

**United States Department of Justice
Federal Bureau of Prisons - Office of Internal Affairs**

Report of Investigation

OSC File Number DI-19-1050; DI-19-1051; DI-19-1082; and DI-19-1094

Subject: INVESTIGATION REGARDING A WHISTLEBLOWER DISCLOSURE THAT MANAGERS AT THE BUREAU OF PRISONS, METROPOLITAN DETENTION CENTER, BROOKLYN, NEW YORK, MAY HAVE ENGAGED IN CONDUCT THAT CONSTITUTES A VIOLATION OF LAW, RULE , OR REGULATION; GROSS MISMANAGEMENT; AND A SUBSTANTIAL AND SPECIFIC DANGER TO PUBLIC HEALTH AND SAFETY.

EXECUTIVE SUMMARY

This investigation was initiated based upon a whistleblower disclosure alleging that managers of the United States Department of Justice (DOJ), Federal Bureau of Prisons, Metropolitan Detention Center (MDC) Brooklyn, New York, may have engaged in conduct that constitutes a violation of law, rule, or regulation; gross mismanagement; and a substantial and specific danger to public health and safety. The Office of Special Counsel (OSC) received these allegations from whistleblowers: Supervisor of Education ED 1, Education Specialist ED 2, Teacher ED 3 and Teacher ED 4, all at MDC Brooklyn, who all consented to the release of their names.

In brief, the allegations involved the following:

- Since at least 2014, due to recurring plumbing leaks that have damaged the ceiling and wall, two classrooms located in the Education Department have been contaminated with mold.
- Management directed staff and inmates to perform improper remediation procedures without training or personal protective equipment (PPE). Despite repeated tests confirming mold contamination, management has failed to abate the mold and allowed unsanitary and hazardous conditions to persist in violation of Occupational Safety and Health Administration (OSHA) regulations, 29 C.F.R.1910.
- Despite the classrooms not being in use, the ventilation system circulates airborne mold spores, allergens, and pathogens to other areas of the facility, resulting in adverse health effects.

The investigation revealed that there was mold contamination in the Education Department beginning in 2014. Testing and remediation efforts did not begin until 2018. Allegations concerning direction to remove mold without PPE in violation of OSHA standards were not sustained. Allegations of circulating mold spores, allergens, and pathogens to other areas of the facility were not sustained. The investigation did find, however, that the Facility Manager and the Warden violated general OSHA standards concerning workplace hazards and Bureau of Prisons policies concerning sanitation and facility maintenance. Disciplinary action will be initiated against the Warden and the Facilities Manager. In addition, MDC Brooklyn has adopted a mold remediation plan, which will be monitored by the new warden at the facility and Regional Office staff.

INVESTIGATION SYNOPSIS

Supervisor of Education ED 1 was contacted by OIA Special Agent SA 1, via email, on April 24, 2019, in an attempt to set-up a phone interview. She was not available for the phone interview until May 3, 2019. On that date a phone interview was completed and ED 1 provided specific information about her allegations, including copies of Air Quality reports and pictures that had been taken by her staff. Following this interview it was determined by Special Agent SA 1 that interviews with the other whistleblowers would be conducted in-person, during an on-site investigation¹.

On May 8, 2019, an in-person interview was conducted by OIA Special Agent SA 1 with the Branch Chief of Occupational and Employee Health (OEH), BC 1. Under BC 1's leadership, OEH is responsible for providing and ensuring a healthy and safe work environment through compliance with federal law and regulation. Her office falls under the Assistant Director of the Health Services Division.

The OIA conducted an on-site investigation at MDC Brooklyn, NY, during the week of June 3, 2019. Based on interviews and inspections of physical areas of the institution, it was determined that additional time and an additional agent would be required to address information uncovered during the first on-site investigation. Multiple interviews of Bureau management officials both in-person and telephonically were conducted and documentary evidence was collected and reviewed from June to October of 2019. A second on-site investigation was conducted at MDC Brooklyn during the week of July 29, 2019 by OIA Special Agents SA 1 and SA 2.

No witnesses were offered confidentiality for their responses and no witnesses requested or were granted confidentiality for their response. No other investigations or reports from other investigations were relied upon as substitutes for the OIA investigation of this case.

¹ All of the whistle blowers were interviewed, in-person by Special Agent SA 1, during the week of June 3, 2019.

INVESTIGATION

Background:

The Metropolitan Detention Center (MDC) Brooklyn is located on the west side of Brooklyn, New York. It is adjacent to the South Brooklyn Marine terminal and overlooks the Upper Bay. MDC Brooklyn is a short-term facility which houses pretrial and unsentenced detainees for, on average, 120 to 180 days. Once detainees are sentenced they are moved to permanent prisons throughout the United States.

The Federal Bureau of Prisons manages its facilities and ensures compliance with local, state and federal health and safety regulations by two means. The first is the Facilities Department. Each prison has a Facilities Department headed by a Facilities Manager. The Facilities Manager is identified in Bureau policy as the person who manages all construction, repairs, improvement and maintenance at the institution. The Facility Manager also prepares the departmental budget, manages the personnel, and is responsible for compliance and monitoring of environmental requirements and regulations. The Facilities Manager reports to an Associate Warden, who in turn reports to the Warden of the institution. There is also a Regional Facilities Manager located at each regional office. While that person is not in the local chain of command, they act in an advisory role to the Warden, the institution's Facility Manager, and to the Regional Director. The Facilities Department at MDC Brooklyn has thirty-seven staff. They have six open positions that are not currently filled.

The second arm of the Bureau's facility management is the Environmental and Safety Compliance Department (ESCD).² Each prison has an ESCD, headed by an Environmental and Safety Compliance Administrator (ESCA).³ The Safety Manager is identified in Bureau policy as the person whose duty it is to advise the institution Warden on occupational safety, employee health, environmental compliance, and fire protection issues. They work at the department head level with other institution managers to achieve environmental and safety goals. When policy and regulations are not specific, they must exercise professional judgment to maintain a reasonable level of employee safety and health at the institution. They serve as the institution's technical resource for emergency response procedures involving work-related accidents, incidents, injuries, illness and deaths as well as similar emergencies. The role of the institution Safety Department is that of inspecting and advising regarding occupational standards, environmental compliance, fire protection, and life safety regulations, as well as all operational requirements. The Safety Manager reports to an Associate Warden, who in turn reports to the Warden of the institution. There is also a Regional Environmental and Safety Compliance Administrator, who is not in the local chain of command, but acts in an advisory role to the Regional Director, Wardens and the institution Safety Managers. The Safety Department at MDC Brooklyn has two staff and two open positions that are not currently filled.

In the Bureau's system, the Facilities Manager and the Safety Manager work in conjunction with one another and should be engaged in a collaborative effort. The Facilities Manager is responsible for the maintenance of all institution buildings and grounds. It is the Facilities

² Also known as the Safety Department.

³ The ESCA is also known as the Safety Manager.

Manager's duty to ensure all labor and work projects incorporate and comply with regulatory guidance provided by the Safety Manager.

