

attached to the consent order. Such stay would not take effect or would cease, and the Court's Orders would again become effective, if Defendants failed to comply substantially with that agreement. In approximately two years, the Court's Orders concerning environmental health and sanitation could be vacated upon Defendants' compliance with the agreement and satisfaction of the conditions described therein.

Nothing in the consent order would stay, terminate, or otherwise modify the Court's Orders concerning the procurement of food, kitchen equipment, maintenance and cleaning supplies and equipment, and medical and pharmaceutical supplies, or limit the Court's ability to continue to monitor and enforce Defendants' compliance with such Orders. In addition, Plaintiffs would retain the right to petition the Court for relief concerning environmental health and sanitation conditions that create an imminent threat of harm to the health, safety, or life of an inmate or group of inmates.

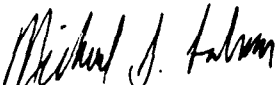
Notice and Comment Period

The parties believe that it would be appropriate to provide notice to the plaintiff class about the proposed consent order and agreement, and to permit members of the plaintiff class to submit comments to the Court. Counsel for Plaintiffs drafted such a notice, attached hereto as Exhibit B, and counsel will cause that notice to be posted at the prison simultaneously with the filing of this motion.

Following the two-week comment period provided for in the notice, the parties would be pleased to appear before the Court to explain the consent order further and answer any questions the Court might have.

Conclusion

For the foregoing reasons, the parties request that not sooner than March 13, 1997, the Court approve the proposed consent order attached hereto, after consideration of any comments submitted by members of the plaintiff class.




Peter J. Nickles # 53447
Alan A. Pemberton # 367108
Eric G. Lasker # 430180
Michael S. Labson # 447867
COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044
(202) 662-6000

Counsel for Plaintiffs

Dated: 2/26/97

Respectfully, submitted,



JO ANNE ROBINSON
Interim Corporation
Counsel, D.C.
MICHAEL E. ZIELINSKI
Deputy Corporation
Counsel, D.C.

RICHARD S. LOVE # 340455
Special Assistant to the
Corporation Counsel
441 Fourth Street, N.W.
10th Floor North
Washington, D.C. 20001
(202) 727-6248

Counsel for Defendants

Dated: 2/26/97

and maintenance personnel, shall be stayed in light of the agreement the parties have entered into regarding environmental health and sanitation matters, attached as Schedule A hereto. It is

FURTHER ORDERED that such stay shall not take effect or shall cease, and the aforementioned Orders regarding environmental health and sanitation shall remain or again become effective, if Plaintiffs show that Defendants have failed to comply substantially with the agreement attached hereto as Schedule A. In the event that the stay shall not take effect or shall cease, the parties shall retain all rights and defenses as they possessed prior to such time, and shall be permitted to reassert the rights and defenses they raised in connection with Plaintiffs' Motion for a Finding that Defendants are in Violation of the Court's Orders Concerning Environmental Health and Sanitation Conditions and for an Order Requiring Defendants to Adopt New Inspection and Abatement Procedures, Defendants' Motion for Termination of Prospective Relief, and the various responses and replies thereto. It is

FURTHER ORDERED that the aforementioned Orders regarding environmental health and sanitation shall be vacated if Defendants show that the conditions described in Section III of Schedule A attached hereto have been satisfied. It is

FURTHER ORDERED that notwithstanding any other provision of this Order, nothing contained herein shall be

construed to stay, terminate, or otherwise modify the Court's Orders concerning the procurement of food, kitchen equipment, maintenance and cleaning supplies and equipment, and medical and pharmaceutical supplies, including the Orders of December 19, 1996, October 9, 1996, May 29, 1996, April 22, 1996, February 29, 1996, and February 6, 1996. In addition, notwithstanding any other provision of this Order, nothing contained herein shall be construed to limit the Court's ability to continue to monitor and enforce Defendants' compliance with these procurement Orders. It is

FURTHER ORDERED that notwithstanding any other provision of this Order, Plaintiffs shall retain the right to petition the Court for relief concerning environmental health and sanitation conditions that create an imminent threat of harm to the health, safety, or life of an inmate or group of inmates at the Central Facility. In the event that Plaintiffs petition the Court for such relief, notwithstanding any other provision of this Order, nothing contained herein shall be construed to limit Defendants' right to raise such defenses as they may have available.

IT IS SO ORDERED.

