

OFFICE OF COMPLIANCE CONSULTANTS

15 West 5th St. - High Impact Compound, Mercado Trailer - East Elmhurst, NY 11370

2023

Report on Environmental Conditions

BENJAMIN V. MOLINA, 75 CIV. 3073 (LAP)

PROGRESS REPORT

MAY – AUGUST 2023

NICOLE N. AUSTIN-BEST

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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, ventilation, lighting, and fire safety within various New York City jails as reviewed by OCC during May–August 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 October 6, 2023 to October 13, 2023. In accordance with longstanding practice, the parties’ comments to the draft report (“Defs.’ resp.” and “Pltfs.’ resp.”) are incorporated into and appended to this final version of the report.

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 trained¹ 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 Department assigns Environmental Health Officers to be "[d]irectly responsible for maintaining satisfactory sanitation and environmental standards in compliance with departmental policies and the requirements of applicable health codes, laws, and court orders, throughout the command." DOC Directive #3900R. The Environmental Health Officers are trained by the Department's Environmental Health Unit, which is staffed by Public Health Sanitarians, civilians 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

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¹ "The environmental health officers shall have had or shall be provided with appropriate training and experience in environmental health and maintenance, and shall have completed the EHO certification course referred to in Directive [3900R]." Environmental Order ¶ 3a.

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 May 10, 2023–August 30, 2023. The PHS reports consisted of inspections conducted April 17, 2023–August 11, 2023 and the EHO reports consisted of inspections conducted March 26, 2023–August 5, 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 reasons.

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, e.g., RMSC for May 28–June 3, OBCC for July 30–August 5, and RMSC/RESH for July 23–29 and July 30–August 5. Per the EHU, this is due to “staffing challenges.” The Department has reported staffing issues as the reason EHO inspections have not taken place in various facilities during the past few years despite the fact that “[e]ach facility must assign an Environmental Health Officer at the rank of captain. . . . In the event that a facility staffing need prohibits the assignment of a certified captain to function as the EHO, a non-certified captain can be temporarily assigned as EHO.” DOC Directive 3900R. The temporarily assigned captain would be allowed to remain in the position until the next available certification course, which must be completed to retain the position. *Id.* 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. Some of the reports are scant on violation details and lack “a description of any ameliorative actions taken, planned[,] or recommended” as required by the Environmental Order; nevertheless, there has been improvement in some of the facility reporting practices during this monitoring period. The facility reporting practices also indicate varying skill levels among the Officers indicating some may still need additional training in conducting inspections. 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. EHOs are required to conduct inspections and produce reports to support compliance with court orders and their reports should align with the requirements of the Environmental Order. Given the wide-ranging reporting and 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, certain facilities are referenced more than others and inspection periods are presented as a calendar week—the way 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, janitor’s 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

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.

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 57% 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 are identified on Att. 1.) There is a final step in the calculation of compliance rates, which the Defendants 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. “[O]ver [two] 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. To illustrate, 63% of the passing inspections were in areas found to be unclean to sight three–eight times during one inspection. Unclean to Sight findings include the presence of loose filth

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.

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. Were the final step applied to the PHS inspections, the Defendants' compliance would be significantly lower. It should be noted that even without incorporating the final step in compliance calculations, were the EHO findings incorporated into the overall compliance findings, the foregoing results would be different. Lastly, the observations and component scores (whether accepted standards or requirements are met) are not consistently applied by the PHSs during the inspections, which ultimately affects the compliance ratings.

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- Intake Areas

Compliance ratings ranged from 70.00⁴—to 96.23⁵ in the intake areas of AMKC, EMTC, GRVC, NIC, OBCC, RESH, RMSC, RNDC, and VCBC. There were no inspection reports for WF intake areas. Of the eleven intake areas inspected during this monitoring period, the EHU found that four demonstrated compliance during every inspection—GRVC Main Intake and Segregation Intake, NIC Main Intake, and RMSC Intake—a decrease from six during the prior monitoring period. The GRVC Main Intake and Segregation Intake and NIC Main Intake also passed all inspections during the prior monitoring period. The AMKC Main Intake, OBCC Intake, and RESH Intake

⁴ NIC Annex Intake (6/25/23–7/1/23)—an increase from 66.67 (EMTC Intake) during the prior monitoring period.

⁵ GRVC Main Intake (5/14/23–5/20/23 and 7/2/23–7/8/23)—a decrease from 100.00 (NIC Annex Intake) 1/8/23–1/14/23, 1/22/23–1/28/23, 1/29/23–2/4/23, and 2/5/23–2/11/23 during the prior monitoring period.

did not pass any of their respective inspections. The EMTC Intake, NIC Annex Intake, RNDC Intake, and VCBC Intake passed some of their respective inspections and failed the others. Overall, the NIC Annex Intake demonstrated the greatest decline, having passed all inspections (with a score of 100.00 during four of nine inspections), during the prior monitoring period to passing only three of nine inspections (with the minimum score of 80.00) during the current period.

- Living Areas

In living areas, compliance ratings ranged from 57.78⁶ to 98.21⁷ in AMKC, EMTC, GRVC, NIC, OBCC, RESH, RMSC, RNDC, VCBC, and WF. Of the 225 living areas reviewed for compliance, the EHU found 70 were compliant during every inspection and assessed the remaining 155 as noncompliant during one or more inspections. Fifty-four of the latter areas failed every inspection. Throughout the monitoring period, living areas were documented to be generally unsanitary, with dirty janitor's closets, vermin, 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

⁶ AMKC Mod 9A (6/11/23–6/17/23) and EMTC 6 Main (6/4/23–6/10/23)—a slight decrease from 57.89 (AMKC Quad Lower 13) during the prior monitoring period.

⁷ GRVC 8B (5/14/23–5/20/23)—an increase from 96.08 (RNDC 2 Central South, 2/5/23–2/11/23) during the prior monitoring period.

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 394 vacant cells and an additional 18 inspections of vacant cells by the EHOs wherein the specific cell was not identified or “multiple” vacant cells was noted. There was improvement with the EHOs specifying the vacant cell inspected, but not the observations. Of the 394 identified vacant cells, 47 were inspected two times, 5 were inspected three times, and 1 was inspected four times resulting in 454 cell inspections of which 94 (21%) were compliant.⁸ The remaining 360 (or 79%) 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 18 vacant cell inspections documented by the EHOs, but in all instances, the finding was unclean to sight. “In its response to OCC’s draft report last monitoring period, the Department indicated that it was addressing the endemic problem of unsanitary vacant cells by ensuring that sanitarians ‘regularly’

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⁸ Nine of the cells that were inspected two times were clean during both inspections and one of the cells inspected three times was clean during each inspection. The cell inspected four times was clean during each inspection.

emphasize the importance of cleaning these cells. (citation omitted). This plan is clearly insufficient.” Pltfs.’ resp. at 2.

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	CRITICAL SANITARY CRITERIA										COMPOONENT TREND SCORE	INSPECTION NOTES (Place X in box)	
	Management/Sanitation					Housekeeping							
	CLEANING & SANITIZING PROCEDURES FOLLOWED	LACK OF CLEANING CHEMICALS	INADEQUATE CLEANING EQUIP & FACILITIES PROVIDED	PRESENCE OF VERMIN OR INDICATOR ORGANISMS	UNCLEAN TO SIGHT	ORGANIC SOIL ACCUMULATIONS	SURFACES SMOOTH & EASILY CLEANABLE	PRESENCE OF COOKS	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	0		
Dormitory Beds					1	0	0				1		
Common Area					0	0	1	0	0	0	2		
UNIT COMPONENT TOTALS:	1	0	0	0	4	0	3	0	2	0			
Management/Sanitation Compliance Score:	1.00											Yes Met standard or requirements.	See inspection notes
Housekeeping Compliance Percentage:	81.36%											It Does not meet accepted standards or requirements.	Non Met not met standard or requirements.
Housekeeping Compliance:	YES											On Meets accepted standards or requirements.	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 summarized 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.

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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 sanitation
inadequate water facilities
presence of vermin and indicator arthropods
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 repeated 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.

➤ *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 ongoing failure to follow cleaning and sanitizing procedures and enforce policies and mandates at all levels is manifest in the Department's inability to achieve substantial compliance with the sanitation orders despite adequate policies and procedures. The Department's directives outline the environmental health roles and responsibilities of its staff from correction officers to the deputy chief of the Department yet there remains a lack of adherence to policies and procedures. Two or more observations are needed to trigger a violation in this category and there were hundreds of such twofold observations during this monitoring period. Among the ongoing issues:

- Dirty, used sponges and scouring pads were placed on surfaces instead of being cleaned and sanitized.
- The Diversey dispenser was found to be missing labels for cleaning chemicals or was mislabeled thereby indicating the incorrect solution.
- English and Spanish sanitation posters were missing.
- 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 and gloves were not available during many inspections, and sometimes were still not available during subsequent inspections.
- Sanitation implements and equipment (including but not limited to brooms, dust pans, mops, mop wringers, buckets, sponges, scrub brushes and other types of brushes) were missing or not being provided for the clean and sanitary upkeep of intake and living areas.

PAR Levels

Item	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

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The Department's PAR (periodic automatic replenishment) 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." DOC Cleaning and Sanitizing Manual 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 repeated instances of missing or unprovided supplies and equipment indicate the Department's cleaning and sanitizing procedures were not followed at any level of its command.

As noted above, 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.

Table 1 Absence of Training Materials in Critical Areas

FACILITY	HOUSING AREA	OBSERVATION	INSPECTION WEEK	
AMKC	Dorm 1 Top	no English and Spanish sanitation posters - Repeat 1	7/16/23	7/22/23
	Dorm 3 Main	English and Spanish sanitation posters not provided	6/25/23	7/1/23
	Mod 9B	no sanitation posters	7/9/23	7/15/23
	Quad Upper 10	no Spanish poster provided	7/23/23	7/29/23
	Quad Upper 12	Spanish and English sanitation posters missing	6/18/23	6/24/23
	Quad Upper 13	no Spanish sanitation poster - Repeat 1	7/16/23	7/22/23
		Spanish sanitation poster missing	6/18/23	6/24/23
EMTC	8 Main	no sanitation manual	7/23/23	7/29/23
RNDC	2 U S	missing English and Spanish sanitation posters	6/18/23	6/24/23
	3 C S	outdated English and Spanish sanitation posters	6/4/23	6/10/23
	3 L S	outdated English and Spanish sanitation posters	6/4/23	6/10/23
	5 C S	missing Spanish sanitation poster	4/30/23	5/6/23

Table 2 Lack of Adherence to Established Policies and Procedures

FACILITY	HOUSING AREA	OBSERVATION	INSPECTION WEEK	
AMKC	Dorm 1 Upper	two dirty, used yellow sponges in plastic container without sanitizer	7/16/23	7/22/23
	Dorm 2 Upper	used, yellow sponge on ledge above sink	7/16/23	7/22/23
	Dorm 3 Top	three dry, dirty, used yellow sponges on Diversey dispenser	7/16/23	7/22/23
	Mod 11A	used yellow sponge without Virex on TV set - Repeat 1	6/11/23	6/17/23
	Mod 12B	one deck brush missing	5/14/23	5/20/23
		used sponge without Virex placed on faucet	6/11/23	6/17/23
	Mod 1LB	dirty , dry, used, yellow sponge on wall shelf	7/9/23	7/15/23
	Mod 9A	one push broom missing	5/14/23	5/20/23

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Environmental Conditions
May – August 2023

FACILITY	HOUSING AREA	OBSERVATION	INSPECTION WEEK	
		one push broom missing - Repeat	6/11/23	6/17/23
	Mod 9B	used sponge on Diversey dispenser and without Virex	6/11/23	6/17/23
	Quad Lower 1	missing deck brushes	5/28/23	6/3/23
	Quad Lower 13	one used yellow sponge on counter without Virex - Repeat	6/18/23	6/24/23
		two used yellow sponges on counter without Virex	5/14/23	5/20/23
	Quad Lower 15	one push broom missing	6/18/23	6/24/23
		two full mildew remover spray bottles under counter	7/16/23	7/22/23
	Quad Lower 17	1/5 full Milcide spray bottle on empty bed frame	6/18/23	6/24/23
		no green scrubbing pads	5/14/23	5/20/23
	Quad Lower 18	one push broom missing	5/7/23	5/13/23
	Quad Lower 3	full spray bottle of Milcide on floor	7/9/23	7/15/23
		missing deck brushes	5/28/23	6/3/23
	Quad Lower 6	dirty, used, yellow sponge on organizer	7/9/23	7/15/23
	Quad Upper 11	missing one mop	6/18/23	6/24/23
	Quad Upper 12	one mop stick missing	5/14/23	5/20/23
	Quad Upper 18	one mop missing	5/7/23	5/13/23
	Quad Upper 6	two dirty, dry yellow sponges and one used green pad on counter and not submerged in sanitizer solution	7/2/23	7/8/23
	Quad Upper 7	missing deck brushes	5/28/23	6/3/23
	West 17LB	required amount of cleaning supplies and cleaning agents not provided	4/30/23	5/6/23
			5/28/23	6/3/23
	West 18LA	dirty, dry, used yellow sponge on shelf	7/16/23	7/22/23
		required amount of cleaning supplies and cleaning agents not provided	4/30/23	5/6/23
			5/28/23	6/3/23
	West 18UA	used yellow dried sponge on organizer and without Virex	6/11/23	6/17/23
	West 19UB	yellow gloves on bed #18 frame	5/21/23	5/27/23
EMTC	11 Upper	dirty, used yellow sponge on window sill	6/25/23	7/1/23
	4 Main	missing deck sticks	4/30/23	5/6/23
	4 Upper	missing label on door for full bottle of sanitizer in Diversey dispenser	4/30/23	5/6/23
	5 Lower	dirty, used yellow sponge on Diversey dispenser (must be stored in container and submerged in sanitizer)	6/25/23	7/1/23
	6 Upper	missing deck brushes	4/30/23	5/6/23
	7 Lower	missing broom stick	5/28/23	6/3/23
	7 Main	missing yellow sponges	5/7/23	5/13/23
GRVC	15A	missing goggles	4/30/23	5/6/23
			5/28/23	6/3/23
	15B	missing gloves	4/30/23	5/6/23
			5/28/23	6/3/23
	17B	missing goggles	4/30/23	5/6/23
		missing sponges	5/28/23	6/3/23
	19B	missing goggles	4/30/23	5/6/23
			5/28/23	6/3/23
	8A	missing gloves	4/30/23	5/6/23
			5/28/23	6/3/23

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	8B	missing goggles	4/30/23	5/6/23
			5/28/23	6/3/23
NIC	5S	yellow sponge in bucket not submerged in Virex	7/9/23	7/15/23
	6N	yellow sponge in bucket not submerged in Virex	7/9/23	7/15/23
	6S	Corcraft Mold & Mildew bottle filled with unknown pink chemical	8/6/23	8/12/23
	Dorm 1	three sponges not provided	6/4/23	6/10/23
	Dorm 2B	three sponges not provided	6/4/23	6/10/23
	Dorm 2C	sponges not provided	6/4/23	6/10/23
	Dorm 3	missing two sponges	6/4/23	6/10/23
OBCC	1 N	missing broom	8/6/23	8/12/23
	Main Intake	Diversey dispenser missing all labels	8/6/23	8/12/23
RMSC	B 14	missing mop bucket	7/23/23	7/29/23
	B 5	dirty, dry yellow sponge on shelf and not submerged in sanitizer	6/4/23	6/10/23
	B 8	missing mop bucket	8/6/23	8/12/23
	East 1A	dirty yellow sponge not stored in sanitizer solution	5/21/23	5/27/23
		dirty, dry, used yellow sponge not stored in sanitizer solution - Repeat 1	6/4/23	6/10/23
	East 4B	missing one push broom	7/9/23	7/15/23
	South 3B	dirty, used yellow sponge in plastic container without sanitizer on Diversey dispenser	6/25/23	7/1/23
		sanitarian not provided with key for Diversey dispenser (WOS 3/20/23)	5/14/23	5/20/23
RNDC	2 L S	yellow sponge submerged in unknown solution	5/21/23	5/27/23
	Intake	bucket of water stored on floor	7/23/23	7/29/23
VCBC	2A/A	full spray bottle with blue solution at A station	7/9/23	7/15/23
		missing mop	8/6/23	8/12/23
	2C/A	used yellow sponge stored on Diversey dispenser without Virex	7/9/23	7/15/23
	3C/B	mop buckets stored upright	7/30/23	8/5/23
WF	Sprung 10	General Cleaner on floor under Diversey dispenser	6/4/23	6/10/23

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As mentioned earlier in this report, unclean to sight, organic soil accumulations, and surfaces not smooth and easily cleanable are the three housekeeping categories that also trigger this management category because “over [two] 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. A surface cannot be sanitized if it is not clean or cleanable. This is clearly noted in the Department’s policies and procedures; however, the Department still rated areas as compliant that had up to eight observations of unclean to sight,

e.g., RMSC Bldg. 12 (5/1/23 and 6/5/23) and RNDC 1 UN (7/14/23); three observations of organic soil accumulations, e.g., GRVC 19B (7/18/23); and up to five observations of surfaces that were not smooth and easily cleanable, e.g., AMKC Mod 11A (7/11/23). The referenced reports were provided to the parties as an attachment to the draft of this report.

➤ *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

The Department improved its provision of Gentle Scrub and Corcraft Mold and Mildew Cleaner, which were often not available during prior monitoring periods. 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 rinsing. DOC Cleaning and Sanitizing Manual at 3. The mildew cleaner must “be applied to shower/bathroom surfaces” and requires scrubbing with a green pad or scrub brush. *Id.* at 1. Notwithstanding the improvement with the provision of these particular chemicals, there is an increasing problem with the availability of chemicals at the Diversey dispensers. The Department provides General Cleaner, Virex sanitizing solution, and Stride floor cleaner via the dispenser⁹; however, the containers were sometimes found to be

⁹ 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

“completely empty” during inspections. “The general cleaner removes all dirt, dust, grime, soap scum, food splatter or other substances found on the surface. This is a critical step in the cleaning and sanitizing program.” *Id.* A surface must be clean before it can be sanitized. “The final step in the cleaning and sanitizing process is the application of the sanitizing solution. This step removes disease-causing organisms from the surface.” *Id.* at 3. Without the adequate supply and replenishment of cleaning chemicals, the facilities cannot be “thoroughly cleaned and sanitized at least once daily” as required by the Environmental Order at ¶ 11a. Examples of when cleaning chemicals were not provided during this monitoring period are below.