Allegation 1. *Since at least 2014, due to recurring plumbing leaks that have damaged the ceiling and wall, two classrooms located in the Education Department have been contaminated with mold.*

Branch Chief of Occupational and Employee Health BC 1 stated that there is no current Bureau policy to deal with mold and that it is handled on a case-by-case basis. However, she said when discovered, the issue should be addressed as soon as possible. Corrective action would begin with fixing any water leaks that are the cause of the mold growth. Following that, removal of any material covered by mold is required and cleaning any surfaces that cannot be removed. She said no air testing is required. She said that OSHA does not have specific mold regulations; however, the standard of a "safe and healthy work environment" does apply to the Bureau and would include dealing with any mold. She said this is due to the possibility that mold may affect the health of employees and inmates.

Supervisor of Education ED 1 is one of the identified whistleblowers. She was interviewed and provided a sworn statement. ED 1 stated that in August 2014, there was a leak in the ceiling of the Education classrooms that was repaired by replacing ceiling tiles. She stated that in September of 2015, she sent a work order to have tiles replaced because they had become damaged and discolored by leaking water from above. She stated that in August 2016, there was a major leak in the Education classroom ceilings and that from that time on, there were leaks off and on. She said sometimes it would leak for days before being stopped. ED 1 stated that on March 8, 2017,⁴ Facilities employee FW 1⁵ was replacing ceiling tiles in the Education classroom and told her, Feliciano, and ED 4 that he saw mold in the ceiling. She further stated that within a few days she contacted Safety to look at the area. ED 1 said the Safety worker looked at the area and identified mold and told her that the room was not safe for staff. She identified the Safety worker as SW 1.⁶ ED 1 explained that she then had one of her staff send a work order which said mold had been found in the Education classroom. In addition, ED 1 said at that point she told her staff not to use the room any longer. She also stated that she notified one of the executive staff, either in person or by phone, that she was told by SW 1 not to use the room. She could not remember with which executive staff she spoke.

Education Work Orders sent to the Facilities Department to request repairs support ED 1's allegations and coincide with the dates she identified. The table below summarizes the Work Orders from the Education Department between August 6, 2014, and December 3, 2018.

⁴ Work orders 16094, 16102 and 16103. See below.

⁵ FW 1 left the Bureau on November 21, 2017.

⁶ SW 1 denied that he told anyone in Education that there was mold in the classrooms. A summary of his statement is below.

| WO # | Date Created | Date Activated | Date Completed | Approximate Time to Fix |
|-------------|---------------------|-----------------------|-----------------------|--------------------------------|
| 1027 | 8/6/14 | 8/18/14 | 9/20/14 | 3 weeks |
| 6172 | UNK ⁷ | 9/13/15 | 11/19/15 | 9 weeks |
| 11655* | UNK | 8/1/16 | 10/7/16 | 9 weeks |
| 12592 | 8/16/16 | 8/16/16 | 8/30/16 | 2 weeks |
| 16094 | 3/8/17 | 5/8/17 | 5/8/17 | 8 weeks |
| 16102 | 3/10/17 | 5/8/17 | 5/8/17 | 8 weeks |
| 16103 | 3/10/17 | 5/8/17 | 5/8/17 | 8 weeks |
| 17705 | 6/28/17 | 7/12/17 | 7/18/17 | 4 weeks |
| 21255 | 2/21/18 | 2/21/18 | 3/14/18 | 3 weeks |
| 24660 | UNK | 11/5/18 | 12/21/18 | 7 weeks |
| 24824 | UNK | 12/3/18 | 12/3/18 | UNK |

*It should be noted, ED 1 reported that in August 2016, there was a major leak in Education. Work Order 11655 indicates in the request, “Needs ceiling tiles replaced due to a major leak. Classroom cannot be utilized until fixed. Need it fixed ASAP. Thanks.” The Work Order was initiated on an unknown date, it was activated⁸ on August 1, 2016, and completed on October 7, 2016.

A monthly Safety Inspection memo⁹ dated August 2016, indicated that a Safety Inspection was conducted in Education during the week of July 5, 2016. The memo indicates, “Damaged ceiling and wall in class room needs repair – damp humid conditions are optimal for mold growth.”

Education Specialist ED 2 is one of the identified whistleblowers. ED 2 was interviewed and provided a sworn statement. ED 2 stated that from 2015 to 2016, she saw minor leaks in the ceiling of the Education classrooms. She said she would notify her supervisor, ED 1, when this occurred. ED 2 stated that someone from Facilities would usually replace any wet ceiling tiles. ED 2 explained that in the fall of 2016, she came to work one day and a section of ceiling tiles about ten feet by ten feet had fallen to the floor. She said water was still leaking at the time and the windows for the classroom were steamy. She stated later that week the tiles were replaced. ED 2 stated that from December 2016, to October 2017, she was on maternity leave. She said when she returned in November 2017, there was another occurrence when approximately five ceiling tiles in each classroom had fallen to the ground, near a wall that adjoined the two rooms. She said the water smelled like sewage. She explained that from that point on, there would be leaks in the classrooms randomly. ED 2 said that in February 2018, she noticed mold growing on the wall near the ceiling and new and old water stains, as well as, “some type of gelatinous mushrooms growing on the floor at the wall.”

⁷ In this chart, UNK indicates an unknown date/time, because Education Technician ED 5 could not recover the initial work order request.

⁸ When a work order is “activated,” a management-level employee in Facilities has assigned the work to be done.

⁹ This memo was sent to ED 1, with instruction that she submit a work order for all maintenance-related deficiencies.

Teacher ED 3 stated that there have always been problems with leaks at MDC Brooklyn. He said he started working in Education in August 2015, and at that time he saw water damage on the ceiling tiles. He further explained that in the summer of 2016, he noticed that water would periodically come down from the ceiling tiles and onto the wall adjoining the two Education classrooms. He said some days he would use the classroom and some days it would have too much water coming down or on the floor for him to use. ED 3 stated that in the fall of 2016, he came to work and found that a three foot by three foot section of ceiling tiles in the Education classroom had fallen to the floor and that water was still coming from the ceiling. ED 3 said it was at that time Safety Manager SM 1 came to the area and put up signs saying no one should use the classrooms due to presumed mold. ED 3 said prior to that he had not seen mold in the classroom but had smelled a musty smell. ED 3 stated that during the following year he continued to see water leaking from the ceilings and that during that time he saw, “a twelve inch mushroom-type growth” coming from the ceiling of the Education classroom. He said in the fall or winter of 2017, he saw ceiling tiles between the two classrooms fall down and throughout the year 2018, the classrooms remained closed.

Teacher ED 4 stated that in 2014, 2015, and 2016, there was leaking in the two classrooms and the library. He said this occurred yearly during those times. He said work orders were submitted and someone from Facilities would usually come and replace the tiles. ED 4 stated, “at some point,” he remembered seeing mold growing on the wall near the ceiling and mushrooms in the crack of the wall and floor. ED 4 was unable to give a definitive date for his observation. He stated that sometime in 2017, he remembered a three foot square section of ceiling tiles falling from the ceiling, and at that time he could see what looked like mold to him, up in the ceiling.

