

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JAMES BENJAMIN, et al.,

Plaintiffs,

-against-

MARTIN F. HORN, et al.,

Defendants.
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**SUPPLEMENTARY ORDER RE:
REPAIR AND RENOVATION OF
VENTILATION SYSTEMS**

75 Civ. 3073 (HB)

Hon. HAROLD BAER, JR., District Judge:

WHEREAS in 2001, this Court found, affirmed by the Court of Appeals for the Second Circuit, that the New York City jails suffered constitutionally inadequate ventilation; and

WHEREAS the Court in its Order on: Environmental Conditions (April 26, 2001), at ¶15(a, c), ordered Defendants to inspect, test and repair or replace to working order all ventilation systems in RNDC, GMDC, RMSC, GRVC, NIC, OBCC, MDC, AMKC mental observation areas and the intake areas of BKIID and QHD (the “covered areas,”), to certify having done so by May 15 of each year, and to maintain those systems in good working order, and to ensure that all bathroom and shower areas are provided with functioning mechanical ventilation at all times; and

WHEREAS Defendants did not comply with these requirements, and more than seven years later many parts of the jails’ ventilation systems are not in working order and/or require repair or replacement, leaving the constitutional violation uncorrected; and

WHEREAS Defendants have acknowledged the need for a comprehensive ventilation remediation plan, and have submitted a plan on September 17, 2007, for remedial measures that are expected to be completed by the end of 2011; and

WHEREAS the Office of Compliance Consultants has retained an expert consultant on ventilation, Lawless & Mangione, LLP (“L&M”), which has inspected a number of jails and has made observations of ventilation conditions and recommendations for corrections of deficiencies, and has stated that Defendants’ plan is generally consistent with L&M’s recommendations, but that it should be assessed by an outside consultant upon completion; and

WHEREAS on July 22, 2008 Plaintiffs moved for further relief with respect to ventilation in the jails as a result of Defendants’ having failed to comply with the Court’s Order requiring them to maintain their ventilation systems in good repair;

It is therefore ORDERED that:

1. Assessment/Evaluation. Assessment of all existing ventilation equipment in the covered areas will be completed by March 31, 2009.

a. Members of the Ventilation Task Force teams (“VTFT”) assembled by Defendants shall inspect and rate every piece of heating ventilation equipment in their assigned facilities and determine if each unit can be repaired, must be replaced, or is acceptable. No piece of equipment shall be deemed acceptable unless it is providing air-flow consistent with design specifications.

b. In order to properly inspect and assess all units providing heating and ventilation to the covered areas, the VTFT will also:

1) Verify that all ductwork access doors are in place and safely secured. In order to make sure such doors are not inadvertently left open, all access doors shall be top-hinged in new construction so the doors will default to the closed position.

2) VTFT members, or other persons designated by the Defendants, shall also clean all supply and exhaust air outlets, grilles and ducts, and remove all obstructions by March 31, 2009.

3) After cleaning the equipment and making any repairs possible at that time, the VTFT member shall confirm their repairs by taking new airflow readings.

2. Repair/Replacement. The VTFT shall repair units, replace belts/bearings, motors, etc., as necessary, lubricate equipment, clean coils, adjust pulleys, catalogue all pieces of equipment, trace the dampers to ensure they are in the appropriate position (dampers should be in full "open" position), and ensure that all units are properly labeled. Within two weeks of receipt of the assessment of the equipment in each housing area and its bathrooms, the Supervising Senior Stationary Engineer will determine whether the unacceptable units can be repaired or upgraded or must be replaced. Defendants shall promptly schedule the repair work and order replacement units. Replacement or repair of the existing units that remained in unacceptable working order at the conclusion of the assessment shall be completed by September 17, 2010, except those that must be replaced through capital projects, which shall be completed by the end of 2011. In addition to repair and replacement of the existing ventilation units found to be inadequate, the Department will carry out a series of in-house and capital projects, including:

a. Installation of air-conditioning to Building 10 and 12 at RMSC, including the female punitive segregation area, shall be completed and fully functioning by 30 days from the date of this Order.

b. All controller units in VCBC shall have new doors installed within 30 days from the date of this Order. VCBC will receive an upgrade to marine grade compressor units to be completed by September 17, 2010.

c. In the OBCC CPSU, reconfiguration of ductwork to ensure that ducts are not blocked, and the addition of ventilation registers in each shower, shall be completed by March 31, 2009.

d. Installation of air-condition throughout the RNDC clinic and mental health areas shall be completed by April 14, 2009.

e. Duct work extensions to the ceiling and the installation of ventilation registers in RNDC shall be completed by September 17, 2010, unless Defendants determine that this work must be performed through a capital project in which case it shall be completed by the end of 2011.

f. The chillers in the North Tower of MDC shall be replaced by October 31, 2009.

