1/29/2023 - 2/4/2023
dirty bed frame	GRVC	5A	cell #32 (v)	1/8/2023 - 1/14/2023
	RNDC	3 Central North	cell #9 (v)	1/1/2023 - 1/7/2023
dirty bed frame, dirty corners, dirty light shield, dirty wall, dirty junctions	GRVC	13A	cell #30 (v)	3/19/2023 - 3/25/2023
dirty bed frame, dirty wall, dirty corners, dirty junctions, dirty light shield, toothpaste on wall	GRVC	7B	cell #24 (v)	2/26/2023 - 3/4/2023
dirty bed frame, dirty window ledge, dirty light shield	RNDC	6 Main North	cell #17 (v)	1/15/2023 - 1/21/2023
dirty bed littered with tissues, used forks, and used cup	RMSC	Bldg. 12	cell #31 (v)	1/8/2023 - 1/14/2023
dirty corners, dirty junctions, dirty holders	GRVC	13B	janitor's closet	2/19/2023 - 2/25/2023
		8A	janitor's closet	2/5/2023 - 2/11/2023
		9B	janitor's closet	1/29/2023 - 2/4/2023
dirty corners, dirty junctions, dirty wall(s), dirty light shield, toothpaste on wall	VCBC	3CB	cell #11U (v)	2/5/2023 - 2/11/2023
dirty corners, dirty junctions, dirty window screens	GRVC	11B	cell #39 (v)	3/19/2023 - 3/25/2023
dirty equipment holder	GRVC	8A	janitor's closet	1/29/2023 - 2/4/2023
dirty equipment organizer	GRVC	15A	janitor's closet	1/15/2023 - 1/21/2023
		9B	janitor's closet	1/1/2023 - 1/7/2023
dirty floor (Repeat 1), dirty wall (Repeat 1), dirty storage shelf	WF	Sprung 10	cell #1010 (v)	2/26/2023 - 3/4/2023
dirty floor, dirty corners, dirty junctions	GRVC	17B	cell #11 (v)	3/19/2023 - 3/25/2023
			cell #39 (v)	3/19/2023 - 3/25/2023
dirty floor, dirty drain, dirty walls, dirty shelves	RMSC	Bldg. 4	janitor's closet	2/26/2023 - 3/4/2023
dirty floor, dirty equipment holder	GRVC	11B	janitor's closet	1/29/2023 - 2/4/2023
		13A	janitor's closet	1/29/2023 - 2/4/2023
		3A	janitor's closet	1/29/2023 - 2/4/2023
dirty floor, dirty holders, dirty junctions	GRVC	9B	janitor's closet	2/26/2023 - 3/4/2023
dirty floor, dirty junctions, dirty wall, dirty window ledge	RNDC	1 Central South	cell #7 (v)	2/5/2023 - 2/11/2023
dirty floor, dirty light shield, dirty door, dirty wall	RNDC	6 Central South	cell #9 (v)	1/15/2023 - 1/21/2023
dirty floor, dirty light shield, dirty wall, dirty door	RNDC	6 Central South	cell #10 (v)	1/15/2023 - 1/21/2023
dirty floor, dirty radiator ledge, dirty door	RNDC	6 Central South	cell #23 (v)	1/15/2023 - 1/21/2023
dirty floor, dirty sink, dirty toilet, excessively dirty light shield	RMSC	Bldg. 12	cell #14 (v)	3/5/2023 - 3/11/2023
dirty floor, dirty slop sink, dirty wall, dirty equipment organizer	GRVC	17B	janitor's closet	2/26/2023 - 3/4/2023
		Segregation Intake	janitor's closet	2/26/2023 - 3/4/2023
dirty floor, dirty wall ledges	RNDC	4 Central North	janitor's closet	1/22/2023 - 1/28/2023
dirty floor, dirty wall	GRVC	10A	janitor's closet	2/5/2023 - 2/11/2023
	WF	Sprung 10	janitor's closet	2/26/2023 - 3/4/2023
		Sprung 8	cell #812(v)	1/22/2023 - 1/28/2023
dirty floor, dirty wall, dirty equipment organizer	GRVC	17B	janitor's closet	1/15/2023 - 1/21/2023
dirty floor, dirty wall, dirty light shield, dirty door, dirty ledges	RNDC	6 Main North	cell #12 (v)	1/15/2023 - 1/21/2023

INSPECTION OBSERVATION	FACILITY	AREA	LOCATION	WEEK OF
dirty floor, dirty wall, dirty slop sink	GRVC	4B	janitor's closet	1/1/2023 - 1/7/2023
				1/15/2023 - 1/21/2023
				1/8/2023 - 1/14/2023
dirty floor, dirty wall, toothpaste on wall, toothpaste on vents, dirty light shield	WF	Sprung 10	cell #1011 (v)	2/26/2023 - 3/4/2023

In addition to the foregoing, the Department requires garbage to be “removed from housing areas and common areas at least three times daily, or whenever a refuse container is full.” Directive 3901R-B, Housekeeping Procedures, at 16. However, the garbage was then left in common areas and not removed timely. See examples, below.

FACILITY	AREA	LOCATION	INSPECTION OBSERVATION	WEEK OF:
AMKC	Dorm 1 Top	common area	garbage not removed	2/19/2023 - 2/25/2023
AMKC	Dorm 3 Main	common area	garbage not removed	2/12/2023 - 2/18/2023
AMKC	Main Intake	common area	"garbage observed in the area"	1/1/2023 - 1/7/2023
AMKC	West 18 Lower	common area	garbage not removed	2/19/2023 - 2/25/2023
AMKC	West 19 Lower	common area	garbage not removed	2/19/2023 - 2/25/2023
RMSC	4 South A/B	common area	"garbage bags corridor"	1/1/2023 - 1/7/2023
VCBC	1AB	housing area	garbage not removed from housing area	1/29/2023 - 2/4/2023
VCBC	1BA	housing area	garbage not removed from housing area	1/29/2023 - 2/4/2023
VCBC	1BA	common area	garbage not removed	2/26/2023 - 3/4/2023
VCBC	first floor A&B side	common area	corridor - "garbage bag burst and there is left over food and milk on the floor"	2/12/2023 - 2/18/2023
VCBC	2AA	common area	garbage not removed	2/19/2023 - 2/25/2023
VCBC	2C corridor	common area	garbage bags left in corridor	2/12/2023 - 2/18/2023
VCBC	2CA	housing area	garbage not removed from housing area	1/29/2023 - 2/4/2023
VCBC	3AA	common area	garbage not removed	2/26/2023 - 3/4/2023
VCBC	3AB	common area	garbage not removed	2/19/2023 - 2/25/2023
VCBC	3C corridor	common area	garbage bags need to be removed	2/12/2023 - 2/18/2023

“DOC is not aware of this as a systemic issue; the delay in removing refuse containers may be due to exigent circumstances that are occurring in the area or facility.” Defs.’ resp. at 6. As noted above there is a relatively high frequency of vermin observations, which is actually an undercount. The Department’s Directive 4005R-A, Environmental Health: Control of Vermin/Pest (at 3), requires a reduction in “conditions conducive to harborage. Conditions conducive to harborage include, but are not limited to . . . stock piling of garbage or other waste.” The Department should be monitoring conditions to ensure it is not contributing to the frequency of observations of vermin indicators.

2. Organic Soil Accumulations in Wet and Moist Areas:

- organic debris accumulation in and around toilets, urinals, utility sinks, lavatories and showers
- drain screens¹³ not cleaned of hair and debris; partially occluded drains resulting in temporary pooling of water
- chronic pooling of water and/or presence of chronically wet walking surfaces

Some examples from the hundreds of observations in this category (Att. 8 to the draft report), which consisted mostly of mildew on floors, walls, and ceilings in showers, toilet areas, and janitor’s closets in all facilities are listed below. Per Defendants’ “The facility's staff are (sic) reminded of the procedures for properly cleaning and sanitizing areas where mildew is observed.” Defs.’ resp. at 6-7.

INSPECTION OBSERVATION	FACILITY	AREA	LOCATION	WEEK OF
"excessive" mildew on ceiling (Repeat 2)	EMTC	12 Main	janitor's closet	3/26/2023 - 4/1/2023
"mold" on shower wall	GRVC	3B	shower	2/12/2023 - 2/18/2023
"mold" on walls	GRVC	3B	shower	2/19/2023 - 2/25/2023
"organic accumulations" in toilet	AMKC	Mod 1 Lower A	cell #17 (v)	1/15/2023 - 1/21/2023
"toilet excessively dirty with organic debris accumulation"	NIC	2A	cell #9 (v)	1/15/2023 - 1/21/2023
		2C	cell #11 (v)	1/15/2023 - 1/21/2023
		3C	cell #5 (v)	1/15/2023 - 1/21/2023
			cell 8# (v)	1/15/2023 - 1/21/2023
excessive mildew on ceiling	EMTC	12 Main	janitor's closet	1/29/2023 - 2/4/2023
excessive mildew on ceiling (Repeat 1)	EMTC	12 Main	janitor's closet	2/26/2023 - 3/4/2023
excessive mildew on floor, excessive mildew at corners, mildew on ceiling	GRVC	10B	shower	1/29/2023 - 2/4/2023
excessive mildew on shower wall	GRVC	10A	shower	2/5/2023 - 2/11/2023
excessive mildew on wall (Repeat 10)	GRVC	5A	janitor's closet	1/8/2023 - 1/14/2023
		5B	janitor's closet	1/8/2023 - 1/14/2023
excessive mildew on wall (Repeat 11)	GRVC	5A	janitor's closet	1/29/2023 - 2/4/2023
		5B	janitor's closet	1/29/2023 - 2/4/2023
mildew at corners	GRVC	11A	shower	2/19/2023 - 2/25/2023
				2/26/2023 - 3/4/2023
				2/5/2023 - 2/11/2023
			4B	1/29/2023 - 2/4/2023
				2/19/2023 - 2/25/2023
mildew at corners, mildew on ceiling	GRVC	2A	shower	2/19/2023 - 2/25/2023
mildew at floor corners, mildew on ceiling	GRVC	2A	shower	1/29/2023 - 2/4/2023

¹³ Per the Housekeeping Matrix, “If the floor drain is occluded or partially occluded with organic deposits below the drain screen, it cannot be cleaned using regular housekeeping methods. Therefore, it is not considered a non-compliance issue and a notation of the observation should be made in the comments section on the inspection report.”

INSPECTION OBSERVATION	FACILITY	AREA	LOCATION	WEEK OF
				2/26/2023 - 3/4/2023
mildew at wall corners	GRVC	4B	shower	2/26/2023 - 3/4/2023
mildew in shower stall	GRVC	11B	shower	1/1/2023 - 1/7/2023
				1/22/2023 - 1/28/2023
				1/8/2023 - 1/14/2023
		19A	shower	1/8/2023 - 1/14/2023
		4A	shower	1/15/2023 - 1/21/2023
				1/8/2023 - 1/14/2023
		4B	shower	1/15/2023 - 1/21/2023
				1/8/2023 - 1/14/2023
		8B	shower	1/15/2023 - 1/21/2023
mildew on storage shelf	RNDC	6 Lower South	janitor's closet	1/15/2023 - 1/21/2023
mildew on storage shelf (Repeat)	RNDC	6 Lower South	janitor's closet	2/5/2023 - 2/11/2023
	VCBC	1AB	janitor's closet	3/19/2023 - 3/25/2023
mildew on wall (Repeat 2)	GRVC	4B	janitor's closet	1/15/2023 - 1/21/2023
mildew on wall (Repeat 4)	GRVC	7A	janitor's closet	1/8/2023 - 1/14/2023
	RNDC	6 Lower South	janitor's closet	3/5/2023 - 3/11/2023
	VCBC	1AB	janitor's closet	2/19/2023 - 2/25/2023
mildew on wall (Repeat 2)	GRVC	7B	janitor's closet	2/26/2023 - 3/4/2023
mildew on wall (Repeat 4)	GRVC	9A	janitor's closet	1/29/2023 - 2/4/2023
mildew on wall (Repeat 5)	AMKC	Quad Lower 2	janitor's closet	1/1/2023 - 1/7/2023
	GRVC	3B	janitor's closet	1/8/2023 - 1/14/2023
		9A	janitor's closet	1/8/2023 - 1/14/2023
mildew on wall (Repeat 6)	GRVC	10A	janitor's closet	2/5/2023 - 2/11/2023
		5B	janitor's closet	3/5/2023 - 3/11/2023
		9B	janitor's closet	1/8/2023 - 1/14/2023
mildew on wall, mildew along junctions	GRVC	7A	janitor's closet	2/26/2023 - 3/4/2023
mildew on wall, mildew at junctions	VCBC	1BA	janitor's closet	2/19/2023 - 2/25/2023
mildew on wall, mildew on ceiling	GRVC	17B	janitor's closet	1/22/2023 - 1/28/2023
		2A	janitor's closet	1/1/2023 - 1/7/2023
				1/15/2023 - 1/21/2023
				1/22/2023 - 1/28/2023
				1/8/2023 - 1/14/2023
		7A	shower	1/29/2023 - 2/4/2023
mildew on wall, mildew on ceiling , mildew at junctions	GRVC	2A	janitor's closet	2/12/2023 - 2/18/2023
mildew on wall, mildew on ceiling	GRVC	17B	janitor's closet	2/26/2023 - 3/4/2023
		2A	janitor's closet	2/5/2023 - 2/11/2023
mildew on wall, mildew on floor	GRVC	7B	janitor's closet	2/12/2023 - 2/18/2023
				2/5/2023 - 2/11/2023
mildew on walls, mildew on ceiling	GRVC	17B	janitor's closet	2/19/2023 - 2/25/2023
		2A	janitor's closet	2/19/2023 - 2/25/2023
mildew on walls, mildew on floor	GRVC	15A	shower	2/19/2023 - 2/25/2023
mold on shower wall	GRVC	3B	shower	2/5/2023 - 2/11/2023
mold on walls	GRVC	3B	shower	2/26/2023 - 3/4/2023
organic accumulations in toilet	AMKC	Quad Lower 2	cell #9 (v)	2/12/2023 - 2/18/2023
		Quad Lower 7	cell #14 (v)	3/26/2023 - 4/1/2023
		Quad Upper 2	cell #24 (v)	1/8/2023 - 1/14/2023
		Quad Upper 7	cell #3 (v)	3/26/2023 - 4/1/2023
organic debris accumulation in toilet	NIC	2B	cell #7 (v)	3/12/2023 - 3/18/2023
toilet dirty with organic debris accumulation	NIC	3D	cell #7 (v)	2/12/2023 - 2/18/2023
toilet dirty with organic debris accumulation	AMKC	Mod 1 Lower A	cell #17 (v)	2/5/2023 - 2/11/2023

INSPECTION OBSERVATION	FACILITY	AREA	LOCATION	WEEK OF
(Repeat) toilet excessively dirty with organic debris accumulation	AMKC	Quad Lower 13	cell #13 (v)	2/12/2023 - 2/18/2023
		Quad Lower 14	cell #27 (v)	1/8/2023 - 1/14/2023
		Quad Lower 15	cell #2 (v)	2/12/2023 - 2/18/2023
		Quad Lower 16	cell #27 (v)	1/8/2023 - 1/14/2023
		Quad Upper 10	cell #20 (v)	3/5/2023 - 3/11/2023
		Quad Upper 13	cell #23 (v)	2/26/2023 - 3/4/2023
				2/5/2023 - 2/11/2023
			cell #5 (v)	2/26/2023 - 3/4/2023
				2/5/2023 - 2/11/2023
			cell #7 (v)	2/5/2023 - 2/11/2023
		Quad Upper 14	cell #10 (v)	2/26/2023 - 3/4/2023
			cell #8 (v)	2/5/2023 - 2/11/2023
		Quad Upper 16	cell #10 (v)	2/5/2023 - 2/11/2023
	NIC	2C	cell #2 (v)	3/12/2023 - 3/18/2023
		3B	cell #7 (v)	2/12/2023 - 2/18/2023
		3C	cell #10 (v)	3/12/2023 - 3/18/2023
			cell #9 (v)	3/12/2023 - 3/18/2023
toilet excessively dirty with organic debris accumulation (Repeat)	NIC	3B	cell #10 (v)	3/12/2023 - 3/18/2023
			cell #9 (v)	3/12/2023 - 3/18/2023

Within the category of Organic Soil Accumulations, the Department requires that “[a]ll drains shall have covers that shall be cleaned daily in order to prevent clogging and defective drainage.” Directive 3901R-B, Housekeeping Procedures, at 9. The examples below show that the drains are not being cleaned as required.