Table 3 Lack of Cleaning Chemicals

FACILITY	HOUSING AREA	OBSERVATION	INSPECTION WEEK	
AMKC	Dorm 3 UPPER	mildew remover needed	5/28/23	6/3/23
	Quad Lower 15	no Gentle Scrub	5/14/23	5/20/23
	Quad Lower 17	"no General Purpose chemical" in Diversey dispenser	7/16/23	7/22/23
		no Gentle Scrub	5/14/23	5/20/23
		no Milcide	5/14/23	5/20/23
	Quad Lower 18	no Stride solution	7/16/23	7/22/23
	Quad Lower 19	no Gentle Scrub	5/14/23	5/20/23
		no Milcide	5/7/23	5/13/23
			5/14/23	5/20/23
	Quad Lower 5	floor cleaner container completely empty in Diversey dispenser	7/9/23	7/15/23
		general cleaner container completely empty in Diversey dispenser	7/9/23	7/15/23
		sanitizer container completely empty in Diversey dispenser	7/9/23	7/15/23
	Quad Upper 11	no Stride in Diversey dispenser	7/23/23	7/29/23
		no Virex in Diversey dispenser	7/23/23	7/29/23
	West 18UA	no Milcide	7/9/23	7/15/23
no Virex		7/9/23	7/15/23	
West 18UB	no Milcide	7/9/23	7/15/23	
	no Virex	7/9/23	7/15/23	
EMTC	11 Upper	completely empty floor cleaner container in Diversey dispenser	6/25/23	7/1/23

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.

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FACILITY	HOUSING AREA	OBSERVATION	INSPECTION WEEK	
	12 Main	completely empty sanitizer container in Diversey dispenser	6/25/23	7/1/23
	5 Lower	no Gentle Scrub or Soft & Creamy	5/7/23	5/13/23
		no Milcide	6/25/23	7/1/23
	5 Main	no Virex available	8/6/23	8/12/23
	7 Lower	missing Gentle Scrub or Soft 'n Creamy	5/7/23	5/13/23
	7 Main	missing Gentle Scrub or Soft 'n Creamy	5/7/23	5/13/23
NIC	5N	Corcraft Mold & Mildew not provided	7/9/23	7/15/23
	5S	Corcraft Mold & Mildew not provided	7/9/23	7/15/23
	6N	Corcraft Mold & Mildew not provided	7/9/23	7/15/23
	Dorm 1	Gentle Scrub not provided	6/4/23	6/10/23
OBCC	1 N	missing Gentle Scrub	8/6/23	8/12/23
		missing mold and mildew cleaner	8/6/23	8/12/23
	3 N	missing Gentle Scrub	8/6/23	8/12/23
		missing mold and mildew cleaner	8/6/23	8/12/23
	3 W	missing Gentle Scrub	8/6/23	8/12/23
		missing mold and mildew cleaner	8/6/23	8/12/23
	5 N	missing Gentle Scrub	8/6/23	8/12/23
	5 W	missing Gentle Scrub	8/6/23	8/12/23
		missing mold and mildew cleaner	8/6/23	8/12/23
	Main Intake	no Gentle Scrub	8/6/23	8/12/23
RESH	B 13	"General Purpose" missing from Diversey dispenser	7/23/23	7/29/23
		Virex missing from Diversey dispenser	7/23/23	7/29/23
	B 15	"General Purpose" missing from Diversey dispenser	7/23/23	7/29/23
		General Cleaner missing from Diversey dispenser	8/6/23	8/12/23
		Stride missing from Diversey dispenser	7/23/23	7/29/23
			8/6/23	8/12/23
		Virex missing from Diversey dispenser	7/23/23	7/29/23
			8/6/23	8/12/23
	B 16	empty Virex container inside Diversey dispenser	8/6/23	8/12/23
RMSC	B 5	completely empty General Cleaner container in Diversey dispenser	6/4/23	6/10/23
	B 7	Gentle Scrub not provided	6/4/23	6/10/23
	B 8	Gentle Scrub not provided	7/30/23	8/5/23
	East 1A	completely empty floor cleaner container in Diversey dispenser	5/21/23	5/27/23
			6/4/23	6/10/23
		completely empty sanitizer container in Diversey dispenser	6/4/23	6/10/23
	East 1B	completely empty floor cleaner container in Diversey dispenser	6/4/23	6/10/23
		completely empty General Cleaner container in Diversey dispenser	6/4/23	6/10/23
		completely empty sanitizer container in Diversey dispenser	6/4/23	6/10/23
	East 2A	completely empty floor cleaner container in Diversey dispenser	5/21/23	5/27/23
		completely empty sanitizer container in Diversey dispenser	5/21/23	5/27/23
	East 2B	completely empty floor cleaner container in Diversey dispenser	5/21/23	5/27/23
		completely empty sanitizer container in Diversey dispenser	5/21/23	5/27/23
	South 2B	completely empty General Cleaner container in Diversey dispenser	6/4/23	6/10/23
	South 3A	completely empty General Cleaner container in Diversey dispenser	6/4/23	6/10/23
		completely empty sanitizer container in Diversey dispenser	6/4/23	6/10/23
	South 5A	completely empty floor cleaner container in Diversey dispenser	6/25/23	7/1/23
		completely empty sanitizer container in Diversey dispenser	6/25/23	7/1/23
VCBC	1B/B	Diversey dispenser missing/removed	7/16/23	7/22/23
	2A/A	Diversey dispenser "dispensing plain water"	8/6/23	8/12/23
	3C/B	Gentle Scrub not provided	7/2/23	7/8/23
			7/30/23	8/5/23

➤ *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 of inadequate cleaning equipment and equipment sanitation recorded during the inspections, consisting mostly of broken and damaged equipment, improperly stored and visibly dirty cleaning equipment, and inoperable Diversey chemical dispensers, as noted in the examples in the table below. Diversey dispensers 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. Some areas share a janitor's closet so an inoperable dispenser in one closet can affect more than one area. The inoperable Diversey dispensers were not repaired for several months, sometimes spanning monitoring periods, despite work orders being submitted and resubmitted in some cases.

Table 4 Inadequate Cleaning Equipment and Equipment Station

FACILITY	HOUSING AREA	OBSERVATION	INSPECTION WEEK	
AMKC	Dorm 4 Upper	Diversey dispenser leaking	4/30/23	5/6/23
	Main Intake	brooms need to be replaced	5/28/23	6/3/23
		mop sticks need to be replaced	5/28/23	6/3/23
	Mod 11A	dirty mop - Repeat	6/11/23	6/17/23
		dirty organizers	6/11/23	6/17/23
		dust-laden push broom	5/14/23	5/20/23
		dust-laden push broom - Repeat	6/11/23	6/17/23

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FACILITY	HOUSING AREA	OBSERVATION	INSPECTION WEEK	
	Mod 11B	dirty mop - Repeat	6/11/23	6/17/23
		dust-laden push broom	6/11/23	6/17/23
	Mod 12B	dust-laden push broom	5/14/23	5/20/23
		dust-laden push broom - Repeat	6/11/23	6/17/23
	Mod 9A	dirty mop head	7/9/23	7/15/23
	Mod 9B	dust-laden push broom	5/14/23	5/20/23
		dust-laden push broom - Repeat	6/11/23	6/17/23
		dust-laden push brooms	7/9/23	7/15/23
		excessively dirty mop heads	5/14/23	5/20/23
		one dirty mop head - Repeat	6/11/23	6/17/23
	Quad Lower 14	dust-laden push broom	5/14/23	5/20/23
	Quad Lower 15	only water comes out of Diversey dispenser - no chemicals	7/16/23	7/22/23
	Quad Lower 17	two push brooms dust-laden	7/16/23	7/22/23
	Quad Lower 19	dust-laden push broom	6/18/23	6/24/23
	Quad Upper 10	dust-laden push broom	5/14/23	5/20/23
		two dust-laden push brooms - Repeat	6/18/23	6/24/23
	Quad Upper 11	two dust-laden push brooms	6/18/23	6/24/23
	Quad Upper 12	dirty mop	6/18/23	6/24/23
		dirty mop bucket	5/14/23	5/20/23
	Quad Upper 13	dirty mop buckets	5/14/23	5/20/23
		dirty yellow bucket - Repeat 2	7/16/23	7/22/23
		two yellow mop buckets dirty	6/18/23	6/24/23
	Quad Upper 17	dirty mop bucket	6/18/23	6/24/23
	Quad Upper 18	dirty mop head	5/7/23	5/13/23
		dust-laden push broom	5/7/23	5/13/23
		three brooms dust-laden	7/16/23	7/22/23
	West 18UA	dirty mop head	7/9/23	7/15/23
		dust-laden push broom	5/21/23	5/27/23
			7/9/23	7/15/23
		dust-laden push broom - Repeat	6/11/23	6/17/23
	West 19LA	dirty mop heads	5/21/23	5/27/23
		dirty mop heads - Repeat	6/11/23	6/17/23
	West 19UA	dust-laden push broom	5/21/23	5/27/23
	West 19UB	dust-laden push broom	6/11/23	6/17/23
EMTC	10 Main	broken broom stick	5/28/23	6/3/23
	2 Upper	broken broom stick	5/28/23	6/3/23
	3 Upper	broken broom stick	4/30/23	5/6/23
	5 Main	broken mop stick	4/30/23	5/6/23
	6 Main	Diversey dispenser left door opened	8/6/23	8/12/23
	8 Main	Diversey dispenser broken and exposing General Cleaner	7/23/23	7/29/23
	9 Lower	broken mop stick	4/30/23	5/6/23
GRVC	10A	inoperable Diversey dispenser	5/14/23	5/20/23
			5/28/23	6/3/23
			6/11/23	6/17/23
	10B	Diversey dispenser inoperable	7/16/23	7/22/23
NIC	6S	Diversey dispenser dispenses water only, no chemicals	7/9/23	7/15/23
	Annex Intake	inoperable Diversey dispenser	5/14/23	5/20/23
	Dorm 2B	dirty organizers	6/4/23	6/10/23
	Dorm 3	inoperable Diversey dispenser	5/7/23	5/13/23
OBCC	3 W	Diversey dispenser inoperable (work order submitted 8/6/23)	8/6/23	8/12/23
	Main Intake	no chemicals dispensed at Diversey dispenser	8/6/23	8/12/23

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RMSC	B 13	dirty mop head	7/23/23	7/29/23
		missing Stride label at Diversey dispenser	7/23/23	7/29/23
	East 4A	dust-laden push broom	7/9/23	7/15/23
	South 4A	missing one mop bucket	7/9/23	7/15/23
VCBC	1A/B	inoperable Diversey dispenser	5/21/23	5/27/23
			7/16/23	7/22/23
		inoperable Diversey dispenser - Repeat 1	6/25/23	7/1/23
	2A/A	dust-laden push brooms	7/9/23	7/15/23
	2A/B	dirty mop head	7/9/23	7/15/23
		dust-laden push broom	7/9/23	7/15/23
	2B/A	inoperable Diversey dispenser	5/14/23	5/20/23
			7/9/23	7/15/23
		inoperable Diversey dispenser - Repeat 1	8/6/23	8/12/23
		inoperable Diversey dispenser (work order submitted 5/16/23)	5/28/23	6/3/23
	2C/A	dust-laden push brooms	7/9/23	7/15/23
	2C/B	Diversey dispenser inoperable - Repeat	7/9/23	7/15/23
		Diversey dispenser inoperable - Repeat 2	8/6/23	8/12/23
		Diversey dispenser inoperable (work order submitted 4/27/23)	4/30/23	5/6/23
		inoperable Diversey dispenser	6/11/23	6/17/23
	3A/A	inoperable Diversey dispenser	7/2/23	7/8/23
		two dust-laden push brooms	7/2/23	7/8/23
	3A/B	inoperable Diversey dispenser	7/2/23	7/8/23
	3B/A	dust-laden push broom	7/2/23	7/8/23
	3B/B	two dust-laden push brooms	7/2/23	7/8/23
	3C/B	Diversey dispenser inoperable (work order submitted 3/26/23)	4/30/23	5/6/23
			5/28/23	6/3/23
WF	Sprung 6	malfunctioning Diversey dispenser - dispenses water only	6/4/23	6/10/23

➤ *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 was one instance of inadequate water facilities.

FACILITY	HOUSING AREA	OBSERVATION	INSPECTION WEEK		LOCATION
OBCC	1 W	no access to hot and cold water - key broken	8/6/23	8/12/23	janitor's closet

➤ *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 except OBCC.

Table 5 Presence of Vermin Including Indicator Arthropods

FACILITY	OBSERVATIONS OF VERMIN/INDICATOR ARTHROPODS
AMKC	91
EMTC	45
GRVC	41
NIC	4
RMSC	22
RNDC	135
VCBC	8
WF	1

There was a significant increase in observations of vermin and indicator arthropods this monitoring period, 347 compared to 176 observations during the prior monitoring period, which is still 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.’ June 12, 2023 resp. to OCC’s Jan–Apr 2023 Report 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. To date, the Defendants have not provided OCC with EHO reports that include vermin observations. Plaintiffs also “request that the Department produce to OCC the pages of the EHO reports concerning vermin—both because those findings are part of *Benjamin’s* scope and because they will provide OCC with a fuller picture of the overall sanitation in the City jails.” Defs.’ resp. at 2. 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.’ June 12, 2023 resp. to OCC’s Jan–Apr 2023 Report 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. Mice, ants, flies, roaches, gnats, and drain flies were among the vermin observed repeatedly in all areas of the facilities, but mostly in shower areas, janitor’s closets, and common areas. Cells, both occupied and vacant, were repeatedly observed with ants, gnats, and mouse droppings. Despite observations in all but one facility, it appears RNDC has a vermin problem, as relayed in the table below.

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RNDC OBSERVATIONS	AREA	LOCATION	INSPECTION WEEK	
<i>"several" live mice</i>	2 U S	closet (near shower)	7/16/23	7/22/23
		common area (corridor)	7/16/23	7/22/23
<i>ants</i>	2 C S	cell #24 (o)	7/16/23	7/22/23
	2 L N	cell #1 (o)	7/16/23	7/22/23
	2 L S	cell #8 (o)	7/16/23	7/22/23
	4 L S	dayroom toilet	6/18/23	6/24/23
	5 L S	cell #6 (o)	6/4/23	6/10/23
		common area (corridor)	7/9/23	7/15/23
<i>dead water bug</i>	1 L S	cell #30 (unk)	5/7/23	5/13/23
	4 L N	common area	6/18/23	6/24/23
	5 L S	dayroom	6/4/23	6/10/23
<i>flies</i>	1 L S	cell #30 (unk)	5/7/23	5/13/23
	INTAKE	common area	7/30/23	8/5/23
<i>fruit flies</i>	MOD 2 N	janitor's closet	5/14/23	5/20/23
		slop sink area	5/14/23	5/20/23
	MOD 2 S	shower area	5/14/23	5/20/23
		toilet area	5/14/23	5/20/23
<i>gnats</i>	1 CN	janitor's closet	8/6/23	8/12/23
	1 LN	janitor's closet	8/6/23	8/12/23
	1 L S	janitor's closet	8/6/23	8/12/23
	1 UN	janitor's closet	8/6/23	8/12/23
		cell #27 (v)	8/6/23	8/12/23
	1 U S	janitor's closet	8/6/23	8/12/23
	2 L S	cell #17 (o)	7/16/23	7/22/23
	3 L S	cell #5 (v)	7/30/23	8/5/23
		common area	7/30/23	8/5/23
	3 U N	common area (corridor)	7/9/23	7/15/23

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RNDC OBSERVATIONS	AREA	LOCATION	INSPECTION WEEK	
	4 C N	janitor's closet	7/16/23	7/22/23
	4 C S	cell #8 (v)	7/16/23	7/22/23
		janitor's closet	7/16/23	7/22/23
	4 L N	janitor's closet	7/16/23	7/22/23
	4 L S	common area (corridor)	7/16/23	7/22/23
		janitor's closet	7/16/23	7/22/23
	4 U N	janitor's closet	7/16/23	7/22/23
	5 L N	common area (corridor)	7/9/23	7/15/23
	5 L S	common area (corridor)	7/9/23	7/15/23
		janitor's closet	7/30/23	8/5/23
	5 U N	common area	7/9/23	7/15/23
	6 C N	cell #16 (o)	7/16/23	7/22/23
		janitor's closet	7/16/23	7/22/23
	6 C S	janitor's closet	7/16/23	7/22/23
	6 L N	common area (corridor)	7/16/23	7/22/23
	6 L S	janitor's closet	7/16/23	7/22/23
	6 U N	janitor's closet	7/16/23	7/22/23
	INTAKE	common area	7/9/23	7/15/23
			7/30/23	8/5/23
		janitor's closet	7/16/23	7/22/23
		throughout intake	7/23/23	7/29/23
	MOD 1N	janitor's closet	7/23/23	7/29/23
	MOD 1S	toilet area	7/23/23	7/29/23
	MOD 2 N	janitor's closet	7/23/23	7/29/23
	MOD 2 S	janitor's closet	7/23/23	7/29/23
	MOD 3LN	janitor's closet	7/23/23	7/29/23
		toilet area	7/23/23	7/29/23
	MOD 3LS	shower area	7/23/23	7/29/23
	MOD 4UN	janitor's closet	7/23/23	7/29/23
	MOD 4US	sleeping area	7/23/23	7/29/23
<i>house flies</i>	2 U S	cell #11 (o)	6/18/23	6/24/23
<i>live mouse</i>	2 U S	dayroom	7/16/23	7/22/23
	6 C N	common area	6/11/23	6/17/23
<i>live water bug</i>	2 U S	janitor's closet	5/21/23	5/27/23
	6 L S	janitor's closet	6/11/23	6/17/23
<i>mouse droppings</i>	1 CN	common area (corners)	7/9/23	7/15/23
			8/6/23	8/12/23
		common area (junctions)	7/9/23	7/15/23
			8/6/23	8/12/23
	1 CS	common area (corners)	7/9/23	7/15/23
		common area (junctions)	7/9/23	7/15/23
		housing area (corners)	8/6/23	8/12/23
		housing area (junctions)	8/6/23	8/12/23
	1 LN	common area (junctions)	7/9/23	7/15/23
	1 LS	common area	7/9/23	7/15/23
		common area (corners)	8/6/23	8/12/23
		common area (junctions)	7/9/23	7/15/23
			8/6/23	8/12/23
	1 UN	common area (corners)	8/6/23	8/12/23
		common area (junctions)	8/6/23	8/12/23

