

matter should OFCCP initiate enforcement proceedings against KESC or any of its existing or newly created subsidiaries after the effective date of this Consent Decree. This provision shall not, in any way, preclude the Secretary of Labor from raising any defense he deems appropriate to any newly filed litigation.

c. KESC will hire an EEO Director to assist its subsidiaries in compliance with the Executive Order and its implementing regulations. OFCCP will provide technical assistance to ensure compliance within the 180 debarment period provided herein.

d. KESC and its current and newly created subsidiaries will file five (5) successive reports with OFCCP listing all federal and federally assisted projects on which it bid and the scope of such work. The reports will be due as follows:

	Period covered	Date due
First report	12/25/94-1/28/95	2/6/95
Second report	1/29/95-3/4/95	3/13/95
Third report	3/5/95-4/8/95	4/17/95
Fourth report	4/9/95-5/6/95	5/15/95
Fifth report	5/7/95-6/3/95	6/12/95

18. The Buffalo District Office shall review each of the reports and shall determine whether there has been compliance with the terms of this Consent Decree and the terms of the Executive Order and its implementing regulations. OFCCP shall notify Defendants in writing, within ten (10) days of receipt of each report, if there is a deficiency. Defendants shall be given fifteen (15) days to rectify the deficiency. If rectified within the fifteen (15) days, such deficiency shall not be deemed a breach of this agreement. All mailing shall be done by certified mail/return receipt.

19. If OFCCP finds that there has been compliance with the terms of this Consent Decree and with the terms of the Executive Order and its implementing regulations, the debarment of KAC, KISC and TK shall be lifted and such companies shall be free to enter into future Government contracts and subcontracts. OFCCP will notify KAC, KISC and TK within ten (10) days of the last report whether they will be reinstated. Notice of the reinstatement shall be printed in the **Federal Register** and shall be made to the Comptroller General of the General Accounting Office and all Federal Contracting Officers. It is understood that OFCCP may conduct an onsite review at the Niagara Falls, New York,

office or projects in the eight Western New York countries to ensure compliance with the Consent Decree and the Executive Order. However, in no circumstances shall this review delay the determination of lifting the debarment beyond the ten (10) day period noted in this paragraph.

20. If OFCCP finds that there has not been compliance with the terms of the Consent Decree or with the terms of the Executive Order and its implementing regulations, OFCCP will notify KAC, KISC, TK and KESC within ten (10) days (after the twenty-five (25) day period noted in paragraph 18, above) that the debarment shall not be lifted and shall remain in effect until there is submission of three (3) consecutive monthly reports which demonstrate compliance with the Consent Decree, the Executive Order and its implementing regulations. KAC, KISC, TK and/or KESC may file a motion with the Administrative Law Judge for review of the Director's decision, and such companies may request a hearing at which the sole issue will be whether there has been compliance with the terms of this Consent Decree and the Executive Order and its implementing regulations.

21. Compliance, as used in this Consent Decree, shall mean that, with regard to the Niagara Falls, New York, office, KAC, KISC and TK have satisfied the provisions of Regulation 41 CFR 60-4. In addition, KAC will make a good faith effort to determine whether there were available qualified female employees within the eight Western New York countries who would have been employed as laborers as the Niagara Falls location of KAC during the period of October 1, 1991 to October 1, 1993. KAC agrees to make such employees whole for lost wages they would have received from KAC, less interim earnings, during such period had they been employed by KAC. In order to be deemed qualified to work for KAC, the employee must successfully complete the medical examination required under OSHA 1926.58 and 1910.134, successfully pass the company drug test, and shows that they had attended and successfully passed Part 763 of the Asbestos Hazard Emergency Removal Act with a grade of at least 70% and had received a state asbestos license prior to or during the period to October 1, 1991, to October 1, 1993.

Part D. Implementation and Enforcement of the Decree

22. Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the

implementation of the provisions of this Consent Decree, is retained by the Office of Administrative Law Judges for a period of nine (9) months from the date this Consent Decree becomes final, or until debarment is lifted, whichever is earlier. If any motion is pending before the Office of Administrative Law Judges nine (9) months from the date this Consent Decree becomes final, jurisdiction shall continue beyond nine (9) months and until such time as the pending motion is finally resolved.

23. Enforcement proceedings for violation of this Consent Decree may be initiated at any time after the 25-day period referred to in Paragraph 18 has elapsed upon filing with the Court a motion for an order of enforcement and/or sanctions. The hearing on the motion shall relate solely to the issues of the factual and legal claims made in the motion.

24. Liability for violation of this Consent Decree shall subject KAC, KISC and TK to possible sanctions set forth in the Executive Order and its implementing regulations.

25. If an application or motion for an order of enforcement or clarification indicates by signature of counsel that the application or motion is unopposed by the Plaintiff or KAC, KISC, TK and/or KESC as appropriate, the application or motion may be presented to the Court without hearing, and the proposed Order may be implemented immediately. If an application or motion is opposed by any party, the party in opposition shall file a written response within twenty (20) days of service. The Office of Administrative Law Judges may, if it deems it appropriate, schedule an oral hearing on the application or motion.

26. This Consent Decree sets forth the complete agreement reached by the parties, including the agreement that there shall be no cancellation of any federal or federally assisted contracts or debarment of any officers of the KAC, KISC, TK and KESC or its subsidiaries.

27. The Agreement, herein set forth, is hereby approved and shall constitute the final Administrative Order in this case.

It is so ordered, this 21st day of December, 1994.

George P. Morin,
Administrative Law Judge, U.S. Department of Labor.

So agreed.

On behalf of Kimmins Environmental Services Corporation.