INSPECTION OBSERVATION	FACILITY	AREA	LOCATION	WEEK OF
"standing dirty water"	AMKC	Dorm 3 Main	shower	1/1/2023 - 1/7/2023
clogged floor drain	RNDC	6 Lower South	janitor's closet	1/15/2023 - 1/21/2023
clogged sink	RNDC	1 Upper North	dayroom toilet	3/5/2023 - 3/11/2023
		4 Lower North	dayroom toilet	1/22/2023 - 1/28/2023
clogged sink (Repeat 1)	RNDC	6 Lower South	dayroom toilet	1/15/2023 - 1/21/2023
dirty floor drain	RMSC	1 East B	janitor's closet	2/26/2023 - 3/4/2023
	RNDC	1 Upper North	janitor's closet	1/1/2023 - 1/7/2023
		6 Upper South	janitor's closet	2/5/2023 - 2/11/2023
		Mod 4 Upper South	shower	1/22/2023 - 1/28/2023
dirty floor drain (Repeat)	RNDC	6 Lower South	janitor's closet	2/5/2023 - 2/11/2023
dirty floor drain (w/food residue)	RNDC	6 Upper South	janitor's closet	1/15/2023 - 1/21/2023
dirty floor drain cover	RNDC	1 Upper South	janitor's closet	1/1/2023 - 1/7/2023
dirty floor drain cover (Repeat 1), dirty floor (Repeat 1)	RNDC	4 Upper South	janitor's closet	2/19/2023 - 2/25/2023
dirty floor drain cover, dirty wall ledges	RNDC	4 Lower North	janitor's closet	1/22/2023 - 1/28/2023

INSPECTION OBSERVATION	FACILITY	AREA	LOCATION	WEEK OF
		4 Lower South	janitor's closet	1/22/2023 - 1/28/2023
dirty floor drain, dirty floor junctions	RNDC	4 Upper South	janitor's closet	3/26/2023 - 4/1/2023
dirty floor, dirty drain	RMSC	2 East B	janitor's closet	2/12/2023 - 2/18/2023
		3 East A	janitor's closet	2/26/2023 - 3/4/2023
dirty floor, dirty drain, dirty walls, dirty shelves	RMSC	Bldg. 4	janitor's closet	2/26/2023 - 3/4/2023
dirty floor, dirty floor drain	RMSC	1 East B	janitor's closet	1/22/2023 - 1/28/2023
				2/12/2023 - 2/18/2023
		2 East A	janitor's closet	1/22/2023 - 1/28/2023
		2 East B	janitor's closet	1/22/2023 - 1/28/2023
	RNDC	4 Upper South	janitor's closet	1/22/2023 - 1/28/2023
dirty sink, dirty drain, dirty wall	WF	Sprung 7	janitor's closet	2/26/2023 - 3/4/2023
floor drain "clogged with plastic and covered with cardboard" (work order submitted 1/30/2023)	EMTC	8 Upper	toilet area	2/19/2023 - 2/25/2023
floor drain was dirty	RNDC	1 Lower South	janitor's closet	1/1/2023 - 1/7/2023

Further within, the category of Organic Soil Accumulations, there were also numerous instances of chronic pooling of water and chronically wet walking surfaces (Att. 9 to the draft report) as shown in the table immediately below.

INSPECTION OBSERVATION(S)	FACILITY	AREA	LOCATION	WEEK OF	WORK ORDER
"floor was wet"	RNDC	6 Central South	dayroom toilet	3/5/2023 - 3/11/2023	-
"leak from an unknown source"	GRVC	10B	janitor's closet	2/12/2023 - 2/18/2023	-
"ponded water"	AMKC	Dorm 1 Top	shower	1/1/2023 - 1/7/2023	-
"ponding water from unknown source"	GRVC	4A	janitor's closet	2/12/2023 - 2/18/2023	2/14/2023
"puddle of water" on floor	RNDC	2 Upper South	common area	1/29/2023 - 2/4/2023	-
"shower ceiling leaking"	RNDC	Mod 1 North	shower	1/29/2023 - 2/4/2023	date not specified
"standing dirty water"	AMKC	Dorm 2 Upper	shower	1/8/2023 - 1/14/2023	-
		Dorm 4 Upper	shower	1/22/2023 - 1/28/2023	-
		Main Intake	pen #7	1/8/2023 - 1/14/2023	-
		Mod 9	shower	1/8/2023 - 1/14/2023	-
		West 17 Lower A	shower	1/1/2023 - 1/7/2023	-
		West 17 Lower B	shower	1/1/2023 - 1/7/2023	-
"standing water" on floor	RNDC	1 Central North	janitor's closet	2/5/2023 - 2/11/2023	-
ceiling leaking	RNDC	Mod 1 North	shower	1/15/2023 - 1/21/2023	
				1/22/2023 - 1/28/2023	date not specified
				1/8/2023 - 1/14/2023	date not specified
leak from an unknown source	GRVC	10B	janitor's closet	2/5/2023 - 2/11/2023	2/10/2023
ponded water on floor	AMKC	Main Intake	decontamination cell	1/22/2023 - 1/28/2023	-
		Mod 9	bridge area	1/15/2023 - 1/21/2023	
		Quad Lower 5	shower	1/15/2023 - 1/21/2023	

INSPECTION OBSERVATION(S)	FACILITY	AREA	LOCATION	WEEK OF	WORK ORDER
	GRVC	10A	shower	3/5/2023 - 3/11/2023	-
		4A	common area	2/5/2023 - 2/11/2023	-
			janitor's closet	1/15/2023 - 1/21/2023	
		9A	janitor's closet	2/26/2023 - 3/4/2023	-
		Segregation Intake	pen #4	3/5/2023 - 3/11/2023	-
	RMSC	1 East B	not specified	1/15/2023 - 1/21/2023	
		Intake	pen #2	1/8/2023 - 1/14/2023	-
	RNDC	1 Lower South	janitor's closet	1/1/2023 - 1/7/2023	-
		4 Lower South	dayroom toilet	3/26/2023 - 4/1/2023	-
		6 Lower South	common area	1/15/2023 - 1/21/2023	
slop sink leaking	VCBC	3CA	janitor's closet	1/29/2023 - 2/4/2023	-
standing dirty water	AMKC	Dorm 2 Upper	shower	1/29/2023 - 2/4/2023	-
	RMSC	1 East B	shower	1/15/2023 - 1/21/2023	
standing water near sink (unknown source)	GRVC	3A	janitor's closet	1/29/2023 - 2/4/2023	-
standing water on floor	AMKC	Dorm 2 Upper	toilet area	3/12/2023 - 3/18/2023	-
		Main Intake	shower	3/5/2023 - 3/11/2023	-
	RNDC	3 Lower North	janitor's closet	2/26/2023 - 3/4/2023	-
		Mod 1 North	shower	1/1/2023 - 1/7/2023	-
	WF	Sprung 12	shower	3/19/2023 - 3/25/2023	-
standing water on floor (Repeat 7)	AMKC	West 18 Lower B	dayroom	2/19/2023 - 2/25/2023	2/23/2023
unknown source of leak	VCBC	3BA	janitor's closet	2/5/2023 - 2/11/2023	2/8/2023
		3CA	janitor's closet	2/5/2023 - 2/11/2023	2/8/2023
		3CB	janitor's closet	2/5/2023 - 2/11/2023	2/8/2023
vestibule with ponding water from unknown source	GRVC	4A/B	common area	2/5/2023 - 2/11/2023	2/10/2023

In some cases, the chronic pooling of water is occurring in locations with multiple missing floor tiles, which as discussed below is a long-standing and ongoing problem.

3. Surfaces (not) Smooth and Easily Cleanable:

- structural surfaces in poor repair; porous; uneven/irregular/jagged, for example: wall-floor junctions not smooth, rounded, or sealed; cracks, joints and tile grouting not sealed or in good repair
- beds and/or dayroom furnishings in poor repair

The Department defines cleanable surfaces as “[c]apable of being cleaned” and exemplifies that definition as “[s]urfaces that are made of smooth, hard, durable, and non-porous substances.” DOC Cleaning and Sanitizing Manual at 2.

There are maintenance conditions that must be reported and repaired to ensure that all surfaces are cleanable. Missing tiles, plumbing leaks, missing/loose cove base, and trip/fall hazards must be reported expeditiously through the work order system. Any wooden patches must be painted prior to the installation of the wooden patches. If there are unpainted wooden patches in the housing area, the area captain must be notified. The

area captain shall inform the environmental health captain who will ensure that patch is painted.

Id. at 12. Despite this plain language definition and direction to report surfaces that are not easily cleanable, such as missing tiles, there seems to be some ongoing confusion between the PHS and EHO inspectors. For example, both inspected RNDC 2 Central North during this monitoring period (with a total of ten inspections) and one reported missing tiles during every inspection while the other did not report missing tiles during any of the inspections even when both undertook the inspection in the same week. Similarly, in the RNDC Intake, which was inspected weekly by both the PHS and the EHO, one reported a hole in the wall during every inspection while the other reported no such observation during any of eleven inspections. In a further example, VCBC Intake was inspected weekly by both the PHS and EHO during this monitoring period and yet, during twenty-four inspections, one reported rust and peeling paint during twelve inspections and the other reported no such observations during twelve inspections. [T]his topic was discussed at [a May 19, 2023] meeting with OCC and the parties, and the Department is considering certain suggestions made by them, to ensure greater consistency in training.” Defs.’ resp. at 7. As with prior monitoring periods, there are hundreds of instances of surfaces that are not smooth and easily cleanable throughout all facilities; however, these deficiencies, although reported repeatedly, largely remain unrepaired. In certain instances, work orders were submitted and resubmitted with deficiencies lasting across monitoring periods.

FACILITY	AREA	LOCATION	INSPECTION OBSERVATION	WEEK OF	WORK ORDER
AMKC	Dorm 1 Top	janitor's closet	peeling paint on ceiling	2/5/2023 - 2/11/2023	-
			peeling paint on ceiling (Repeat)	3/19/2023 - 3/25/2023	-
	Mod 1 Lower A	cell #11 (v)	cracked floor	3/26/2023 - 4/1/2023	-
		cell #16 (v)	cracked floor	3/26/2023 - 4/1/2023	-
	Mod 1 Lower B	janitor's closet	cracked floor (Repeat 5)	2/5/2023 - 2/11/2023	-
			cracked floor (Repeat 6)	3/26/2023 - 4/1/2023	-
	Mod 1 Upper B	cell #8 (v)	rusty ceiling vent	3/26/2023 - 4/1/2023	-
		janitor's closet	cracked floor (Repeat 8), ceiling rusty (Repeat 3)	2/5/2023 - 2/11/2023	-
			cracked floor (Repeat 9)	3/26/2023 - 4/1/2023	-

FACILITY	AREA	LOCATION	INSPECTION OBSERVATION	WEEK OF	WORK ORDER
			rusted ceiling (Repeat 5), cracked floor (Repeat 4)	1/15/2023 - 1/21/2023	-
			rusted light shield (Repeat 4)	3/26/2023 - 4/1/2023	-
	Quad Lower 1	cell #11 (v)	"floor cover paint missing"	2/12/2023 - 2/18/2023	-
		cell #22 (v)	"floor cover paint missing"	2/12/2023 - 2/18/2023	-
		cell #28 (v)	peeling paint on ceiling	3/19/2023 - 3/25/2023	-
		janitor's closet	"large hole" at wall, rusted ceiling	3/19/2023 - 3/25/2023	-
			rusted ceiling (Repeat 3)	1/1/2023 - 1/7/2023	-
			rusted ceiling (Repeat 4)	2/12/2023 - 2/18/2023	-
	Quad Upper 3	cell #16 (v)	peeling paint on wall	1/8/2023 - 1/14/2023	-
		cell #22 (v)	peeling paint on wall	1/8/2023 - 1/14/2023	-
	Quad Upper 4	cell #11 (v)	peeling paint on ceiling	1/8/2023 - 1/14/2023	-
		cell #18 (v)	peeling paint on ceiling	2/12/2023 - 2/18/2023	-
	Quad Upper 7	cell #3 (v)	peeling paint on ceiling	3/26/2023 - 4/1/2023	-
EMTC	1 Main	janitor's closet	peeling paint on ceiling (Repeat 2), peeling paint on wall (Repeat 2), unpainted wall panel (Repeat 1)	2/12/2023 - 2/18/2023	1/3/2023
			peeling paint on wall (Repeat 1), peeling paint on ceiling (Repeat 1), unpainted wall panel	1/1/2023 - 1/7/2023	1/3/2023
			wall panel unpainted (Repeat 2), peeling paint on ceiling (Repeat 3), peeling paint on wall (Repeat 3)	2/26/2023 - 3/4/2023	1/3/2023
	10 Lower	janitor's closet	displaced ceiling pipe insulation (Repeat 2), missing ceiling pipe insulation (Repeat 2), torn ceiling pipe insulation (Repeat 2)	2/19/2023 - 2/25/2023	2/24/2023
GRVC	11B	cell #38 (v)	peeling paint on floor panel, "peeling" plaster on floor panel	1/22/2023 - 1/28/2023	-
	5A	janitor's closet	missing wall tiles	1/1/2023 - 1/7/2023	Resubmitted - 12/28/2022- pending
				1/15/2023 - 1/21/2023	Resubmitted - 12/28/2022- pending
				1/22/2023 - 1/28/2023	Resubmitted - 01/28/2023- pending
				1/29/2023 - 2/4/2023	Resubmitted - 01/28/2023 - pending
				1/8/2023 - 1/14/2023	Resubmitted - 12/28/2022- pending
				2/12/2023 - 2/18/2023	Resubmitted - 01/28/2023 - pending
				2/19/2023 - 2/25/2023	Resubmitted - 01/28/2023 - pending
				2/26/2023 - 3/4/2023	Resubmitted - 03/02/2023 - pending
			peeling paint on wall	1/1/2023 - 1/7/2023	"Paint detail notified - 12/08/2022 - pending"
				1/15/2023 - 1/21/2023	"Paint detail notified - 01/08/2023 - pending"
				1/8/2023 - 1/14/2023	"Paint detail notified -