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RNDC OBSERVATIONS	AREA	LOCATION	INSPECTION WEEK	
1 US		cell #21 (o)	5/7/23	5/13/23
		common area (corners)	8/6/23	8/12/23
		common area (junctions)	8/6/23	8/12/23
		janitor's closet	8/6/23	8/12/23
2 C N		janitor's closet	7/16/23	7/22/23
2 L N		common area (corners)	7/16/23	7/22/23
		common area (junctions)	7/16/23	7/22/23
		janitor's closet	7/16/23	7/22/23
2 L S		janitor's closet	7/16/23	7/22/23
2 U S		cell #26 (o)	7/16/23	7/22/23
		dayroom	7/16/23	7/22/23
4 C N		common area (corners)	7/16/23	7/22/23
		common area (junctions)	7/16/23	7/22/23
		janitor's closet	7/16/23	7/22/23
4 C S		common area (corners)	7/16/23	7/22/23
		common area (junctions)	7/16/23	7/22/23
4 L S		common area (junctions)	7/16/23	7/22/23
4 U N		janitor's closet	7/16/23	7/22/23
4 U S		common area (corners)	7/16/23	7/22/23
		common area (junctions)	7/16/23	7/22/23
5 C N		common area (corners)	7/9/23	7/15/23
		common area (junctions)	7/9/23	7/15/23
5 C S		common area (corners)	7/30/23	8/5/23
		common area (junctions)	7/30/23	8/5/23
		janitor's closet	7/9/23	7/15/23
5 L N		common area (junctions)	7/9/23	7/15/23
		janitor's closet	7/30/23	8/5/23
5 L S		cell #6 (o)	6/4/23	6/10/23
		common area (corners)	7/30/23	8/5/23
		common area (junctions)	7/9/23	7/15/23
			7/30/23	8/5/23
5 U N		common area	7/9/23	7/15/23
5 US		common area (corners)	7/9/23	7/15/23
		common area (junctions)	7/9/23	7/15/23
		janitor's closet	7/30/23	8/5/23
6 C N		common area (junctions)	7/16/23	7/22/23
		common area (corners)	7/16/23	7/22/23
		common area (junctions)	7/16/23	7/22/23
6 L N		common area (corridor)	7/16/23	7/22/23
6 U N		common area (junctions)	7/16/23	7/22/23
INTAKE		common area (junctions)	7/30/23	8/5/23
		throughout intake	7/23/23	7/29/23
MOD 1N		sleeping area (corners)	7/23/23	7/29/23
		sleeping area (junctions)	7/23/23	7/29/23
MOD 1S		sleeping area (corners)	7/23/23	7/29/23
		sleeping area (junctions)	7/23/23	7/29/23
MOD 2 N		sleeping area (junctions)	7/23/23	7/29/23
MOD 2 S		sleeping area (corners)	7/23/23	7/29/23
		sleeping area (junctions)	7/23/23	7/29/23
MOD 4UN		sleeping area (corners)	7/23/23	7/29/23

RNDC OBSERVATIONS	AREA	LOCATION	INSPECTION WEEK	
		sleeping area (junctions)	7/23/23	7/29/23
	MOD 4US	sleeping area	7/23/23	7/29/23
<i>roaches</i>	6 C N	janitor's closet	7/16/23	7/22/23
	6 C S	cell #2 (v)	7/16/23	7/22/23
		janitor's closet	7/16/23	7/22/23
	6 L S	janitor's closet	7/16/23	7/22/23
	6 U S	janitor's closet	7/16/23	7/22/23
<i>room "dirty with trashes - prone to pest infestation"</i>	4 C N	storage room	5/21/23	5/27/23

OCC requested that the Department disclose whether there is an infestation (or are infestations) in RNDC or any other facility; GRVC, for instance, which had many of the same vermin observations as RNDC but also larvae as observed in the shower of 7A during the week of April 30–May 6 indicating arthropods in various stages of development. The Department defines an infestation as “[a]n overrunning or inhabitation of an area by large numbers of vermin or insects so as to be harmful or bothersome.” DOC Directive 4005R-A at 1. “Determination of an infestation is also through the observation of multiple signs such as the presence of feces . . . [and] detection of multiple instars (stages of development) of arthropods is considered an infestation.” Housekeeping Inspection Matrix at 6. In response to OCC’s request for disclosure about any infestation in the Department, the Defendants’ report

The Department is currently handling an ongoing vermin issue at RNDC. The pipe chases are baited with rodenticide and people in custody are encouraged to store food items in vermin proof containers and to keep their areas clean. Additionally, the exterminators seal small entry points and work orders are submitted for larger entry points to be sealed by maintenance staff.

Defs.’ resp. at 4. OCC appreciates the Department’s response, but notes that in some housing areas there is a lack of vermin proof containers with tight fitting lids and holes and gaps remain unaddressed.

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

➤ *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

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. 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. The examples listed below illustrate the observations during this monitoring period, underscoring an ongoing lack of compliance.

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Table 6 Unclean to Sight

FACILITY	HOUSING AREA	OBSERVATION	INSPECTION WEEK		LOCATION
AMKC	Mod 12A	dirty floor - Repeat 2	7/9/23	7/15/23	shower area
		dirty walls - Repeat 2	7/9/23	7/15/23	shower area
	Quad Lower 13	dirty shower area	5/28/23	6/3/23	shower area
	Quad Lower 3	dirty janitor's closet	4/30/23	5/6/23	janitor's closet
	Quad Upper 10	excessive soap scum on floor - Repeat 2	7/23/23	7/29/23	shower area
		excessive soap scum on wall - Repeat 2	7/23/23	7/29/23	shower area
EMTC	3 Main	excessively dirty toilet	8/6/23	8/12/23	cell #15 (v)
					cell #22 (v)
	4 Upper	dirty showers	5/28/23	6/3/23	shower area
	5 Main	two tables dirty with food residue	8/6/23	8/12/23	dayroom furnishings
	6 Lower	dirty showers	5/28/23	6/3/23	shower area
	6 Upper	dirty floor	8/6/23	8/12/23	janitor's closet
	8 Main	dirt accumulation at empty bed frames	8/6/23	8/12/23	dormitory beds
		dirty showers	5/28/23	6/3/23	shower area
	9 Lower	dirty showers	5/28/23	6/3/23	shower area
	GRVC	10A	dirty equipment organizer	4/30/23	5/6/23
			5/28/23	6/3/23	janitor's closet
		dirty floor	5/28/23	6/3/23	janitor's closet
		dirty slop sink	5/28/23	6/3/23	janitor's closet
		soap scum on ceilings	4/30/23	5/6/23	shower area
		soap scum on walls	4/30/23	5/6/23	shower area
			5/28/23	6/3/23	shower area
13A		dirt build-up in lower tier corridor	5/28/23	6/3/23	common area
		dirty equipment organizer	4/30/23	5/6/23	janitor's closet
			5/28/23	6/3/23	janitor's closet
		dirty floor	4/30/23	5/6/23	janitor's closet
			5/28/23	6/3/23	janitor's closet
		dirty slop sink	5/28/23	6/3/23	janitor's closet
		dirty staircases	5/28/23	6/3/23	common area
		dirty walls	5/28/23	6/3/23	not specified
		paper debris in lower tier corridor	5/28/23	6/3/23	common area
		soap scum on floors	5/28/23	6/3/23	shower area
		soap scum on walls	5/28/23	6/3/23	shower area
15A		dirt build-up in lower tier corridor	5/28/23	6/3/23	common area
		dirt build-up in upper tier corridor	5/28/23	6/3/23	common area
		dirty equipment organizer	5/28/23	6/3/23	janitor's closet
		dirty floor	4/30/23	5/6/23	janitor's closet
			5/28/23	6/3/23	janitor's closet
		dirty slop sink	4/30/23	5/6/23	janitor's closet
			5/28/23	6/3/23	janitor's closet
		dirty staircases	5/28/23	6/3/23	common area
		dirty walls	5/28/23	6/3/23	janitor's closet
	floor littered with soap packets	5/28/23	6/3/23	shower area	
	paper debris in lower tier corridor	5/28/23	6/3/23	common area	
	paper debris in upper tier corridor	5/28/23	6/3/23	common area	
	soap scum on floors	5/28/23	6/3/23	shower area	
	soap scum on walls	5/28/23	6/3/23	shower area	
4B	dirt build-up on wall - Repeat	8/6/23	8/12/23	janitor's closet	
	dirty equipment organizer	4/30/23	5/6/23	janitor's closet	

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FACILITY	HOUSING AREA	OBSERVATION	INSPECTION WEEK		LOCATION
			5/28/23	6/3/23	janitor's closet
		dirty floor	4/30/23	5/6/23	janitor's closet
			5/28/23	6/3/23	janitor's closet
		dirty slop sink	4/30/23	5/6/23	janitor's closet
			5/28/23	6/3/23	janitor's closet
		soap scum on ceilings	4/30/23	5/6/23	shower area
			5/28/23	6/3/23	shower area
		soap scum on floors	5/28/23	6/3/23	shower area
		soap scum on walls	4/30/23	5/6/23	shower area
			5/28/23	6/3/23	shower area
	5A	dirty floor	5/28/23	6/3/23	janitor's closet
		dirty slop sink	4/30/23	5/6/23	janitor's closet
			5/28/23	6/3/23	janitor's closet
		excessively dirty light shield	8/6/23	8/12/23	cell #17 (o)
					cell #37 (o)
					cell #46 (o)
		soap scum on ceilings	5/28/23	6/3/23	shower area
		soap scum on walls	5/28/23	6/3/23	shower area
	9B	dirt build-up on lower tier corridor floor	5/28/23	6/3/23	common area
		dirt build-up on upper tier corridor floor	5/28/23	6/3/23	common area
		dirty floor	4/30/23	5/6/23	janitor's closet
			5/28/23	6/3/23	janitor's closet
		dirty slop sink	4/30/23	5/6/23	janitor's closet
			5/28/23	6/3/23	janitor's closet
	Main Intake	dirt build-up in corridor near janitor's closet	5/28/23	6/3/23	common area
		dirt build-up on shower floors	5/28/23	6/3/23	shower area
		dirty ceiling	5/28/23	6/3/23	not specified
		dirty sink	5/28/23	6/3/23	toilet area
		dirty toilet	5/28/23	6/3/23	toilet area
		dirty urinal	5/28/23	6/3/23	toilet area
		soap scum on walls	5/28/23	6/3/23	shower area
	Segregation Intake	dirt build-up in corridor near janitor's closet	5/28/23	6/3/23	common area
		dirty equipment organizer	4/30/23	5/6/23	janitor's closet
			5/28/23	6/3/23	janitor's closet
		dirty floor	4/30/23	5/6/23	janitor's closet
			5/28/23	6/3/23	janitor's closet
		dirty slop sink	4/30/23	5/6/23	janitor's closet
			5/28/23	6/3/23	janitor's closet
		dirty wall	5/28/23	6/3/23	janitor's closet
NIC	2B	dirty ceilings	5/28/23	6/3/23	not specified
		dirty floors	5/28/23	6/3/23	not specified
		dirty sinks	5/28/23	6/3/23	not specified
		dirty toilets	5/28/23	6/3/23	not specified
		dirty window screens	4/30/23	5/6/23	not specified
			5/28/23	6/3/23	not specified
	3A	dirty equipment organizer	4/30/23	5/6/23	janitor's closet
		dirty floor	4/30/23	5/6/23	janitor's closet
		dirty floors	5/28/23	6/3/23	not specified
		dirty sinks	5/28/23	6/3/23	not specified
		dirty toilets	5/28/23	6/3/23	not specified
		dirty walls	5/28/23	6/3/23	not specified

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FACILITY	HOUSING AREA	OBSERVATION	INSPECTION WEEK		LOCATION
		dirty window screens	5/28/23	6/3/23	not specified
	3D	dirty floors	5/28/23	6/3/23	not specified
		dirty sinks	5/28/23	6/3/23	not specified
		dirty toilets	5/28/23	6/3/23	not specified
		dirty walls	5/28/23	6/3/23	not specified
		dirty window screens	5/28/23	6/3/23	not specified
	5N	dirty floors	5/28/23	6/3/23	not specified
		dirty showers	5/28/23	6/3/23	shower area
	5S	dirty sinks	5/28/23	6/3/23	toilet area
	6N	dirty showers	5/28/23	6/3/23	shower area
	6S	dirty walls	5/28/23	6/3/23	not specified
OBCC	1 N	dirty floor	8/6/23	8/12/23	cell #1 (o)
		upper shower #3 with soap scum	8/6/23	8/12/23	shower area
		upper shower #4 with soap scum	8/6/23	8/12/23	shower area
	3 N	dirty slop sink	8/6/23	8/12/23	janitor's closet
	3 W	dirt build-up at stall #4	8/6/23	8/12/23	shower area
		dirty slop sink	8/6/23	8/12/23	janitor's closet
	5 N	dirty light shield	8/6/23	8/12/23	cell #22 (v)
		dirty toilet	8/6/23	8/12/23	cell #22 (v)
					cell #24 (v)
		dusty table frames	8/6/23	8/12/23	dayroom furnishings
		excessively dirty light shield	8/6/23	8/12/23	cell #20 (v)
	5 W	dirty slop sink	8/6/23	8/12/23	janitor's closet
	Main Intake	excessively dirty sink	8/6/23	8/12/23	toilet area
		excessively dirty toilet	8/6/23	8/12/23	toilet area
		excessively dirty urinal	8/6/23	8/12/23	toilet area
RESH	B 10	soap scum on shower floors	4/30/23	5/6/23	shower area
	B 11	excessively dirty light shield	8/6/23	8/12/23	cell #14 (v)
	B 12	soap scum on shower floors	4/30/23	5/6/23	shower area
		soap scum on shower walls	4/30/23	5/6/23	shower area
	B 14	debris at upper tier	7/23/23	7/29/23	common area
		dirt build-up on floor	8/6/23	8/12/23	janitor's closet
					shower area
		soap scum on floors	8/6/23	8/12/23	shower area
RMSC	B 7	dirty floors	4/30/23	5/6/23	shower area
		dirty walls	4/30/23	5/6/23	shower area
	East 1A	dirty slop sink	7/16/23	7/22/23	janitor's closet
		excessively dirty slop sink	6/4/23	6/10/23	janitor's closet
		soap scum on floors	4/30/23	5/6/23	shower area
		soap scum on walls	4/30/23	5/6/23	shower area
	East 2A	dirty floor	4/30/23	5/6/23	janitor's closet
	Intake	dust-laden wall mounted fans - Repeat 24	8/6/23	8/12/23	common area
	South 2B	dirty toilets	4/30/23	5/6/23	toilet area
		soap scum in sinks	4/30/23	5/6/23	toilet area
		soap scum on floors	4/30/23	5/6/23	shower area
		soap scum on walls	4/30/23	5/6/23	shower area
	South 4A	dirt build-up on floor - Repeat	8/6/23	8/12/23	shower area
		dirt build-up on wall - Repeat	8/6/23	8/12/23	shower area
	South 4B	excessive dirt build-up on floor - Repeat 7	8/6/23	8/12/23	shower area
		excessive dirt build-up on wall - Repeat 7	8/6/23	8/12/23	shower area
		excessive soap scum up on floor - Repeat 7	8/6/23	8/12/23	shower area

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		excessive soap scum up on wall - Repeat 7	8/6/23	8/12/23	shower area
RNDC	1 UN	debris in cell	8/6/23	8/12/23	cell #27 (v)
		old food residue in cell	8/6/23	8/12/23	cell #27 (v)
		paper in cell	8/6/23	8/12/23	cell #27 (v)
	6 U N	dirty toilet	4/30/23	5/6/23	cell #8 (unk)
VCBC	1A/B	dirty bars/doors	4/30/23	5/6/23	not specified
		dirty ceilings	4/30/23	5/6/23	not specified
		dirty corridors	4/30/23	5/6/23	not specified
		dirty floors	4/30/23	5/6/23	not specified
		dirty toilets/urinals	4/30/23	5/6/23	toilet area
		dirty walls	4/30/23	5/6/23	not specified
			5/28/23	6/3/23	not specified
	Intake	dirty floors	5/28/23	6/3/23	not specified
		dirty walls	5/28/23	6/3/23	not specified
WF	Sprung 10	dirty bars/doors	4/30/23	5/6/23	not specified
			5/28/23	6/3/23	not specified
		dirty ceilings	4/30/23	5/6/23	not specified
			5/28/23	6/3/23	not specified
		dirty corridors	4/30/23	5/6/23	not specified
			5/28/23	6/3/23	not specified
		dirty floors	4/30/23	5/6/23	not specified
			5/28/23	6/3/23	not specified
		dirty sinks	4/30/23	5/6/23	not specified
			5/28/23	6/3/23	not specified
		dirty walls	4/30/23	5/6/23	not specified
			5/28/23	6/3/23	not specified
		dirty window screens	4/30/23	5/6/23	not specified
			5/28/23	6/3/23	not specified

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➤ **Organic Soil Accumulations in Wet and Moist Areas**

- organic debris accumulation in and around toilets, urinals, utility sinks, lavatories and showers
- drain screens¹⁰ 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

The Department requires surfaces to be inspected for mildew, among other things, and when observed, the correction officer is responsible for ensuring its removal. To remove mildew, mildew remover must be applied to the surface and left there for

¹⁰ 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.”

fifteen minutes before manually scrubbing and thoroughly rinsing it off the surface.

Mildew and other organic debris were observed mostly in shower and toilet areas, janitor's closets, and cells. Some examples from the hundreds of observations in this category are listed below.

Table 7 Mildew and Other Organic Accumulations

FACILITY	HOUSING AREA	OBSERVATION	INSPECTION WEEK		LOCATION	
AMKC	Dorm 2 Upper	mildew on shower floors	5/28/23	6/3/23	shower area	
		mildew on shower walls	5/28/23	6/3/23	shower area	
	Quad Lower 15	mildew on shower walls	5/28/23	6/3/23	shower area	
	Quad Lower 17	excessive mildew on ceiling - Repeat 2	5/14/23	5/20/23	toilet area	
	Quad Lower 3	excessive mildew on ceiling	7/9/23	7/15/23	dayroom toilet	
	Quad Upper 10	excessive mildew on floor - Repeat 2	7/23/23	7/29/23	shower area	
		excessive mildew on wall - Repeat 2	7/23/23	7/29/23	shower area	
		mildew on ceiling - Repeat 2	7/23/23	7/29/23	toilet area	
		mildew on shower curtain	7/23/23	7/29/23	shower area	
		mildew on wall - Repeat 2	7/23/23	7/29/23	toilet area	
EMTC	2 Upper	mildew on ceiling - Repeat 6	7/30/23	8/5/23	shower area	
	5 Upper	mildew on wall	8/6/23	8/12/23	shower area	
	6 Upper	mildew on floor	8/6/23	8/12/23	shower area	
		mildew on wall	8/6/23	8/12/23	shower area	
	7 Main	mildew at ceiling - Repeat 4	8/6/23	8/12/23	janitor's closet	
		mildew on floor at missing tiles	8/6/23	8/12/23	shower area	
8 Main	excessive mildew on ceiling	8/6/23	8/12/23	toilet area		
GRVC	10A	mildew on ceilings	4/30/23	5/6/23		
		mildew on shower floor	4/30/23	5/6/23		
		mildew on shower floors	5/28/23	6/3/23	shower area	
		mildew on wall	4/30/23	5/6/23		
			5/28/23	6/3/23	janitor's closet	
		mildew on walls	4/30/23	5/6/23		
			5/28/23	6/3/23	shower area	
	10B	mildew on ceilings	4/30/23	5/6/23		
		mildew on shower floor	4/30/23	5/6/23		
		mildew on wall	5/28/23	6/3/23	janitor's closet	
	13B	mildew on floors	5/28/23	6/3/23	shower area	
		mildew on walls	5/28/23	6/3/23	shower area	
	15A	mildew on floors	5/28/23	6/3/23	shower area	
		mildew on walls	5/28/23	6/3/23	shower area	
	19B	mildew on wall	4/30/23	5/6/23		
	1A	mildew on ceilings	5/28/23	6/3/23	shower area	
		mildew on walls	5/28/23	6/3/23	shower area	
	2A	mildew on ceiling	4/30/23	5/6/23		
				5/28/23	6/3/23	janitor's closet
		mildew on ceilings	4/30/23	5/6/23		
			5/28/23	6/3/23	shower area	
	mildew on wall	4/30/23	5/6/23			
		5/28/23	6/3/23	janitor's closet		