The staff at the institution responsible for the safety and maintenance of the prison facility were interviewed during the investigation. They provided the following information:

Safety Manager SM 1 was shown an email dated August 23, 2017, in which ED 1 told him that mold was in the Education classroom ceiling and the room was closed.¹⁰ He acknowledged that the email was sent to him; however, he said he did not remember the email. SM 1 said it is possible that he overlooked the email or that he received it and talked with ED 1 about her concern. However, he said he did not remember any conversation with her. SM 1 was shown a second email dated September 7, 2017, in which ED 1 asked again for SM 1’s assistance because Education classes were being cancelled.¹¹ He stated he did not remember receiving the email or having a conversation with ED 1 about mold in Education at that time. SM 1 stated he first became aware of mold in Education when he was cc’d on an email from ED 1 to Facility Manager FM 1 on April 16, 2018. SM 1 stated that ED 1 indicated in the email that there was an active leak in Education that had not been resolved. SM 1 explained that he responded to the email and addressed his comments to FM 1, expressing a concern with a leak and the growth of mold as a result of the water. SM 1 said he requested a corrective action plan from FM 1 with a due date of April 18, 2018. SM 1 said he did go to Education on or about April 16, 2018, to look at the situation. SM 1 stated he did not observe mold at that time, but he thought the ceiling

¹⁰ This email was provided by ED 1. It did not have a reply from SM 1.

¹¹ This email was provided by ED 1 and did not have a reply from SM 1.

above the tiles was not exposed. SM 1 said he sent a follow-up email to FM 1 on April 18, 2018, requesting a status update of the work. He said he received a response from FM 1 on April 19, 2018, in which FM 1 explained that showers on the floors above Education were found to be leaking and that he believed his plumbers had fixed the problem. SM 1 said that FM 1 indicated in the email he would have a new ceiling installed once it was confirmed that the water was completely stopped. SM 1 was shown an email dated April 19, 2018, in which he stated that, “I did not observe any significant presumed mold concerns.” SM 1 explained that what he meant in the email was that he saw mold but that it was less than 10 square feet.¹² SM 1 stated this was the first time he had observed the ceiling above the tiles, because usually Facilities workers would replace damaged material with new material in a short time. SM 1 said that Executive Assistant and Acting Associate Warden ES 1 was made aware of the mold problem at that time. SM 1 stated that in a previous year, around 2015 or 2016, he had observed Facilities staff working in the Education classroom. He said at that time he remembered being told that mold was present and the wall was being replaced. He explained that he did not see the mold but thought they were taking the correct action by replacing anything that had mold on it, and as a result he did not see the need to take any additional action at that time.

Environmental and Safety Compliance Administrator SW 1 is currently assigned to MCC New York. Prior to July 2018, he worked as an Environmental and Safety Compliance Specialist at MDC Brooklyn. SW 1 stated that he did see water leaks and ceiling damage in the Education classrooms at MDC Brooklyn. However, when shown a work order dated March 8, 2017, which noted “mold was detected by safety,” he stated he did not tell anyone that there was mold in the Education classroom. He explained that, based on the continuous water leaks, there were conditions that could lead to mold if left untreated. SW 1 stated he did not detect mold in the Education classrooms and that he never saw a mushroom-like material growing on the walls.

Facility Manager FM 1 stated that water leaks in Education had been a constant issue since he began work at MDC Brooklyn in 2006. He said that he was temporarily promoted to Acting Facility Manager from January 7, 2018, to April 29, 2018, and officially promoted to Facility Manager on July 22, 2018. He stated that at some point, he did see mold growing on the drywall in the Education classrooms but that he did not remember when it was. When shown a work order dated May 8, 2017,¹³ FM 1 said that he did not remember the specific work order; however, he said he did become aware of people in Education saying mold was there around that time. He said the previous Facility Manager was FM 2, but he explained that she was out often and eventually retired. FM 1 further explained that work order 16094 has him listed erroneously as the Facility Manager. He said this is because the computer system populates the current person in the position, at the time it is printed. He stated that sometime around May 2017, he became aware that there were concerns of mold in the Education classrooms and he discussed this with his supervisors when he assumed the job of Facilities Manager. FM 1 said he arranged for himself and his staff to have mold training. He said his workers applied waterproofing material to shower tiles on the floors above Education. He said he hired an outside plumber to come in and provide suggestions on ways to prevent future leaks. He said he purchased new

¹² The OSHA guide to mold indicates that mold over more than 10 square feet may require some additional measures for remediation.

¹³ Work order 16094 is sometimes referred to by the date 3/8/2017 (the date of the work request from Education) and sometimes by the date 5/8/2017 (the date that Facilities staff made it active).

ceiling material for the Education classrooms that is mold resistant, in the event water does leak. He said he plans to cut a French Drain in the shower areas above Education. FM 1 said he read the Mold Remediation Plan¹⁴ and emailed it to his staff and discussed it with them, in more than one meeting. FM 1 stated he was aware that staff in Education were worried about their health from mold, he was aware that mold could grow in ceiling areas and that mold can lead to health problems.

Regional Executive Assistant ES 1 was an Acting Associate Warden at MDC Brooklyn from November 2017, until July 2018. She stated that during her time as Acting Associate Warden she was responsible for the Facilities, Education and Safety Departments. ES 1 was shown the work order dated May 8, 2017, which indicated someone reported mold in the Education department. ES 1 stated she was not advised about mold by anyone at that time. She explained that in the beginning of 2017, there was an American Correctional Association (ACA) reaccreditation¹⁵ for MDC Brooklyn. ES 1 said that for six months prior, she had five teams of staff touring the area on a monthly basis and that it was their job to identify any possible issues for the upcoming ACA. She said that during that time they did not report any mold problems to her and that ACA determined that MDC Brooklyn was 100% compliant. ES 1 stated she first became aware of a mold problem in Education when she was cc'd on an email chain on April 19, 2018. She said ED 1 did not notify her prior to this email about mold in Education. ES 1 said in the email, FM 1 reported that the ceiling in Education had been removed and his staff were looking for leaks before replacing the ceiling. ES 1 said she did go to the Education Department and look at the area soon after she was made aware; however, she did not remember the exact date. She said she did not see anything that looked like mold to her at the time. ES 1 stated that on May 31, 2018, she sent an email to FM 1 requesting an update on the status of the Education classrooms. She said on June 8, 2018, she emailed FM 1 asking if they had figured out the leaks. She said on July 2, 2018, she emailed SM 1 and told him to ensure that all OSHA and BOP policy was followed regarding cleaning the Education classrooms. ES 1 stated she received an email from Warden W 1 in June 2018, in which he requested follow-up on the problems in Education. She further explained that until the time she was transferred to the Mid-Atlantic Regional Office, she continued to follow-up with ED 1, FM 1 and SM 1 on the progress of correcting the problems in the Education classroom.

Six staff from the Facilities Department and two staff from the Education Department¹⁶ were interviewed regarding water and mold in the Education Department. All agreed that they had seen periods of water damage to the ceilings in the Education classrooms. Two of the Facilities workers said they did see mold in the Education classrooms, two said they did not and two said they felt unable to definitively identify mold. The two Education staff said they saw mold.

There are three Work Orders (16094, 16102 and 16103) that appear to be related. 16094 was created on March 8, 2017, by Education Technician ED 5.¹⁷ The other two were created on

¹⁴ The Mold Remediation Plan was written by SM 1 in response to an OSHA inquiry. The Plan was approved by Warden W 1.