FACILITY	AREA	LOCATION	INSPECTION OBSERVATION	WEEK OF	WORK ORDER
					01/08/2023 - pending"
					"Paint detail notified - 12/08/2022 - pending"
				2/26/2023 - 3/4/2023	Paint Detail Notified - 02/08/2023 - pending
			peeling paint on wall (Repeat 11), "peeling plaster" on wall (Repeat 11)	1/8/2023 - 1/14/2023	-
			peeling paint on wall	1/22/2023 - 1/28/2023	"Paint detail notified - 01/08/2023 - pending"
				3/5/2023 - 3/11/2023	-
			peeling paint on wall (Repeat 12), "peeling plaster" on wall (Repeat 12)	1/29/2023 - 2/4/2023	-
			peeling paint on walls	2/19/2023 - 2/25/2023	paint detail notified - pending 2/8/2023
	8A	janitor's closet	peeling paint on wall, peeling paint on ceiling	3/12/2023 - 3/18/2023	-
			two holes in wall	1/1/2023 - 1/7/2023	Resubmitted - 12/29/2022- pending
				1/15/2023 - 1/21/2023	Resubmitted - 12/29/2022- pending
				1/22/2023 - 1/28/2023	Resubmitted - 12/29/2022- pending
				1/29/2023 - 2/4/2023	Resubmitted - 02/03/2023 - pending
				1/8/2023 - 1/14/2023	Resubmitted - 12/29/2022- pending
				2/12/2023 - 2/18/2023	Resubmitted - 02/03/2023 - pending
				2/19/2023 - 2/25/2023	Resubmitted - 01/29/2023 - pending
				2/26/2023 - 3/4/2023	Resubmitted - 03/02/2023 - pending
				2/5/2023 - 2/11/2023	Resubmitted - 02/03/2023 - pending
NIC	2A	janitor's closet	broken ceiling panel (Repeat 6)	1/15/2023 - 1/21/2023	1/18/2023
			broken ceiling panel (Repeat 7)	2/12/2023 - 2/18/2023	1/18/2023
			broken ceiling panel (Repeat 8)	3/12/2023 - 3/18/2023	1/18/2023
	3A	janitor's closet	cracked wall (Repeat 5)	2/12/2023 - 2/18/2023	12/27/2023
			wall cracked at base (Repeat 4)	1/15/2023 - 1/21/2023	12/27/2022
	3B	janitor's closet	cracked wall (Repeat 6)	3/12/2023 - 3/18/2023	3/15/2023
	Annex Intake	common area	missing ceiling tiles	2/12/2023 - 2/18/2023	-
	Dorm 2C	janitor's closet	"floor missing cover paint" (Repeat 9)	1/29/2023 - 2/4/2023	-
			missing floor cover paint (Repeat 8)	1/8/2023 - 1/14/2023	-
RMSC	3 South B	janitor's closet	cracked slop sink	1/22/2023 - 1/28/2023	-
			cracked slop sink (Repeat 1)	2/12/2023 - 2/18/2023	-
			cracked slop sink (Repeat 2)	3/19/2023 - 3/25/2023	-
	5 South A	janitor's closet	cracked slop sink	1/8/2023 - 1/14/2023	-
			cracked slop sink (Repeat 1)	3/12/2023 - 3/18/2023	-
	5 South B	janitor's closet	cracked slop sink (Repeat 1)	3/12/2023 - 3/18/2023	-

FACILITY	AREA	LOCATION	INSPECTION OBSERVATION	WEEK OF	WORK ORDER
			slop sink cracked	1/8/2023 - 1/14/2023	-
	Nursery	cell #4 (v)	peeling paint on ceiling	2/19/2023 - 2/25/2023	-
RNDC	1 Central North	cell #11 (v)	peeling paint on ceiling	1/1/2023 - 1/7/2023	-
		cell #18 (v)	peeling paint on ceiling	2/5/2023 - 2/11/2023	-
		janitor's closet	missing floor tiles	1/1/2023 - 1/7/2023	-
				2/5/2023 - 2/11/2023	-
	2 Central North	janitor's closet	missing floor tile	1/22/2023 - 1/28/2023	WOS - date not specified
				1/1/2023 - 1/7/2023	WOS - date not specified
				1/15/2023 - 1/21/2023	WOS - date not specified
				1/29/2023 - 2/4/2023	WOS - date not specified
				1/8/2023 - 1/14/2023	WOS - date not specified
				2/12/2023 - 2/18/2023	WOS - date not specified
				2/26/2023 - 3/4/2023	WOS - date not specified
				2/5/2023 - 2/11/2023	WOS - date not specified
	6 Lower North	janitor's closet	peeling paint on ceiling (Repeat 2)	1/15/2023 - 1/21/2023	-
				2/5/2023 - 2/11/2023	-
			pipe insulation torn	1/15/2023 - 1/21/2023	-
			torn pipe insulation	3/5/2023 - 3/11/2023	-
			torn pipe insulation (Repeat)	2/5/2023 - 2/11/2023	-
	6 Lower South	janitor's closet	cracked shelf	3/5/2023 - 3/11/2023	-
			cracks in storage shelf	1/15/2023 - 1/21/2023	-
	6 Upper North	janitor's closet	peeling paint on ceiling	1/15/2023 - 1/21/2023	-
	6 Upper South	janitor's closet	missing floor tiles (Repeat 10)	2/5/2023 - 2/11/2023	2/9/2023
				3/5/2023 - 3/11/2023	-
			missing floor tiles (Repeat 9)	1/15/2023 - 1/21/2023	-
	Intake	janitor's closet	cracked floor panel	1/15/2023 - 1/21/2023	-
			hole in wall	1/15/2023 - 1/21/2023	WOS - date not specified
				1/22/2023 - 1/28/2023	WOS - date not specified
				1/29/2023 - 2/4/2023	WOS - date not specified
				2/12/2023 - 2/18/2023	WOS - date not specified
				2/5/2023 - 2/11/2023	WOS - date not specified
	Mod 1 South	janitor's closet	floor top layer "peeling"	2/26/2023 - 3/4/2023	-
VCBC	1BA	janitor's closet	cracked junctions (Repeat 1), broken junctions (Repeat 1)	3/19/2023 - 3/25/2023	-
			rust on wall, rust along junctions	2/19/2023 - 2/25/2023	-
	1BB	janitor's closet	peeling paint on wall, rusted corners, rusted junctions	3/19/2023 - 3/25/2023	-
			rust along corners	1/22/2023 - 1/28/2023	-
			rusted junctions, cracked	2/19/2023 - 2/25/2023	-

FACILITY	AREA	LOCATION	INSPECTION OBSERVATION	WEEK OF	WORK ORDER
			junctions (with sharp edges)		
	Intake	janitor's closet	peeling paint on wall (Repeat 3), rust on wall (Repeat 3)	3/5/2023 - 3/11/2023	-
			rust on wall (Repeat 14), peeling paint on wall (Repeat 14), rusty ceiling vent (Repeat 11)	1/8/2023 - 1/14/2023	-
			rust on wall (Repeat 5), peeling paint on wall (Repeat 5)	3/19/2023 - 3/25/2023	-
			rust on wall (Repeat 6), peeling paint on wall	1/22/2023 - 1/28/2023	-
			rust on wall (Repeat 7), peeling paint on wall (Repeat 7)	1/29/2023 - 2/4/2023	-
			rust on wall (Repeat 2), peeling paint on wall (Repeat 2)	2/26/2023 - 3/4/2023	-
			rust on wall	2/12/2023 - 2/18/2023	-
			rust on wall (Repeat 1), peeling paint on wall (Repeat 1)	2/19/2023 - 2/25/2023	-
			rust on wall (Repeat 4), peeling paint on wall (Repeat 4)	3/12/2023 - 3/18/2023	-
			rust on wall (Repeat 6), peeling paint on wall (Repeat 6)	3/26/2023 - 4/1/2023	-
			rust on wall (Repeat 8), peeling paint on wall (Repeat 8)	2/5/2023 - 2/11/2023	-
			rust on wall, peeling paint on wall	1/15/2023 - 1/21/2023	-
WF	Sprung 10	cell #1010 (v)	cracked floor tiles	1/22/2023 - 1/28/2023	-
			cracked tiles (Repeat 1)	2/26/2023 - 3/4/2023	-
		janitor's closet	peeling paint on wall	3/19/2023 - 3/25/2023	-
			peeling paint on wall	2/26/2023 - 3/4/2023	-
	Sprung 11	cell #1101 (v)	cracked floor tiles	1/22/2023 - 1/28/2023	-
		cell #1107 (v)	cracked floor tiles	1/22/2023 - 1/28/2023	-
		janitor's closet	peeling paint on door, peeling paint on wall	3/19/2023 - 3/25/2023	-
			peeling paint on wall	2/26/2023 - 3/4/2023	-
	Sprung 12	cell #1213 (v)	broken plexiglass	3/19/2023 - 3/25/2023	-
		janitor's closet	peeling paint on wall	1/22/2023 - 1/28/2023	-
			peeling paint on wall (Repeat 1)	2/26/2023 - 3/4/2023	-
	Sprung 6	cell #608 (v)	"several small holes" in wall	2/26/2023 - 3/4/2023	-
		cell #609 (v)	cracked floor panel	1/22/2023 - 1/28/2023	-
				3/19/2023 - 3/25/2023	-
			cracked floor panel (Repeat 1)	2/26/2023 - 3/4/2023	-
	Sprung 7	cell #712 (v)	cracked floor tiles	1/22/2023 - 1/28/2023	-
		janitor's closet	peeling paint on wall	3/19/2023 - 3/25/2023	-
			peeling paint on wall	2/26/2023 - 3/4/2023	-
	Sprung 8	cell #812(v)	cracked floor panel	1/22/2023 - 1/28/2023	-
	Sprung 9	cell #902 (v)	cracked floor tiles	1/22/2023 - 1/28/2023	-
		cell #904 (v)	cracked floor tiles	1/22/2023 - 1/28/2023	-
		janitor's closet	cracked floor (Repeat 6), peeling paint on door	3/19/2023 - 3/25/2023	-
			cracked floor tiles (Repeat 5)	2/26/2023 - 3/4/2023	-
			cracked floor tiles, unpainted broom holder	1/22/2023 - 1/28/2023	-

Per, OCC’s former expert sanitarian, Eugene Pepper:

“[E]ven if proper procedures are followed, the impact of poor surface conditions is impacting cleaning and sanitizing negatively. Despite sometimes heroic efforts by staff, damaged surfaces cannot be properly cleaned, yet when repairs are made . . . the staff generally are capable of maintaining them in a safe and clean condition.”

2013 Environmental Health Inspections for New York City Jail Facilities at Rikers Island at 9.

4. Lighting

- less than 10 foot-candles, measured at three feet from the target horizontal surface, or,
- less than optimal lighting from an existing and operational luminary—this includes observable conditions such as dimming or flickering and/or the presence of blackened ends of fluorescent light bulbs

The 79 instances of inadequate lighting were reported in the janitor’s closets, showers, toilet areas, and dayroom toilets of AMKC, EMTC, GRVC, RNDC, and WF during this monitoring period. However, this is an undercount as EHOs are in the facilities daily but do not record light readings. In certain cases, the inadequate lighting violation remained unabated after the initial report.

FACILITY	AREA	LOCATION	FOOT CANDLES	WEEK OF	WORK ORDER
AMKC	Mod 9A	janitor's closet	4.7 fc	1/22/2023 - 1/28/2023	-
				2/19/2023 - 2/25/2023	-
				3/12/2023 - 3/18/2023	-
	Mod 9B	janitor's closet	0.5 fc	4/9/2023 - 4/15/2023	-
			1.8 fc	1/22/2023 - 1/28/2023	-
				2/19/2023 - 2/25/2023	-
				3/12/2023 - 3/18/2023	-
	Quad Lower 1	dayroom toilet	9.7 fc	2/12/2023 - 2/18/2023	-
	Quad Lower 11	dayroom toilet	5.3 fc	1/15/2023 - 1/21/2023	-
		toilet area	5.3 fc	2/12/2023 - 2/18/2023	-
	Quad Lower 13	dayroom toilet	4.2 fc	1/8/2023 - 1/14/2023	-
		toilet area	4.2 fc	2/12/2023 - 2/18/2023	-
				3/5/2023 - 3/11/2023	-
	Quad Lower 15	janitor's closet	0.0 fc	2/12/2023 - 2/18/2023	-
				4/9/2023 - 4/15/2023	-
	Quad Lower 16	janitor's closet	0.0 fc	1/8/2023 - 1/14/2023	-
				2/12/2023 - 2/18/2023	-
		toilet area	0.5 fc	1/8/2023 - 1/14/2023	-
				2/12/2023 - 2/18/2023	-
	Quad Lower 19	dayroom toilet	0.0 fc	1/8/2023 - 1/14/2023	-
		toilet area	0.0 fc	2/26/2023 - 3/4/2023	3/2/2023
				2/5/2023 - 2/11/2023	-
	Quad Lower 3	dayroom toilet	8.0 fc (R1)	2/12/2023 - 2/18/2023	-

FACILITY	AREA	LOCATION	FOOT CANDLES	WEEK OF	WORK ORDER
			9.5 fc	1/1/2023 - 1/7/2023	-
	Quad Upper 11	janitor's closet	0.9 fc	1/15/2023 - 1/21/2023	-
			1.3 fc	2/5/2023 - 2/11/2023	-
				3/5/2023 - 3/11/2023	-
			8.7 fc	4/9/2023 - 4/15/2023	-
	Quad Upper 13	janitor's closet	1.3 fc	1/8/2023 - 1/14/2023	-
				2/26/2023 - 3/4/2023	-
				2/5/2023 - 2/11/2023	-
			9.0 fc	4/9/2023 - 4/15/2023	-
	Quad Upper 14	janitor's closet	0.0 fc	1/8/2023 - 1/14/2023	-
				2/26/2023 - 3/4/2023	-
				2/5/2023 - 2/11/2023	-
	Quad Upper 16	janitor's closet	4.4 fc	1/8/2023 - 1/14/2023	-
				2/26/2023 - 3/4/2023	-
				2/5/2023 - 2/11/2023	-
	Quad Upper 4	janitor's closet	0.0 fc	2/12/2023 - 2/18/2023	-
	West 18 Lower A	shower	9.6 fc	1/29/2023 - 2/4/2023	-
	West 19 Lower A	janitor's closet	0.0 fc	3/12/2023 - 3/18/2023	3/13/2023
	West 19 Upper A	janitor's closet	0.0 fc	1/22/2023 - 1/28/2023	-
				2/12/2023 - 2/18/2023	-
				3/12/2023 - 3/18/2023	3/2/2023
		shower	6.0 fc	3/12/2023 - 3/18/2023	-
EMTC	11 Upper	janitor's closet	0.7 fc (light inoperable)	3/26/2023 - 4/1/2023	-
	7 Main	shower	7.2 fc	1/15/2023 - 1/21/2023	-
			7.3 fc	3/19/2023 - 3/25/2023	-
	8 Upper	janitor's closet	0.7 fc (inoperable light)	1/22/2023 - 1/28/2023	1/26/2023
GRVC	10B	janitor's closet	8.3 fc	3/5/2023 - 3/11/2023	-
	3B	janitor's closet	6.8 fc	1/8/2023 - 1/14/2023	-
			light inoperable	1/15/2023 - 1/21/2023	1/19/2023
	4A	janitor's closet	5.3 fc (inoperable light fixture w/exposed wires)	1/15/2023 - 1/21/2023	-
RNDC	1 Central South	dayroom toilet	3.8 fc (no operational light)	1/1/2023 - 1/7/2023	-
	1 Lower North	janitor's closet	6.5 fc	1/1/2023 - 1/7/2023	-
			7.6 fc	2/26/2023 - 3/4/2023	-
	3 Central North	janitor's closet	6.8 fc	1/1/2023 - 1/7/2023	-
	3 Upper North	dayroom toilet	5.0 fc	2/26/2023 - 3/4/2023	-
		janitor's closet	8.3 fc	2/26/2023 - 3/4/2023	-
			8.5 fc	1/1/2023 - 1/7/2023	-
	4 Central South	dayroom toilet	2.8 fc	1/22/2023 - 1/28/2023	-
	5 Lower North	janitor's closet	2.6 fc	1/15/2023 - 1/21/2023	-
			9.6 fc	2/5/2023 - 2/11/2023	-
	5 Lower South	janitor's closet	2.1 fc (no operational light)	1/15/2023 - 1/21/2023	1/5/2023
	6 Central North	janitor's closet	7.1 fc	1/15/2023 - 1/21/2023	-
	6 Lower North	dayroom toilet	7.8 fc	1/15/2023 - 1/21/2023	-
		janitor's closet	1.6 fc	1/15/2023 - 1/21/2023	-
			4.3 fc	2/5/2023 - 2/11/2023	-
	6 Lower South	dayroom toilet	5.8 fc (no light) (R1)	1/15/2023 - 1/21/2023	-
	6 Upper North	janitor's closet	2.2 fc (no operational light)	1/15/2023 - 1/21/2023	-
	Intake	janitor's closet	6.8 fc	2/19/2023 - 2/25/2023	-
			7.1 fc	1/15/2023 - 1/21/2023	-
			7.5 fc	1/1/2023 - 1/7/2023	-
	Mod 2 South	toilet area	8.2 fc	1/22/2023 - 1/28/2023	-

FACILITY	AREA	LOCATION	FOOT CANDLES	WEEK OF	WORK ORDER
	Mod 3 Lower North	janitor's closet	5.7 fc (no operational light)	1/15/2023 - 1/21/2023	-
	Mod 4 Lower North	janitor's closet	7.9 fc	1/22/2023 - 1/28/2023	-
WF	Main Intake	janitor's closet	4.7 fc	1/1/2023 - 1/7/2023	-
	Sprung 12	shower	8.5 fc, 8.9 fc	2/26/2023 - 3/4/2023	-
	Sprung 8	cell #809 (v) shower	7.8 fc	1/22/2023 - 1/28/2023	-

The Defendants believe the foregoing “over a four month period is certainly not an unreasonable amount.” Defs.’ resp. at 7. Again, OCC reminds the Defendants that the living areas are inspected once per month at most, and numerous other areas are not inspected during the course of a month. Further, repeat occurrences in the same location should be cause for concern as deficiencies that directly affect sanitation and compliance with the *Benjamin* orders are clearly being ignored even after repeated reporting by the PHS despite the requirement that, “[t]he Commanding Officer shall ensure that all sanitation related deficiencies cited on the Public Health Sanitarian reports and other regulatory agency and oversight agency reports are abated expeditiously.” DOC Directive 3901R-B, Housekeeping Procedures, at 2.