June L. Green
United States District Judge

Dated: _____

Copies to:

Alan A. Pemberton, Esq.
Covington & Burling
1201 Pennsylvania Ave., N.W.
P.O. Box 7566
Washington, D.C. 20044-7566

Richard S. Love, Esq.
Corporation Counsel
441 Fourth Street, N.W.
Washington, D.C. 20001

Grace M. Lopes, Esq.
Special Officer of the Court
1130 17th Street, N.W.
Suite 400
Washington, D.C. 20036

SCHEDULE A

AN AGREEMENT

The undersigned parties, the plaintiffs ("Plaintiffs") and the defendants ("Defendants") in Twelve John Does, et al. v. District of Columbia, et al., No. 80-2136 (D. D.C.) [hereinafter Twelve John Does], through their authorized counsel enter into the following agreement (the "Agreement").

WHEREAS, Plaintiffs and Defendants (the "Parties") wish to ensure that the District of Columbia's Central Facility in Lorton, Virginia (the "Central Facility") is sanitary, habitable and safe;

WHEREAS, the Parties disagree as to whether the Court's Orders in Twelve John Does regarding environmental health and sanitation conditions must be terminated in light of the Prison Litigation Reform Act of 1995, Pub. L. No. 104-134 (April 26, 1996);

WHEREAS, the Parties wish to avoid unnecessary litigation;

WHEREAS, the Parties agree that the Court's Orders in Twelve John Does regarding environmental health and sanitation conditions should be stayed upon Defendants' undertaking of certain actions to ensure that the Central Facility is sanitary, habitable and safe; and

WHEREAS, the Parties agree that the Court's Orders in Twelve John Does regarding environmental health and

sanitation conditions should remain stayed so long as Defendants continue to undertake certain actions.

NOW, THEREFORE, in consideration of the mutual undertakings and covenants contained herein, the Parties hereby agree as follows:

I. Initial Steps

1. Expert Assistance. Defendants shall obtain the assistance of appropriately qualified expert(s) (the "Expert" or "Experts"), to be selected by Defendants in consultation with Plaintiffs and the Special Officer of the Court in Twelve John Does (the "Special Officer"), to help them develop environmental health and sanitation standards and fire safety standards, formulate a housekeeping and preventive maintenance plan, conduct a needs assessment, respond to the needs assessment, and perform other tasks, as described below.

2. Standards. Within 90 days of the effective date of this Agreement, Defendants shall develop a set of standards designed to upgrade and maintain the Central Facility as a sanitary, habitable and safe institution. Defendants commit to comply with these standards. Defendants shall develop such standards for all significant areas of environmental health and sanitation, including but not limited to the following: plumbing, water supply and temperature, lighting, heating, ventilation, electrical, radiological equipment, solid waste management, insect and rodent control, housekeeping, mattresses, pharmaceutical services, medical

services, industries, noise control, accident and fire prevention and preparedness, food services, milk quality, building maintenance, and personal hygiene. Defendants shall consult with the Special Officer and Plaintiffs in developing such standards and solicit their review and comment.

3. Housekeeping and Preventive Maintenance Plan.

Within 150 days of the effective date of the Agreement, Defendants shall develop a housekeeping and preventive maintenance plan to upgrade and maintain the Central Facility as a sanitary, habitable and safe institution. Defendants commit to comply with the plan.

Such housekeeping and preventive maintenance plan shall provide for the staffing and training of staff needed to upgrade and maintain the Central Facility as a sanitary, habitable and safe institution. Such housekeeping and preventive maintenance plan shall further establish a regular inspection procedure to (1) monitor the conditions at the Central Facility for compliance with the standards described in Section I.2 above; and (2) review Defendants' abatement of deficiencies from one inspection to the next. The regular inspection procedure shall include a scoring system that rates the overall state of the environmental health and sanitation conditions at the Central Facility in comparison to the standards described in Section I.2 above. Defendants, in consultation with the Expert(s), Plaintiffs and the Special Officer, shall establish what constitutes a passing score for

the institution as a whole and for appropriate operational divisions.

Such inspections shall occur at least monthly. Defendants shall provide for sufficient staffing and training of the inspection teams to ensure that they are capable of ascertaining whether the Central Facility is sanitary, habitable, and safe. Defendants shall consult with the Special Officer and Plaintiffs regarding their housekeeping and preventive maintenance plan and provide them a copy of the plan for their review and comment.