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FACILITY	HOUSING AREA	OBSERVATION	INSPECTION WEEK		LOCATION
		mildew on walls	4/30/23	5/6/23	
			5/28/23	6/3/23	shower area
	3A	excessive organic debris accumulation in toilet	7/30/23	8/5/23	cell #26 (o)
		mildew at corners	5/28/23	6/3/23	shower area
	4A	mildew on floors	5/28/23	6/3/23	shower area
		mildew on wall	4/30/23	5/6/23	
		mildew on walls	5/28/23	6/3/23	shower area
			8/6/23	8/12/23	janitor's closet
	4B	mildew on wall	4/30/23	5/6/23	
			5/28/23	6/3/23	janitor's closet
		mildew on wall - Repeat	8/6/23	8/12/23	janitor's closet
	5A	excessive organic debris accumulation in toilet	8/6/23	8/12/23	cell #37 (o)
					cell #8 (o)
		mildew on wall	4/30/23	5/6/23	
			5/28/23	6/3/23	janitor's closet
		mildew on walls	5/28/23	6/3/23	shower area
	5B	mildew on floors	5/28/23	6/3/23	shower area
		mildew on wall	4/30/23	5/6/23	
			5/28/23	6/3/23	janitor's closet
	7B	excessive organic debris accumulation in toilet	8/6/23	8/12/23	cell #15 (v)
		mildew on ceilings	5/28/23	6/3/23	shower area
		mildew on wall	4/30/23	5/6/23	
			5/28/23	6/3/23	janitor's closet
		mildew on wall - Repeat	8/6/23	8/12/23	janitor's closet
		mildew on walls	5/28/23	6/3/23	shower area
	9A	excessive organic debris accumulation in toilet	8/6/23	8/12/23	cell #25 (o)
		mildew on ceiling	8/6/23	8/12/23	shower area
		mildew on ceilings	5/28/23	6/3/23	shower area
		mildew on floor	8/6/23	8/12/23	shower area
		mildew on wall	8/6/23	8/12/23	shower area
		mildew on wall - Repeat 1	8/6/23	8/12/23	janitor's closet
		mildew on walls	5/28/23	6/3/23	shower area
	9B	mildew on wall	4/30/23	5/6/23	
			5/28/23	6/3/23	janitor's closet
			8/6/23	8/12/23	janitor's closet
NIC	2C	excessive organic debris accumulation in toilet	5/7/23	5/13/23	cell #2 (v)
	3B	excessive organic debris accumulation in toilet	5/7/23	5/13/23	cell #3 (v)
					cell #4 (v)
	Dorm 1	excessive mildew on ceiling - Repeat 1	8/6/23	8/12/23	toilet area
RESH	B 10	mildew on shower floors	4/30/23	5/6/23	
	B 12	mildew on shower floors	4/30/23	5/6/23	
		mildew on shower walls	4/30/23	5/6/23	
	B 14	dirt and water on floor	7/23/23	7/29/23	janitor's closet
		lower tier - debris and water on floor	7/23/23	7/29/23	common area
	B 15	excessive organic debris accumulation in toilet	8/6/23	8/12/23	cell #8 (o)
RMSC	East 1A	mildew on floors	4/30/23	5/6/23	
		mildew on shower walls	4/30/23	5/6/23	
	South 2B	mildew on floors	4/30/23	5/6/23	
		mildew on shower walls	4/30/23	5/6/23	
RNDC	Mod 3LN	"mold" on wall by sink	5/28/23	6/3/23	not specified

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.

Table 8 Dirty Drains

FACILITY	HOUSING AREA	OBSERVATION	INSPECTION WEEK		LOCATION
AMKC	Mod 12A	dirty floor drains - Repeat 2	7/9/23	7/15/23	shower area
	Quad Upper 1	dirty floor drains	7/9/23	7/15/23	shower area
	Quad Upper 10	dirty floor drain	7/23/23	7/29/23	shower area
	Quad Upper 12	debris in floor drain	5/14/23	5/20/23	janitor's closet
	Quad Upper 13	standing dirty water in floor drain	5/14/23	5/20/23	janitor's closet
		standing water in floor drain - Repeat	6/18/23	6/24/23	janitor's closet
EMTC	5 Upper	dirty floor drain cover	8/6/23	8/12/23	janitor's closet
	6 Main	dirty floor drain cover	8/6/23	8/12/23	janitor's closet
	6 Upper	dirty floor drain cover	8/6/23	8/12/23	janitor's closet
RESH	B 12	dirty floor drains	4/30/23	5/6/23	shower area
RMSC	East 1A	dirty floor drains - Repeat 1	5/21/23	5/27/23	shower area
	East 2A	dirty floor drain	4/30/23	5/6/23	janitor's closet
RNDC	3 U S	dirty floor drain	6/4/23	6/10/23	janitor's closet
	5 C N	dirty floor drain	4/30/23	5/6/23	janitor's closet
	5 U N	standing water in sink	4/30/23	5/6/23	cell #26 (o)
	Intake	dirty floor drain	7/23/23	7/29/23	janitor's closet
VCBC	2C/A	clogged sink (work order submitted 5/22/23)	5/28/23	6/3/23	janitor's closet
	Intake	dirty floor drains	4/30/23	5/6/23	not specified

Further, within the category of organic soil accumulations, there were also numerous instances of chronic pooling of water and chronically wet walking surfaces as shown in the table immediately below.

Table 9 Chronic Pooling of Water

FACILITY	HOUSING AREA	OBSERVATION	INSPECTION WEEK		LOCATION
AMKC	Main Intake	ponded water on floor	4/30/23	5/6/23	pen #2
	Mod 12A	standing water on floor	7/9/23	7/15/23	janitor's closet
	Quad Lower 6	pool of water	5/7/23	5/13/23	cell #3 (v)
					cell #5 (v)
				6/4/23	6/10/23
					cell #26 (o)

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					cell #27 (o)
					cell #28 (o)
	West 18UA	corridor floor wet and dirty	7/9/23	7/15/23	shower area
		standing water in area	6/11/23	6/17/23	toilet area
		standing water near toilet #1	7/9/23	7/15/23	toilet area
EMTC	2 Upper	standing water at missing tiles	7/30/23	8/5/23	shower area
	3 Upper	standing water at missing tiles	7/30/23	8/5/23	shower area
	4 Upper	standing water at missing tiles	7/30/23	8/5/23	shower area
	5 Lower	ponded water on floor	5/28/23	6/3/23	common area
	7 Main	standing water at missing tiles	8/6/23	8/12/23	shower area
	8 Main	standing water on floor	8/6/23	8/12/23	shower area
GRVC	4B	ponded water on floor	5/14/23	5/20/23	janitor's closet
NIC	Dorm 1	standing water in area	6/4/23	6/10/23	janitor's closet
		standing water near bed #43	6/4/23	6/10/23	sleeping area
RESH	B 10	"pool of water" on floor	8/6/23	8/12/23	cell #39 (v)
					cell #40 (o)
					janitor's closet
	B 12	debris and water on floor	7/23/23	7/29/23	common area
	B 14	"pool of water" on floor	8/6/23	8/12/23	janitor's closet
	B 15	lower tier - debris and water on floor	7/23/23	7/29/23	common area
RMSC	B 5	standing water	7/2/23	7/8/23	janitor's closet
	East 3A	dirty standing water	8/6/23	8/12/23	janitor's closet
	Intake	water on floor	7/16/23	7/22/23	scanning area
	South 3A	standing water on floor	7/16/23	7/22/23	common area
	South 3B	standing water on floor	7/16/23	7/22/23	toilet area
RNDC	2 C N	ponded water on floor	5/28/23	6/3/23	janitor's closet
	2 L N	ponded water on floor	5/21/23	5/27/23	common area
	4 LN	ponded water on floor	6/18/23	6/24/23	common area
	4 LS	ponded water on floor	7/16/23	7/22/23	common area
VCBC	2B/A	standing water on floor	7/9/23	7/15/23	janitor's closet
		standing water on floor - Repeat	8/6/23	8/12/23	janitor's closet
	2B/B	standing water in area	7/9/23	7/15/23	janitor's closet
		standing water on floor	7/9/23	7/15/23	common area
					storage
	3A/A	standing water in area	7/30/23	8/5/23	janitor's closet
	3C/B	standing water	7/2/23	7/8/23	janitor's closet
		standing water - Repeat	7/30/23	8/5/23	janitor's closet
		standing water at front	7/2/23	7/8/23	common area
		standing water at rear	7/2/23	7/8/23	shower area
		standing water at rear - Repeat	7/30/23	8/5/23	shower area

➤ *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, there remains ongoing confusion between the PHS and EHO inspectors. However, the more problematic issue is the inconsistency in the reporting of such observations by PHSs, for this variability directly impacts compliance scoring. To illustrate that this is not simply an issue of different PHSs observing different things during an inspection or a PHS simply making a one-off error, OCC presents the variability in reporting by one PHS in three housing areas across seven inspections:

RNDC 5 Upper South

- April 10, 2023 – The PHS reported cracked floor tiles and torn ceiling pipe insulation in the janitor’s closet and accordingly marked a violation on the inspection report.

- May 1, 2023 – The same PHS inspected the janitor’s closet again, but did not report any surface issues. The location was marked on the inspection report as inspected and having no violation.
- June 5, 2023 – The same PHS again inspected the janitor’s closet and, as with the April inspection, reported cracked floor tiles and torn ceiling pipe insulation in the janitor’s closet, and accordingly marked a violation on the inspection report.

RNDC 5 Central North

- May 1, 2023 – The same PHS inspected the janitor’s closet and noted that the wall storage shelf was cracked.
- June 5, 2023 – The same PHS again inspected the janitor’s closet and again noted the cracked wall shelf; however, during this inspection, the PHS reported that the floor was cracked (noting it as a repeat violation) and also reported that the janitor’s closet was missing a vent, marking that as a violation as well. During the May inspection, the PHS marked the location as inspected and having no ventilation deficiencies.

RNDC 3 Upper North

- May 2, 2023 – The same PHS inspected the janitor’s closet and noted that the wall storage shelf was cracked and that “no vent was provided” (noting both as repeat violations).
- June 6, 2023 – The same PHS inspected the janitor’s closet again, but during this inspection, only the cracked wall shelf was reported and the location was marked as inspected and having no ventilation deficiencies.

The foregoing compounds the issue OCC raised last monitoring period about the discrepancies between what the PHSs and EHOs report although they are required to report the same things. As a reminder OCC noted:

[B]oth 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.

Upon notification by OCC, the Defendants remarked, “[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.’ June 12, 2023 resp. to OCC’s Jan – Apr 2023 Report, at 7. OCC urges the Department to undertake a comprehensive remedial training about *Benjamin* inspections for both EHOs and PHSs. Per the Defendants’ response (at 5), “This has been discussed at our monthly meeting, and the EHU has begun refresher training of the EHOs to better ensure consistency of reporting. A training that focused on violation writing was held for several captains on July 18, 2023.”

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. 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.

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at 9. Some examples of surfaces that were not smooth and easily cleanable are below.

Table 10 Surfaces not Smooth and Easily Cleanable

FACILITY	HOUSING AREA	OBSERVATION	INSPECTION WEEK		LOCATION
AMKC	Mod 12A	cracked floor panel - Repeat 2	7/9/23	7/15/23	toilet area
	Quad Upper 4	Diversey dispenser case broken (work order submitted - date not specified)	5/28/23	6/3/23	janitor's closet
	West 18LB	rusty vents	5/28/23	6/3/23	not specified

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	West 19LA	rusty vents	5/28/23	6/3/23	not specified
EMTC	1 Main	cracked floor tiles (work order submitted 1/13/23, 2/8/23) - Repeat 12	5/28/23	6/3/23	sleeping area
		missing floor tiles (work order submitted 1/13/23, 2/8/23) - Repeat 12	5/28/23	6/3/23	sleeping area
		missing floor tiles (work order submitted 1/13/23, 3/30/23) - Repeat 10	5/28/23	6/3/23	dayroom
		peeling paint on ceiling (work order submitted 1/3/23, 4/5/23) - Repeat 6	5/28/23	6/3/23	janitor's closet
		peeling paint on wall (work order submitted 1/3/23, 4/5/23) - Repeat 6	5/28/23	6/3/23	janitor's closet
	10 Upper	missing shower floor tiles (work order submitted - date not specified)	5/28/23	6/3/23	shower area
	11 Upper	"loose cement" at wall near telephone	5/28/23	6/3/23	common area
		missing wall tiles (work order submitted - date not specified)	5/28/23	6/3/23	dayroom
		peeling paint on ceiling (maintenance notified)	5/28/23	6/3/23	sleeping area
	12 Upper	peeling paint on ceiling (maintenance notified)	5/28/23	6/3/23	sleeping area
	2 Upper	missing floor tiles - Repeat 3	7/30/23	8/5/23	shower area
		missing shower floor tiles (work order submitted - date not specified)	5/28/23	6/3/23	shower area
	3 Main	missing floor tiles	8/6/23	8/12/23	cell #15 (v)
		peeling paint on ceiling	8/6/23	8/12/23	cell #22 (v)
	3 Upper	missing floor tiles - Repeat 3	7/30/23	8/5/23	shower area
		missing shower floor tiles (work order submitted - date not specified)	5/28/23	6/3/23	shower area
	4 Upper	missing floor tiles - Repeat 11	7/30/23	8/5/23	shower area
	5 Lower	depression on floor at missing drain cover	8/6/23	8/12/23	toilet area
		peeling paint on ceiling (maintenance notified)	5/28/23	6/3/23	sleeping area
	5 Main	corroded partition with sharp edges at toilets #1 and #2 - Repeat 9	8/6/23	8/12/23	toilet area
		corroded partition with sharp edges at toilets #5 and #6 - Repeat 9	8/6/23	8/12/23	toilet area
		missing floor tiles - Repeat 2	8/6/23	8/12/23	shower area
		rusted empty bed #60	8/6/23	8/12/23	dormitory beds
	5 Upper	corroded door frame at base	8/6/23	8/12/23	janitor's closet
		missing floor tiles	8/6/23	8/12/23	shower area
	6 Main	corroded partition #1 with sharp edges - Repeat 8	8/6/23	8/12/23	toilet area
		missing floor tiles - Repeat 8	8/6/23	8/12/23	shower area
		peeling paint on ceiling - Repeat 10	8/6/23	8/12/23	sleeping area
		peeling paint on ceiling (maintenance notified)	5/28/23	6/3/23	sleeping area
	7 Lower	missing floor tiles	7/23/23	7/29/23	shower area
	7 Main	"big" holes in wall at sink	8/6/23	8/12/23	toilet area
		missing floor tiles - Repeat 11	8/6/23	8/12/23	shower area
	7 Upper	near bed #12 - missing floor tiles (work order submitted - date not specified)	5/28/23	6/3/23	sleeping area
		peeling paint on ceiling (maintenance notified)	5/28/23	6/3/23	sleeping area
	8 Main	corroded partition #4 with sharp edges - Repeat 9	8/6/23	8/12/23	toilet area
		corroded partition #5 with sharp edges - Repeat 9	8/6/23	8/12/23	toilet area
		missing floor tiles - Repeat 8	8/6/23	8/12/23	shower area
		peeling paint on ceiling (maintenance notified)	5/28/23	6/3/23	sleeping area
	8 Upper	corroded partition #6	8/6/23	8/12/23	toilet area

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FACILITY	HOUSING AREA	OBSERVATION	INSPECTION WEEK		LOCATION
		holes in wall at sink	8/6/23	8/12/23	toilet area
		missing floor tiles - Repeat 6	8/6/23	8/12/23	shower area
	9 Upper	missing floor tiles (work order submitted - date not specified)	5/28/23	6/3/23	sleeping area
GRVC	10A	peeling paint on ceiling (paint detail notified 5/8/23)	5/28/23	6/3/23	shower area
		stall #1 broken wall tiles (work order resubmitted 5/2/23)	5/28/23	6/3/23	shower area
		stall #1 missing wall tiles (work order resubmitted 5/2/23)	5/28/23	6/3/23	shower area
		stall #4 broken wall tiles (work order resubmitted 5/2/23)	5/28/23	6/3/23	shower area
		stall #4 missing wall tiles (work order resubmitted 5/2/23)	5/28/23	6/3/23	shower area
	10B	peeling paint on walls (paint detail notified 5/8/23)	5/28/23	6/3/23	janitor's closet
		stall #2 broken wall tiles (work order resubmitted 5/2/23)	5/28/23	6/3/23	shower area
		stall #2 missing wall tiles (work order resubmitted 5/2/23)	5/28/23	6/3/23	shower area
		stall #4 broken wall tiles (work order resubmitted 5/2/23)	5/28/23	6/3/23	shower area
		stall #4 missing wall tiles (work order resubmitted 5/2/23)	5/28/23	6/3/23	shower area
		stall #6 broken wall tiles (work order resubmitted 5/2/23)	5/28/23	6/3/23	shower area
		stall #6 missing wall tiles (work order resubmitted 5/2/23)	5/28/23	6/3/23	shower area
	19A	wall cracked at fixture (work order resubmitted 5/2/23)	4/30/23	5/6/23	shower area
			5/28/23	6/3/23	shower area
	19B	shower #2 wall cracked at fixture (work order resubmitted 5/2/23)	4/30/23	5/6/23	shower area
			5/28/23	6/3/23	shower area
		shower #3 wall cracked at fixture (work order resubmitted 5/2/23)	4/30/23	5/6/23	shower area
			5/28/23	6/3/23	shower area
	2A	peeling paint on wall near janitor's closet (paint detail notified 5/16/23)	5/28/23	6/3/23	common area
	3A	cracked floor tiles (work order submitted 5/6/23)	4/30/23	5/6/23	janitor's closet
			5/28/23	6/3/23	janitor's closet
		missing floor tiles at vestibule (work order resubmitted 4/14/23)	4/30/23	5/6/23	shower area
		missing floor tiles at vestibule (work order resubmitted 5/14/23)	5/28/23	6/3/23	shower area
	3B	broken wall tiles (work order resubmitted 5/8/23)	5/28/23	6/3/23	janitor's closet
		missing wall tiles (work order resubmitted 4/8/23)	4/30/23	5/6/23	janitor's closet
	4A	multiple floor tiles broken in vestibule (work order resubmitted 5/3/23)	5/28/23	6/3/23	common area
		peeling paint on walls (paint detail notified 5/8/23)	5/28/23	6/3/23	janitor's closet
		vestibule missing multiple floor tiles (work order resubmitted 5/3/23)	5/28/23	6/3/23	common area
	4B	broken floor panel - Repeat	8/6/23	8/12/23	janitor's closet
		multiple floor tiles broken in vestibule (work order resubmitted 5/3/23)	5/28/23	6/3/23	common area
		vestibule missing multiple floor tiles (work order resubmitted 5/3/23)	5/28/23	6/3/23	common area
	5A	missing wall tiles (work order resubmitted 5/2/23)	4/30/23	5/6/23	janitor's closet
			5/28/23	6/3/23	janitor's closet
		stall #5 broken wall tile (work order resubmitted 5/14/23)	5/28/23	6/3/23	shower area
		stall #5 missing wall tile (work order resubmitted 4/14/23)	4/30/23	5/6/23	shower area
		stall #6 broken wall tile (work order resubmitted 5/21/23)	5/28/23	6/3/23	shower area
		stall #6 missing wall tile (work order resubmitted 4/21/23)	4/30/23	5/6/23	shower area
	5B	missing wall tiles (work order resubmitted 4/8/23)	4/30/23	5/6/23	janitor's closet
		missing wall tiles (work order resubmitted 5/8/23)	5/28/23	6/3/23	janitor's closet
	7A	stall #3 missing wall tile (work order resubmitted 4/14/23)	4/30/23	5/6/23	shower area
		stall #3 missing wall tile (work order resubmitted 5/14/23)	5/28/23	6/3/23	shower area