¹⁵ The ACA is a private, non-profit association that establishes standards for correctional facilities.

¹⁶ Two Education staff in addition to the four whistleblowers already identified. One of the six facilities workers' statements is referenced specifically in Allegation 2.

¹⁷ This is the Work Order commonly referred to in the investigation as dated either March 8, 2017, (the date it was created) or May 8, 2017, (the date it was activated).

March 10, 2017, by someone in the Facilities Department. All three appear to be requesting work on the classrooms¹⁸ in Education for leaking from the ceiling and damaged ceiling tiles. All three appear to have been completed on May 8, 2017. FW 1 was identified on 16102 as completing the work. FM 2 was the Facility Manager from December 2011, until September 2017.

An additional eight Work Orders were reviewed, with dates from September 2015, to December 2018, requesting work in Education. All referenced water problems coming from the ceiling. All but one were for work on the Education classrooms.

Allegation 2. *Management directed staff and inmates to perform improper remediation procedures without training or personal protective equipment (PPE). Despite repeated tests confirming mold contamination, management has failed to abate the mold and allowed unsanitary and hazardous conditions to persist in violation of Occupational Safety and Health Administration (OSHA) regulations, 29 C.F. R. 1910.*

Maintenance Worker Supervisor¹⁹ FW 2 stated he completed work in the Education classrooms where mold was found. He said there were three times that he replaced the ceiling in those classrooms. He said he took out the tiles and cut out the wet sheetrock that the tiles were glued to. He said he would let the area dry for a day or two after the leak was fixed. He said he would then put up new sheetrock and glue new tiles to the new sheetrock. He said he remembered working on it in late 2016, then again in early 2017, two times. FW 2 stated he has received the Mold Remediation Operations and Maintenance Plan on email from FM 1 and then SM 1 taught a class on it. He said FM 1 instructed Facilities staff to follow the plan and that he (FW 2) does follow the plan. He said when one of his supervisors tells him to go fix water damage, they usually specify for it to be done immediately and it takes priority over everything else.

Maintenance Worker Foreman²⁰ FW 3 stated that in July 2018, he was asked to remove some possible mold in the Education classroom ceiling by FM 1. He said he went to the area and noticed a large amount of mold in the ceiling area and saw what looked like mold on the concrete wall within the ceiling. He said he immediately stopped work and tried to contact both his supervisor and SM 1. FW 3 said he eventually reached FM 1 by email and told him the job was too big and that a professional was needed to come in for the work. FW 3 stated FM 1 did not order him to continue any work on the rooms. Mold abatement in this area was eventually completed by an outside contractor, on or around March 4, 2019.

Facility Manager FM 1 stated he does make rounds of the institution to look for problems on a weekly basis. He said he does not believe there is another area of the institution that has a consistent problem with leaking. FM 1 stated that when he is notified of any leak in the buildings, he sends out plumbers to identify the problem. He said he is aware that mold can grow in ceiling areas and that mold can lead to health problems. He said neither W 1 nor any of

¹⁸ In this report, any reference to the classrooms in Education applies to the two classrooms that are the subject of this inquiry.

¹⁹ This is a staff title. The position supervises inmate work crews.

²⁰ This is a staff title. The position supervises inmate work crews.

the Associate Wardens that have supervised him have told him not to address problems in Education. FM 1 stated he has been involved in the general construction industry since 1996, and through that he has been aware that mold can be a problem in buildings and with people's health. He stated he has read the MDC Brooklyn Mold Remediation Plan written by SM 1 and that it went into effect on November 19, 2018. He said since that time he has been following it.

Warden W 1 was warden at MDC Brooklyn from December 2015, to June 2019. W 1 stated that in late July or early August 2018, he was informed about a possible mold issue in the Education Department. He said ED 1 told him she might have mold in her area and she was concerned for her staff. He said he did not see any mold at that time, but that he was concerned. W 1 stated that shortly afterwards he had several meetings with Associate Warden ES 2, FM 1, SM 1 and the Union regarding the problem. He said he was also told by SM 1 that there was an OSHA complaint filed regarding possible mold in the Education Department. He explained that he had FM 1 and ES 2 contact Industrial Hygienist BC 2,²¹ in order to determine if mold testing was the best course of action. He further explained that BC 2 told ES 2 and FM 1 that testing was not necessarily recommended for large industrial facilities because the testing always showed some level of mold and it was difficult to differentiate where mold was coming from. However, W 1 said he decided to go forward with testing. He said he approved mold remediation training for six staff and he contacted Northeast Regional Director RD 1 and advised that he wanted to procure mold remediation services from an outside company. W 1 stated that multiple tests for mold were conducted by an outside contractor and that a separate outside contractor came into the Education Department to perform mold remediation.²²

ED 1 provided pictures of the Education classrooms to SA 1. These pictures do show evidence of heavy water damage to the Education classrooms and mold on sheetrock taken from the ceiling. It is difficult to tell from the pictures if mold was present on the structures above the ceiling. The pictures were dated June 22, 2018.

In October of 2018, ED 2 submitted a CA1.²³ The medical records indicated an office visit to Bay Ridge West ENT and Allergy Associates on September 25, 2018. The medical impression was, "severe nasal obstruction, congestion, secondary to mold exposure and allergy at workplace (prison)." Follow-up treatment was completed on October 9, 2018. The medical impression was, "unchanged severe nasal obstruction, congestion, secondary to mold exposure and allergy at workplace (prison) and ragweed allergy."

On May 24 and 25, 2018, FM 1 and FW 4 both participated in outside training and received Certificates for Mold Assessor Initial Course and Mold Remediation Contractor Initial Course. On October 23, 2018, Facilities Department employees FW 2, FW 5, FW 6, and FW 7 received certificates from an outside training company for completion of 16 hours of Mold Worker Initial Course.

²¹ BC 2 is a subject matter expert and works in the Bureau's Central Office under BC 1.

²² The first test, conducted on August 7, 2018 indicated contamination of the Education classrooms by three categories of mold (*Aspergillus/Penicillium*, *Chaetomium* species and *Stachybotrys* species). Removal of mold contaminated material and cleaning of the area was performed on or around March 4, 2019.

²³ CA1 is the form required for workplace injury.

MDC Brooklyn contracted with Proservice Environmental LLC to perform mold remediation in the Education Department classrooms, Food Service and Medical Isolation Area. The work in Education was done on March 4, 2019. The total contract award for work in all areas was \$17,318.00. The work included cleaning all surfaces, removal of molded materials that could not be cleaned, HEPA vacuuming, application of an anti-microbial and air scrubbing. Work was verified complete by a receipt dated March 19, 2019, in the amount of \$17,318.50.

Emails provided by ES 1,²⁴ who was Acting Associate Warden at the time, indicate that from April 19, 2018, she was aware of the water and mold problems in Education. From that point forward, her email showed that she continued to request updates from FM 1, ED 1 and SM 1. Specifically:

In an email dated April 16, 2018, ED 1 wrote to FM 1, "I know FW 8 shared the future plan to prevent leaks in the classrooms. As of today, there is an active leak, which has water leaking from the ceiling in both classrooms in west education. The amount of water continues to increase overtime [sic] which is causing additional mold and further damage to the walls and tiles. Please let me know of any maintenance can scheduled to stop the current leak."