4. Personnel Accountability. Defendants shall develop a personnel management system to ensure that assigned staff are adequately performing the task of making the Central Facility sanitary, habitable, and safe. Defendants shall further develop an enforcement system to correct the actions of those individuals not adequately performing their assigned tasks.

5. Independent Inspections. Defendants, in consultation with Plaintiffs and the Special Officer, shall arrange for an independent group of inspectors appropriately qualified in their respective disciplines to conduct periodic reviews of the conditions at the Central Facility and the adequacy of Defendants' own regular inspection and abatement process. Such independent review should be conducted by inspectors not employed by the Department of Corrections of the District of Columbia, and should occur at least annually.

Such independent inspections should include an overall inspection score for the institution as a whole and for appropriate operational divisions, similar to that described in Section I.3 above. Within 90 days of the effective date of the Agreement, Defendants shall notify Plaintiffs and the Special Officer which independent group Defendants have selected to conduct such inspections.

6. Procurement. Defendants shall procure the housekeeping, cleaning, and maintenance supplies, equipment and services needed to upgrade and maintain the Central Facility as sanitary, habitable, and safe, and develop a system to ensure that they maintain sufficient stores of such supplies and equipment. This provision shall be of the essence of this Agreement.

7. Needs Assessment. Within 120 days of the effective date of the Agreement, Defendants shall conduct a comprehensive inspection of the Central Facility to assess the current state of the Central Facility in comparison to the basic standards described in Section I.2 above. Defendants shall report their findings to Plaintiffs and the Special Officer.

8. Initial Response to Needs Assessment. Within 150 days of the effective date of the Agreement, Defendants shall develop a plan to remedy the deficiencies Defendants identified in the comprehensive inspection described in Section I.7 above. Defendants shall consult with the Special

Officer and Plaintiffs regarding the plan and provide them a copy of the plan for their review and comment.

9. Interim Compliance with Environmental Health and Sanitation Orders. At the same time that Defendants are undertaking the various steps provided for in this Section, Defendants commit to use their best efforts to comply with the Court's Orders in Twelve John Does regarding environmental health and sanitation, notwithstanding any stay of those Orders. Specifically, during the interim period until Defendants have implemented the measures set forth in Section I of this Agreement, Defendants commit to use their best efforts to satisfy the environmental health and sanitation standards in those Orders, as well as to conduct inspections and remedy violations identified by such inspections pursuant to those Orders. Defendants' failure to use their best efforts to comply with such Orders during such interim period shall constitute a material breach of this Agreement.

II. Ongoing Requirements

Defendants commit to comply with the requirements outlined in this Section. The Parties recognize and agree that it would be difficult to determine with certainty the damages arising from any breach of the provisions in this Section. The Parties also recognize and agree that any such breach could cause irreparable harm to Plaintiffs that cannot be adequately compensated solely through money damages. Therefore, if Defendants fail to comply with the requirements

in this section, they shall pay liquidated damages in the amounts specified below for particular requirements. The amounts are intended as damages and are not a penalty.

1. Regular Inspections. Defendants shall conduct regular inspections of the Central Facility, as provided for in the plan described in Section I.3 above.

For the first twelve months of such inspections, Defendants shall further report the results of each inspection to Plaintiffs and the Special Officer within 15 days of the completion of the inspection. After the first twelve months, Defendants shall report the results of inspections on a quarterly basis for the duration of this Agreement. All inspection reports shall include an overall inspection score, as described in Section I.3 above.

2. Abatement. Defendants shall abate any defect identified in a regular inspection conducted pursuant to the plan described in Section I.3 above within 45 days of the completion of the inspection. For a deficiency which Defendants cannot correct within 45 days of the completion of the inspection, Defendants must correct the deficiency within a reasonable time period. If Defendants fail to correct a major deficiency within 45 days of the completion of the inspection, they shall pay liquidated damages of \$500 per day per major deficiency for each day of delay, unless such delay is reasonable. A major deficiency is a deficiency that

imminently threatens a deprivation of the minimal necessities of civilized life.

3. Procurement. Defendants shall report to Plaintiffs and the Special Officer on the adequacy of their housekeeping, cleaning, and maintenance supplies and equipment at least every six months.

4. Staffing and Training. Defendants shall maintain sufficient staff and conduct adequate training so as to ensure that they substantially meet the standards identified in Section I.2 above and conduct the inspections provided by Section I.3 above.