5. Presence of Malodors:

Malodors are those that are classified as those that are distinctly septic, putrefactive, or body odors.

Instances of malodors were detected in 19 instances distributed across AMKC, GRVC, RNDC, and VCBC with the odor being described as a “strong sewer smell” in RNDC.

FACILITY	AREA	LOCATION	WEEK OF
AMKC	Quad Lower 5	cell #6 (o)	4/9/2023 - 4/15/2023
	Quad Lower 6	cell #13 (o)	4/9/2023 - 4/15/2023
		cell #31 (o)	4/9/2023 - 4/15/2023
	Quad Lower 8	cell #12 (o)	4/9/2023 - 4/15/2023
GRVC	10A	common area	3/5/2023 - 3/11/2023
		janitor's closet	1/15/2023 - 1/21/2023
	10B	janitor's closet	1/15/2023 - 1/21/2023
			3/5/2023 - 3/11/2023
	13B	janitor's closet	2/19/2023 - 2/25/2023
	3A	janitor's closet	1/8/2023 - 1/14/2023
			3/5/2023 - 3/11/2023
	5B	janitor's closet	4/9/2023 - 4/15/2023
	9B	janitor's closet	2/26/2023 - 3/4/2023
RNDC	1 Central North	dayroom	2/5/2023 - 2/11/2023

FACILITY	AREA	LOCATION	WEEK OF
		dayroom toilet	2/5/2023 - 2/11/2023
VCBC	2BB	janitor's closet	2/12/2023 - 2/18/2023
			3/12/2023 - 3/18/2023
		showers	4/9/2023 - 4/15/2023
	Intake	common area	1/29/2023 - 2/4/2023

Per the Defendants, “A small number of malodors were noted—19 instances in 4 facilities.”

Defs.’ resp. at 8. Again, OCC reminds the Defendants that the living areas are inspected once per month, at most, and numerous other areas are not inspected during the course of a month.

And, as before, repeat occurrences in the same location should be cause for concern as deficiencies that directly affect sanitation and compliance with the *Benjamin* orders are clearly being ignored even after PHS reporting.

6. Ventilation:

- exhaust ventilation in toilets, showers and utility closets not working
- exhaust ventilation grills occluded with dust, dirt or sealed with paint

Observations of ventilation deficiencies (Att. 10 to the draft report) were reported in all facilities as illustrated in the table below and reflect an ongoing issue with the maintenance and repair of vents. The deficiencies consisted principally of dirty/dusty vents and partially or fully occluded vents as seen in the examples below. In numerous instances, the condition was not abated and the same violation was reported repeatedly.

FACILITY	AREA	LOCATION	INSPECTION OBSERVATION(S)	WEEK OF	WORK ORDER
AMKC	Dorm 1 Upper	janitor's closet	clogged vent	3/12/2023 - 3/18/2023	-
		shower	dusty ceiling vents	3/12/2023 - 3/18/2023	-
		toilet area	dusty ceiling vents	3/12/2023 - 3/18/2023	-
	Main Intake	pen #3	dirty vents	1/29/2023 - 2/4/2023	-
		pen #4	dust-laden ceiling vent	1/1/2023 - 1/7/2023	-
			dusty vents	3/5/2023 - 3/11/2023	-
		search area	missing ceiling vent cover	1/1/2023 - 1/7/2023	-
	Mod 1 Lower B	cell #10 (v)	partially clogged ceiling vent, partially clogged wall vent	2/5/2023 - 2/11/2023	-
		cell #7 (v)	partially clogged ceiling vent	2/5/2023 - 2/11/2023	-
			partially clogged wall vent	1/15/2023 - 1/21/2023	-
		cell #9 (v)	partially clogged ceiling vent	1/15/2023 - 1/21/2023	-
				2/5/2023 - 2/11/2023	-
		common area	partially clogged ceiling vent (Repeat 8)	3/26/2023 - 4/1/2023	-
			partially clogged ceiling vent	1/15/2023 - 1/21/2023	-

FACILITY	AREA	LOCATION	INSPECTION OBSERVATION(S)	WEEK OF	WORK ORDER
EMTC	Quad Lower 1	shower	partially clogged ceiling vent (Repeat 7)	2/5/2023 - 2/11/2023	-
			partially clogged ceiling vent	1/15/2023 - 1/21/2023	-
		cell #11 (v)	partially clogged ceiling vent (Repeat 5)	2/5/2023 - 2/11/2023	-
			clogged wall vent	2/12/2023 - 2/18/2023	-
			dust-laden wall vent	3/19/2023 - 3/25/2023	-
			clogged wall vent	3/19/2023 - 3/25/2023	-
			dusty wall vent	1/1/2023 - 1/7/2023	-
			dusty wall vent	3/19/2023 - 3/25/2023	-
			excessively dusty wall vent	3/19/2023 - 3/25/2023	-
			dusty wall vent	1/1/2023 - 1/7/2023	-
			dust-laden wall vent	1/1/2023 - 1/7/2023	-
	1 Main	shower	"no vent" (Repeat 6)	2/12/2023 - 2/18/2023	-
			"no vent" (Repeat 7)	2/26/2023 - 3/4/2023	-
		toilet area	no vent	1/1/2023 - 1/7/2023	-
			"no vent"	2/26/2023 - 3/4/2023	-
	Intake	janitor's closet	partially occluded ceiling vent (Repeat 10)	3/26/2023 - 4/1/2023	2/10/2023
			partially occluded ceiling vent (Repeat 3)	2/5/2023 - 2/11/2023	2/10/2023
			partially occluded ceiling vent (Repeat 4)	2/12/2023 - 2/18/2023	2/10/2023
			partially occluded ceiling vent (Repeat 5)	2/19/2023 - 2/25/2023	2/10/2023
			partially occluded ceiling vent (Repeat 6)	2/26/2023 - 3/4/2023	2/10/2023
			partially occluded ceiling vent (Repeat 7)	3/5/2023 - 3/11/2023	2/10/2023
			partially occluded ceiling vent (Repeat 8)	3/12/2023 - 3/18/2023	2/10/2023
			partially occluded ceiling vent (Repeat 9)	3/19/2023 - 3/25/2023	2/10/2023
			partially occluded ceiling vent	1/8/2023 - 1/14/2023	-
			partially occluded ceiling vent (Repeat 1)	1/15/2023 - 1/21/2023	-
		shower	dusty wall vent	2/26/2023 - 3/4/2023	-
			dusty wall vent (Repeat 1)	3/5/2023 - 3/11/2023	-
			dusty wall vent (Repeat 2)	3/12/2023 - 3/18/2023	-
			dusty wall vent (Repeat 3)	3/19/2023 - 3/25/2023	-
			dusty wall vent (Repeat 4)	3/26/2023 - 4/1/2023	-
		toilet area	"vent occluded"	1/15/2023 - 1/21/2023	"Maintenance notified"
				1/8/2023 - 1/14/2023	"Maintenance notified"
			dust-laden ceiling vent	1/8/2023 - 1/14/2023	-
GRVC	10A	common area	dirty vent	3/5/2023 - 3/11/2023	-
	11A	cell #27 (o)	dirty vents	2/19/2023 - 2/25/2023	-
		cell #46 (v)	dirty vent	1/22/2023 - 1/28/2023	-
		cell #49 (v)	dirty vent	1/22/2023 - 1/28/2023	-
		common area	dirty high vents	1/22/2023 - 1/28/2023	-
			dirty vents	2/19/2023 - 2/25/2023	-
		janitor's closet	clogged wall vent	1/15/2023 - 1/21/2023	Resubmitted - 12/28/2022-pending
			dirty wall vent	1/1/2023 - 1/7/2023	Resubmitted - 12/28/2022-pending
				1/22/2023 - 1/28/2023	Resubmitted - 1/28/2023-pending
				1/29/2023 - 2/4/2023	Resubmitted - 01/28/2023 - pending

FACILITY	AREA	LOCATION	INSPECTION OBSERVATION(S)	WEEK OF	WORK ORDER	
NIC				1/8/2023 - 1/14/2023	Resubmitted - 12/28/2022- pending	
				2/19/2023 - 2/25/2023	Resubmitted - 01/28/2023 - pending	
				2/26/2023 - 3/4/2023	Resubmitted - 03/02/2023 - pending	
				2/5/2023 - 2/11/2023	Resubmitted - 1/28/2023- pending	
	15B	cell #19 (o)	clogged vent	1/22/2023 - 1/28/2023	-	
		cell #21 (v)	dirty vents	2/19/2023 - 2/25/2023	-	
		cell #28 (v)	dirty vent	1/22/2023 - 1/28/2023	-	
		cell #48 (o)	dirty vents	3/19/2023 - 3/25/2023	-	
		cell #5 (o)	dirty vents	3/19/2023 - 3/25/2023	-	
		cell #6 (o)	dirty vent	1/22/2023 - 1/28/2023	-	
	4 South	dayroom	dirty ceiling vent	1/1/2023 - 1/7/2023	-	
			dirty vents	1/1/2023 - 1/7/2023	-	
			dirty wall vent	1/1/2023 - 1/7/2023	-	
			dusty ceiling vent (R), dusty wall vent (Repeat)	3/5/2023 - 3/11/2023	-	
			dusty ceiling vent, dusty wall vent	2/5/2023 - 2/11/2023	-	
		sleeping area	dirty wall vent	2/5/2023 - 2/11/2023	-	
				3/5/2023 - 3/11/2023	-	
			dirty wall vent	1/1/2023 - 1/7/2023	-	
		storage	"no vent" (Repeat 7)	2/5/2023 - 2/11/2023	-	
			"no vent" (Repeat 8)	3/5/2023 - 3/11/2023	-	
			no vent	1/1/2023 - 1/7/2023	-	
		5 South	dayroom	"ceiling vent covered with plastic"	2/5/2023 - 2/11/2023	-
				ceiling vent covered	3/5/2023 - 3/11/2023	-
			janitor's closet	dirty ceiling vent	2/5/2023 - 2/11/2023	-
				dirty ceiling vent	1/1/2023 - 1/7/2023	-
			shower	dust-laden ceiling vent	2/5/2023 - 2/11/2023	-
				dust-laden ceiling vent	1/1/2023 - 1/7/2023	-
				dusty vent	1/1/2023 - 1/7/2023	-
	sleeping area		bed #18 wall vent covered (Repeat 5)	3/5/2023 - 3/11/2023	-	
			covered wall vent above bed #18 (Repeat 4)	2/5/2023 - 2/11/2023	-	
			covered wall vent above bed #8	1/1/2023 - 1/7/2023	-	
	storage		"no vent" (Repeat 7)	2/5/2023 - 2/11/2023	-	
			"no vent" (Repeat 8)	3/5/2023 - 3/11/2023	-	
	6 North		no vent	1/1/2023 - 1/7/2023	-	
		dayroom	dusty vents	1/1/2023 - 1/7/2023	-	
			partially occluded ceiling vent (Repeat 1)	3/5/2023 - 3/11/2023	-	
			partially occluded ceiling vent R	2/5/2023 - 2/11/2023	-	
			partially occluded ceiling vent	1/1/2023 - 1/7/2023	-	
		storage	"no vent" (Repeat 7)	2/5/2023 - 2/11/2023	-	
			"no vent" (Repeat 8)	3/5/2023 - 3/11/2023	-	
			no vent	1/1/2023 - 1/7/2023	-	
RMSC		1 East A	dayroom	partially occluded ceiling vent (Repeat 1)	2/19/2023 - 2/25/2023	-
				partially occluded ceiling vent (Repeat 2)	3/19/2023 - 3/25/2023	-
			partially occluded ceiling vent	1/22/2023 - 1/28/2023	-	