In an email dated April 16, 2018, SM 1 wrote to FM 1, "As you are aware, water leaks introduce slip hazards, which are among the institution's most frequently occurring injury type. Additionally, unresolved water leaks introduces a legitimate concern regarding mold growth, which also represents a workplace safety hazard, especially for those having sensitive respiratory systems i.e., allergic reactions etc. Therefore, to ensure the safety of staff and inmates, I am respectfully requesting that the Facilities Department provide a plan of corrective action to the Safety Department by Aril 18, 2018, regarding this ongoing, and longstanding safety concern."

In an email dated April 18, 2018, SM 1 wrote to FM 1, "As a follow-up, Please provide the Safety Office with a plan of corrective action regarding the below ongoing safety issue."

In an email dated April 19, 2018, FM 1 wrote to SM 1, "Mr. SM 1 the area above the two classrooms in education on the west side is below the showers for the 3 units of the building. We have found a leak that the plumbers addressed. The ceiling in the area has been removed in the past and will be installed once we can confirm the water has completely stopped. We are looking at products to seal the pipe chase on the 4th floor, which will help with water issues in education."

In an email dated June 22, 2018, FM 1 wrote, "The facilities department has been actively making all attempts to fix this long going issue as above these rooms are the showers for all 3 units. We will be removing all the damaged sheetrock and ceiling following the protocols of mold remediation. We are also making

²⁴ No email chains could be provided by ED 1 as evidence of her claims that she had notified executive staff of the mold in Education.

additional repairs to the handicap shower on G43 which we believe is one of the issues.”

In an email dated July 3, 2018, FW 3 wrote to FM 1, “We attempted to move the mold but its very extensive. We don’t have the equipment we need. For safety reason I pulled the inmates out.”

On July 3, 2018, FM 1 replied, “FW 3 what do you need”

On July 3, 2018, FW 3 replied, “I think it need to be done by a professional. It’s really bad. It’s all over the ceiling and wall. There are mushrooms coming out the ceiling. Those respirators we have, Tyvek suits,”

On July 3, 2018, FM 1 then sent this email chain to ES 1 and wrote, “This is what happens when you listen to Mr. SM 1. FW 3 is a union rep. I will have myself and Mr. FW 4 do the removal on Tuesday, as FW 4 is off on Mondays.”

On July 3, 2018, ES 1 wrote to FM 1, “Well I believe if mushrooms are growing. Then that is mold so you better follow all appropriate protocols.”

On July 31, 2018, W 1 wrote to ES 1 requesting updates on a number of Facilities projects, it included repairs in Education.

On July 31, 2018, ES 1 wrote to FM 1 requesting information on the updates for W 1. ES 1’s email showed no response from FM 1 regarding an update on the repairs in Education.

This last date was the end of the email chain. Subsequently, W 1 authorized the air quality testing and mold remediation by outside contractors described previously.

Allegation 3. *Despite the classrooms not being in use, the ventilation system circulates airborne mold spores, allergens, and pathogens to other areas of the facility, resulting in adverse health effects.*

It is not possible to quantify accepted amounts of airborne mold spores because OSHA has not established a standard. The OSHA Bulletin states in pertinent part:

Currently, there are no federal standards or recommendations, (e.g., OSHA, NIOSH, EPA) for airborne concentrations of mold or mold spores.

In many cases, it is not economically practical or useful to test for mold growth on surfaces or for airborne spores in the building. In addition, there are no standards for “acceptable” levels of mold in buildings, and the lack of a definitive

correlation between exposure levels and health effects makes interpreting the data difficult, if not impossible.

If you know you have a mold problem, it is more important to spend time and resources removing the mold and solving the moisture problem that causes the moldy conditions than to undertake extensive testing for the type and quantity of mold.

As a result, it would be impossible to establish whether or not Allegation 3, of and by itself, is a violation of any law, rule or regulation.

Additional Investigative Findings:

During the on-site investigation of June 3, 2019, SA 1 observed several ceiling areas in the Human Resource Department that had water damaged tiles or missing tiles next to water damaged tiles. There were no observable water leaks at the time, but there had been no work done to remove and replace the water damaged tiles, as required by the MDC Brooklyn Mold Remediation Operations and Maintenance Plan.

During the on-site investigation conducted by OIA, the week of July 29, 2019, Special Agent SA 1 and Special Agent SA 2 made direct observations of numerous areas of the East and West buildings of MDC Brooklyn.

SA 1 observed the Receiving and Discharge (R&D) areas of both the East and West buildings, the underground walkway connecting the East and West buildings and the hallway near the East Building Control Center.

In the West building R&D there was a medical exam room (“West R&D PA”) with water stained ceiling tiles and pieces of ceiling tiles and drywall on the floor of the room. The pieces of debris on the floor of the room had numerous black, raised round spots on the side that would have been in the ceiling. SA 1 instructed Supervisory Correctional Systems Specialist CW 1 to submit a work order for the room. She submitted work order number 28469 on July 30, 2019. The remarks section stated, “fallen ceiling tile from a leak with the appearance of circular mold spots.”

In the West building R&D there was a clothing storage room with stained ceiling tiles and the smell of mold. SA 1 instructed CW 1 to submit a work order for the room. She submitted work order number 28470²⁵ on July 30, 2019. The remarks section stated, “West R&D Clothing Room stained ceiling with the smell of mold.”

In the hallway near the East Control Center there was a stained area of ceiling with a pale green fuzz spot. SA 1 instructed CW 1 to submit a work order for the area. She submitted work order number 28471 on July 30, 2019. The remarks section stated, “East Control hallway above or near the E1W door frame is expose two areas of stain ceiling tile with a pale green fuzz spot.”

²⁵ It appears two work orders (28470 and 28474) were submitted for this area, rather than one.

On August 15, 2019, SA 1 contacted CW 1 for a follow-up. CW 1 reported that all three areas, for which she sent work orders, had remained unrepaired. In addition, CW 1 reported an active leak in an R&D visual search room and the beginning of mold like circles developing. She indicated she reported this new leak on August 12, 2019, via work order (28734) and with a follow-up email to the Facilities Department. On August 15, 2019, she reported to SA 1, “However, I still hear it leaking on the sheet rock and some tiles have feel [*sic*]²⁶ and the ceiling is stained.”

A review conducted by SA 1 of work orders 28469, 28474, 28471 and 28734 revealed the following:

| WO # | Date Created | Date Activated | Date Completed | Date Reviewed | Time Since Request |
|-----------------------------|--------------|----------------|----------------|---------------|--------------------|
| 28469 | 7/30/19 | 7/31/19 | Not Completed | 9/5/19 | 5 weeks |
| 28470 ²⁷ / 28474 | 7/30/19 | 8/19/19 | Not Completed | 9/5/19 | 5 weeks |
| 28471 | 7/30/19 | 7/31/19 | Not Completed | 9/5/19 | 5 weeks |
| 28734 | 8/12/19 | 9/4/19 | Not Completed | 9/5/19 | 3 weeks |

SA 2 observed the fifth floor of the West building.