5. Independent Inspections. Defendants shall conduct the independent inspections identified in Section I.5 above at least annually. Defendants shall provide the results of each independent inspection to Plaintiffs and the Special Officer within 30 days following the completion of the inspection. Defendants shall abate any defect identified in an independent inspection within 45 days of the independent inspection. If Defendants fail to correct a major deficiency (as defined in Section II.2 above) within 45 days of the completion of such an inspection, they shall pay liquidated damages of \$500 per day per major deficiency for each day of delay, unless such delay is reasonable.

6. Inspections by Plaintiffs' Counsel. Plaintiffs' attorneys may inspect areas of the Central

Facility at any time during regular business hours with reasonable notice to Defendants.

III. Termination

1. Initial Independent Expert Review. Within 1 year of the effective date of the Agreement, the Expert(s) described in Section I.1 shall conduct a review of the steps Defendants have taken under Sections I and II and report to Defendants, Plaintiffs, and the Special Officer on whether those steps are sufficient to ensure that the Central Facility becomes and remains sanitary, habitable, and safe (as measured under the standards adopted pursuant to Section I.2 above). Defendants commit to correct any deficiencies identified by the Expert(s), pursuant to the requirements of Section II.2 above. If the Expert(s) report that the Defendants have not taken sufficient steps to ensure that the Central Facility becomes and remains sanitary, habitable, and safe, the Expert(s) shall return one year later to conduct another review, and once every year thereafter until Defendants receive a passing review.

2. Follow-up Independent Expert Review. If Defendants receive a satisfactory report from the Expert(s) in Section III.1 above and receive two or more consecutive passing scores in the independent inspections described in Sections I.5 and II.5 above, where at least one of the independent inspections occurs after the inspection from the Expert(s), then the Expert(s) shall conduct another review of

the steps Defendants have taken (the "Termination Review") and report to Defendants, Plaintiffs, and the Special Officer. If the Expert(s) report that the Central Facility is sanitary, habitable, and safe (as measured under the standards adopted pursuant to Section I.2 above), and that Defendants have taken steps sufficient to ensure that the Central Facility will likely remain sanitary, habitable and safe, then this Agreement shall terminate and Defendants shall be entitled to apply to the Court in Twelve John Does for termination of the Court's Orders concerning environmental health and sanitation contained in (1) Section VI of the April 28, 1982 Final Settlement Agreement and Consent Decree; (2) paragraphs 13 through 21 of the August 18, 1993 Consent Decree Amending Final Settlement Agreement and Consent Decree; (3) Section 6 of the March 4, 1985 Consent Decree Amending Final Settlement Agreement and Consent Decree; and (4) the portion of the June 14, 1991 Consent Order regarding a preventive maintenance plan and maintenance personnel.

If, after conducting the Termination Review, the Expert(s) report that the Central Facility is not sanitary, habitable, and safe (as measured under the standards adopted pursuant to Section I.2 above), or that Defendants have not taken steps sufficient to ensure that the Central Facility will likely remain sanitary, habitable and safe, then Defendants shall correct any deficiencies identified by the Expert(s), pursuant to the requirements of Section II.2 above.

The Expert(s) shall not return to conduct a new Termination Review unless and until Defendants receive two further consecutive passing scores in the independent inspections described in Sections I.5 and II.5 above.

IV. Enforcement.

1. If Plaintiffs believe there has been a material breach of the Agreement, Plaintiffs shall so notify Defendants, and the Parties shall meet and confer regarding the alleged breach. The Parties agree that the Special Officer can make findings related to the enforcement of this Agreement, and such findings shall be presumed correct.

2. Following the meet and confer required by Section IV.1, Defendants shall within 15 days provide to Plaintiffs a statement (1) certifying that the alleged breach has been cured, or (2) denying the alleged breach or stating that it cannot or will not be cured, or (3) admitting the breach and providing a plan to cure the breach.

3. Except in the event of an emergency posing an imminent threat to the life or health of inmates at the Central Facility, Plaintiffs shall take no further action while awaiting the statement from Defendants required by Section IV.2, provided that if Defendants have not given Plaintiffs such statement within 15 days of the meet and confer, Plaintiffs may immediately proceed to seek relief from a court. In the event of an emergency posing an imminent threat to the life or health of inmates at the Central

Facility, Plaintiffs may immediately proceed to seek relief from a court.

4. If the Parties cannot agree to a consensual resolution of the matter, Plaintiffs may (1) seek a remedy for breach of contract under District of Columbia law in the Superior Court of the District of Columbia; or (2) seek to vacate the stay of the Court's environmental health and sanitation Orders in Twelve John Does. If the stay of the Court's environmental health and sanitation Orders in Twelve John Does is lifted, this Agreement shall automatically terminate in its entirety at such time.