FACILITY	AREA	LOCATION	INSPECTION OBSERVATION(S)	WEEK OF	WORK ORDER
		shower	dust-laden ceiling vent	2/19/2023 - 2/25/2023	-
			dust-laden ceiling vent (Repeat 1)	3/19/2023 - 3/25/2023	-
		sleeping area	bed #50 - partially occluded ceiling vent	1/22/2023 - 1/28/2023	-
			bed #50 ceiling vent partially occluded (Repeat 2)	3/19/2023 - 3/25/2023	-
			bed #50 partially occluded ceiling vent (Repeat 1)	2/19/2023 - 2/25/2023	-
			dirty vents	1/29/2023 - 2/4/2023	-
			dirty vents, dusty vents	2/12/2023 - 2/18/2023	-
				2/5/2023 - 2/11/2023	-
		toilet area	dirty vents	1/29/2023 - 2/4/2023	-
			dirty vents, dusty vents	2/12/2023 - 2/18/2023	-
				2/26/2023 - 3/4/2023	-
				2/5/2023 - 2/11/2023	-
	3 South B	common area	dust-laden ceiling vent	2/12/2023 - 2/18/2023	-
			dust-laden ceiling vent (Repeat 1)	3/19/2023 - 3/25/2023	-
		dayroom	dust-laden ceiling vents	3/19/2023 - 3/25/2023	-
			dusty ceiling vents	1/22/2023 - 1/28/2023	-
			dusty ceiling vents (Repeat 1)	2/12/2023 - 2/18/2023	-
		shower	dust-laden ceiling vent (Repeat 1)	2/12/2023 - 2/18/2023	-
			dust-laden ceiling vent (Repeat 2)	3/19/2023 - 3/25/2023	-
			dust-laden ceiling vent	1/22/2023 - 1/28/2023	-
		sleeping area	above bed #22 - dirty vent w/ toothpaste	1/22/2023 - 1/28/2023	-
			above bed #32 - dirty vent w/ toothpaste	1/22/2023 - 1/28/2023	-
			above bed #4 - dirty vent w/ toothpaste	1/22/2023 - 1/28/2023	-
			above bed #9 - dirty vent w/ toothpaste	1/22/2023 - 1/28/2023	-
			bed #1 ceiling vent excessively dirty (Repeat 2)	3/19/2023 - 3/25/2023	-
			bed #32 ceiling vent excessively dirty (Repeat 2)	3/19/2023 - 3/25/2023	-
			bed #4 ceiling vent excessively dirty (Repeat 2)	3/19/2023 - 3/25/2023	-
			bed #4 excessively dirty ceiling vent (Repeat 1), bed #9 excessively dirty ceiling vent (Repeat 1), bed #22 excessively dirty ceiling vent (Repeat 1), bed #32 excessively dirty ceiling vent (Repeat 1)	2/12/2023 - 2/18/2023	-
			bed #9 ceiling vent excessively dirty (Repeat 2)	3/19/2023 - 3/25/2023	-
		toilet area	dust-laden ceiling vent	1/22/2023 - 1/28/2023	-
			dust-laden ceiling vents (Repeat 2)	3/19/2023 - 3/25/2023	-
			dusty ceiling vents (Repeat 1)	2/12/2023 - 2/18/2023	-
	Bldg. 12	cell #10 (o)	partially occluded wall vent	2/5/2023 - 2/11/2023	-
		cell #14 (o)	partially occluded wall vent	2/5/2023 - 2/11/2023	-
		cell #14 (v)	partially occluded wall vent	3/5/2023 - 3/11/2023	-
		cell #16	dirty vents	1/8/2023 - 1/14/2023	-
		cell #16 (o)	partially occluded wall vent	3/5/2023 - 3/11/2023	-
			partially occluded wall vent	2/5/2023 - 2/11/2023	-
		cell #18 (o)	partially occluded wall vent	2/5/2023 - 2/11/2023	-
		cell #20 (v)	partially occluded wall vent	1/8/2023 - 1/14/2023	-
		cell #27 (v)	partially occluded wall vent	1/8/2023 - 1/14/2023	-
		cell #32 (v)	partially occluded wall vent	1/8/2023 - 1/14/2023	-

FACILITY	AREA	LOCATION	INSPECTION OBSERVATION(S)	WEEK OF	WORK ORDER
	Intake	cell #38 (o)	partially occluded wall vent	3/5/2023 - 3/11/2023	-
		non-felony pen	dust-laden ceiling vent	2/5/2023 - 2/11/2023	-
			dust-laden ceiling vent	1/1/2023 - 1/7/2023	-
				1/15/2023 - 1/21/2023	-
		not specified	dusty vents	2/5/2023 - 2/11/2023	-
		pen #10	dust-laden ceiling vent	1/8/2023 - 1/14/2023	-
		pen #11	dust-laden ceiling vent	1/8/2023 - 1/14/2023	-
		search area	dusty ceiling vent register	3/26/2023 - 4/1/2023	-
		search pen	dust-laden ceiling vent	1/8/2023 - 1/14/2023	-
RNDC	1 Central South	cell #18 (o)	dusty wall vent	1/1/2023 - 1/7/2023	-
	1 Lower North	cell #16 (o)	dusty wall vent	1/1/2023 - 1/7/2023	-
		cell #4 (o)	dusty wall vent	1/1/2023 - 1/7/2023	-
	1 Upper South	dayroom	dirty wall vent	2/5/2023 - 2/11/2023	-
	3 Central North	cell #15 (o)	dusty wall vent	1/1/2023 - 1/7/2023	-
		cell #20 (o)	dusty wall vent	1/1/2023 - 1/7/2023	-
	3 Lower North	cell #18 (o)	dusty wall vent	3/12/2023 - 3/18/2023	-
			dusty wall vent	1/1/2023 - 1/7/2023	-
	Mod 1 North	cell #2 (o)	dusty wall vent	1/1/2023 - 1/7/2023	-
		sleeping area	dust inside wall vents (Repeat 1)	2/26/2023 - 3/4/2023	-
			partially clogged wall vent	1/1/2023 - 1/7/2023	-
	Mod 2 North			2/5/2023 - 2/11/2023	-
		sleeping area	dusty wall vents, clogged wall vents	1/22/2023 - 1/28/2023	-
				2/19/2023 - 2/25/2023	-
	Mod 3 Upper South		partially clogged wall vent (Repeat 4), dusty wall vents (Repeat 4)	3/19/2023 - 3/25/2023	-
		janitor's closet	dirty wall vent, dirty ceiling vent	2/26/2023 - 3/4/2023	-
			dusty vent	1/15/2023 - 1/21/2023	-
	Mod 4 Lower North	janitor's closet	dusty ceiling vent	2/19/2023 - 2/25/2023	-
			dusty ceiling vents (Repeat 1)	1/22/2023 - 1/28/2023	-
			partially clogged ceiling vent	3/19/2023 - 3/25/2023	-
	Mod 4 Upper North	shower	partially clogged ceiling vent (Repeat 1)	2/19/2023 - 2/25/2023	-
			partially occluded ceiling vent	1/22/2023 - 1/28/2023	-
		shower	"partly clogged" ceiling vent	2/19/2023 - 2/25/2023	-
		sleeping area	bed #10 dirty ceiling vent	1/22/2023 - 1/28/2023	-
			bed #13 dirty ceiling vent	1/22/2023 - 1/28/2023	-
			bed #29 covered ceiling vent	1/22/2023 - 1/28/2023	-
			covered ceiling vents	2/19/2023 - 2/25/2023	-
VCBC	1AB	not specified	dirty vents	1/1/2023 - 1/7/2023	date not specified
				1/15/2023 - 1/21/2023	date not specified
				1/22/2023 - 1/28/2023	date not specified
				1/29/2023 - 2/4/2023	date not specified
				1/8/2023 - 1/14/2023	date not specified
				2/12/2023 - 2/18/2023	date not specified
				2/19/2023 - 2/25/2023	date not specified
				2/26/2023 - 3/4/2023	date not specified
				2/5/2023 - 2/11/2023	date not specified
		janitor's closet	dusty vents	1/22/2023 - 1/28/2023	-
		sleeping area	dirty vents	1/22/2023 - 1/28/2023	-
				2/19/2023 - 2/25/2023	-
				3/19/2023 - 3/25/2023	-
	2AB	not specified	dirty vents	1/1/2023 - 1/7/2023	date not specified
				1/15/2023 - 1/21/2023	date not specified

FACILITY	AREA	LOCATION	INSPECTION OBSERVATION(S)	WEEK OF	WORK ORDER
				1/22/2023 - 1/28/2023	date not specified
				1/29/2023 - 2/4/2023	date not specified
				1/8/2023 - 1/14/2023	date not specified
				2/12/2023 - 2/18/2023	date not specified
				2/19/2023 - 2/25/2023	date not specified
				2/26/2023 - 3/4/2023	date not specified
				2/5/2023 - 2/11/2023	date not specified
		sleeping area	dirty vent	2/12/2023 - 2/18/2023	-
			dirty vent	1/15/2023 - 1/21/2023	-
			dirty vents	3/12/2023 - 3/18/2023	-
	3CB	not specified	dirty vents	1/1/2023 - 1/7/2023	date not specified
				1/15/2023 - 1/21/2023	date not specified
				1/22/2023 - 1/28/2023	date not specified
				1/29/2023 - 2/4/2023	date not specified
				1/8/2023 - 1/14/2023	date not specified
				2/12/2023 - 2/18/2023	date not specified
				2/19/2023 - 2/25/2023	date not specified
				2/26/2023 - 3/4/2023	date not specified
				2/5/2023 - 2/11/2023	date not specified
		cell #11L (o)	clogged vent	3/5/2023 - 3/11/2023	-
		common area	dirty high vents	1/8/2023 - 1/14/2023	-
				2/5/2023 - 2/11/2023	-
			dusty vents	3/5/2023 - 3/11/2023	-
	Intake	common area	dusty vent	2/12/2023 - 2/18/2023	-
		pen #1	dirty vent	1/15/2023 - 1/21/2023	-
		pen #3	dirty vents	1/22/2023 - 1/28/2023	-
WF	Sprung 10	not specified	dirty vents	1/29/2023 - 2/4/2023	-
		cell #1011 (v)	dirty ceiling vents	2/26/2023 - 3/4/2023	-
		common area	dusty ceiling vents	1/22/2023 - 1/28/2023	-
		not specified	dirty vents	1/1/2023 - 1/7/2023	-
				1/15/2023 - 1/21/2023	-
				1/22/2023 - 1/28/2023	-
				1/8/2023 - 1/14/2023	-
				2/12/2023 - 2/18/2023	-
				2/19/2023 - 2/25/2023	-
				2/26/2023 - 3/4/2023	-
				2/5/2023 - 2/11/2023	-
	Sprung 6	not specified	dirty vents	1/29/2023 - 2/4/2023	-
		cell #604 (v)	partially clogged ceiling vent	1/22/2023 - 1/28/2023	-
		cell #608 (v)	clogged ceiling vent (Repeat 1)	2/26/2023 - 3/4/2023	-
			clogged vent	1/22/2023 - 1/28/2023	-
		not specified	dirty vents	1/1/2023 - 1/7/2023	-
				1/15/2023 - 1/21/2023	-
				1/22/2023 - 1/28/2023	-
				1/8/2023 - 1/14/2023	-
				2/12/2023 - 2/18/2023	-
				2/19/2023 - 2/25/2023	-
				2/26/2023 - 3/4/2023	-
				2/5/2023 - 2/11/2023	-
	Sprung 9	not specified	dirty vents	1/29/2023 - 2/4/2023	-
		cell #902 (v)	clogged vent	1/22/2023 - 1/28/2023	-
			dirty vent	1/22/2023 - 1/28/2023	-

FACILITY	AREA	LOCATION	INSPECTION OBSERVATION(S)	WEEK OF	WORK ORDER
		cell #907 (v)	clogged vent	1/22/2023 - 1/28/2023	-
		cell #908 (v)	clogged vent	1/22/2023 - 1/28/2023	-
		common area	dusty ceiling vents	1/22/2023 - 1/28/2023	-
		not specified	dirty vents	1/1/2023 - 1/7/2023	-
				1/15/2023 - 1/21/2023	-
				1/22/2023 - 1/28/2023	-
				1/8/2023 - 1/14/2023	-
				2/12/2023 - 2/18/2023	-
				2/19/2023 - 2/25/2023	-
				2/26/2023 - 3/4/2023	-
				2/5/2023 - 2/11/2023	-

The Department currently incarcerates over 6,000 people in squalid, unconstitutional conditions. The [OCC] Report describes intolerable conditions—large roaches in a shower in GRVC; a dead mouse inside a light shield at AMKC Main Intake; filthy toilets, showers, floors, and walls in areas of all inspected facilities; a ‘strong sewer smell’ in RNDC; mildew and mold growing in showers in GRVC; standing water, sometimes itself dirty, in showers throughout the facilities; and dusty and clogged vents system wide. (citations omitted). These problems are compounded by the perennial lack of cleaning supplies and chemicals and ‘inoperable Diversey dispensers [that are] not repaired for months, . . . despite work orders being submitted and resubmitted in some cases.’ (citation omitted). As the Diversey dispensers are the primary source of cleaning solution, when they are not functional, cleaning cannot occur. What’s more, the report notes that safety glasses and gloves—protective equipment that to safeguard incarcerated individuals when cleaning supplies happen to be available—were missing during 155 and 138 inspections respectively, creating another health and safety concern. (citation omitted).

Pltfs.’ Resp. at 1-2.

2. DOHMH Inspection Reports

The Environmental Order requires the NYC Department of Health and Mental Hygiene’s Division of Environmental Health, hereinafter “DOHMH,” (formerly DOH) to “thoroughly inspect each jail at least once every month[,] . . . submit to [OCC] . . . reports of all such inspections, and the [DOC] shall provide [OCC] with a description of any ameliorative actions taken, planned or recommended.” Environmental Order at ¶ 6–6a. OCC received DOHMH inspection reports for January, February, and March 2023; however, the Department has not provided OCC with appropriate responses to the DOHMH reports. “The Department therefore remains in violation of this straightforward reporting requirement.” Pltfs.’ resp. at 3.

In format, the DOHMH reports specify the areas to be inspected, those that could not be inspected (for reasons including consolidation or closing of housing areas), areas in which no violations were observed, and areas in which violations were observed. The standardized reports are completed with a violation checklist cover page for the categories specified in the table below, which are explained on its reverse as in the “violation subcategories” column of the table, and the details of each violation are expounded in narrative form.

DOHMH Observations

Unlike the reports provided by the Defendants, the DOHMH reports are not redacted; however, OCC has not considered non-*Benjamin* matters when undertaking its reviews. Relatedly, OCC did not consider such matters in analyzing the types and frequencies of reported violations, and areas with matters that are not currently subject to *Benjamin*, e.g., clinic, were excluded from review. Additionally, violations reported in areas that are subject to *Benjamin*, but have violations not under OCC’s purview are coded as non-*Benjamin* violations for statistical purposes and not included in the discussion. As a reminder, DOHMH’s focus and standardized reporting of violations differ from DOC but has some overlap with the *Benjamin* mandates.

The areas scheduled for inspection by DOHMH but not inspected are listed below.

- AMKC Dorm 4 Top 1/30/2023 - "closed because of lack of inmates"
- AMKC Main Intake 1/30/2023 - "officers are busy conducting a search"
- AMKC Mod 9A 1/30/2023 - reason not provided
- AMKC Mod 9B 1/30/2023 - reason not provided
- EMTC 6 Lower 1/30/2023 - "unsafe"
- EMTC 7 Lower 1/30/2023 - "renovations"
- EMTC 7 Upper 1/30/2023 - "medical emergency"
- NIC 3A 3/27/2023 - "no inmate population today"
- NIC Main Intake 2/21/2023 - "closed due to inmates and officers activity"
- RMSC 3 East A 1/30/2023 - reason not provided
- RMSC 3 South A 1/30/2023 - reason not provided
- RMSC Bldg. 2 3/27/2023 - "closed at the time of inspection"
- RNDI Intake 3/28/2023 - "alarm was on"
- WF CDU Intake Sprung 5 - 1/30/2023 closed

Areas inspected by DOHMH with no *Benjamin* violations are listed below.