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	7B	missing floor tiles (work order resubmitted 5/2/23)	4/30/23	5/6/23	janitor's closet
			5/28/23	6/3/23	janitor's closet
		peeling paint on wall - Repeat 1	8/6/23	8/12/23	janitor's closet
		stall #2 missing wall tile (work order resubmitted 4/21/23)	4/30/23	5/6/23	shower area
		stall #2 missing wall tile (work order resubmitted 5/21/23)	5/28/23	6/3/23	shower area
		stall #4 missing wall tile (work order resubmitted 4/21/23)	4/30/23	5/6/23	shower area
		stall #4 missing wall tile (work order resubmitted 5/21/23)	5/28/23	6/3/23	shower area
		stall #5 missing wall tile (work order resubmitted 4/21/23)	4/30/23	5/6/23	shower area
		stall #5 missing wall tile (work order resubmitted 5/21/23)	5/28/23	6/3/23	shower area
	8A	broken floor tile in shower vestibule (work order resubmitted 5/2/23)	5/28/23	6/3/23	shower area
		missing floor tile in shower vestibule (work order resubmitted 5/2/23)	5/28/23	6/3/23	shower area
		two holes in wall (work order resubmitted 5/2/23)	4/30/23	5/6/23	janitor's closet
			5/28/23	6/3/23	janitor's closet
	9A	peeling paint on ceiling	8/6/23	8/12/23	shower area
		peeling paint on wall - Repeat 1	8/6/23	8/12/23	janitor's closet
	9B	peeling paint on wall	8/6/23	8/12/23	janitor's closet
	Main Intake	caged stall missing wall tiles (work order resubmitted 4/8/23)	4/30/23	5/6/23	shower area
			5/28/23	6/3/23	shower area
		cracked floor tiles (work order resubmitted 4/14/23)	4/30/23	5/6/23	shower area
		cracked floor tiles (work order resubmitted 5/14/23)	5/28/23	6/3/23	shower area
	Segregation Intake	cracked wall tiles (work order submitted 4/8/23)	4/30/23	5/6/23	search pen
		cracked wall tiles (work order submitted 5/8/23)	5/28/23	6/3/23	search pen
		missing wall tiles (work order resubmitted 5/5/23)	4/30/23	5/6/23	
			5/28/23	6/3/23	shower area
NIC	6S	peeling paint on ceiling - Repeat 10	8/6/23	8/12/23	sleeping area
	Annex Intake	missing ceiling tiles (work order submitted 6/3/23 and 6/30/23) - Repeat 16	8/6/23	8/12/23	common area
		missing floor tiles (work order submitted - date not specified)	5/28/23	6/3/23	not specified
		missing part of cove base - Repeat 5	8/6/23	8/12/23	pen #15
	Dorm 1	torn pipe insulation (work order submitted 7/10/23) - Repeat 9	8/6/23	8/12/23	common area
	Main Intake	missing floor tiles (work order submitted - date not specified)	5/28/23	6/3/23	not specified
		missing wall tiles (work order submitted - date not specified)	5/28/23	6/3/23	not specified
		peeling paint on ceiling	4/30/23	5/6/23	not specified
			5/28/23	6/3/23	not specified
		wall cracked by toilet (work order submitted - date not specified)	4/30/23	5/6/23	pen #4
OBCC	1 N	broken wall tiles	8/6/23	8/12/23	shower area
		cracked lower wall at sink/toilet area	8/6/23	8/12/23	cell #1 (o)
		missing wall tiles creating gap/opening	8/6/23	8/12/23	janitor's closet
	5 N	missing wall tiles	8/6/23	8/12/23	shower area
		rusted ceiling with hole/gap (work order submitted 8/8/23)	8/6/23	8/12/23	shower area
		torn wall tiles	8/6/23	8/12/23	shower area
RMSC	B 10	peeling paint on ceilings	4/30/23	5/6/23	shower area
		peeling paint on walls	4/30/23	5/6/23	shower area
	Intake	broken floor tiles - Repeat 25	8/6/23	8/12/23	common area
		cracked floor tiles - Repeat 25	8/6/23	8/12/23	common area
		missing floor tiles - Repeat 25	8/6/23	8/12/23	common area
	Nursery	missing floor tiles near shower area	4/30/23	5/6/23	shower area
	South 3A	cracked slop sink - Repeat 2	6/4/23	6/10/23	janitor's closet

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	South 3B	cracked slop sink - Repeat 4	5/14/23	5/20/23	janitor's closet
	South 5A	holes in wall - Repeat	8/6/23	8/12/23	janitor's closet
	South 5B	broken wall around faucet	8/6/23	8/12/23	janitor's closet
		holes in wall	8/6/23	8/12/23	janitor's closet
RNDC	2 C N	missing floor tiles (work order submitted - date not specified)	4/30/23	5/6/23	janitor's closet
			5/28/23	6/3/23	janitor's closet
	MOD 1N	cracked floors (work order submitted - date not specified)	4/30/23	5/6/23	"multiple areas"
			5/28/23	6/3/23	"multiple areas"
		uneven floors (work order submitted - date not specified)	4/30/23	5/6/23	"multiple areas"
			5/28/23	6/3/23	"multiple areas"
VCBC	1B/B	broken edges (work order submitted 4/24/23)	5/28/23	6/3/23	janitor's closet
		cracked edges (work order submitted 4/24/23)	5/28/23	6/3/23	janitor's closet
		sharp edges (work order submitted 4/24/23)	5/28/23	6/3/23	janitor's closet
	2A/A	holes above sink junctions (work order submitted 5/16/23)	5/28/23	6/3/23	toilet area
		peeling paint (work order submitted 6/5/23)	5/28/23	6/3/23	janitor's closet
	2B/A	cracked wall (work order submitted 5/22/23)	5/28/23	6/3/23	toilet area
	2B/B	"cracked molding" (work order submitted 6/5/23)	5/28/23	6/3/23	shower area
	2C/A	"rusted" (work order submitted 5/22/23)	5/28/23	6/3/23	janitor's closet
		peeling paint on wall	5/28/23	6/3/23	janitor's closet
	2C/B	rusty junctions (work order submitted 5/22/23)	5/28/23	6/3/23	not specified
		rusty ledges (work order submitted 5/22/23)	5/28/23	6/3/23	not specified
	Intake	cracked floor tiles at pen #14 (work order submitted 6/5/23)	5/28/23	6/3/23	common area
		missing floor tiles	4/30/23	5/6/23	not specified
5WF	Sprung 7	holes in floor	5/28/23	6/3/23	not specified
		missing floor tiles (work order submitted - date not specified)	4/30/23	5/6/23	not specified
	Sprung 9	cracked floor tiles - Repeat 10	7/23/23	7/29/23	janitor's closet
		missing floor tiles - Repeat 10	7/23/23	7/29/23	janitor's closet

➤ *Inadequate 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 73 instances of inadequate lighting during this monitoring period were recorded in the janitor's closets, showers, toilet areas, and dayroom toilets of AMKC, GRVC, NIC, OBCC, RESH, RMSC, and RNDC. 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. 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 Department's 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.

Table 11 Inadequate Lighting

FACILITY	HOUSING AREA	FOOT CANDLES	LOCATION	INSPECTION WEEK	
AMKC	Main Intake	2.1	janitor's closet	5/7/23	5/13/23
	Mod 9A	0.3	janitor's closet	5/14/23	5/20/23
		8.2	janitor's closet	6/11/23	6/17/23
	Mod 9B	0	janitor's closet	5/14/23	5/20/23
		8.4	janitor's closet	6/11/23	6/17/23
				7/9/23	7/15/23
	Quad Lower 1	2.8	toilet area	4/30/23	5/6/23
				5/28/23	6/3/23
		1.1 (light inoperable)	dayroom toilet	7/9/23	7/15/23
	Quad Lower 14	7.8	toilet area	6/18/23	6/24/23
	Quad Lower 17	7.3	janitor's closet	5/14/23	5/20/23
	Quad Lower 2	0.2 (light inoperable)	janitor's closet	7/9/23	7/15/23
	Quad Lower 3	4.6	dayroom toilet	4/30/23	5/6/23
				5/28/23	6/3/23
				7/9/23	7/15/23
	Quad Lower 7	6.7	dayroom toilet	7/9/23	7/15/23
	Quad Upper 11	9.2	janitor's closet	6/18/23	6/24/23
		9.8	janitor's closet	5/14/23	5/20/23
	Quad Upper 12	6.8	janitor's closet	5/14/23	5/20/23
		7.8	janitor's closet	7/23/23	7/29/23
	Quad Upper 17	9.3	janitor's closet	5/7/23	5/13/23
		9.8 - Repeat	janitor's closet	6/18/23	6/24/23
	Quad Upper 18	9.1	toilet area	6/18/23	6/24/23
	Quad Upper 3	6.7	dayroom toilet	7/9/23	7/15/23
	Quad Upper 4	0	janitor's closet	4/30/23	5/6/23
	Quad Upper 6	5.7	toilet area	4/30/23	5/6/23
				6/4/23	6/10/23
		5.8	dayroom toilet	7/2/23	7/8/23
		0.1 (light inoperable)	janitor's closet	7/2/23	7/8/23
	Quad Upper 7	0.7 (light inoperable)	dayroom toilet	7/9/23	7/15/23

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FACILITY	HOUSING AREA	FOOT CANDLES	LOCATION	INSPECTION WEEK	
	Quad Upper 8	7.9	dayroom toilet	7/2/23	7/8/23
	West 18LA	6.7	shower area	7/16/23	7/22/23
GRVC	13B	8.9	janitor's closet	6/18/23	6/24/23
	15A	6.6	janitor's closet	7/16/23	7/22/23
NIC	2C	0.8	janitor's closet	6/4/23	6/10/23
	Dorm 2C	0	janitor's closet	5/7/23	5/13/23
		0.9 (light inoperable)	janitor's closet	7/9/23	7/15/23
OBCC	3 N	0.5 (light inoperable)	janitor's closet	8/6/23	8/12/23
	3 W	0.8 (light inoperable)	janitor's closet	8/6/23	8/12/23
	5 W	0.8 (light inoperable)	janitor's closet	8/6/23	8/12/23
RMSC	B 1	7.1	janitor's closet	7/2/23	7/8/23
RESH	B 15	7	janitor's closet	7/23/23	7/29/23
RNDC	1 LN	6.8	janitor's closet	6/4/23	6/10/23
	2 L N	4.3	janitor's closet	5/21/23	5/27/23
	3 C N	4.3	janitor's closet	7/30/23	8/5/23
	3 L S	4.8	janitor's closet	7/9/23	7/15/23
		6.2	dayroom toilet	6/4/23	6/10/23
	3 U N	2.1	dayroom toilet	6/4/23	6/10/23
		7.5	janitor's closet	6/4/23	6/10/23
		2.3 (light inoperable)	dayroom toilet	7/9/23	7/15/23
	3 U S	5.6	janitor's closet	6/4/23	6/10/23
	4 C N	6.1	janitor's closet	5/21/23	5/27/23
	5 L N	3.2	janitor's closet	6/4/23	6/10/23
	5 L S	3.2	janitor's closet	6/4/23	6/10/23
		3.5	janitor's closet	7/9/23	7/15/23
		4.7 (light inoperable)	janitor's closet	7/30/23	8/5/23
	5 U N	1.3	janitor's closet	6/4/23	6/10/23
		3.8	janitor's closet	4/30/23	5/6/23
		2.3 (light inoperable)	janitor's closet	7/9/23	7/15/23
	6 L N	8.9	janitor's closet	7/16/23	7/22/23
		9.1	janitor's closet	6/11/23	6/17/23
	6 U N	8.1	janitor's closet	7/16/23	7/22/23
	6 U S	6.9	janitor's closet	7/16/23	7/22/23
		7.4	janitor's closet	6/11/23	6/17/23
	Intake	4.8	janitor's closet	5/21/23	5/27/23
		6.5	janitor's closet	5/28/23	6/3/23
		8.1	janitor's closet	7/16/23	7/22/23
		8.5	janitor's closet	7/9/23	7/15/23
		8	janitor's closet	7/23/23	7/29/23
				7/30/23	8/5/23
	Mod 3LN	5.9	janitor's closet	7/23/23	7/29/23
	Mod 4LN	9.1	janitor's closet	7/23/23	7/29/23
	Mod 4UN	8.6	janitor's closet	6/18/23	6/24/23

➤ 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 57 instances —a significant increase from 19 during the last monitoring period—distributed across AMKC, EMTC, GRVC, NIC, RNDC, and VCBC with the malodors detected mostly in shower and toilet areas, janitor’s closets, and cells (both vacant and occupied). Some of the instances were of repeat occurrences.

Table 12 Presence of Malodors

FACILITY	HOUSING AREA	LOCATION	INSPECTION WEEK		
AMKC	Dorm 2 Main	janitor's closet	5/21/23	5/27/23	
	Dorm 2 Upper	janitor's closet	5/21/23	5/27/23	
	Dorm 3 Main	janitor's closet	6/25/23	7/1/23	
	Dorm 4 Top	janitor's closet	5/21/23	5/27/23	
	Main Intake		shower area	4/30/23	5/6/23
			shower area - Repeat	5/7/23	5/13/23
			shower area - Repeat 1	5/14/23	5/20/23
			shower area - Repeat 2	5/21/23	5/27/23
	Mod 1UB	cell #14 (o)	5/14/23	5/20/23	
	Quad Lower 1	cell #2 (o)	4/30/23	5/6/23	
		cell #8 (o)	5/28/23	6/3/23	
	Quad Lower 6		cell #16 (v)	5/7/23	5/13/23
			cell #24 (o)	5/7/23	5/13/23
	Quad Lower 7		cell #19 (o)	6/4/23	6/10/23
			cell #2 (o)	6/4/23	6/10/23
	Quad Lower 8		cell #19 (o)	5/7/23	5/13/23
			cell #21 (o)	5/7/23	5/13/23
			janitor's closet	5/7/23	5/13/23
	West 17LA		shower area	5/7/23	5/13/23
			shower area - Repeat	6/11/23	6/17/23
West 17UB		shower area	5/7/23	5/13/23	
		shower area - Repeat	6/11/23	6/17/23	
EMTC	2 Upper	shower area	7/2/23	7/8/23	
	3 Main	common area	8/6/23	8/12/23	
	4 Upper	shower area	7/30/23	8/5/23	
	5 Main	janitor's closet	7/9/23	7/15/23	
	Intake		shower area	7/2/23	7/8/23
			toilet area	7/16/23	7/22/23
			7/23/23	7/29/23	
GRVC	10A	janitor's closet	7/16/23	7/22/23	
	10B	janitor's closet	7/16/23	7/22/23	
	13B	janitor's closet	5/21/23	5/27/23	
	15A	janitor's closet	6/18/23	6/24/23	

FACILITY	HOUSING AREA	LOCATION	INSPECTION WEEK	
	15B	cell #2 (o)	7/16/23	7/22/23
	19A	janitor's closet	6/18/23	6/24/23
			7/16/23	7/22/23
	1A	janitor's closet	6/4/23	6/10/23
			7/9/23	7/15/23
			7/30/23	8/5/23
	3A	janitor's closet	5/7/23	5/13/23
			7/30/23	8/5/23
	4B	janitor's closet	8/6/23	8/12/23
	5A	janitor's closet	7/9/23	7/15/23
			8/6/23	8/12/23
	7A	janitor's closet	8/6/23	8/12/23
	9A	janitor's closet	8/6/23	8/12/23
	9B	janitor's closet	4/30/23	5/6/23
			5/28/23	6/3/23
			7/2/23	7/8/23
			8/6/23	8/12/23
NIC	3A	janitor's closet	6/11/23	6/17/23
RNDC	6 U S	janitor's closet	7/16/23	7/22/23
VCBC	2A/A	shower area	7/9/23	7/15/23
	2B/B	janitor's closet	5/14/23	5/20/23
			6/11/23	6/17/23
	3A/B	shower area	7/30/23	8/5/23
	Main Intake	throughout intake	5/14/23	5/20/23

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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. The Defendants claim that the reports are not being ignored and that, “of the approximately 800 housing areas and intake inspected during this monitoring period, malodor was cited about 7% of the time.” Defs.’ resp. at 5. This is incorrect. Foremost, DOC does not have 800 housing and intake areas. During the monitoring period the Department had 236 open intake and housing areas. The intakes were inspected weekly and malodors were recorded weekly in the AMKC Main Intake shower area, for example. In another example, housing areas were inspected monthly and malodors were

recorded monthly in the GRVC 9B janitor's closet. Clearly, the reports of these and other instances were repeatedly ignored—for weeks and for months.

➤ **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 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.