In the fifth floor West building there were damaged ceiling areas in the hall and by the elevators. On the heating and ventilation vents there was a black dust like substance which Case Manager CW 2 feared was mold. CW 2 also showed SA 2 the ceiling area where she believed there was water damage resulting from the mezzanine floor just above her office.

Both SA 1 and SA 2 conducted interviews with other staff throughout the institution regarding mold issues that had been reported in their work areas. Some individuals interviewed said they had no problems with mold, while some reported extensive problems with water and mold. Affidavits were taken from individuals who reported water or mold problems. A summary of those statements follows:

Supervisory Correctional Systems Specialist CW 1 stated she has worked at MDC Brooklyn since 1998. She said during that time it had been fairly common for water leaks to occur. She said usually the administration was pretty responsive and that she did not remember any mold issues. She explained that there was a large leak in her work area in the last year or two. She

²⁶ CW 1 meant to indicate some of the ceiling tiles fell to the floor.

²⁷ WO 28470 and 28474 were duplicated requests. 28470 was cancelled on 7/31/19 because it was a duplicate of 28474

said prior to that, she did not remember any issues with mold being brought up to her. CW 1 said the large leak that occurred affected almost the entire ceiling of R&D,²⁸ including her office. She said when the ceiling came down as a result of the leak she observed areas up in the ceiling of what looked to her like mold. CW 1 explained that the ceiling was exposed for approximately three months before being repaired. She further explained that after it was repaired no one told her anything about what had been done, or if the mold had been treated. She said she reported seeing the mold to SM 1, who agreed with her that it was mold.

Unit Manager²⁹ CW 3 stated she began working at MDC Brooklyn in July 2018. She said as soon as she arrived, she discovered water leaks in the Unit Team areas and hallways of floors 4, 5 and 6. She explained she observed what appeared to be black mold on the concrete surfaces of the walls above the damaged ceiling tiles and on the exposed duct work where ceiling tiles have been removed due to water damage. CW 3 stated she had shown some of what she believed to be mold to SM 1 and he argued that the black substance on the duct work was not mold but dust. CW 3 further stated that one of her staff reported being sick due to mold in her sinuses and that she herself has not been feeling well.

Case Manager³⁰ CW 2 stated she has worked at MDC Brooklyn since 2000. She said there have been many water leaks in the ceiling of her office. She said over the past year she has experienced headaches and that a medical specialist identified mold in her sinuses.

In late February of 2019, Regional Director RD 1 assigned Regional Environmental and Safety Compliance Administrator RD 2 to go to MDC Brooklyn on a special assignment, to review alleged water and mold problems that had come to his attention. He sent an email instructing her to review specific problem areas of the institution. He identified R&D, Education, Unit Team areas, Control Center, Commissary, Financial Management, West Powerhouse and Food Service. RD 2 was interviewed and provided a sworn statement. A summary of the statement follows:

RD 2 toured the institution on February 26 and 27 of 2019. She stated that while at MDC Brooklyn members of the Union pointed out many things to her that they claimed were mold. However, she said that she often found what they said was mold was actually dust, mildew or old water stains. RD 2 stated that she also observed many sanitation issues at MDC Brooklyn. She said when she suggested that staff have inmates clean dirty or dusty areas they told her it was mold and refused to touch it. RD 2 stated that it is her opinion, after visiting MDC Brooklyn, that management is not being fully compliant with maintaining and repairing water damaged areas and also maintaining sanitation. She said it was also her opinion that line staff and the Union were reluctant to do required sanitation work because they believe mold is present and they want to show that it is a problem.

²⁸ Receiving and Discharge.

²⁹ A Unit Manager is a mid-level manager responsible for the staff who run an inmate housing unit and the inmates who live on that unit. Their office is on an inmate housing unit.

³⁰ A Case Manager manages a case load of inmates and is responsible for all aspects of the inmate's case. They work on an inmate housing unit and report to a Unit Manager.

SA 1 conducted a review of monthly Safety Inspections,³¹ performed by the Safety Department at MDC Brooklyn, from January 2016, to September 2019.³² Some areas had few problems reported or problems that were corrected by the next inspection. There were, however, several areas of the prison with repeated deficiencies that were identified month-after-month. Those specific problem areas are detailed in the next paragraphs.

The review revealed numerous and continuously repeated deficiencies in cleanliness in the housing units (including “mildew”) and painted sprinkler heads; and were noted by the Safety Department as an “ACA compliance issue.” The review also revealed that inmate housing units had clogged shower drains for months at a time or leaking water from various sources on consecutive reports. A chart of the more egregious findings is below:

| Area Inspected | Dates | Problem on Report | Number of Months on Report |
|--------------------|-------------------------------------|--|----------------------------|
| Religious Services | Aug 2016 to Sep 2017 | Ceiling damage needs repair. | 18 Months |
| | Oct 2017 to Oct2018** ³³ | Water leaking from ceiling onto floor of closet and ceiling damage | 13 Months |
| R&D | Oct 2016 to Feb 2017 | Mildew/leaky ceiling with water leaking onto computer | 5 Months |
| Unit G | Nov 2016 to Jan 2017 | Shower drains slow, rag in drain | 3 Months |
| | Jun 2017 to Dec 2017 | Shower needs cleaning and drain is clogged | At least 7 Months |
| | Mar 2017 to May 2017 | Ice machine leaking water onto floor. | 3 Months |
| Unit H | Aug 2016 to Dec 2017 | Shower drains clogged. Some months noted water on floor. | At least 17 Months |
| | Dec 2017 to Jan 2018 | Ceiling has black mildew, needs to be replaced | 2 Months |
| Unit I | Apr 2016 to Dec 2017 | Shower drains clogged or running slowly. Some months noted water on floor. | At least 16 Months |
| | Jul 2018 to Oct2018** | Washer drain pipe overflowing, possible clog | 4 Months |
| Unit J | Oct 2016 to Dec 2016 | Clogged shower drains, faucet spitting water onto floor, holes in ceilings | 3 Months |

³¹ The Safety Department does a monthly inspection of all areas of the prison. Each area is covered in a two to four page report. The report was emailed to the mid-level manager responsible for the area and the Warden was cc’d on the report.

³² SA 1 was unable to collect a complete set of reports for year 2018, as the reports were not maintained in a consistent way in the Safety Department.

³³ ** Indicates not every month in this time period was reviewed. The first month the problem was reported and the last month it was reported (of those reviewed) were used to calculate the number of months.

| | | | |
|--------|------------------------|--|------------|
| | Apr 2017 to May 2017 | Sprinkler pipe fallen due to metal supports being removed (potential weapon) | 2 Months |
| | Jun 2017 to Oct 2017 | Standing water on some floors, holes in ceiling | 5 Months |
| | Nov 2017 to Dec 2017 | Clogged shower drains, water on floor, holes in ceiling | 2 Months |
| | Jan 2018 to Oct2018** | Mop closet with holes in ceiling and standing water on floor | 10 Months |
| Unit K | Jul 2016 to Aug 2016 | Standing water on floor | 2 Months |
| | Oct 2017 to Nov 2017 | Clogged shower drains | 2 Months |
| | Jun 2017 to Dec 2017 | Holes in ceiling | 7 Months |
| | Sep 2017 to Aug 2019** | Water damaged ceilings, need to be repaired | 16 Months* |

When asked about the Monthly Safety Inspections, W 1 stated he was sure he received Monthly Safety Inspections and he did peruse some of them, but did not spend a lot of time looking at them. When directly confronted with specific reports, he then said he did not remember reading about the specific problems identified in the reports. W 1 sent a follow-up email to SA 1 which stated in pertinent part:

I have searched my inbox and have no record of these reports. I stated in my affidavit I was sure I received the reports but after checking and finding no record, and having no recollection of reviewing each report, I cannot be sure I received all of them. I know I have reviewed some of these reports in the past but as they are not addressed to me and require no response from me, they may not have always made it to my desk.