- AMKC Dorm 1 Top 1/30/2023
- RMSC 5 South A 3/27/2023
- RNDC 3 Central North 3/28/2023
- RNDC 3 Lower North 3/28/2023
- RNDC 3 Upper North 3/28/2023
- RNDC 4 Central North 3/28/2023
- RNDC 4 Central South 3/28/2023
- VCBC 1AB 3/27/2023
- VCBC 2CA 1/31/2023
- VCBC 3BA 2/21/2023

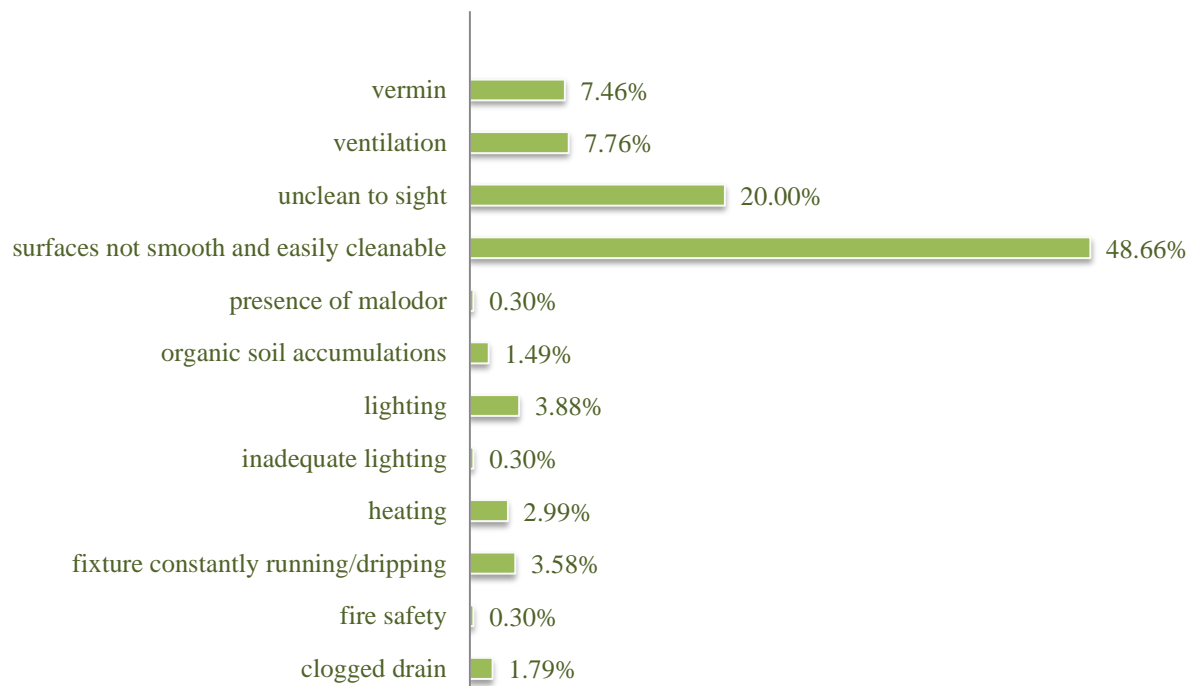
The DOHMH standards for which violations were reported during the January–April 2023 monitoring period include those in the table below, which are also *Benjamin* violations. Similar to the *Benjamin* sanitation inspection protocol, the seventy-eight occurrences represented in the table do not reflect individual instances, but groups of instances.

DOHMH Violation Category	Violation Subcategories	Subcategory Occurrences Cited by DOHMH	Related <i>Benjamin</i> Mandate
Air Quality	<i>Dust or odor create nuisance.</i>	0	Environmental Order ¶ 11, Sanitation Stipulation ¶ 5.A.
	<i>Existence of mold or mildew creates nuisance.</i>	0	Environmental Order ¶ 15, Sanitation Stipulation ¶ 5.A.
	<i>Ambient air temperature not maintained at required level.</i>	2	Heat Orders re: Adequate Cooling in Punitive Segregation Areas
	<i>Ventilations system not provided, inadequate, not adequately maintained, or in disrepair.</i>	3	Environmental Order ¶ 15, Am. Supp. Ventilation Order, Sanitation Stipulation ¶ 5.A.
Chemicals and Waste Management	<i>Waste receptacles not provided or inadequate. Storage area not properly constructed or maintained, grinder or compactor dirty.</i>	0	Environmental Order ¶ 11
Construction and Equipment	<i>Floor, wall, ceiling, door, or window improperly constructed, not adequately maintained or in disrepair.</i>	24	Sanitation Stipulation ¶ 2
	<i>Toilet, lavatory, or shower not provided, inadequate in number, not adequately maintained or in disrepair.</i>	14	Sanitation Stipulation ¶ 5.C.
	<i>Adequate lighting not provided.</i>	8	Environmental Order ¶ 17, Amended Lighting Order, Sanitation Stipulation ¶ 5.D.
	<i>Equipment/utensil not clean, in good repair, washed, rinsed, disinfected, sanitized or sterilized as required.</i>	5	Environmental Order ¶ 11, Sanitation Stipulation ¶ 5.A.
Plumbing	<i>Hot water not provided.</i>	7	Sanitation Stipulation ¶ 5.A.
	<i>Plumbing system not properly installed or maintained. System pressure inadequate.</i>	6	Sanitation Stipulation ¶ 2
	<i>Sewage or liquid waste on ground accessible to occupants. Sewage disposal system improper, unapproved or defective. Surface drainage inadequate. Facility or equipment contaminated by sewage.</i>	1	Sanitation Stipulation ¶ 2
Vermin and Weed Control	<i>Vermin control inadequate. Harborage or conditions conducive to vermin exist.</i>	8	Sanitation Stipulation ¶ 5.A.

Within the groups of violations, the DOHMH inspectors noted 337 violations (Att. 11 to the draft report) in the following *Benjamin* categories:

<i>Benjamin</i> Violation Category	Frequency
chronic pooling of water/chronically wet walking surfaces	5
clogged drain	6
fire safety	1
fixture constantly running/dripping	12
heating	10
inadequate lighting	1
lighting	13
organic soil accumulations	5
presence of malodor	1
surfaces not smooth and easily cleanable	163
unclean to sight	67
ventilation	26
vermin	25

Benjamin Violation Category



3. Expert Sanitation Inspection Reports

On March 8, 2023, Plaintiffs' counsel submitted the report prepared by LAS expert sanitarian Dr. Robert W. Powitz who was accompanied by his colleague Christopher A. Pirolli during the expert sanitation inspection, which took place May 23–26, 2022 and included AMKC, EMTC, GRVC, NIC, OBCC (since closed), RMSC, RNDC, VCBC, and WF. On March 27, 2023, Defendants requested the inspection sheets that were used by Dr. Powitz and Mr. Pirolli to prepare the report and have since received them. However, the Defendants now have several questions and request further information from Dr. Powitz. Patricia Feeney, Trevor J. Weigle, and Michael J. Hodges undertook the inspection on behalf of the Defendants and OCC is awaiting submission of the Defendants' report. OCC attended the inspection but was unrepresented by an expert sanitarian (with the retirement of Eugene Pepper). Attorneys for the Prisoners' Rights Project and the Department accompanied their respective experts and were present throughout the inspection.

4. OCC Recommendations

The Department's performance has improved in some aspects; however, there is clearly ongoing noncompliance. OCC again reiterates some of its recommendations from the previous monitoring period and continues to urge their implementation.

- **Amend the EHO reports to align with the PHS reports.** The EHO course incorporates the *Benjamin* sanitation orders, and the PHS reports, developed pursuant to the *Benjamin* litigation, are shared with the EHO yet the reports are not aligned to determine compliance. OCC believes the parties will get a more accurate reflection of the sanitation conditions through a unified effort by the Department's inspectors. Whereas the PHS inspections of a facility generally take place over the course of a month, the EHO inspections are conducted weekly and should be incorporated, at least in part, into the compliance scoring of the PHS

reports. These combined reports should then be submitted to OCC instead of the separate reports.

- **Ensure that work orders are submitted as required and corrective action is taken timely.**

The Department must make certain that work orders are submitted for all maintenance related violations as required by the Environmental Order (at ¶ 5) and should provide an updated work order summary to OCC with the combined PHS/EHO reports. The Defendants reported that these will be provided. Defs.’ July 5, 2022 resp. to Jan-April 2022 draft report at 7.

However, neither the work order summary nor the combined reports have been submitted to date.

- **Provide ameliorative action responses to the DOHMH reports, pursuant to the Environmental Order.** OCC requests that the Department provide responses of what it actually did to abate the specific violation reported by DOHMH and when, or note that the violation was not abated at all.

“These matters were discussed at our May meeting with OCC and Legal Aid, and are under consideration.” Defs.’ resp. at 8.

B. Ventilation

1. Defendants’ Heating Certification and Ventilation Reports

a. Defendants’ Obligations

The Environmental Order (at ¶ 16a) mandates that prior to October 15 of each year, the Department “shall inspect, test, and repair or replace to working order all heating systems” in the various facilities, and—shall certify to the Court, with copies to its counsel, OCC, and Plaintiffs that these tasks have been completed. Thereafter, the systems are to be maintained in working order. The November 14, 2003 Ventilation Order (at ¶ 3) mandates that “[c]opies of [airflow reports], and of any correspondence or documentation made in response to them by the jails’ stationary engineers, by the Director of Environmental Health, or by any other employee or agent of the Defendants, shall be provided to [OCC] and to Plaintiffs’ counsel on a monthly basis.” The February 11, 2009 Am. Supp. Ventilation Order (at ¶ 4b) further mandates that “[t]he Monthly Intake Ventilation Reports, Heating and Ventilation Certification Reports, and Monthly [Airflow] Reading Reports produced by the [Ventilation Task Force teams must] be produced to OCC and Plaintiffs’ counsel on a quarterly basis.” After years of unproduced or delayed reports, on November 18, 2021, the Court issued a remedial Order mandating that “[p]rior unproduced airflow reports from January 2019 to the present will be provided on a rolling basis to be completed no later than January 18, 2022.” Order re: Ventilation Reports, ¶ 3. By further order dated May 23, 2022, the Court modified the Defendants’ production schedule to coincide with OCC reporting periods. *See* Order re: Monthly Ventilation Report Schedule.

b. Defendants' Performance

i. Heating

As reported for the previous monitoring period, the Defendants submitted the annual heating certification (covering AMKC, GRVC, NIC, RMSC, RNDC, and VCBC, on October 21, 2022), reporting that the majority of equipment was operational. A certification was not provided for EMTC so the functionality of that facility's equipment is unknown. During the February 2023 DOHMH inspections, the inspector reported "cold temperature" and recorded an ambient temperature "measured at 60°F" in RNDC 2 Central South and 2 Lower South:

NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE DIVISION OF ENVIRONMENTAL HEALTH INSPECTION REPORT — NOTICE OF VIOLATION			PG. <u>3</u> OF <u>6</u>
OWNER <u>NYC Dept of Corrections</u>	D/B/A <u>RNDC</u>	C.C. NO.	
ADDRESS <u>11-11 Hazen Street</u>	BORO <u>Queens</u>	PERMIT NO.	
BUREAU <u>K</u>	PROGRAM <u>RI/A</u>	DATE <u>2/23/23</u>	

ITEM NUMBER	DESCRIPTION OF VIOLATIONS
-	Inmate Cells #26, #25, #24, #23, #22 observed with cold temperature. Ambient temp measured at 60°F.
	<u>2 Lower South</u>
-	Inmate Cell #26, #25, #24, #23, #22 observed with cold temperature inside cells. Ambient temperature measured at 60°F.

The Department is required to respond to the DOHMH reports and OCC requested its response to the "cold temperature" reports along with an update as to whether the two inoperable units in RNDC that did not have anticipated abatement dates and were identified as being a part of an unspecified ventilation project have been repaired. Per the Defendants:

The low temperature readings in 2 Lower South were in compliance the following morning, as indicated in the Temperature Report, dated February 24, 2023. The Temperature Report dated February 28, 2023 (for 2 Central South), shows five of the seven temperature readings in compliance. The facility's maintenance staff was notified by the Tour Commander to adjust the heating system.

Defs.' resp. at 9. The Defendants' response suggests that the Department was not aware of the low temperatures as it had not taken temperatures in those locations on the date of DOHMH's visit; further, it seems from the Defendants' response that no ameliorative measures were taken to redress the situation beyond telling the facility to adjust the heat on an unspecified date. While temperatures may have improved the following day in 2 Lower South, it is unclear when temperatures improved in 2 Central South as the Department did not record temperatures there until five days after the DOHMH report.

ii. Quarterly Mechanical Equipment Inspection Reports

The Defendants submitted January–March 2023 mechanical equipment inspection reports for AMKC, GRVC, NIC, RMSC, and RNDC on May 4, 2023. EMTC has now been added to the inspection protocols and its mechanical equipment reports for February and March were submitted on May 4, 2023. Per the Department, April 2023 reports for all facilities are being finalized, but there is no explanation for the missing EMTC January 2023 report. The January–April 2023 reports will be reviewed for the May–August 2023 monitoring period. September–December 2022 reports were submitted for all facilities except EMTC, on February 16, 2023, and the Department reported limited deficiencies: an AMKC pump was not operational on November 2, 2022 and had an anticipated abatement date of December 19, 2022; however, there was no update on the December 28, 2022 facility report. NIC reported HVAC issues affecting the temperature controls that were anticipated to be abated by January 31, 2023, but did not include an update with the February 16 submission of the report.

iii. Monthly Airflow Reading Reports

The September–December 2022 reports, which were submitted on February 16, 2023 for all facilities except EMTC, are discussed herein, and the January–March 2023 monthly airflow reading reports were submitted on May 4, 2023 for all facilities except EMTC, and will be reviewed for the May–August monitoring period. Airflow readings are taken by the assigned PHS in intakes and fifteen percent of housing areas in AMKC, GRVC, NIC, RMSC, and RNDC (formerly ARDC), pursuant to the November 14, 2003 Ventilation Order.¹⁴ If the airflow reading (recorded in cubic feet per minute (cfm)) is below the design specifications then a violation exists. In cases where the Department does not have the design specification, it counts a reading of below 50 cfm as a violation. The majority of violations included vents that were excessively dirty, dusty, dust-laden, or clogged (with dirt or paint). In a limited number of instances, the facility determined there was no actual violation and the low cfm was due to the variable air volume reaching its set point—“because the supply air temperature is constant, the [airflow] rate must vary to meet the rising and falling heat gains or losses.” E.g., RMSC October 2022 airflow deficiency report. In NIC, the facility determined there was no violation as “there are no exhaust” in the areas reported with a low cfm at the exhaust by the PHS.

iv. Airflow Deficiency Reports

The Defendants, additionally, are required to provide the airflow deficiency reports, which correspond to the monthly airflow reports, pursuant to the Ventilation Order at ¶ 3. The monthly airflow reading reports differ from the monthly airflow deficiency reports in that the former reports

¹⁴ The Order re: Testing and Repair of Ventilation Systems also lists GMDC, MDC, and OBCC as facilities to be inspected; however, those facilities are now closed to the *Benjamin* class. The Order mandates, “Any jail that is presently closed, will, if reopened, be subject to this order 30 days after reopening.” EMTC did not house *Benjamin* members when the Order was issued in 2003, so its closure and reopening do not apply; however, it does now and should be inspected and reported accordingly.

convey the entirety of the findings as observed by the EHU Sanitarians and the respective facility engineer or oiler while the latter reports focus only on the deficiencies and their abatement.

Corresponding to the airflow reports discussed above, the Defendants submitted airflow deficiency reports for the September–December 2022 period on February 16, 2023 and reports for January–March 2023 on May 4, 2023, which will be reviewed during the May–August 2023 monitoring period. To date, the Defendants have not submitted airflow reading reports for EMTC and, consequently, no airflow deficiency reports. In addition to the dirty and dusty deficiencies noted by the PHS for the facilities that were inspected, facility staff noted inadequate airflow due to closed dampers, closed louvers, unsecured ducts, and mechanical issues, e.g., loose/broken belts, inoperable motor, and inoperable Building Management System, which controls and monitors the HVAC system.

Per Department policy, “It is imperative that all deficiencies noted are abated expeditiously to ensure compliance with the existing order.” Emphasis in original. While some deficiencies were abated within a week, many took several weeks, such as to clean vents and open dampers in AMKC; to adjust louvers in GRVC; to reset the fire alarm in NIC because an “inmate kept setting it off” and to provide an anticipated abatement date on the inoperable Building Management System in NIC; to clean vents and replace belts in RMSC; and to clean vents in RNDC. Beyond the delayed responses, the reports do not reflect the areas in which a vent is not provided or obstructed, such as those indicated on the table immediately below. As a result, there is no corrective action and anticipated abatement date as required for deficiencies. Per DOC policy:

If the report indicates that a vent is dirty, the facility *must* abate the sanitation deficiency and the engineer *must* ensure that the equipment is operating properly. If the report indicates that there is “No vent,” the date for the installation of the required mechanical ventilation *must* be provided. The facility *must* submit a response for all violations noted on the [airflow] report. The facility response *must* include the violation, the deficiency identified by the stationary engineer/oiler causing the restricted [airflow], the corrective action taken to abate the

deficiency, and the abatement date or expected completion date (emphasis added throughout).