Table 13 Ventilation

FACILITY	HOUSING AREA	OBSERVATION	INSPECTION WEEK		LOCATION
AMKC	Dorm 2 Upper	dirty vents	5/28/23	6/3/23	sleeping area
	Dorm 3 Main	dirty vents	5/28/23	6/3/23	sleeping area
	Dorm 4 Main	dirty vents	5/28/23	6/3/23	sleeping area
	Quad Upper 10	partially clogged vent	7/23/23	7/29/23	janitor's closet
	Quad Upper 11	vent clogged	7/23/23	7/29/23	cell #23 (o)
	Quad Upper 13	"totally clogged" ceiling vent - Repeat 2	7/16/23	7/22/23	dayroom
		partially clogged ceiling vent - Repeat 2	7/16/23	7/22/23	dayroom
	Quad Upper 3	partially occluded wall vent	5/28/23	6/3/23	cell #22 (v)
					cell #6 (v)
EMTC	1 Main	no vent - Repeat 10	5/28/23	6/3/23	shower area
		no vent - Repeat 12	8/6/23	8/12/23	shower area
		no vent provided	7/9/23	7/15/23	shower area
	10 Main	missing vent	5/28/23	6/3/23	janitor's closet
		no vent - Repeat 9	5/14/23	5/20/23	janitor's closet
	10 Upper	no vent (work order submitted 3/23/23) - Repeat 1	5/14/23	5/20/23	janitor's closet
	12 Main	no vent - Repeat 2	6/25/23	7/1/23	janitor's closet
	2 Upper	missing vent	4/30/23	5/6/23	janitor's closet
			5/28/23	6/3/23	janitor's closet
			4/30/23	5/6/23	janitor's closet
	3 Upper	missing vent	5/28/23	6/3/23	janitor's closet
			4/30/23	5/6/23	janitor's closet
	6 Main	partially clogged wall vent	8/6/23	8/12/23	toilet area
	9 Lower	missing vent	4/30/23	5/6/23	janitor's closet
			5/28/23	6/3/23	janitor's closet
Intake	partially occluded ceiling vent - Repeat 23	7/16/23	7/22/23	janitor's closet	
	partially occluded vent - Repeat 25	8/6/23	8/12/23	janitor's closet	
GRVC	11A	dirty wall vent (work order resubmitted 5/2/23)	4/30/23	5/6/23	janitor's closet
			5/28/23	6/3/23	janitor's closet

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FACILITY	HOUSING AREA	OBSERVATION	INSPECTION WEEK		LOCATION
	11B	clogged wall vent (work order resubmitted 5/2/23)	4/30/23	5/6/23	janitor's closet
			5/28/23	6/3/23	janitor's closet
	17A	clogged shower stall #4 vent (work order resubmitted 5/2/23)	4/30/23	5/6/23	shower area
			5/28/23	6/3/23	shower area
	7A	dust-laden high wall vents	8/6/23	8/12/23	common area
		dusty high ceiling vents (work order submitted - resubmitted 4/14/23)	4/30/23	5/6/23	common area
		dusty high ceiling vents (work order submitted - resubmitted 5/14/23)	5/28/23	6/3/23	common area
		lower tier corridor vents dusty work order submitted - resubmitted 4/14/23)	4/30/23	5/6/23	common area
		lower tier corridor vents dusty work order submitted - resubmitted 5/14/23)	5/28/23	6/3/23	common area
	7B	dust-laden high wall vents	8/6/23	8/12/23	common area
		dust-laden wall vent	8/6/23	8/12/23	cell #15 (v)
		dusty ceiling vent (work order resubmitted 4/8/23)	4/30/23	5/6/23	shower area
		dusty ceiling vent (work order resubmitted 5/8/23)	5/28/23	6/3/23	shower area
		lower tier corridor vents dusty work order submitted - resubmitted 4/14/23)	4/30/23	5/6/23	common area
		lower tier corridor vents dusty work order submitted - resubmitted 5/14/23)	5/28/23	6/3/23	common area
	9A	dust-laden high wall vents	8/6/23	8/12/23	common area
		dust-laden wall vent	8/6/23	8/12/23	cell #32 (v)
	9B	clogged ceiling vent	8/6/23	8/12/23	shower area
		dust-laden ceiling vent	8/6/23	8/12/23	janitor's closet
NIC	2C	completely occluded wall vent	5/7/23	5/13/23	cell #2 (v)
					cell #5 (v)
					cell #7 (v)
	3A	vent not provided	7/23/23	7/29/23	storage
	3B	completely occluded wall vent	5/7/23	5/13/23	cell #3 (v)
					cell #4 (v)
					cell #6 (v)
	3C	no vent provided	7/23/23	7/29/23	storage
		partially occluded wall vent	5/7/23	5/13/23	cell #11 (v)
					cell #4 (v)
					cell #9 (v)
	3D	completely occluded wall vent	5/7/23	5/13/23	cell #3 (v)
	4S	no vent	7/9/23	7/15/23	storage
			8/6/23	8/12/23	storage
	5N	no vent	7/9/23	7/15/23	storage
	5S	no vent	7/9/23	7/15/23	storage
	6N	no vent	7/9/23	7/15/23	storage
			8/6/23	8/12/23	storage
	6S	clogged ceiling vent - Repeat 4	8/6/23	8/12/23	dayroom
		dusty wall vents - Repeat 4	8/6/23	8/12/23	dayroom
		no vent	8/6/23	8/12/23	storage
	Dorm 1	no vent	8/6/23	8/12/23	janitor's closet
	Dorm 2B	no vent	7/9/23	7/15/23	janitor's closet
OBCC	3 W	partially occluded wall vent	8/6/23	8/12/23	cell #34 (o)
					cell #45 (o)

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FACILITY	HOUSING AREA	OBSERVATION	INSPECTION WEEK		LOCATION
	5 N	partially covered wall vent	8/6/23	8/12/23	cell #22 (v)
		partially occluded ceiling vents	8/6/23	8/12/23	shower area
	5 W	dust-laden ceiling vent	8/6/23	8/12/23	janitor's closet
RESH	B 10	dust-laden high wall vents	8/6/23	8/12/23	common area
	B 12	dust-laden high wall vents	8/6/23	8/12/23	common area
	B 14	dust-laden high wall vents	8/6/23	8/12/23	common area
	B 15	dust-laden high wall vents	8/6/23	8/12/23	common area
	B 16	dust-laden high wall vents	8/6/23	8/12/23	common area
RMSC	East 1B	dirty vents	4/30/23	5/6/23	toilet area
	East 2B	dirty vents	4/30/23	5/6/23	toilet area
	South 2A	dirty vents	4/30/23	5/6/23	toilet area
	South 4B	dusty ceiling vent - Repeat 3	8/6/23	8/12/23	shower area
		dusty ceiling vent - Repeat 6	8/6/23	8/12/23	sleeping area
RNDC	5 C N	missing vent	6/4/23	6/10/23	janitor's closet
VCBC	1A/B	dirty vents (work order submitted - date not specified)	4/30/23	5/6/23	not specified
	1B/A	dirty vents (work order submitted - date not specified)	4/30/23	5/6/23	not specified
			5/28/23	6/3/23	not specified
	1B/B	dirty vents (work order submitted - date not specified)	4/30/23	5/6/23	not specified
			5/28/23	6/3/23	not specified
	2A/A	dirty vents (work order submitted - date not specified)	4/30/23	5/6/23	not specified
			5/28/23	6/3/23	not specified
	2A/B	dirty vents (work order submitted - date not specified)	4/30/23	5/6/23	not specified
			5/28/23	6/3/23	not specified
	2B/A	dirty vents (work order submitted - date not specified)	4/30/23	5/6/23	not specified
			5/28/23	6/3/23	not specified
	2B/B	dirty vents (work order submitted - date not specified)	4/30/23	5/6/23	not specified
			5/28/23	6/3/23	not specified
		dusty vent	5/28/23	6/3/23	toilet area
	2C/A	dirty vents (work order submitted - date not specified)	4/30/23	5/6/23	not specified
			5/28/23	6/3/23	not specified
	2C/B	dirty vents (work order submitted - date not specified)	4/30/23	5/6/23	not specified
			5/28/23	6/3/23	not specified
	3A/A	dirty vents (work order submitted - date not specified)	4/30/23	5/6/23	not specified
			5/28/23	6/3/23	not specified
	3A/B	dirty vents (work order submitted - date not specified)	4/30/23	5/6/23	not specified
			5/28/23	6/3/23	not specified
	3B/A	dirty vents (work order submitted - date not specified)	4/30/23	5/6/23	not specified
			5/28/23	6/3/23	not specified
	3B/B	dirty vents (work order submitted - date not specified)	4/30/23	5/6/23	not specified
			5/28/23	6/3/23	not specified
	3C/B	dirty vents (work order submitted - date not specified)	4/30/23	5/6/23	not specified
			5/28/23	6/3/23	not specified

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Defendants assert, “these instances, even if not promptly abated, do not have any particularly discernable effect on the ventilation.” Defs.’ resp. at 6. This blasé approach to court ordered obligations is not only unsupported, but contradicted by the Department’s own records. As discussed later in this report, dirty or clogged

vents led to zero cubic feet per minute of airflow—the same as inoperable equipment! Moreover, Plaintiffs’ counsel “emphasize the interrelation between the environmental issues, and the cascading effects created by each individual failure. For instance, dirty vents are a sanitation issue, created by a failure to properly clean them. But dirty vents become occluded vents, which interfere with proper ventilation. And adequate ventilation is necessary for properly functioning fire safety systems.” *Pltfs.’ resp. at 1.*

Further, they (sic) physical and environmental conditions of the jails affect every essential aspect of life in custody. Failures of sanitation and ventilation can create or exacerbate health problems, especially among the medically vulnerable and chronically ill—populations overrepresented in carceral setting. This creates additional pressures on DOC’s medical care system, which is already failing to perform, due in part to DOC’s entrenched staff mismanagement. (footnote omitted) The staff mismanagement contributes to inadequate delivery of services and programs, which in turn contributes to increased violence in the jails—violence that DOC staff is ill equipped to respond to given, among other things, the staffing mismanagement. DOC’s staffing problems also has led to housing areas where no staff is on post to do rounds, or to monitor the population of those housing units for, and timely respond to, emergency medical or other needs. When people in custody are neglected, deprived of services and ignored, we often see an increase in fires set in the jails. And, as described below and in our prior letters, the fire safety systems in many facilities are lacking. In short, the New York City jails’ environmental problems are not secondary to other institutional problems of violence and access to health care, some of which have led advocates to push for Rikers to be placed into federal receivership. These issues are intertwined, and DOC’s neglect of environmental conditions is an issue of life and death.

Id. 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 June 2023, only.

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 have some overlap with the *Benjamin* mandates.

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

- AMKC Quad Upper 3: not inspected – reason not provided
- VCBC 3CA: closed – used for de-escalation only

Areas inspected by DOHMH with no violations are listed below.

- NIC Main Intake

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

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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>	0	Heat Orders re: Adequate Cooling in Punitive Segregation Areas
	<i>Ventilations system not provided, inadequate, not adequately maintained, or in disrepair.</i>	1	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>	8	Sanitation Stipulation ¶ 2
	<i>Toilet, lavatory, or shower not provided, inadequate in number, not adequately maintained or in disrepair.</i>	4	Sanitation Stipulation ¶ 5.C.
	<i>Adequate lighting not provided.</i>	3	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>	1	Environmental Order ¶ 11, Sanitation Stipulation ¶ 5.A.
Plumbing	<i>Hot water not provided.</i>	0	Sanitation Stipulation ¶ 5.A.
	<i>Plumbing system not properly installed or maintained. System pressure inadequate.</i>	3	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>	0	Sanitation Stipulation ¶ 2
Vermin and Weed Control	<i>Vermin control inadequate. Harborage or conditions conducive to vermin exist.</i>	4	Sanitation Stipulation ¶ 5.A.

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Within the groups of violations, the DOHMH inspectors noted 112 violations in the following *Benjamin* categories:

<i>Benjamin</i> Finding Category	Count of Violation
chronic pooling of water/chronically wet walking surfaces	4
fixture constantly running/dripping	3
lighting not maintained	3
organic soil accumulations	7
surfaces not smooth and easily cleanable	61
unclean to sight	8
ventilation	11
vermin	16

<i>Benjamin</i> Finding Category	Facility	Area	Violation	
<i>chronic pooling of water/chronically wet walking surfaces</i>	AMKC	Quad Lower 4	waste water on floor in janitor's closet	
	EMTC	Intake	accumulation of liquid in pen #2	
	NIC	Dorm 2C	"stagnant pool of water" in janitor's closet	
	RMSC	Infirmary	accumulation of water in dorm area	
<i>fixture constantly running/dripping</i>	AMKC	Main Intake	ceiling pipe leaking waste water into plastic container	
	RNDC	Intake	water leaking from hose attached to faucet into plastic bin	
		Mod 2UN	leaking faucet opposite janitor's closet	
<i>lighting not maintained</i>	VCBC	3BA	inoperable light near bed #6	
			inoperable light near bed #16	
			inoperable light near bed #42	
<i>organic soil accumulations</i>	GRVC	1A	"moldy" ceiling in shower area	
			"moldy" walls in shower area	
		2A	"moldy" ceiling in shower area	
			"moldy" doors in shower area	
	RNDC	3A	"mold build-up" in shower stall #2	
		Mod 1N	"black mildew" on shower walls	
<i>surfaces not smooth and easily cleanable</i>	AMKC	Mod 1S	"mildew" on shower walls	
		Quad Lower 3	peeling paint on ceiling in common area	
		Quad Lower 4	peeling paint on ceiling in common area	
		Quad Lower 5	peeling paint on ceiling in shower area	
		Quad Lower 6	peeling paint on ceiling in common area	
		Quad Upper 4	peeling paint on ceiling in cell #2	
		EMTC	7 Main	peeling paint on dorm ceiling
				cracked dorm ceiling
				rusty shower ceiling
			7 Upper	rusty shower ceiling
	8 Main		rusty shower ceiling	
			missing floor tiles at corridor	
	8 Upper		peeling paint on dayroom ceiling	
			peeling paint on dorm ceiling	
	GRVC		peeling paint on wall	
		1A	rusted doors in shower area	
	2A	rusted doors in shower area		

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<i>Benjamin Finding Category</i>	<i>Facility</i>	<i>Area</i>	<i>Violation</i>
			rusted ceiling in shower area
			missing 15 - 20 tiles in dayroom
	3A		20 - 30 tiles missing in shower area
			tiles broken in shower area
	3B		peeling paint on shower floor
	Main Intake		20 - 30 tiles missing at pen #5
	NIC	Annex Intake	missing ceiling tiles
		Dorm 1	peeling paint on sleeping area ceiling
			peeling paint on sun room ceiling
			peeling paint on sleeping area wall
			peeling paint on toilet area wall
			peeling paint on toilet area ceiling
			peeling paint on shower area wall
			peeling paint on shower area ceiling
	Dorm 2B		peeling paint on sleeping area ceiling
	Dorm 2C		peeling paint on sleeping area ceiling
			peeling paint on sun room ceiling
	Dorm 3		peeling paint on sleeping area ceiling
			peeling paint on sleeping area wall
			peeling paint on toilet area wall
			peeling paint on toilet area ceiling
			peeling paint on shower area wall
			peeling paint on shower area ceiling
			broken floor tiles in sleeping area
	RNDC	Mod 1N	peeling paint on dayroom ceiling
			"peeling" plaster on dayroom ceiling
			peeling paint on shower walls
		Mod 1S	peeling paint on shower walls
			peeling paint on ceiling over beds #20, #15, #10, and #11
		Mod 2UN	peeling paint on shower walls
			peeling paint on ceiling above beds #1, #5, #6, #15, and #21
			"peeling" plaster on ceiling above beds #1, #5, #6, #15, and #21
			"ceiling over bed #12 hanging down"
		Mod 2US	peeling paint on dayroom ceiling
			peeling paint on shower walls
			peeling paint over all beds
			"peeling" plaster over all beds
	VCBC	3BB	peeling paint on wall by telephone area
		Intake	janitor closet - peeling paint on door
			pen #7 - peeling paint on wall
			pen #14 - peeling paint on wall
			broken floor tiles in front of janitor's closet
		3CB	janitor closet - peeling paint on door
	WF	Sprung 7	broken flooring outside cell #2 and cell #4
<i>unclean to sight</i>	AMKC	Quad Lower 6	uncovered garbage bin filled with garbage in dayroom
	EMTC	7 Main	stained dayroom ceiling
		Intake	floor littered with debris in pen #6
			floor littered with debris in pen #7
	VCBC	3BA	inoperable sink #1
			inoperable toilet #5

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<i>Benjamin Finding Category</i>	<i>Facility</i>	<i>Area</i>	<i>Violation</i>
		3BB	inoperable toilet #2
			inoperable urinal #1
<i>ventilation</i>	GRVC	2A	all vents "dusty and clogged"
		3A	dusty vents in shower area
		3B	dusty vents in shower area
	RMSC	South 2A	dusty vent in janitor's closet
	VCBC	3BA	dusty ceiling vent in dayroom
			dusty vent in janitor's closet
		3BB	dusty ceiling vent in dayroom
			dusty vent above bed #44
			dusty vent above bed #9
			dusty vent above bed #5
			3CB
<i>vermin</i>	AMKC	Main Intake	fruit flies in common area
		Quad Lower 3	fruit flies in toilet area
			fruit flies in cell #11
			house flies in common area
		Quad Lower 4	fruit flies in shower area
		Quad Lower 6	fruit flies in dayroom
			fruit flies in common area
			house flies in shower area
		Quad Upper 4	house flies near sink
			house flies in dayroom
			fruit flies in cell #2
			fruit flies in cell #15
	RNDC	Mod 1S	gnats in janitor's closet
WF	Sprung 8	approximately 30 ants by cell #13	
		approximately 10 fruit flies by cell #13	

Per DOC Directive #3900R, EHOs “[c]oordinate visits of the DOHMH Public Health Sanitarian to the facility and escorts sanitarian during scheduled visits”; “[p]repares draft responses to the monthly DOHMH sanitarian report”; and “[m]aintains a permanent file of all required reports, including but not limited to . . . Monthly Department of Health and Mental Hygiene Sanitary Report and Response as required by Directive #3905R, Environmental Health: Inspection & Report Protocol.” In response to the draft of this report, the Defendants, on October 13, submitted a written table of recommendations to abate the violations observed by the DOHMH inspectors during June 2023. Exhibit A to Defs.’ resp. However, the measures to be

taken are generic policy recommendations that do not address the specific violations reported by the DOHMH inspectors. For example:

Inoperable toilet	If this is a cell, the incarcerated individual must be removed until the toilet is repaired. A work order must be submitted, and maintenance must repair the toilet.
Inoperable sink	If this is a cell, the incarcerated individual must be removed until the sink is repaired. If in a common area, a work order must be submitted, and maintenance must repair the sink
Inoperable lights	If this is a cell, the incarcerated individual must be removed until the light is repaired. If in a common area, a work order must be submitted for any inoperable light, and maintenance must replace the light bulb. If that does not abate the deficiency, the electrician must determine what is causing the issue and repair the deficiency.

OCC believes that the recommendations provided by the Department do not reflect the spirit of the Court's order that "the [DOC] shall provide [OCC] with a description of any ameliorative actions taken, planned or recommended." Environmental Order at ¶ 6–6a. Aside from the fact that there are no descriptions of any ameliorative actions that were actually taken or even planned, the Department should, at the very least, know whether the violations are in common areas or cells, thereby holding individuals in uninhabitable conditions.

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 (recently closed), EMTC, GRVC, NIC, OBCC, 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 later posed several questions and requested 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 remains ongoing noncompliance. OCC reiterates some of its recommendations from the previous monitoring periods and continues to urge their implementation as practical and beneficial. "Plaintiffs strongly urge the Department to adopt all of OCC's recommendations regarding sanitation. . . . [and] highlight the recommendation that the Department conduct an updated, comprehensive training for EHOs and PHSs focused on *Benjamin* sanitation inspections." Pltfs.' resp. at 3. The Defendants' provided responses to OCC's recommendations (from Defs.' resp. at 7), which follow each recommendation below; however, it is apparent that the Department has no intention of addressing PHS performance deficiencies as any mention of refresher training for them is conspicuously absent from the Defendants' responses while additional training for EHOs is clearly accepted.

- **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.

Response: The PHSs are registered sanitarians with different skill sets. The PHSs inspect housing areas monthly, while the EHOs captains do so weekly. EHU is working with the EHO captains to ensure the weekly reports are descriptive and contain relevant information observed during the inspections. But it was not intended for both reports to contain the same level of information, and so we do not see this as a deficiency. Please note that the EHO captains also have other responsibilities in addition to their inspection duties.