If a significant concern for an extended period with the plumbing, I would expect someone involved, the Safety Manager, affected Department Head, or AW would have brought it to my attention rather than just place it in a monthly report; that did not happen. In addition, if this was a continuous problem, I would have expected inmates who have the ability to email me or see me during rounds/mainline, to bring it to my attention it would have been a big issue and that did not happen.

Three Safety Department staff were asked about the distribution of the Monthly Safety Inspections. All indicated that they were distributed to Mid-Level Managers and that it was possible W 1 did not receive them.

Bureau of Prisons policy (P.S. 1600.11) states in pertinent part:

Weekly/Monthly Inspections. Written reports of weekly and monthly inspections, including deficiencies, must be sent to the department head and forwarded to the Warden, through the Associate Warden, for review and corrective action if

needed. The reports and corrective action taken must be kept in the Environmental and Safety Compliance Department for three years.

An interview was conducted with current MDC Brooklyn Warden W 2. W 2 stated he became warden of MDC Brooklyn on June 23, 2019. He said he was made aware of on-going water and mold problems in the Education Department. He said he personally viewed the situation and he talked with ED 1, FM 1 and SM 1. W 2 said the Education classrooms currently remain closed. He explained that an outside plumbing contractor did come in and make recommendations for stopping water leaks and he is having his staff take action on the recommendations. He stated that the parts have been ordered. W 2 has sufficient funding to correct the problem. He explained he is short a few staff and he is looking to hire more staff. W 2 further stated that he is familiar with the MDC Brooklyn Mold Remediation Operations and Maintenance Plan, that he will review it with SM 1 and FM 1 and ensure that all parties agree on the plan and make any needed changes. He stated, once approved he will enforce the plan.

As of the writing of this report, the Brooklyn Mold Remediation Operations and Maintenance Plan has been updated by W 2 and his staff. He indicated the plan has been approved and will be enforced by him.

SUMMARY

The investigation revealed a significant, long-standing and on-going unresolved leaking water problem at MDC Brooklyn. The investigation further revealed a poor response to repairing water damage that has contributed to the growth of mold in various areas of the prison. The investigation revealed that some staff have reported becoming sick due to mold in the workplace and that at least one staff member has a documented medical condition attributed to the mold in her workplace. Finally, the investigation revealed a lack of involvement by management in abiding by and enforcing the sanitation policies of the Bureau.

The Occupational Safety and Health Administration (OSHA) has put out guidance in the form of a Safety and Health Information Bulletin called, “A Brief Guide to Mold in the Workplace.”³⁴ The Bulletin states in pertinent part:

Currently, there are no federal standards or recommendations, (e.g., OSHA, NIOSH, EPA) for airborne concentrations of mold or mold spores.

Moisture Control is the key to mold control. When water leaks or spills occur indoors – act promptly. A prompt response (within 24 – 48 hours) and thorough clean-up, drying, and/or removal of water-damaged materials will prevent or limit mold growth.

³⁴ A Brief Guide to Mold in the Workplace is a Safety and Health Information Bulletin put out by OSHA and dated November 8, 2013. The guide states, “This Safety and Health Information Bulletin is not a standard or regulation, and it creates no new legal obligations. The Bulletin is advisory in nature, information and content...”

Please note these are guidelines; some professionals may prefer other remediation methods, and certain circumstances may require different approaches or variation on the approaches described below

These remediation guidelines are based on the size of the affected area to make it easier for remediators to select appropriate techniques, not on the basis of research showing there is a specific method appropriate at a certain number of square feet. The guidelines have been designed to help construct a remediation plan. The remediation manager should rely on professional judgement and experience to adapt the guidelines to particular situations. When in doubt, caution is advised. Consult an experienced mold remediator for more information.

In most cases, if visible mold growth is present, sampling is unnecessary. Air sampling for mold may not be part of a routine assessment because decisions about appropriate remediation strategies often can be made on the basis of a visual inspection.

After correcting water or moisture infiltration, the prompt removal of contaminated material and structural repair is the primary response to mold contamination in buildings. In all situations, the underlying cause of water accumulation must be rectified or the mold growth will reoccur. Emphasis should be placed on preventing contamination through proper building and HVAC system maintenance and prompt repair of water damaged areas.

As a result, it was difficult to evaluate the whistleblower allegations against a standard that would lead to any finding of misconduct or violation of law, rule or regulation. However, the General Duty Clause of the Occupational Safety and Health Act stipulates that, employers must provide their employees with a workplace free from recognized hazards likely to cause death or serious physical harm. Additionally, the Bureau of Prisons has standards for sanitation set forth in Program Statements that constitute internal policy. The investigators used the General Duty Clause and Bureau of Prisons policy as a guide for misconduct.

Violation of Laws, Rules or Regulations

Allegation 1

The allegation that recurring plumbing leaks have damaged the ceilings and walls in two classrooms located in the Education Department and that the classroom has become contaminated with mold was found to be true.

Numerous witness statements, institution documentation and a review of remediation efforts provided sufficient evidence that the two classrooms in Education had significant, on-going water leaks resulting in damage and mold growth. Further, it was revealed that this occurred over the course of approximately four years and was the result of the inattention of the previous Facility Manager FM 2, to her duty to provide a safe and healthy work environment.

Bureau of Prisons policy, regarding Facilities Operations and the duties of the Institution Facilities Manager, states in pertinent part:

Managing all construction, repairs, improvement and maintenance of the institution's physical plant, staff housing, and BOP-owned building operated by UNICOR. This includes all equipment (excluding UNICOR equipment), utilities, energy conservation, and structures.

Preparing the departmental budget Salaries & Expenses (S&E) and B&F, personnel management, reporting compliance, and monitoring of environmental requirements of local, state, and Federal regulations.

Ensuring the equipment/buildings and grounds are properly maintained.

FM 2 was the Facility Manager from December 1, 2011, to September 30, 2017. During that time there were eight work orders generated for the Education Department regarding leaks in the Education classrooms. The time to complete the Work Orders ranged from two weeks to nine weeks (sixty percent took eight weeks or more). The problem continued to reoccur from August 2014, through FM 2's retirement in September of 2017. As the Facilities Manager, it was her duty to be aware of an on-going problem, and take action to rectify the situation in a timely manner. Because of her failure to take action to address the leaks or manage the situation, the problem was left unresolved for at least three years. Over that time, recurring water leaks damaged the Education classroom walls and ceilings, to the point that the rooms became unusable.