FACILITY	AREA	LOCATION	INSPECTION OBSERVATION	WEEK OF:	WORK ORDER
AMKC	Quad Lower 15	janitor's closet	"wall vent register was missing" (Repeat 1)	3/5/2023 - 3/11/2023	-
			missing wall vent register	1/8/2023 - 1/14/2023	-
			wall vent missing, per note	2/12/2023 - 2/18/2023	-
EMTC	1 Main	shower	"no vent" (Repeat 6)	2/12/2023 - 2/18/2023	-
			"no vent" (Repeat 7)	2/26/2023 - 3/4/2023	-
			"no vent"	1/1/2023 - 1/7/2023	-
		toilet area	"no vent"	2/26/2023 - 3/4/2023	-
	10 Main	janitor's closet	"no vent" (Repeat 6)	2/19/2023 - 2/25/2023	-
			"no vent" (Repeat 7)	3/26/2023 - 4/1/2023	-
	10 Upper	janitor's closet	"no vent"	2/19/2023 - 2/25/2023	-
				3/19/2023 - 3/25/2023	3/23/2023
	11 Lower	janitor's closet	"no vent"	2/19/2023 - 2/25/2023	-
			"no vent" (Repeat 1)	3/26/2023 - 4/1/2023	-
	12 Main	janitor's closet	"no vent"	2/26/2023 - 3/4/2023	-
			"no vent" (Repeat 1)	3/26/2023 - 4/1/2023	-
	2 Upper	janitor's closet	vent covered with a panel (Repeat 1)	1/1/2023 - 1/7/2023	-
			vent covered with a panel (Repeat 2)	2/5/2023 - 2/11/2023	-
			missing vent	2/5/2023 - 2/11/2023	-
	3 Main	janitor's closet	"no vent/covered" (Repeat 1)	2/12/2023 - 2/18/2023	-
			"no vent/covered" (Repeat 2)	2/26/2023 - 3/4/2023	-
			no vent/covered	1/1/2023 - 1/7/2023	-
	3 Upper	janitor's closet	"wall vent covered with a panel" (Repeat 3)	2/26/2023 - 3/4/2023	3/2/2023
			missing vent	2/5/2023 - 2/11/2023	-
	9 Lower	janitor's closet	"no vent" (Repeat 4)	2/19/2023 - 2/25/2023	11/15/2022; 2/24/2023
			"no vent" (Repeat 5)	3/19/2023 - 3/25/2023	11/15/2022, 2/24/2023
NIC	2A	storage	"no vent provided" (Repeat 7)	2/12/2023 - 2/18/2023	-
			"no vent" (Repeat 8)	3/12/2023 - 3/18/2023	-
			no vent	1/15/2023 - 1/21/2023	-
	3A	storage	"no vent provided" (Repeat 7)	2/12/2023 - 2/18/2023	-
			no vent	1/15/2023 - 1/21/2023	-
	3B	storage	"no vent" (Repeat 8)	3/12/2023 - 3/18/2023	-
	4 South	storage	"no vent" (Repeat 7)	2/5/2023 - 2/11/2023	-
			"no vent" (Repeat 8)	3/5/2023 - 3/11/2023	-
			no vent	1/1/2023 - 1/7/2023	-
	5 North	storage	"no vent" (Repeat 7)	2/5/2023 - 2/11/2023	-
			"no vent" (Repeat 8)	3/5/2023 - 3/11/2023	-
			no vent	1/1/2023 - 1/7/2023	-
	5 South	storage	"no vent" (Repeat 7)	2/5/2023 - 2/11/2023	-
			"no vent" (Repeat 8)	3/5/2023 - 3/11/2023	-
			no vent	1/1/2023 - 1/7/2023	-
	6 North	storage	"no vent" (Repeat 7)	2/5/2023 - 2/11/2023	-
			"no vent" (Repeat 8)	3/5/2023 - 3/11/2023	-
			no vent	1/1/2023 - 1/7/2023	-
	6 South	storage	"no vent" (Repeat 7)	2/5/2023 - 2/11/2023	-
			"no vent" (Repeat 8)	3/5/2023 - 3/11/2023	-
			no vent	1/1/2023 - 1/7/2023	-

v. Monthly Intake Ventilation Reports

The reports of intake ventilation mechanical equipment inspections at AMKC, GRVC, NIC, OBCC (now closed), RMSC, RNDC, and VCBC, which are described immediately below, are required by the Am. Supp. Ventilation Order at ¶ 4b. EMTC now houses detainees and should be included in the intake ventilation mechanical equipment inspections; however, the Defendants have not yet done so.

Intake Ventilation Mechanical Equipment Inspection Reports

The intake equipment inspection reports record the findings of inspections of intake mechanical equipment, identify corrective action needed to abate deficiencies, and provide the results of the corrective action. Reports for September–December 2022 were provided on February 16, 2023 for AMKC, GRVC, NIC, RMSC and VCBC. Again, reports were not submitted for EMTC and, to date, reports for RNDC have not been submitted for the past few years, save for the August 2022 report, which was submitted on November 10, 2022. Nevertheless, the reports that were submitted do not indicate any deficiencies.

Intake Airflow Deficiency Reports

Intake airflow deficiency reports note airflow deficiencies in intake areas, the corrective action taken for each deficiency, the date of completion, and the new airflow reading (cfm). Per DOC policy: “The facility shall also ensure that any deficiencies noted in the intake during the [airflow] inspection are also included in the monthly intake ventilation report.” The intake airflow deficiency reports were submitted as a counterpart to the intake mechanical equipment inspection reports discussed above and, accordingly, OCC received no such reports for EMTC and RNDC. Although no intake airflow deficiencies were noted in the reports, there were such deficiencies found

during the PHS airflow inspections and noted on the general airflow deficiency reports, as in the examples below.

- In the GRVC Main Intake, the janitor’s closet exhaust was 23.75 cfm during the October 25, 2022 inspection. The facility determined the deficiency was caused by a partially closed damper and set an anticipated abatement date of October 31; however, the date of completion is “November 01-30th” with the corrective action noted as “secured.” OCC requested that the Defendants explain this facility report, but they have not done so.
- The NIC Main Intake had 0 cfm at the Pen #3 exhaust on September 23, and the facility determined that the deficiency was related to the fire alarm, which was reset the same day resulting in a new reading of 680 cfm. During the prior monitoring period, OCC reported: “The NIC Main Intake had 0 cfm at the Pen #3 exhaust due to what the PHS noted was an “electrical issue” on August 26. The facility determined that the “fire alarm tripped” the unit and it was reset the same day resulting in a new reading of 675 cfm.” If this is an ongoing issue, the Department should explain what is being done to resolve it.
- In the RMSC Intake janitor’s closet, the exhaust was 43.49 cfm due to a “loose belt” during the November 3, 2022 inspection. The facility changed the belt on December 7, 2022 and reported a new cfm of 54.7.

Reports for January–March 2023 were submitted on May 4, 2023 and will be reviewed for the May–August 2023 monitoring period.

vi. Operational Windows

In addition to mechanical ventilation, “Defendants shall ensure that all windows that are designed to be opened are operational.” Environmental Order at ¶ 15e. The windows listed in Att. 12 to the draft report were noted inoperable during facility inspections. Given the number of repeated reports of the same deficiency and resubmitted work orders, indicating significant delays in making repairs, OCC requested that the Defendants provide an update on the status of the repairs, but they have not done so.

c. Defendants’ Compliance

The Defendants are not compliant with the reporting requirements of the collective ventilation orders, but state, “we are puzzled at OCC’s conclusion that DOC is not compliant with the ventilation order.” Defs.’ resp. at 9. Yet, they acknowledge, “OCC notes repeatedly that it had not previously received reports on the Eric M. Taylor Center (“EMTC”)” *Id.* The Defendants claim this is because “until recently, EMTC held sentenced individuals only, and so was not a *Benjamin*-covered facility.” *Id.* EMTC began holding detainees three years ago—in 2020, and has been subject to the ventilation orders since that time. As reported herein, the Defendants have still not submitted all applicable EMTC (and RNDC) reports and are therefore non-compliant. Moreover, the heating and ventilation equipment maintenance and repair provisions of the applicable orders are not being complied with—facility inspection reports indicate significant delays in completing routine maintenance tasks, prolonged delays in abating known deficiencies, overall inconsistent reporting, and months’ long delays in making the conditions known to OCC and Plaintiffs. In view of the foregoing, OCC is working with the parties to arrange an expert ventilation inspection of the various facilities. “In the context of an upcoming ventilation meeting with OCC’s

expert and the Department's consultant, the status of the Order can be discussed, with an eye towards making necessary improvements.” Defs.’ resp. at 9.

C. Lighting

a. Defendants’ Obligations

“Defendants shall ensure that in all cells and dormitory areas . . . no less than 20 foot–candles of light will be provided at bed or desk level for each inmate” Am. Lighting Order at ¶ 1. “In areas in which the Defendants believe it will be unduly burdensome to comply with the 20 foot–candle requirement, the Defendants may provide no less than 15 foot–candles of light at bed or desk level for *each* inmate (emphasis supplied). However, Defendants will make reasonable good faith efforts to provide a higher minimum amount of foot–candles” *Id.* at ¶ 2.

“In dormitories where Defendants cannot provide 15 foot–candles of light because of the positions of the lighting fixtures and dormitory beds, each dormitory will have at least one table in a dayroom where there is 20 foot–candles of light, and inmates will be advised of where the maximum lighting area is located—unless readings below 15 foot–candles are isolated and sporadic instances in that dormitory.” *Id.* at ¶ 15. Additionally, the Am. Lighting Order requires timely repair and maintenance of lighting by the Defendants (¶¶ 3–5 and ¶¶ 16–17) and conformity of DOC internal policies (¶ 6) with the requirements of the Order.

b. Defendants’ Performance

As with the prior monitoring periods, a review of inspection reports for the current monitoring period indicates hundreds references to the lighting not being maintained and, as before, there was limited information on the status of work orders for the deficiencies observed during the monitoring period. Examples of the deficiencies are listed in the table below.

FACILITY	AREA	LOCATION	INSPECTION OBSERVATION	WEEK OF	WORK ORDER
EMTC	1 Main	sleeping area	inoperable ceiling light fixture above bed #21	1/1/2023 - 1/7/2023	1/3/2023
			inoperable ceiling light fixture above bed #31	1/1/2023 - 1/7/2023	1/3/2023
	3 Main	dayroom	inoperable ceiling light fixture	1/1/2023 - 1/7/2023	-
	4 Main	dayroom	inoperable ceiling light fixture	1/1/2023 - 1/7/2023	-
		sleeping area	inoperable ceiling light fixture above bed #67	1/1/2023 - 1/7/2023	-
			inoperable ceiling light fixture above bed #68	1/1/2023 - 1/7/2023	-
			inoperable ceiling light fixture above bed #69	1/1/2023 - 1/7/2023	-
			inoperable ceiling light fixture above bed #70	1/1/2023 - 1/7/2023	-
	6 Main	dayroom	three ceiling lights inoperable (Repeat 2)	1/8/2023 - 1/14/2023	11/3/2022, 1/3/2023
		sleeping area	several ceiling light fixtures inoperable (Repeat 2)	1/8/2023 - 1/14/2023	1/12/2023
	6 Upper	dayroom	inoperable ceiling light fixture	1/8/2023 - 1/14/2023	1/12/2023
GRVC	10A	cell #11	light fixture "broken and hanging with exposed wires	2/5/2023 - 2/11/2023	-
		cell #38	inoperable lighting	1/29/2023 - 2/4/2023	2/2/2023
		cell #5	"light inoperable"	1/8/2023 - 1/14/2023	1/10/2023
	11A	cell #03	light inoperable	2/26/2023 - 3/4/2023	3/1/2023
	11B	cell #09	"light fixture broken"	1/1/2023 - 1/7/2023	1/5/2023
		cell #20	"light inoperable"	1/22/2023 - 1/28/2023	1/27/2023
			inoperable lighting	1/29/2023 - 2/4/2023	1/31/2023
				2/5/2023 - 2/11/2023	1/31/2023
		cell #21	"light inoperable"	1/22/2023 - 1/28/2023	1/27/2023
			light fixture inoperable	2/19/2023 - 2/25/2023	2/20/2023
	13A	cell #33	"light inoperable"	1/8/2023 - 1/14/2023	1/11/2023
		cell #42	"light inoperable"	1/8/2023 - 1/14/2023	1/10/2023
	15B	cell #26	"light inoperable"	1/22/2023 - 1/28/2023	1/27/2023
			one light bulb inoperable	1/22/2023 - 1/28/2023	-
		cell #31	light fixture broken	2/19/2023 - 2/25/2023	2/20/2023
		cell #48	light inoperable	2/26/2023 - 3/4/2023	3/1/2023
	17A	cell #25	"light inoperable"	1/1/2023 - 1/7/2023	1/5/2023
	19B	cell #33	"light inoperable"	1/22/2023 - 1/28/2023	1/24/2023
	3A	cell #14	"light inoperable"	1/8/2023 - 1/14/2023	1/11/2023
			"inoperable switch"	2/5/2023 - 2/11/2023	1/31/2023
RMSC	5 South A	sleeping area	light fixture inoperable above bed #4	1/8/2023 - 1/14/2023	-
	5 South B	dayroom	ceiling light fixture inoperable	1/8/2023 - 1/14/2023	-
		sleeping area	light fixture inoperable above bed #37	1/8/2023 - 1/14/2023	-
VCBC	1AB	sleeping area	"dorm light inoperable"	1/22/2023 - 1/28/2023	1/25/2023
			six inoperable light fixtures	1/22/2023 - 1/28/2023	-
VCBC	1BA	sleeping area	"dorm light inoperable"	1/22/2023 - 1/28/2023	1/25/2023
	3AA	sleeping area	four light fixtures inoperable	1/8/2023 - 1/14/2023	-
	3AB	dayroom	two light fixtures inoperable	1/8/2023 - 1/14/2023	-
		sleeping area	four light fixtures inoperable	1/8/2023 - 1/14/2023	-

c. Defendants' Compliance

The Defendants remain out of compliance with the maintenance and repair provisions of the Am. Lighting Order as indicated by the hundreds of instances (provided to the parties as Att. 13 to the draft of this report) wherein inoperable lighting in cells, dormitory sleeping areas, and dayrooms

were reported, sometimes repeatedly, but not repaired timely. The Defendants state, “OCC is critical of lighting deficiencies, both because of low light readings and ‘limited information’ on the status of work orders.” Defs. resp. at 9. This is not entirely correct. Light readings were not taken pursuant to the Am. Lighting Order; therefore, OCC did not discuss lighting levels as evident in the table above. Moreover, Defendants’ statement that “[t]he percentage of lighting deficiencies (< 10 FC) compared to those in compliance is not significant” (*id.*) is unsupported and erroneous for as stated above, the Am. Lighting Order requires 20 foot-candles at bed or desk level unless it is too burdensome, in which case no less than 15 foot–candles of light is acceptable. The Sanitarians did not record lighting levels at bed and desk levels, so there is no comparison to be made for compliance or any other purpose. Lastly, Defendants’ exemplifying statement that [m]any of the lighting violations include covered lights, and lights shields with toothpaste, paper residue etc.; these are not structural defects, but reflect the actions of detainees who wish to dim the lights for personal comfort,” (*id.*) is misplaced. The Defendants are describing sanitation deficiencies, which do not apply to this discussion of the Am. Lighting Order except for covered light shields in vacant cells, which can be for no one’s personal comfort and covered shields in dormitory areas, which affect multiple people and is simply not permitted. Just a glance at the table presented in this discussion will show OCC’s focus is on the inoperability of light fixtures and switches for which the Department is required to conduct timely repair and maintenance pursuant to the Am. Lighting Order at ¶¶ 3–5 and ¶¶ 16–17.