g. Automatic temperature control systems in all applicable covered areas shall be in good working order by the end of 2011.

h. By September 17, 2010, the VTFT shall install liquid filled manometers in each covered area to measure static pressure as an additional means of monitoring the ventilation systems.

i. NIC shall be completely air-conditioned, and suitable for heat-sensitive inmates by September 30, 2011.

j. If any additional projects are deemed necessary after the completion of the initial inspection and assessment of air flow and air distribution, plans for addressing these issues shall be submitted to this court, with copies to OCC and Plaintiffs' counsel, no later than September 30, 2009.

k. At that conclusion of work in each facility, Defendants shall ensure that the heating and ventilation systems are balanced using the services of a certified air balancing and testing firm.

3. Maintenance. The Department will develop a facility-based, unit-specific, preventive maintenance plan. The plan will be developed for each facility within six months after the initial assessment of each facility is completed, and no later than September 30, 2009. The plan shall

be entered into the Department's MP2 system and monitored by the VTFT. At a minimum this plan shall include replacement of belts every two months and cleaning of coils every six months.

a. Defendants shall ensure, by contract or otherwise, monthly on-site chemical treatment and testing for the cooling towers and heating and cooling systems. This includes but is not limited to chemical rust inhibitors and biocides.

b. Defendants shall ensure, by contract or otherwise, replacement of filters every two months in all covered areas. Filters will be changed more frequently if conditions require it, *e.g.*, where construction projects result in the need for more frequent changes.

4. Monitoring.

a. An outside balancing and testing firm will test the systems as the work is completed in each covered area to ensure that the systems are functioning properly. The reports of that firm will be produced to OCC and Plaintiffs' counsel as they become available.

b. The Monthly Intake Ventilation Reports, Heating and Ventilation Certification Reports, and Monthly Air Flow Reading Reports produced by the VTFT will be produced to OCC and Plaintiffs' counsel on a quarterly basis.

c. If Defendants believe that they cannot comply with any deadline contained in this Order, they shall in writing request an extension of time from the Court via OCC as soon as the need for an extension becomes apparent, and in any case no later than one week before the date stated in the Order.

d. The parties, with OCC's assistance, shall attempt to resolve in good faith all adjustments in completion dates and/or substantive provisions of this Order as are necessary, and shall consult with each other before seeking court approval for such changes. This Court shall be notified in writing of any agreed-upon changes. In the event that the parties are unable to reach agreement on extensions of the completion dates or changes in substantive provisions, the

appropriate party shall promptly and in writing request such extensions of time or changes in substantive provisions.

e. In any case in which Defendants fail to meet a deadline set forth herein, and have not obtained an extension of the deadline by agreement or from the Court, Defendants shall be fined \$100 per day for each day of noncompliance for a period of 14 days. If noncompliance persists after 14 days, the fine shall be increased to \$500 per day for a further period of 28 days. After the 28th day of noncompliance, the fine shall be increased to \$1,000 per day for each additional day of noncompliance. The amount of any fine may be adjusted by the Court after the 14th day of noncompliance, based upon a showing by the Defendant that the amount is unreasonable and oppressive in relation to the seriousness of the noncompliance; or upon a showing by the Plaintiffs that the amount is too small relative to the cost of compliance effectively to coerce Defendants' efforts to achieve prompt compliance; or upon any other factors that the Court in its discretion deems to be relevant. Defendants shall be excused from paying fines if they show that their noncompliance was occasioned by unforeseen events or circumstances beyond the control of the agencies and personnel of the Defendants.

f. Defendants shall apprise Plaintiffs and OCC of progress in the improvement projects. This will be accomplished by the submission of quarterly status reports, in letter form, reporting on compliance with the schedule during the preceding six months; Defendants shall make the certification beginning six months from the entry of this Order. Defendants shall submit to the Court within sixty (60) days from the date of this Order a proposed internal procedure for inspecting the ventilation units regularly and for responding to reports of malfunctions that will ensure that any deficiencies are promptly identified and corrected. A conference with this Court shall be arranged should a problem arise.

5. **Prior Orders.** This provisions of this Order are intended to supplement, and not to replace, the provisions of the Order on: Environmental Conditions (April 26, 2001) at ¶ 15, and of the Order re: Testing and Repair of Ventilation Systems (November 14, 2003), which remain in effect.

6. **Finding.** Based on the record made on this motion, as well as the prior record and findings in this proceeding, the Court finds that this Order, based on Defendants' proposed remedy, is narrowly drawn and is the least intrusive measure necessary to correct the constitutional violation previously found with respect to jail ventilation and will have no adverse impact on public safety or on the operation of the criminal justice system.

IT IS SO ORDERED.

New York, NY
January 28, 2009



U.S.D.J.