- **Conduct an updated in-service training for EHOs and PHSs focused on the *Benjamin* sanitation inspections.** There has been noticeable improvement with the inspection and reporting of *Benjamin* deficiencies by the EHOs in some facilities; however, there remains a significant disparity in the quality of work produced by the various EHOs; moreover, the reports do not align with the Environmental Order at ¶ 3a-c, which requires EHOs to “be provided with appropriate training and experience,” to inspect facilities, and to “submit . . .

reports of all such inspections, including a description of any ameliorative actions taken, planned[,] or recommended.” Additionally, the PHS reports reflect inconsistent reporting of *Benjamin* violations among PHSs and sometimes by the same PHS across inspections. Consequently, the PHS reports also do not align with the protocols outlined in DOC Directives #3905R – Environmental Health: Inspection and Report Protocol, which sets forth DOC’s policy “to establish and maintain procedures for environmental health inspections and procedures for responses to inspection reports, which are consistent with consent decree mandates, court orders, laws, and regulations.”

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Response: The EHU intends to continue a refresher course for EHOs to address concerns raised by OCC.

- **Ensure that work orders are submitted as required by DOC Directive #3910R**
 - **Work Order Procedures 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.

Response: The DOC agrees, and under the auspices of DC Benn, has been

working on digitizing work orders.

- **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.

Response: DOC maintains its position that it is in compliance with the applicable portion of the Environmental Order requiring it to provide written responses for "actions taken, planned, or recommended."

[Plaintiffs' counsel] again emphasize that each individual sanitation violation, or each category of violations, cannot be viewed on its own. The violations reinforce each other, and they must be tackled together. Missing tiles and cracked and holey floors and walls, for instance, lead to pooling water and both conditions lead to vermin. (citations omitted). Damp conditions, obstructed or nonexistent vents, and inoperable windows allow mildew and mold to fester. (citations omitted). And, of course, missing or mislabeled cleaning supplies, inoperable Diversey dispensers, and languishing work orders preclude any cleaning from taking place. (citations omitted). In short, given the findings in previous OCC reports and the Department's failure to substantially change its practices to address them, the unconstitutional conditions described in the Draft Report are not surprising. And they are completely unacceptable.

Pltfs.' Resp. at 3.

B. VENTILATION

1. DEFENDANTS' VENTILATION CERTIFICATION

a. Defendants' Obligations

The Environmental Order (¶ 15 (a)) mandates that prior to May 15 of each year, the Department "shall inspect, test, and repair or replace to working order all ventilation systems" in the applicable 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 May 15 deadline for the

inspections and repairs of the Defendants’ ventilation equipment was modified to June 1 by order dated May 23, 2022—the Order re: Ventilation Certification.

b. Defendants’ Performance

The Department submitted its annual ventilation certification (covering AMKC, EMTC, GRVC, NIC, RMSC, RNDC, and VCBC)¹¹ to its counsel, OCC, and Plaintiffs’ counsel, on June 6, 2023, reporting that the majority of equipment was operational. OCC requested an update as to the status of the equipment that was not operational at the time of the certification, and on September 6, 2023, the Department confirmed that the equipment was repaired and is operational.

c. Defendants’ Compliance

The Defendants are in compliance with the ventilation certification requirements of the Environmental Order.

2. VENTILATION REPORTS

a. Defendants’ Obligations

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

¹¹ OBCC was closed at the time and was not included in the certification. It has since reopened and the Department submitted a report of the mechanical equipment inspection that was conducted prior to its re-occupancy.

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 at ¶ 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. 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. The April 2023 mechanical equipment inspection reports for all facilities were submitted on June 28, 2023 but there is no explanation for the missing EMTC January 2023 report. OBCC reopened during this monitoring period and, on September 6, 2023, the Department provided the mechanical equipment inspection conducted prior to re-occupancy. Overall, the collective reports indicated that most of the mechanical equipment was operational.

ii. Monthly Airflow Reading Reports

The January – March 2023 monthly airflow reading reports were submitted on May 4, 2023 for all facilities except EMTC, and the April 2023 airflow reading reports were submitted for all facilities including EMTC, on June 28. 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.¹² 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. Violations were distributed across facilities as noted in the table below.

Table 14 Ventilation Violations

Facility	Airflow Reading Reports Submitted (Months)	Locations Inspected (Count)	Violations (Count)	Violations (Percentage)
AMKC	January - April	305	133	44%
EMTC	April	20	15	75%
GRVC	January - April	260	66	25%
NIC	January - April	73	13	18%
RMSC	January - April	153	83	54%
RNDC	January - April	227	8	4%

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As with prior monitoring periods, the majority of violations included vents that were excessively dirty, dusty, dust-laden, or clogged (with dirt or paint), and in several instances, this resulted in an airflow reading of 0 cfm, as noted in the examples in the table below.

Table 15 Dirty/Clogged Vents – 0 cfm

Facility	Housing Area (inspection date)	Location	Airflow Reading (cfm)	Design Specs	Deficiency	Corrective Action	Anticipated Abatement Date	Date of Completion	New Reading (cfm)
AMKC	Dorm 3 Upper (1/25/23)	janitor exhaust	0	50	occluded w/dust	cleaned vent	not provided	2/8/23	73.21
AMKC	Dorm 3 Main (1/25/23)	janitor exhaust	0	50	occluded w/dust	cleaned vent	not provided	2/8/23	77.08
AMKC	Quad Lower 1 (2/22/23)	cell #17 exhaust	0	50	dust laden	cleaned vent	not provided	4/14/23	218.8
AMKC	Quad Lower 2 (2/22/23)	cell #29 exhaust	0	50	clogged w/dust	cleaned vent	not provided	4/14/23	95.17

¹² The Order re: Testing and Repair of Ventilation Systems also lists GMDC, MDC, and OBCC as facilities to be inspected; however, those facilities were closed to the *Benjamin* class. OBCC reopened during this monitoring period and is again subject to the ventilation orders. 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 did not initially apply; however, it does now and must be inspected and reported accordingly.

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Facility	Housing Area (inspection date)	Location	Airflow Reading (cfm)	Design Specs	Deficiency	Corrective Action	Anticipated Abatement Date	Date of Completion	New Reading (cfm)
AMKC	Quad Upper 2 (2/22/23)	cell #24 exhaust	0	50	partially clogged inside	cleaned vent	not provided	4/14/23	281.84
AMKC	Quad Lower 13 (4/26/23)	cell #5 exhaust	0	50	clogged w/paint	cleaned vent	5/31/23	5/29/23	85.58
AMKC	Quad Lower 7 (4/26/23)	cell #16 exhaust	0	50	clogged w/paint	cleaned vent	5/31/23	5/25/23	55.43
RMSC	East 3A (2/8/23)	shower exhaust	0	300	dusty vent	cleaned vent	3/7/23	3/7/23	356.4
RMSC	East 3A (2/8/23)	toilet exhaust	0	150	dusty vent	cleaned vent	3/7/23	3/7/23	155.17

In other instances, an airflow reading of 0 cfm was due to deficiencies with the mechanical equipment as illustrated in the table below.

Table 16 Mechanical Deficiencies – 0 cfm

Facility	Housing Area (inspection date)	Location	Airflow Reading (cfm)	Design Specs	Deficiency	Corrective Action	Anticipated Abatement Date	Date of Completion	New Reading (cfm)
AMKC	Dorm 3 Top (1/25/23)	shower exhaust	0	50	closed damper	opened damper	not provided	2/8/23	71.46
AMKC	Quad Upper 13 (3/22/23)	toilet exhaust	0	50	inoperable motor	replaced motor	4/30/23	4/26/23	136.08
EMTC	1 Main (4/25/23)	janitor exhaust	0	50	fan breaker tripped	reset breaker	5/31/23	5/15/23	210
EMTC	4 Upper (4/25/23)	shower/toilet exhaust	0	50	fan was inoperable	replaced bad motor	5/31/23	5/15/23	240
EMTC	2 Upper (4/25/23)	cell #24 exhaust	0	50	loose belt and pulley	adjusted belt and pulley	5/31/23	5/15/23	121
NIC	4 South (2/2/23)	bathroom exhaust	0	50	fire alarm	reset	2/28/23	2/2/23	324.4
NIC	6 South (4/7/23)	bed #9 supply	0	50	building management system down	system manually turned on	4/28/23	4/10/23	387
NIC	6 North (4/7/23)	bed #11 supply	0	50	building management system down	system manually turned on	4/28/23	4/10/23	520
RMSC	4 South A (3/8/23)	bed #33 supply	0	200	unit SV2 was down for repairs	abated	4/20/23	3/20/23	253
RMSC	4 South A (3/8/23)	bed #9 supply	0	200	unit SV2 was down for repairs	abated	4/20/23	3/20/23	227
RMSC	5 South A (3/8/23)	bed #9 exhaust	0	700	unit SV2 was down for repairs	abated	4/20/23	3/20/23	736
RNDC	Mod 4 Upper South (4/26/23)	bed #33 supply	0	50	broken fan belt	replaced belt	5/30/23	5/18/23	67.4

Mechanical equipment deficiencies were also responsible for “insufficient airflow” in GRVC 17A and 17B on January 31, 2023. The facility made adjustments in mechanical equipment room 19, which improved airflow in eight locations. Similarly, GRVC 7A, 7B, and 19A had “low airflow” on February 28, 2023 which improved after the facility adjusted the louvers.

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 February 2023 airflow deficiency report.

In GRVC, the facility determined there was no violation as the vent size was recorded incorrectly during the inspection. NIC 6 North had deficient airflow in the janitor closet because a bird was in the unit on March 17, 2023. The bird was removed the same day and the airflow improved.

iii. Airflow Deficiency Reports

The Defendants are required to provide 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 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. Correspondingly, to the airflow reports discussed above, the Defendants submitted airflow deficiency reports for January – March 2023 on May 4, 2023 for all facilities except EMTC, and the April 2023 airflow reading reports were submitted for all facilities including EMTC, on June 28, 2023. As

discussed above, 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, separated ducts, and mechanical issues, e.g., loose/broken belts, inoperable motors, and in the case of NIC—an inoperable Building Management System (BMS), which controls and monitors the HVAC system. The BMS problem at NIC is an ongoing issue that has spanned monitoring periods. “The Department has been working with the Department of Citywide Administrative Services ("DCAS") to upgrade several areas and install new BMSs. The work is scheduled to begin in January 2024. All current systems will continue to be monitored by DOC's stationary engineers.” Defs.’ resp. at 8.

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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 open dampers in several facilities; to adjust louvers in GRVC; to clean vents in several facilities; and to adjust belts and pulleys in EMTC. “The Department agrees that the sooner issues are abated, the better; it will continue efforts to do so.” Defs.’ resp. at 8. Beyond the delayed responses, the reports do not reflect the areas in which a vent is not provided or is obstructed, such as those indicated on the table immediately below.

Table 17 Vent not Provided

INSPECTION WEEK	FACILITY	AREA	LOCATION	OBSERVATION
1/8/23 - 1/14/23	AMKC	Quad Lower 15	janitor's closet	missing wall vent register
2/12/23 - 2/18/23	AMKC	Quad Lower 15	janitor's closet	wall vent missing, per note
1/1/23 - 1/7/23	EMTC	1 Main	shower	no vent
2/12/23 - 2/18/23	EMTC	1 Main	shower	no vent - Repeat 6
2/26/23 - 3/4/23	EMTC	1 Main	shower	no vent - Repeat 7

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INSPECTION WEEK	FACILITY	AREA	LOCATION	OBSERVATION
2/26/23 - 3/4/23	EMTC	1 Main	toilet area	no vent
5/28/23 - 6/3/23	EMTC	1 Main	shower area	no vent - Repeat 10
7/9/23 - 7/15/23	EMTC	1 Main	shower area	no vent provided
8/6/23 - 8/12/23	EMTC	1 Main	shower area	no vent - Repeat 12
1/1/23 - 1/7/23	EMTC	10 Main	janitor's closet	missing vent
1/15/23 - 1/21/23	EMTC	10 Main	janitor's closet	missing vent
1/22/23 - 1/28/23	EMTC	10 Main	janitor's closet	missing vent
1/29/23 - 2/4/23	EMTC	10 Main	janitor's closet	missing vent
1/8/23 - 1/14/23	EMTC	10 Main	janitor's closet	missing vent
2/12/23 - 2/18/23	EMTC	10 Main	janitor's closet	missing vent
2/19/23 - 2/25/23	EMTC	10 Main	janitor's closet	no vent - Repeat 6
2/19/23 - 2/25/23	EMTC	10 Main	janitor's closet	missing vent
2/26/23 - 3/4/23	EMTC	10 Main	janitor's closet	missing vent
2/5/23 - 2/11/23	EMTC	10 Main	janitor's closet	missing vent
3/26/23 - 4/1/23	EMTC	10 Main	janitor's closet	no vent - Repeat 7
5/14/23 - 5/20/23	EMTC	10 Main	janitor's closet	no vent - Repeat 9
5/28/23 - 6/3/23	EMTC	10 Main	janitor's closet	missing vent
2/19/23 - 2/25/23	EMTC	10 Upper	janitor's closet	no vent
3/19/23 - 3/25/23	EMTC	10 Upper	janitor's closet	no vent (work order submitted 3/23/23)
5/14/23 - 5/20/23	EMTC	10 Upper	janitor's closet	no vent (work order submitted 3/23/23) - Repeat 1
2/19/23 - 2/25/23	EMTC	11 Lower	janitor's closet	no vent
2/19/23 - 2/25/23	EMTC	11 Lower	janitor's closet	missing vent
2/26/23 - 3/4/23	EMTC	11 Lower	janitor's closet	missing vent
3/26/23 - 4/1/23	EMTC	11 Lower	janitor's closet	no vent - Repeat 1
2/26/23 - 3/4/23	EMTC	12 Main	janitor's closet	no vent
3/26/23 - 4/1/23	EMTC	12 Main	janitor's closet	no vent - Repeat 1
6/25/23 - 7/1/23	EMTC	12 Main	janitor's closet	no vent - Repeat 2
1/1/23 - 1/7/23	EMTC	2 Upper	janitor's closet	vent covered with a panel - Repeat 1
1/15/23 - 1/21/23	EMTC	2 Upper	janitor's closet	missing vent
1/22/23 - 1/28/23	EMTC	2 Upper	janitor's closet	missing vent
1/29/23 - 2/4/23	EMTC	2 Upper	janitor's closet	missing vent
1/8/23 - 1/14/23	EMTC	2 Upper	janitor's closet	missing vent
2/12/23 - 2/18/23	EMTC	2 Upper	janitor's closet	missing vent
2/19/23 - 2/25/23	EMTC	2 Upper	janitor's closet	missing vent
2/26/23 - 3/4/23	EMTC	2 Upper	janitor's closet	missing vent
2/5/23 - 2/11/23	EMTC	2 Upper	janitor's closet	vent covered with a panel - Repeat 2
4/30/23 - 5/6/23	EMTC	2 Upper	janitor's closet	missing vent
5/28/23 - 6/3/23	EMTC	2 Upper	janitor's closet	missing vent
1/1/23 - 1/7/23	EMTC	3 Main	janitor's closet	no vent/covered
2/12/23 - 2/18/23	EMTC	3 Main	janitor's closet	no vent/covered - Repeat 1
2/26/23 - 3/4/23	EMTC	3 Main	janitor's closet	no vent/covered - Repeat 2
1/1/23 - 1/7/23	EMTC	3 Upper	janitor's closet	missing vent
1/15/23 - 1/21/23	EMTC	3 Upper	janitor's closet	missing vent
1/22/23 - 1/28/23	EMTC	3 Upper	janitor's closet	missing vent
1/29/23 - 2/4/23	EMTC	3 Upper	janitor's closet	missing vent
1/8/23 - 1/14/23	EMTC	3 Upper	janitor's closet	missing vent
2/12/23 - 2/18/23	EMTC	3 Upper	janitor's closet	missing vent
2/19/23 - 2/25/23	EMTC	3 Upper	janitor's closet	missing vent
2/26/23 - 3/4/23	EMTC	3 Upper	janitor's closet	missing vent

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INSPECTION WEEK	FACILITY	AREA	LOCATION	OBSERVATION
2/5/23 - 2/11/23	EMTC	3 Upper	janitor's closet	missing vent
4/30/23 - 5/6/23	EMTC	3 Upper	janitor's closet	missing vent
5/28/23 - 6/3/23	EMTC	3 Upper	janitor's closet	missing vent
2/19/23 - 2/25/23	EMTC	9 Lower	janitor's closet	no vent (work order submitted 11/15/22, 2/24/23) - Repeat 4
2/26/23 - 3/4/23	EMTC	9 Lower	janitor's closet	missing vent
3/19/23 - 3/25/23	EMTC	9 Lower	janitor's closet	no vent (work order submitted 11/15/22, 2/24/23) - Repeat 5
4/30/23 - 5/6/23	EMTC	9 Lower	janitor's closet	missing vent
5/28/23 - 6/3/23	EMTC	9 Lower	janitor's closet	missing vent
1/15/23 - 1/21/23	NIC	2A	storage	no vent
2/12/23 - 2/18/23	NIC	2A	storage	no vent provided - Repeat 7
3/12/23 - 3/18/23	NIC	2A	storage	no vent - Repeat 8
1/15/23 - 1/21/23	NIC	3A	storage	no vent
2/12/23 - 2/18/23	NIC	3A	storage	no vent provided - Repeat 7
7/23/23 - 7/29/23	NIC	3A	storage	vent not provided
3/12/23 - 3/18/23	NIC	3B	storage	no vent - Repeat 8
7/23/23 - 7/29/23	NIC	3C	storage	no vent provided
1/1/23 - 1/7/23	NIC	4 South	storage	no vent
2/5/23 - 2/11/23	NIC	4 South	storage	no vent - Repeat 7
3/5/23 - 3/11/23	NIC	4 South	storage	no vent - Repeat 8
7/9/23 - 7/15/23	NIC	4S	storage	no vent
8/6/23 - 8/12/23	NIC	4S	storage	no vent
1/1/23 - 1/7/23	NIC	5 North	storage	no vent
2/5/23 - 2/11/23	NIC	5 North	storage	no vent - Repeat 7
3/5/23 - 3/11/23	NIC	5 North	storage	no vent - Repeat 8
1/1/23 - 1/7/23	NIC	5 South	storage	no vent
2/5/23 - 2/11/23	NIC	5 South	storage	no vent - Repeat 7
3/5/23 - 3/11/23	NIC	5 South	storage	no vent - Repeat 8
7/9/23 - 7/15/23	NIC	5N	storage	no vent
7/9/23 - 7/15/23	NIC	5S	storage	no vent
1/1/23 - 1/7/23	NIC	6 North	storage	no vent
2/5/23 - 2/11/23	NIC	6 North	storage	no vent - Repeat 7
3/5/23 - 3/11/23	NIC	6 North	storage	no vent - Repeat 8
1/1/23 - 1/7/23	NIC	6 South	storage	no vent
2/5/23 - 2/11/23	NIC	6 South	storage	no vent - Repeat 7
3/5/23 - 3/11/23	NIC	6 South	storage	no vent - Repeat 8
7/9/23 - 7/15/23	NIC	6N	storage	no vent
8/6/23 - 8/12/23	NIC	6N	storage	no vent
8/6/23 - 8/12/23	NIC	6S	storage	no vent
8/6/23 - 8/12/23	NIC	Dorm 1	janitor's closet	no vent
7/9/23 - 7/15/23	NIC	Dorm 2B	janitor's closet	no vent
6/4/23 - 6/10/23	RNDC	5 C N	janitor's closet	missing vent

The same deficiencies have been reported repeatedly across monitoring periods,

albeit inconsistently. In addition to the lack of vents in janitor's closets, shower and

toilet areas, and storage locations, in EMTC, there is also no vent in certain sleeping areas, such as 4 Upper. As a result, there is no corrective action with an anticipated abatement date as required for deficiencies. Per DOC policy:

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).