D. Fire Safety

West Facility Fire Watch¹⁵

During this monitoring period, Plaintiffs conducted a further review of the West Facility Fire Watch logbooks on May 31, 2023. The Court may recall that on May 11, 2022, Plaintiffs’ counsel reviewed the logbooks up to that time and presented the findings to the Defendants and OCC on July 5, 2022:

As the parties are aware, the fire and life safety system at West Facility relies heavily on the human element, as there are no smoke detectors. Instead, the Department has activated its Fire Watch Posts for the Sprungs in West Facility. See Operations Order 18/07, Activation of Fire Watch Posts, eff. date Dec. 14, 2007. As set forth in a January 30, 2014 memo from Fire Safety Unit Director Christopher Currenti to the warden of West Facility (and as renewed in January 2022, shortly after the parties’ fire safety meeting with OCC), “[o]fficers assigned to fire watch duties, including those assigned to all ‘B’ posts will constantly be on high alert while performing regular duties, observing all areas to detect a smoke/fire condition and immediately report the condition to the main Control Room.” The memo continues:

Duties required while performing a Fire Watch:

- 1) To be constantly on alert, and where required, on patrol, observing all areas/floors of a building for fire hazards.
- 2) Make appropriate logbook entries of all tours during every tour, **assigned area Captains will ensure that fire watches are being conducted and appropriate 30 minute log book entries are being made during every tour. The Facility Fire Safety Officer will conduct weekly periodic inspections to ensure that fire watches are being conducted and logbook entries are being made.**
- 3) Upon discovery of any fire hazards, Fire Watch Officer is to make appropriate notifications to have noted fire hazards abated.

(Memo, at 1, emphasis in original.)

¹⁵ Fire Watch Post – A post, which is activated when certain fire prevention equipment, partially or totally, is inoperable or when a building/maritime facility is unoccupied. It is the responsibility of the Officer assigned to a fire watch post to patrol and watch for a smoke/fire condition within a building/maritime facility, occupied or unoccupied. If a smoke/fire condition exists, the fire watch post officer shall immediately alert all affected occupants, a supervisor and the facility central control room. The control room supervisor shall notify the New York City Fire Department and the Rikers island Special Operations Division Central Desk.

DOC Directive 18/07 Activation of Fire Watch Posts, effective December 14, 2007.

In light of the Department’s months-long staff absenteeism crisis, which continues to persist and plague all number of jail operations, on May 11, 2022, plaintiffs’ counsel inspected the Fire Watch logbooks to assess whether these critical posts had ever been abandoned. To our dismay, we saw logbook entries that strongly suggested that that Fire Watch Posts were frequently abandoned for entire shifts and sometimes even for two consecutive, uninterrupted shifts.

Defendants responded on November 3, 2022:

DOC Response: As an initial matter, the Department rejects Plaintiffs' assertions that their inspection of WF fire watch logbooks indicates that these posts are "regularly" abandoned. Plaintiffs' review of the logbooks demonstrates only that during a period of extreme staffing issues within the Department, uniformed staff assigned to fire watch posts failed to maintain perfect compliance with the requirement that they make 30 minute logbook entries. Following Plaintiffs' request, Mr. Currenti was informed of the findings in July 2022. Mr. Currenti reviewed the findings submitted by Plaintiffs and reiterated to facility leadership at WF the importance of complete compliance with Operations Order 10/17, Activation of Fire Watch Posts. Upon further review of the findings, Mr. Currenti determined that a new written plan of action as requested by Plaintiffs was not necessary. To further demonstrate the effectiveness of the fire watch at WF, the Department points to its response to a fire that occurred in WF Sprung 6 on April 24, 2022, which was reviewed by both Mr. Currenti and Mario Antonetti. As shown in the documents provided to Mr. Antonetti, DOC staff responded immediately to a fire set by an incarcerated individual in the food slot of a cell door. Staff extinguished the fire without further incident.

With the May 31, 2023 review of the logbooks, Plaintiffs sought “to assess whether, despite Mr. Currenti’s instruction, the Department is continuing to frequently leave the WF fire watch post unstaffed. March 14, 2023 letter emailed from Plaintiffs’ counsel to counsel for the defense.

By letter dated June 9, 2023, Plaintiffs' counsel advised Defendants of their conclusions, and requested a meeting with Fire Safety Director Chris Currenti and OCC's expert, Mr. Antonetti, to discuss interim steps that may be needed. The Department is happy to do so, and will include its consultant, Tom McCormack. However, Mr. Currenti is no longer with the Department, and his position is being held in the interim by Capt. Anthony Meli, a long-time member of Mr. Currenti's staff. In addition, oversight of fire safety matters is now within the purview of Deputy Commissioner Ronald Brereton. In addition, assistance is also provided by newly appointed Deputy Commissioners Patrick Benn and James Saunders, Esq. There will be some reorganization in this area, and we will keep OCC and counsel apprised.

Defs.’ resp. at 10. (Plaintiffs’ June 9, 2023 letter referenced in the Defendants’ response immediately above is attached to Plaintiffs’ comments.) “Plaintiffs summarized their findings, and just like last year, they were disturbing: the post remains frequently abandoned, often for two consecutive shifts.” Pltfs.’ resp. at 5. Plaintiffs further reported that not all applicable logbooks

were provided and the ones that were produced “were in tatters—some with missing covers and almost all with missing pages.” *Id.*

NIC April 6, 2023 Fire

Unlike the West Facility fire referenced in Defendants’ November 3, 2022 response above, Mario Antonetti, OCC’s fire safety expert, found that although a responding correction officer attempted to extinguish the fire, he was unable to do so and called for an emergency evacuation. April 24, 2023 report from Mario Antonetti (attached hereto as Att. A). “It was reported that eight individuals were remove[d] from the area. One individual sustained severe burns while four staff members suffered from smoke inhalation.” *Id.* Mr. Antonetti reviewed photographs of the fire affected area and observed, “[t]he photos indicated very heavy damage for a building protected by a complete sprinkler system. There is sprinkler protection within the cells and in the area immediately outside the cells.” *Id.*



Puzzled, Mr. Antonetti contacted the Department to “determine why the heavy damage occurred with sprinkler protection in place. DOC indicated that the sprinklers protection for this area had been shut down due to a sprinkler being damaged by an inmate. The sprinkler was not replaced in a

timely manner; therefore the system was still out of service.” *Id.* OCC requested available video footage of the fire incident and was provided with such on June 5, 2023.

On May 31, the Department provided Plaintiffs’ counsel with a thumb drive with two files that apparently depict the NIC fire. There are many as-yet unexplained gaps in the video footage. Plaintiffs’ counsel communicated these gaps to the department via email. To date, the only reason offered for these gaps is the fact that their ‘system is motion-based, so if there is not enough motion in the field of view for the camera, there will not be any recorded video.’ This cannot be the reason for missing camera coverage during an active fire, where movement of incarcerated people and staff can be observed on camera immediately preceding the missing blocks of footage.

Pltfs.’ resp. at 4 FN2. Per Defendants, Plaintiffs questions “are being addressed and there will be further communications.” Defs.’ resp. at 10. OCC is hopeful that Defendants’ “further communications” will include responses to earlier communications. By letter dated May 11, 2023, Plaintiffs followed up with Defendants for responses to questions arising from Mr. Antonetti’s report about the Department’s response to the fire and again requested records that were originally requested on April 6, 2023 upon notification of the fire. And, among other fire safety issues, Plaintiffs’ further followed up on the repeated request for the Department’s position on the interim plans of correction.

Interim Plans of Correction

OCC and Plaintiffs have now received a definitive response from Defendants as to which items from the interim plans of correction (for GRVC, NIC, RMSC, VCBC, and West Facility), originally proposed by Mr. Antonetti, will be implemented. The plans, which are tailored for each facility, have been developed to provide fire and life safety measures, e.g., compartmentation, smoke control, automatic sprinkler protection, for the protection of incarcerated individuals and staff; however, the plans are temporary and slated to last until the anticipated 2027 closure of Rikers and the construction of replacement jails. For the past year, the Defendants’ fire safety staff and consultants—Christopher Currenti, former Fire Safety Director, Department of Correction and Tom

McCormack, DOC Fire and Life Safety Consultant, Jensen Hughes Engineering P.C.—have worked in concert with Mr. Antonetti to refine the plans. Below is the budget allocation for the implementation of the plans. Plaintiffs “ask that [the Department] provide Plaintiffs and OCC with a dated timeline for the implementation of these plans. . . . and expect that interim plans of correction will be developed for the remaining facilities.” Pltfs.’ Resp. at 4.

Building	Compartmentation	Sprinklers	Fire Detection	Total
NIC Highrise	\$38,000			\$69,000
NIC Annex	\$117,000	\$204,000	\$57,000	\$395,000
VCBC	\$538,000	\$798,000		\$1,384,000
GRVC Main Building	\$311,000			\$311,000
RMSC Main Building	\$236,000	\$98,000		\$334,000
West Facility	\$103,000			\$103,000
TOTAL	\$1,343,000	\$1,100,000	\$57,000	\$2,500,000

III. COMPLAINTS

Along with its general monitoring responsibilities, OCC is tasked with investigating and responding to *Benjamin* related complaints from incarcerated individuals and their representatives. As noted in prior progress reports, traditionally, OCC investigated complaints independently of the Department and received detailed findings from DOC for the same complaints; however, OCC does not have staff to independently investigate complaints and must rely on responses from DOC.

Where feasible, OCC determines whether complaints are being addressed timely and appropriately by the Department. Plaintiffs’ counsel reached out to the Defendants regarding OCC staffing as well as independent access to the Department’s complaint system for OCC and is currently awaiting appropriate responses. Relatedly, the Plaintiffs and Defendants have worked together to update the *Benjamin* class notice, which notifies incarcerated individuals of the *Benjamin* litigation and its impact on their incarceration along with contact information to file complaints.

During this monitoring period, the Legal Aid Society’s Prisoners’ Rights Project included OCC on fifteen complaints submitted to the Defendants, alleging the presence of vermin, lack of heat, lack of sanitation supplies, unsanitary living conditions, and inadequate fire evacuation response among other things. The DOC provided its investigation findings for three of the seven *Benjamin* related complaints:

- 1/24/2023 URGENT Report of Denial of Access to Recreation Time and Unsanitary Environmental Conditions: Kwaine Thompson, B&C: 3491901450, NYSID: 07289661Q, GRVC – “unsanitary conditions in his housing unit since there is a lack of access to cleaning supplies. Mr. Thompson informs us of fungus and dirt accumulating in the showers and a smell of urine in the unit.”

DOC response

GRVC 1A is court ordered lockdown housing. Twice per day, on the midnight tour and the 7x3 tour, the unit management sanitation team conducts sanitation of the showers, pantry, & the common area/dayroom area. Each inmate is allowed to clean their assigned cell under the supervision of the area supervisor wearing a [Body Worn Camera] and recording. On February 3rd, Capt. Guan interviewed Mr. Thompson – his written statement is attached. Upon inspection by Capt. Guan, the janitor's closet was found to be fully stocked.

This complaint is partially substantiated. (Mr. Thompson’s written statement referenced above in Doc’s response is reproduced below.) Mr. Thompson’s cell was inspected on 1/19/2023—five days before the complaint was filed—and there were no sanitation deficiencies observed in his cell. (There are no other reported inspections of his cell.) The shower, however, was unclean to sight with dirt and soap scum along the wall and floor. Mildew was visible in the shower during all inspections so far this year: 1/19/2023, 2/9/2023, 3/9/2023, 4/13/2023, and 5/12/2023; therefore, the shower area was not clean and sanitary during this monitoring period.

181484

Thompson Kwaine		2/3/23	
Book and Case Number: 349-19-01450	Date of Birth: 12/30/74	Age: 48	Housing Area: 1A
<p>I hereby acknowledge that the following written statement issued was made VOLUNTARILY of my own free will without promise of reward, or under any threat of physical harm or fear of such. Additionally, you will not be subject to any form of retaliation for providing information in connection with this investigation by the New York City Department of Correction.</p>			
<p>My toilet smell like urine because there no scrub brush and cleaning supplies to clean the toilet. There's no programs like Books & magazines carts being brought to Housing unit 1A for inmates who are in there cell 23 hours out the day. There's no Recreation workouts - pull up Bar or dip BAR outside in The yard for inmates to workout on. Mice are running around my cell because There's no dust pan on unit to properly pick up the trash. Officers are serving the food, the same officers that you put your grievance on. Shower are being clean once a week, when there's 6 inmates that use the shower everyday. Those showers need to be clean at least twice a day. My Mental & Physical Health is deteriorating because of those conditions</p>			
Inmate's Signature: K Thompson		Date: 2/3/23	
Witness by (print name): Cannon	Witness Signature: Cannon	Rank: CLC	Shield Number: 18608

- 2/14/2023 Unsanitary Conditions Report: John Horn, B&C: 3492203030; NYSID: 12039502Y, RNDC – “there are severely unsanitary conditions in his housing unit, including the presence of mice, cockroaches, and water bugs”

DOC response

On February 28th, 2023, Capt. Mayers investigated. Mr. Horn refused to provide a written or verbal statement. Upon a tour of Mr. Horn's housing area, Mod4LN appeared to have ample cleaning supplies. The house detail along with all inmates housed in the area were reminded to ensure the housing area remains clean. Sanitation supply delivery receipts for the month of February attached. The exterminator was contacted and notified of the complaint. The exterminator notified Capt. Mayers that a tour would be conducted to ensure any issues are abated.

This response does not provide information regarding the exterminator's observations, so OCC is unable to assess whether the complaint is substantiated. The Department's production of sanitation supply delivery receipts do not assist in that determination.

- 4/26/2023 Report of Cold Conditions in NIC Dorm 3: Sinke Zewge, B&C: 3492102961, NYSID: 09267401R, NIC Dorm 3 – “no heat in NIC for about two weeks. . . . it gets very cold at night when the temperatures drop”

DOC response

Following receipt of this complaint, ambient air temperatures were taken in NIC Dorm 3 on 4/27/2023 at 0640 hours by CO Neely. Temperature readings were as follows: Front of house - 61.7; Middle of house - 60.5; Rear of house - 58.9; Dayroom - 61.5. Officer Neely immediately notified the on duty Tour Commander ADW Cajuste of the findings who dispatched additional blankets to the area, hot liquids and made notification to the facility Supervisor of Maintenance, Facility Engineer and Oiler. ADW Thomas-Barton made notification at 0900 hours that facility maintenance staff had abated the issue.

This complaint was only partially investigated and is substantiated in that aspect. The Department did not provide information about temperatures in the area during the two-week period prior to the complaint for which the complainant alleges “no heat.”

The Department did not provide responses to the remaining *Benjamin* complaints during this monitoring period.

This concludes OCC’s summary of the January–April 2023 monitoring period.

REPORT ON ENVIRONMENTAL CONDITIONS

January–April 2023

Dated this 5th day of July 2023

A handwritten signature in blue ink, reading "Nicole N. Austin-Best", written over a horizontal blue line.

Prepared and submitted by:

Nicole N. Austin-Best
Deputy Director
Office of Compliance Consultants