FM 1 became the Facilities Manager on July 28, 2018, and remains in that position to the date of this investigation. Since his promotion to Facility Manager, FM 1 has taken training and sent his staff to training for mold. He has taken preventative measures for leaks above Education, looked for assistance from outside contractors to prevent leaks in Education and kept his supervisors apprised of the situation. Although intermittent water leaks continue, as of the writing of this report, active measures are being taken by FM 1 to resolve the problem. As a result, FM 1 has not been inattentive to his duty to provide a safe and healthy work environment in the Education department.

Allegation 2

As discussed at the beginning of this section, there are no OSHA regulations to violate in remediating mold and the Bureau has no standard requirement for mold abatement. As a result, Allegation 2, *prima facie*, is not found to be true.

However, as the whistleblowers were most likely not aware of the lack of OSHA regulations when the allegation was made, it is reasonable to believe that they intended to convey concerns with the lack of mold abatement in general. This course of inquiry was undertaken by the investigators and Bureau policy was used to evaluate the findings.

Because of conflicting, vague and contradictory statements from witnesses, and a lack of hard evidence to establish what exactly was being described as mold by various witnesses, the earliest date when mold was definitively observed in the Education classrooms could not be determined. However, by April 2018, W 1, ES 1 and FM 1 were openly acknowledging to one another that there was a mold problem in the Education classrooms. A preponderance of the evidence indicates that W 1, ES 1 and FM 1 began to take action on the reported mold growth around April of 2018.

Emails provided by ES 1 indicated that she was definitively made aware of the mold in the ceiling of the Education classrooms in April 2018. This occurred when she was copied in on an email chain between ED 1, FM 1 and SM 1. From that time forward she worked to have the issue resolved.³⁵ ES 1 stated she would have made W 1 aware of the problem at that time, although she did not provide any emails to establish this as a fact. W 1 stated he became aware of the possibility of mold in the Education classrooms in July or August 2018, when ED 1 told him about her concerns. He also stated that around that time he was told of an OSHA complaint³⁶ regarding possible mold in the Education Department. After W 1 became aware of the mold he began to take steps to address the problem. He had multiple air sampling tests completed, authorized a Mold Remediation Plan for MDC Brooklyn, and had Facilities obtain a contractor to perform mold abatement.³⁷

It was established that mold grew in the Education Department. It was established that management began addressing the problem beginning in April 2018. It was established, that at the time of this investigation, the Education classrooms remained unusable. It was established, that at the time of this investigation, abatement efforts continue and have been on-going for over a year. It was established that potentially unhealthy conditions did exist in the Education classrooms. Since April 2018, management has worked to address the water and mold problems in Education. However, their actions to remedy the situation have been slow and ineffectual. W 1, as the warden of the institution, is ultimately responsible to ensure that his managers complete the work and provide him with information needed to correct the problem. He was the person responsible to provide a safe and healthy work environment for employees of the Bureau. His lack of leadership in this regard is conduct unbecoming a management official.

Allegation 3

The allegation that, despite the classrooms not being in use the ventilation systems circulated airborne mold spores, allergens, and pathogens to other areas of the facility, resulting in adverse health effects, cannot be evaluated. As discussed at the beginning of this section, there are no OSHA regulations for acceptable concentrations of airborne mold.

However, the investigation revealed a far more problematic issue that did lead to other areas of the prison being contaminated with mold. That will be discussed as Allegation 4, which has

³⁵ She did this by having the Facilities Department deal with the mold, which is not a violation of any law, rule, regulation or policy.

³⁶ The OSHA Complaint indicates SM 1 was notified by phone on July 19, 2018.

³⁷ The actual work was not completed until March 2019, but was in-part delayed due to the government shut down in late 2018, and early 2019.

been added by the Office of Internal Affairs and is based on additional investigative findings.

Allegation 4

The OIA investigation revealed that management officials at the Metropolitan Detention Center failed to follow Bureau policy regarding institution sanitation. Facility Manager FM 1 failed to ensure that a safe and healthy work environment existed at MDC Brooklyn. Warden W 1 failed to enforce Bureau policy and allowed unsanitary and potentially harmful working conditions to exist at MDC Brooklyn.

First, FM 1 was the Facility Manager in August 2019, through October 2019. It was at this time that CW 1, at the direction of SA 1, submitted work orders for three areas that were identified as being water damaged and containing possible mold. A review by SA 1 showed that work had not yet been completed in these areas at his last review on September 5, 2019, a period of five weeks. Not addressing the water damage and possible mold development was a violation of the Brooklyn Mold Remediation Plan that had been approved by Warden W 1. In addition, FM 1 stated he was aware of the possible health problems associated with mold development. FM 1 was also aware that an active investigation was being conducting regarding mold problems at MDC Brooklyn.

As the Facilities Manager, it was FM 1's duty to ensure that the Facilities Department had developed a plan to manage water damage and minimize mold development. It was his duty to work with the Safety Manager when health concerns were raised and it was his duty to ensure the staff had a "safe and healthy work environment." The facts indicate that FM 1 did not attend to this duty. Accordingly, the allegation of Inattention to Duty is sustained against FM 1. In addition, because of the health problems that had already been demonstrated to have occurred in at least one staff member, the allegation of Endangering the Safety of Others is also sustained against FM 1.

Second, W 1 was the Warden during the time of the water and mold problems at MDC Brooklyn. Monthly Safety Inspection reports were completed and they do identify significant, long-standing and on-going problems with water, plumbing and basic sanitation at MDC Brooklyn. Taken in their totality, they give the impression of a facility in a state of disrepair, which was unaddressed for long periods by management. W 1 said he should have been notified by someone if there was a problem and the information should not have been left to a report. However, as the warden at MDC Brooklyn it was incumbent upon W 1 to avail himself of these reports, which policy required he receive.

It is unclear if W 1 received the reports and failed to read them or if he did not receive the reports and failed to require they be sent to him. In either case, W 1 ignored the reports. If he had reviewed the reports he would have been aware of the plumbing problems well before the institution reached its current state of neglect. Accordingly, the allegation of Inattention to Duty is sustained against W 1.

Action taken or planned as a result of the investigation

(A) Changes in agency rules, regulations or practices.

At MDC Brooklyn, mold related and water damage related work orders will be assigned priority 1 in the Total Maintenance System (TMS). Warden W 2 will assign a specific individual in the Facilities Department to complete this task.

Any lack of correction will be addressed by the Facility Manager in the quarterly work committee meetings and added to the minutes.

The Regional Facility Manager currently reviews reports that make him aware of priority 1 work orders that have not been addressed. In the future, the Regional Facility Manager will submit a misconduct referral to OIA, for Inattention to Duty, for any item not addressed by a second quarterly meeting.

The Regional Director will ensure that Warden W 2 is made aware of this plan and that it is in place by January 30, 2020.

The Regional Director will ensure that this plan is enforced.

(B) Restoration of any aggrieved employee.

Not applicable.

(C) Disciplinary action against any employee.

Disciplinary action will commence against Facility Manager FM 1 for sustained allegations of Inattention to Duty and Endangering the Safety of Others.

Disciplinary action will commence against Warden W 1 for the sustained allegations of Conduct Unbecoming a Management Official and Inattention to Duty.

(D) Referral to the Attorney General of any evidence of criminal violation.

Not applicable