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DISTRICT OF WYOMING  
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CLERK  
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING

Civil Action No. 01 CV 044D

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

v.

CUNDY ASPHALT PAVING CONSTRUCTION, INC.,

Defendant.

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**CONSENT DECREE**

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**I. RECITALS**

1. This matter was instituted by Plaintiff, Equal Employment Opportunity Commission ("Commission" or "Plaintiff" or "EEOC"), an agency of the United States, alleging that Defendant Cundy Asphalt Paving Construction, Inc, discriminated against Kimberly Dalby because of her sex and pregnancy, in violation of Section 703(a) of Title VII of the Civil Rights Act of 1964 ("Title VII"), as amended, 42 U.S.C. § 2000e-2(a).

2. The Commission and Defendant, desiring to settle this action by an appropriate Consent Decree ("Decree"), agree to the jurisdiction of this Court over the parties and the subject matter of this action, and agree to the power of this Court to enter a Consent Decree enforceable against Defendant.

3. This Decree is final and binding upon the parties as to the issues resolved, as well as upon their successors and assigns.

ENTERED  
ON THE DOCKET  
19 SEP 01  
(Date)  
Betsy A. Griess, Clerk

4. This Decree, being voluntarily entered into by the parties, shall not constitute an admission or an adjudication of the merits or the damages of this case.

5. The parties agree that this Consent Decree fairly resolves the issues alleged in this lawsuit, and constitutes a complete resolution of all of the Commission's claims of unlawful employment practices under Title VII that were made or could have been made in this action.

6. For the purpose of amicably resolving disputed claims, the Defendant joins with the Commission in requesting this Court to adjudge as follows:

IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

## II. JURISDICTION

7. The parties stipulate to the jurisdiction of the Court over the parties and subject matter of this action, and have waived the entry of findings of fact and conclusions of law.

8. The duration of this Decree shall be three years from the date of signing by the Court, subject to the reporting provisions at Section IV(C).

## III. ISSUES RESOLVED

9. This Decree resolves all claims for damages arising out of the issues and claims set forth in Civil Action No. 01 CV 044D.

10. Defendant and its officers, agents, employees, successors, and all other persons in active concert or participation with any of them will not interfere with the relief herein ordered, but shall cooperate in the implementation of this Decree.

## IV. COMPLIANCE

### A. Monetary Relief

11. Defendant agrees to pay \$25,000 to Kimberly Dalby, as payment for back pay, compensatory damages, and interest.

11.1 Payment pursuant to this Section IV(A)(11)(a) shall be paid to Kimberly Dalby within five business days after entry of this Consent Decree by the Court;

11.2 Defendant shall pay all administrative and/or other costs associated with the payment of monetary relief under this Decree.

**B. Injunctive Relief**

12. During the term of this Consent Decree, Defendant, its officers, agents, successors and other persons in active concert or participation with it, or any of them, is enjoined from engaging in any employment practice which discriminates on the basis of sex.

13. During the term of this Consent Decree, Defendant, its officers, agents, successors and other persons in active concert or participation with it, or any of them, is enjoined from engaging in reprisal or retaliation of any kind against any person because of such person's opposition to any practice made unlawful under Title VII, because of such person's filing a charge, testifying or participating in any manner in any investigation, proceeding or hearing under any of these statutes, because such person was identified as a witness or possible witness for the Commission, because such person participated in any manner in this action or in the investigation giving rise to this action, or because such person is designated as an aggrieved individual under this Decree.

**C. Record Keeping and Reporting Provisions**

14. Defendant shall maintain all records concerning its implementation of this Consent Decree during the term of the Decree. The Commission shall have the right to interview any personnel employed by Defendant for the purpose of determining Defendant's compliance with the terms of this Consent Decree. In the event the Commission exercises its right to interview personnel pursuant to this paragraph, said interviews shall be scheduled with due regard to the convenience of the individual to be interviewed.

15. Each party shall bear its own costs in conjunction with the maintenance of records, preparation of any report, access or copying of records, or interviews of employees.

16. Defendant shall provide semi-annual reports for each six month period following the date the Court signs the Decree. The reports shall be due thirty days following the end of the

respective six month period, except the final report which shall be submitted to the Commission two weeks prior to the date on which the Consent Decree is to expire.

17. Each report shall provide the following information:

17.1 The name, address and telephone number of each person making a complaint of gender discrimination to the Defendant or to any federal, state, or local government agency; the date of the complaint, and the name of the individual(s) who allegedly engaged in the discriminatory conduct;

17.2 A brief summary of each complaint, including the date of the complaint, the name of the individual(s) who allegedly engaged in the discriminatory conduct, the Defendant's response to the complaint, the name of the person who investigated or responded to the complaint, and what, if any resolution was reached;

17.3 Copies of all documents memorializing or referring to the complaint, investigation, and/or resolution thereof.

**D. Posting of Notice**

18. Within five business days of the entry of this Consent Decree, Defendant shall post in a conspicuous place in each of its facilities, where notices to employees and applicants for employment are customarily kept or posted, the Notice attached as Attachment A to this Decree. The Notice shall remain posted for the duration of this Decree. If the Notice becomes defaced or illegible, Defendant will replace it with a clean copy. Defendant shall certify to the Commission, in writing, within twenty (20) days of entry of this Decree that the Notice has been properly posted.