5. Nothing in this Agreement shall be construed to limit Plaintiffs' right to petition the Court in Twelve John Does for relief related to environmental health and sanitation conditions that create an imminent threat of harm to the health, safety, or life of an inmate or group of inmates at the Central Facility. This Agreement shall not terminate if Plaintiffs seek such relief. Any relief Plaintiffs obtain shall be considered separate and apart from this Agreement. Nothing in this Agreement shall be construed to limit Defendants' defenses to any relief Plaintiffs' seek in Twelve John Does.

V. Damage Fund.

Any damages Defendants pay under this Agreement shall be paid to a fund to be administered by the Special Officer. The Special Officer shall authorize the expenditure

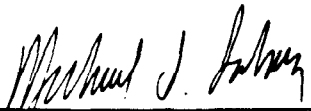
of such funds on Plaintiffs' behalf as she deems appropriate after consulting with the Parties.

VI. Effective Date.

The Agreement shall be effective once all of the Parties have signed the Agreement and the Court in Twelve John Does has entered the consent order to which this Agreement is attached as Schedule A.

VII. Modification.

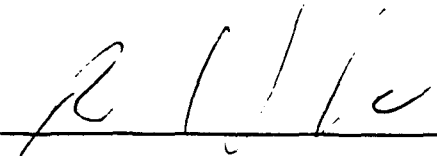
The Agreement may be modified only by a writing signed by all of the Parties.



Peter J. Nickles
Alan A. Pemberton
Eric G. Lasker
Michael S. Labson
COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044
(202) 662-6000

Counsel for Plaintiffs

Dated: 2/26/97



JO ANNE ROBINSON
Interim Corporation
Counsel, D.C.
MICHAEL E. ZIELINSKI
Deputy Corporation
Counsel, D.C.

RICHARD S. LOVE
Special Assistant to the
Corporation Counsel
441 Fourth Street, N.W.
10th Floor North
Washington, D.C. 20001
(202) 727-6248

Counsel for Defendants

Dated: 2/26/97

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE, N. W.

P.O. BOX 7566

WASHINGTON, D.C. 20044-7566

(202) 662-6000

February 26, 1997

**PROPOSED CONSENT ORDER REGARDING ENVIRONMENTAL HEALTH AND
SANITATION ISSUES IN *TWELVE JOHN DOES* v. *DISTRICT OF COLUMBIA***

In April 1996, Covington & Burling filed on behalf of the inmates at Central a motion to find Defendants in violation of the Court's Orders concerning environmental health and sanitation conditions. In response, the Defendants filed a motion to terminate all of those Orders under the recently enacted Prison Litigation Reform Act (PLRA). To resolve these matters, Covington & Burling and the Defendants have drafted a consent order and agreement, which they have submitted to the Court for its approval. Before determining whether or not to approve the agreement, we have asked the Court to consider comments from members of the plaintiff class.

Under the agreement, the District commits to take the following actions:

1. Obtain the assistance of an expert to improve the environmental health and sanitation conditions at Central (including the plumbing, water supply and temperature, lighting, heating, ventilation, insect and rodent control, fire safety, and kitchen maintenance);
2. Follow a housekeeping and preventive maintenance plan, including conducting regular inspections that score the overall state of the institution;
3. Maintain and train appropriate staff, and develop a personnel system to hold staff who do not perform their jobs accountable;
4. Conduct inspections by an independent group of qualified inspectors; and
5. Procure needed supplies and equipment.

The agreement would be enforceable as a contract, and the Defendants would be liable for specified damages for certain violations. The environmental health and sanitation provisions of the Twelve John Does consent decree would be stayed (put on hold) so long as Defendants comply with the agreement. If Defendants fail to comply with the agreement, Plaintiffs can dissolve the agreement and reinstate the environmental health and sanitation provisions of the Twelve John Does decree. If the Defendants improve conditions and keep conditions improved for approximately 2 years, the Court's Orders regarding environmental health and sanitation would be vacated.

Judge Green will keep the power to oversee the food, canteen, and other emergency procurement issues, which are the subject of separate orders. Plaintiffs could also still seek relief from Judge Green for emergency conditions.

If you wish to submit comments to the Court on the agreement, write to the Honorable June L. Green within the next 2 weeks at United States District Court, United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C. 20001.