Further, the Environmental Order at ¶ 15c requires Defendants to “ensure that all bathroom and shower areas are provided with functioning mechanical ventilation at all times.”

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iv. Monthly Intake Ventilation Reports

The reports of intake ventilation mechanical equipment inspections at AMKC, EMTC, GRVC, NIC, OBCC (closed at the time of the inspection reports, but now reopened), RMSC, RNDC, and VCBC, which are described immediately below, are required by the Am. Supp. Ventilation Order at ¶ 4b.

- *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 January - March 2023 were provided on May 4 for AMKC, GRVC, NIC, and RMSC along with EMTC reports for February and March 2023. On June 28, reports were submitted for AMKC, EMTC, GRVC, NIC, RMSC, RNDC, and VCBC. There is no explanation for the missing EMTC January report or the missing RNDC January, February, and March reports.

Previously, RNDC reports were not 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 in January 2023 and RNDC for January through March 2023. 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 GRVC examples below.

- In the GRVC Segregation Intake, the janitor’s closet exhaust was 44.472 cfm during the January 31, 2023 inspection and noted simply as “low flow,” which was “adjusted” on February 14, 2023 resulting in 50.55 cfm.
- Also, in the GRVC Segregation Intake during the January 31, 2023 inspection, the suicide prevention grille was “slightly occluded” at the cell #15 supply with 43.594 cfm. On February 14, the grille was cleaned and the louver adjusted for a new cfm of 70.875.

- In the GRVC Main Intake, the duct was “separated” during the April 25, 2023 inspection resulting in 46 cfm at the return in pen #14. The duct was repaired on May 22, 2023 and the new cfm was 81.

Although the majority of intake deficiencies were included on the general deficiency report, the lack of a vent in EMTC Intake pen #8 was not included on any of the deficiency reports.

c. Defendants’ Compliance

The Defendants have improved compliance with the collective ventilation orders and mandates, but remain out of compliance with providing all required reports and providing functioning mechanical ventilation at all times as required by the Environmental Order. Additionally, the 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 and prolonged delays in abating known deficiencies. The Court requires the weekly cleaning of ventilation registers (Environmental Order ¶ 15 f), which is clearly not happening when the cleaning of vents is scheduled weeks out from the observations of dirty, dusty, and clogged/occluded vents. In view of the foregoing, OCC and the parties sought to arrange an expert ventilation inspection of the various facilities; however, OCC’s expert has now retired and is no longer available to conduct the inspection. OCC is seeking a new ventilation expert. “The Department completely concurs with the value of an inspection, and awaits OCC’s selection of a new consultant.” Defs.’ resp. at 9.

3. OPERATIONAL WINDOWS

a. Defendants' Obligations

In addition to mechanical ventilation, "Defendants shall ensure that all windows that are designed to be opened are operational." Environmental Order at ¶ 15e.

b. Defendants' Performance

During the monitoring period, hundreds of windows were found to be inoperable with deficiencies such as listed in the examples below. (The occupancy of cells was not specified). Many of the inoperable windows remained unrepaired despite repeated reports of the same deficiency and resubmitted work orders, indicating significant delays in making repairs. Moreover, some of the deficiencies span monitoring periods. For example, the inoperable windows in the AMKC Dorm 3 Main and Dorm 4 Main sleeping areas were previously reported as examples in the OCC January–April 2020 and the September–December 2022 progress reports and in attachments for the parties' review in the January–April 2023 progress report along with the EMTC 4 Upper and 6 Lower and RNDC 2CN, 6 CN, and 6 US inoperable windows.

Table 18 Inoperable Windows

INSPECTION WEEK		FACILITY	HOUSING AREA	LOCATION	OBSERVATION
5/28/23	6/3/23	AMKC	Dorm 2 Upper	sleeping area	inoperable windows (work order submitted-date not specified)
5/28/23	6/3/23	AMKC	Dorm 3 Main	sleeping area	inoperable windows (work order submitted-date not specified)
5/28/23	6/3/23	AMKC	Dorm 4 Main	sleeping area	inoperable windows (work order submitted-date not specified)
4/30/23	5/6/23	AMKC	West 17LB	dayroom	inoperable window
4/30/23	5/6/23	AMKC	West 19LB	dayroom	inoperable window
4/30/23	5/6/23	EMTC	4 Upper	sleeping area	inoperable windows (work order submitted - date not specified)
5/28/23	6/3/23	EMTC	4 Upper	sleeping area	inoperable windows (work order submitted - date not specified)
5/28/23	6/3/23	EMTC	6 Lower	sleeping area	inoperable windows (work order submitted - date not specified)
5/28/23	6/3/23	EMTC	6 Lower	sleeping area	inoperable windows (work order submitted - date not specified)
4/30/23	5/6/23	RNDC	2 C N	dayroom	two windows inoperable (work order submitted - date not specified)
4/30/23	5/6/23	RNDC	2 C N	dayroom toilet	window inoperable (work order submitted - date not specified)

INSPECTION WEEK		FACILITY	HOUSING AREA	LOCATION	OBSERVATION
5/28/23	6/3/23	RNDC	2 C N	dayroom	two windows inoperable (work order submitted - date not specified)
5/28/23	6/3/23	RNDC	2 C N	dayroom toilet	window inoperable (work order submitted - date not specified)
4/30/23	5/6/23	RNDC	2 C S	dayroom toilet	window inoperable (work order submitted - date not specified)
5/28/23	6/3/23	RNDC	2 C S	dayroom toilet	window inoperable (work order submitted - date not specified)
4/30/23	5/6/23	RNDC	5 U N	cell #6 (unk)	inoperable window knob (work order submitted - date not specified)
5/28/23	6/3/23	RNDC	5 U N	cell #6 (unk)	inoperable window knob (work order submitted - date not specified)
4/30/23	5/6/23	RNDC	6 C N	cell #17 (unk)	window broken (work order submitted - date not specified)
4/30/23	5/6/23	RNDC	6 C N	cell #8 (unk)	window broken (work order submitted - date not specified)
5/28/23	6/3/23	RNDC	6 C N	cell #17 (unk)	window broken (work order submitted - date not specified)
5/28/23	6/3/23	RNDC	6 C N	cell #8 (unk)	window broken (work order submitted - date not specified)
4/30/23	5/6/23	RNDC	6 U S	dayroom toilet	window inoperable (work order submitted - date not specified)
5/28/23	6/3/23	RNDC	6 U S	dayroom toilet	window inoperable (work order submitted - date not specified)

c. Defendants' Compliance

The Defendants are not in compliance with the Court's mandate that "all windows that are designed to be opened are operational."

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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 of 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. (The occupancy of the cells was not specified.)

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Table 19 Lighting not Maintained

INSPECTION WEEK	FACILITY	HOUSING AREA	HOUSING TYPE	LOCATION	OBSERVATION	
5/28/23	6/3/23	EMTC	1 Main	dorm	sleeping area	inoperable lighting (WOS - date not specified)
4/30/23	5/6/23	EMTC	3 Upper	cell	cell #5 (unk)	inoperable lighting
4/30/23	5/6/23	EMTC	3 Upper	cell	cell #19 (unk)	inoperable lighting
4/30/23	5/6/23	EMTC	5 Main	dorm	dayroom	inoperable lighting
5/28/23	6/3/23	EMTC	5 Upper	dorm	sleeping area	inoperable lighting (WOS - date not specified)
5/28/23	6/3/23	EMTC	5 Upper	dorm	dayroom	inoperable lighting (WOS - date not specified)
4/30/23	5/6/23	EMTC	7 Lower	dorm	sleeping area	inoperable lighting
5/28/23	6/3/23	EMTC	7 Lower	dorm	sleeping area	inoperable lighting (WOS - date not specified)
4/30/23	5/6/23	EMTC	8 Upper	dorm	dayroom	inoperable lighting
5/28/23	6/3/23	EMTC	9 Upper	dorm	sleeping area	inoperable lighting (WOS - date not specified)
5/28/23	6/3/23	GRVC	19B	cell	dayroom	three lights inoperable (WOS 5/24/23)
4/30/23	5/6/23	GRVC	4A	cell	cell #8 (unk)	inoperable lighting (WOS 5/2/23)
4/30/23	5/6/23	GRVC	4A	cell	cell #9 (unk)	inoperable lighting (WOS 5/2/23)
4/30/23	5/6/23	GRVC	4A	cell	cell #36 (unk)	inoperable lighting (WOS 5/2/23)
4/30/23	5/6/23	GRVC	4A	cell	cell #37 (unk)	inoperable lighting (WOS 5/2/23)
4/30/23	5/6/23	GRVC	4A	cell	cell #38 (unk)	inoperable lighting (WOS 5/2/23)
4/30/23	5/6/23	GRVC	4A	cell	cell #46 (unk)	inoperable lighting (WOS 5/2/23)
4/30/23	5/6/23	GRVC	4A	cell	cell #47 (unk)	inoperable lighting (WOS 5/2/23)
4/30/23	5/6/23	GRVC	4A	cell	cell #48 (unk)	inoperable lighting (WOS 5/2/23)
5/28/23	6/3/23	GRVC	5A	cell	cell #37 (unk)	light inoperable (WOS 5/24/23)
4/30/23	5/6/23	GRVC	9A	cell	cell #16 (unk)	inoperable light (WOS 5/2/23)

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INSPECTION WEEK	FACILITY	HOUSING AREA	HOUSING TYPE	LOCATION	OBSERVATION	
4/30/23	5/6/23	GRVC	9A	cell	cell #46 (unk)	inoperable light (WOS 5/2/23)
4/30/23	5/6/23	GRVC	9B	cell	cell #12 (unk)	inoperable light (WOS 5/2/23)
4/30/23	5/6/23	RMSC	East 2B	dorm	sleeping area	inoperable lights
4/30/23	5/6/23	RMSC	South 2B	dorm	dayroom	inoperable lights
5/28/23	6/3/23	VCBC	1B/A	dorm	not specified	five inoperable light fixtures (WOS 4/17/23)
5/28/23	6/3/23	VCBC	1B/B	dorm	dayroom	inoperable light (WOS 5/25/23)
5/28/23	6/3/23	VCBC	2A/A	dorm	not specified	inoperable light fixture
5/28/23	6/3/23	VCBC	2A/B	dorm	sleeping area	two light fixtures inoperable (WOS 5/17/23)

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

wherein inoperable lighting in cells, dormitory sleeping areas, and dayrooms were

reported, sometimes repeatedly, but not repaired timely.

85 D. FIRE SAFETY

- West Facility Fire Watch¹³

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

¹³ 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.

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.)

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 to Plaintiffs 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 18/07, 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.

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.’ June 12, 2023 resp. to OCC’s Jan – Apr 2023 Report on Environmental Conditions, at 10. (Plaintiffs’ June 9, 2023 letter referenced in the Defendants’ response immediately above is attached hereto for reference as Att. 2.) “Plaintiffs summarized their findings, and just like last year, they were disturbing: the post remains frequently abandoned, often for two consecutive shifts.” Pltfs.’ June 12, 2023 resp. to OCC’s Jan – Apr 2023 Report, 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.* The Defendants have not yet responded to these updated findings, but assert “the fire

pump, sprinkler system and pull-stations at WT have been tested and are operable. Additionally, even though the fire prevention equipment is operable at WF, the fire watch remains in place.” Defs.’ resp. at 9.

- NIC April 6, 2023 Fire (follow-up)

On April 6, 2023, the Department’s Fire Safety Unit (FSU) responded to a fire in NIC 2A, which remains closed due to the damage. Mario Antonetti, OCC’s fire safety expert, reviewed the circumstances and responses to the fire and found that although a responding correction officer attempted to extinguish the fire, the officer was unable to do so and called for an emergency evacuation. Mr. Antonetti provided a preliminary report, which was attached to OCC’s January – April 2023 Report on Environmental Conditions. On August 3, 2023, Mr. Antonetti provided an updated report (attached hereto as Att. 3), but is still awaiting requested documentation to finalize his report. “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.” Antonetti August 3, 2023 Report at 1. 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 length of time of the sprinkler impairment was not known.” *Id.* at 1-2.



photographs provided by Defendants

On June 30, 2023, OCC requested NIC Fire Safety Unit inspection records and Fire Marshal reports going back one year; however, on August 1, 2023, counsel for the defense provided OCC and plaintiffs' counsel with a memorandum from the facility's acting warden, which stated:

On Thursday, July 27, 2023, the Deputy Warden of Security Steven Ramkissoon and the assigned Fire Safety Officer [FSO] Jermain Phillips conducted an audit of the FSO post and were unable to locate the weekly Fire Safety reports ranging in dates from April 1, 2022 through April 30, 2023. Additionally, the assigned senior stationary engineer Mr. Richard Riley was unable to produce the requested monthly fire safety reports from April 1, 2022 through April 30, 2023.

Upon further inquiry, it was determined that the reports were not located because the required inspections were not conducted. The required inspections, pursuant to DOC Directive #1248, should have detected the closed sprinkler valve, per Mr. Antonetti. DOC Directive #1248 was promulgated "[t]o identify and correct all fire hazards and deficiencies within a facility." It requires that staff conduct weekly and monthly fire safety inspections of all areas to determine whether any fire hazards exist.

Weekly fire safety inspections involve an assessment of general conditions including regular removal of accumulated combustible refuse or rubbish, the clean and orderly maintenance of storage areas, and the proper storage of flammable or combustible

agents; a review of the fire evacuation plans including their posting and institutional orders applicable to the specific facility; a survey of exit areas to ensure they are not obstructed, that signs are illuminated, and have readily accessible keys; and the checking of cooking equipment for accumulated grease and the placement of regularly inspected automatic extinguishers. Electrical equipment is likewise checked to ensure they are in good condition and covered (e.g., electrical switches) or closed (e.g., fuse boxes) as the case may require. Additionally, an assessment of the storage and handling of flammable liquids is undertaken to ensure there are no possible ignition sources and that the correct types of fire extinguishers are present; and, lastly, a review of fire protection measures such as easily accessible fire extinguishers in all areas that need them, the availability of keys for pull boxes and hose cabinets. The monthly inspections further review fire protection measures, specifically sprinkler systems and their functioning, fire hoses, standpipes, fire alarm systems, and smoke detectors.

Since the required weekly and monthly fire safety inspections were not conducted and consequently, no reports of the conditions exist, OCC, on August 3, 2023, further requested the NIC annual audit report that should have been completed by the Fire Safety Unit as well as the weekly, monthly, and annual inspection records for all open facilities. Mr. Antonetti inquired about the requested documents on August 11, 2023 during a meeting with the parties and OCC followed up with the Defendants on August 25, 2023; however, the documents have not yet been provided.

Relatedly, by letter dated May 11, 2023, Plaintiffs followed up with Defendants for responses to questions arising from Mr. Antonetti's initial 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. Beginning July 3, Defendants responded to the letter and provided documents and photographs in fulfillment of Plaintiffs' request. Earlier, 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.' June 12, 2023 resp. to Jan – Apr 2023 Report at 4 FN2. In August, Defendants arranged a meeting with Plaintiffs' counsel to review the video footage and resolve any concerns. The parties were able to resolve most of the discrepancies, but there are still some unexplained gaps in the video footage for which the parties await information from the Department's IT unit.

- Interim Plans of Correction

As reported last monitoring period, 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. Per the Defendants, the plans are moving forward for the 2024–2025 fiscal year and the Department’s contractors are actively working on Rikers Island. However, “[t]he plan[s] will be slightly modified in light of the closing of VCBC. The funding earmarked for that facility will now be redirected to NIC/West Facility.” Defs.’ resp. at 10.

III. COMPLAINTS

In addition to OCC's 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 and OCC have been meeting with counsel for the Defendants regarding OCC staffing and independent access to the Department's complaint system for OCC. On August 30, 2023, the Department posted a Teletype advertising for a correction officer to perform monitoring and clerical tasks for OCC.

During this monitoring period, the Legal Aid Society's Prisoners' Rights Project included OCC on fourteen complaints submitted to the Defendants, alleging the presence of vermin, uneven and damaged surfaces, inadequate ventilation, and unsanitary living conditions among other things. The DOC provided its investigation findings for seven of the complaints, listed below. Responses were not provided for the seven complaints from AMKC because "AMKC closed on July 12th." Defs.' resp. at

11.

- 5/19/23 Environmental Concerns, Decontamination Request, Steven Chirse, B&C 1412201541, NYSID 03658082P, NIC 6 South
- 5/23/23 Unsanitary Showers Report, Rene Ayarde, B&C 5412100832, NYSID 15169560L, RMSC

- 5/30/23 Unsanitary Environmental Concerns, Peter Dumas, B&C 2412300271, NYSID 08354476N, AMKC
- 5/30/23 Unsanitary Environmental Conditions Concern, Christopher Harris, B&C 3612300002, NYSID 13494938M, AMKC
- 6/2/23 DOC Misconduct Report, ID Request, Lack of Services, Environmental Concerns, Donovan Allen, B&C 3492301560, NYSID 12582536L AMKC 12 Mod
- 6/7/23 Environmental Concerns, Raudy Nunez, B&C 8252200958, NYSID 13382786Z, NIC
- 6/14/23 Unsanitary Environmental Conditions Concern, DOC Misconduct, Christopher Harris, B&C 3612300002, NYSID 13494938M, AMKC
- 6/14/23 Unsanitary Environmental Conditions, Peter Dumas, B&C 2412300271, NYSID 08354476N, AMKC
- 7/11/23 Unsanitary Conditions Report, Anonymous Individuals, AMKC Quad Upper 4
- 7/11/23 Urgent Report of Warm, Deteriorating Conditions, Peter Dumas, B&C 2412300271, NYSID 08354476N, AMKC
- 8/3/23 Report Unsanitary Housing Conditions, Lack of Services, Peter Dumas, B&C 2412300271, NYSID 08354476N, OBCC 3 Upper
- 8/15/23 Report of Environmental Concerns, Raudy Nunez, B&C 8252200958, NYSID 13382786Z, NIC
- 8/24/23 Report of Environmental Concerns, Jose Colon, B&C 3492301899, NYSID 01174680Z, OBCC
- 8/24/23 Report of Environmental Hazards, John Horn, B&C 3492203030, NYSID 12039502Y, OBCC

Five of the seven complaints were partially substantiated for peeling paint, presence of vermin (mouse droppings, drain flies, gnats), and unsanitary showers among other things, and work orders were submitted. Complaints about a leaking pipe, water temperature, asbestos, poor ventilation, and mold were not substantiated. The complaints that were investigated were investigated timely and thoroughly.

This concludes OCC's summary of the May–August 2023 monitoring period.

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REPORT ON ENVIRONMENTAL CONDITIONS

May–August 2023

Dated this 3rd day of November 2023

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