**E. GENDER/PREGNANCY DISCRIMINATION POLICY**

19. Defendant shall adopt or maintain a policy prohibiting discrimination based on sex or pregnancy, and proscribing retaliation against any employee who complains about gender or

pregnancy discrimination. ("Discrimination Policy"). Defendant's Discrimination Policy shall contain all the elements shown in the sample policy attached hereto as Attachment B. For the duration of this Decree, Defendant shall post in a conspicuous place in each of its facilities, where notices to employees and applicants for employment are customarily kept or posted, a copy of the Discrimination Policy. For the duration of this Decree, Defendant shall provide each employee a copy of the Discrimination Policy. Within thirty days of the execution of this Decree, Defendant shall forward a copy of its Discrimination Policy to the Commission and a letter indicating that the Discrimination Policy has been posted and distributed.

#### **F. REFERENCE**

20. Defendant agrees that in response to inquiries or requests for references regarding Kimberly Dalby, it will provide only Ms. Dalby's dates of employment, the title of the position she held, and the starting and ending salaries she received. Defendant will make no mention of this action or Decree to any such prospective employer or other person.

#### **G. TRAINING**

21. For the duration of the term of this Decree, the Defendant shall conduct annual training for all its supervisory and managerial employees, on the subject of compliance with federal laws prohibiting employment discrimination, including specifically Title VII provisions prohibiting discrimination based on sex or pregnancy, and provisions prohibiting retaliation against individuals who complain about perceived discrimination.

22. Defendant agrees that the training will be conducted by an outside consultant, in person or by videotape and, the first such session will take place as soon as practicable but not later than January 31, 2002.

23. Each seminar training session shall be no less than 4 hours of instruction. The registry of attendance shall be submitted to the EEOC and retained by Defendant for the duration of this Decree.

24. The Commission, at its discretion, may designate one or more Commission representatives to attend any of the seminar-training sessions described above, and the representative(s) shall have the right to attend and fully observe all of the sessions.

#### **V. RETENTION OF JURISDICTION AND FILING OF DECREE**

25. This Court shall retain jurisdiction of this case for purposes of compliance with this Decree and entry of such further orders or modifications as may be necessary or appropriate to effectuate equal employment opportunities for employees. Upon submission of the final report referenced at Section IV(C), and the expiration of a period of 15 days after submission of said report, within which the Commission has not filed an objection thereto, the Commission and Defendant shall promptly file a Joint Stipulation for Dismissal with Prejudice ("Joint Stipulation") of this civil action, upon which filing this Decree shall automatically dissolve, and this Civil Action shall be dismissed with prejudice. If the Commission files an objection to the final report within said 15-day period, the Parties will file the Joint Stipulation promptly after the Court's resolution of the Commission's objection.

#### **VI. ENFORCEMENT**

26. There is no private right of action to enforce Defendant's obligations under the Decree and only the Commission and Defendant, or their successors or assigns may enforce compliance herewith.

27. Enforcement may be had by the Commission or Defendant petitioning the Court for enforcement of the terms of this Decree.

#### **VII. EEOC AUTHORITY**

28. With respect to matters or charges outside the scope of this Decree, this Decree shall in no way limit the powers of the Commission to seek to eliminate unrelated employment practices or acts made unlawful by any of the statutes over which the EEOC has enforcement authority.

**VIII. COSTS AND ATTORNEY'S FEES**

29. Each party shall be responsible for and shall pay its own costs and attorney's fees.

**IX. NOTICE**

30. Any notice, report, or communication required under the provisions of this Decree shall be sent by certified mail, postage prepaid, to the appropriate parties as follows:

Regional Attorney  
Denver District Office  
Equal Employment Opportunity  
Commission  
303 E. 17th Avenue, Suite 510  
Denver, CO 80203

Cundy Asphalt Paving Construction, Inc.  
P.O. Box 2469  
Gillette, WY 82717

James L. Edwards  
Stevens, Edwards & Hallock, P.C.  
P.O. Box 1148  
Gillette, WY 82717-1148

SO ORDERED this 16th day of Sept., 2001.

BY THE COURT:

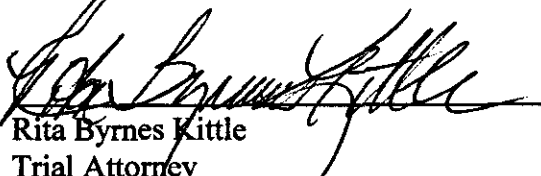


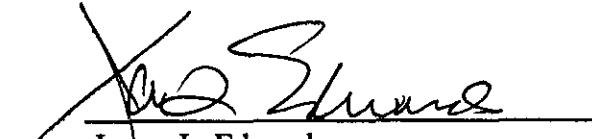
United States District Judge

APPROVED AS TO FORM:

Joseph H. Mitchell  
Regional Attorney

Nancy A. Weeks  
Supervisory Trial Attorney

  
Rita Byrnes Kittle  
Trial Attorney  
(303) 866-1347

  
James L. Edwards  
Stevens, Edwards & Hallock, P.C.  
511 S. Kendrick  
P.O. Box 1148

Gillette, Wyoming 82717-1148

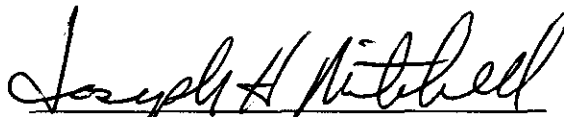
Attorneys for Defendant

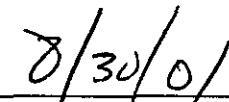
Equal Employment Opportunity Commission  
303 East 17th Avenue, Suite 510  
Denver, CO 80203


Attorneys for Plaintiff


BY CONSENT:

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

BY:   
Joseph H. Mitchell  
Regional Attorney

  
Date

BY:   
Brad Cundy, President  
Cundy Asphalt Paving Construction, Inc.

  
Date