

III.

(a) Stanley W. Radeski, (“Radeski”) was gainfully employed by EMS from September of 2013 until May of 2014 as a field technician in EMS’s Steubenville office.

(b) Radeski was employed part-time, subject to the varying needs of EMS.

(c) Radeski was, at all times material herein, an employee who was employed by an employer as defined by Sections 3(5) and 3(6) of the Act.

(d) On or about April 28, 2014 or April 29, 2014, Radeski observed safety hazards at an EMS worksite in eastern Ohio, where employees were performing frac tank cleaning. On May 5, 2014, he made a complaint with the U.S. Department of Labor’s Occupational Safety and Health Administration (“OSHA”), regarding confined space safety issues and respiratory issues.

(e) On May 5, 2014, by letter and telephone call, OSHA notified James L. Gress (“Gress”), Vice President of EMS, of the alleged safety hazards and gave EMS five (5) business days to correct these hazards. The letter specifically noted receipt of a complaint that employees were left in the tank working while the relief attendant went to smoke; escape respirators were not provided; employees were not medically evaluated for fitness for use of respiratory protection equipment; and confined space permits were not used to record the information required by OSHA.

(f) On or about May 8, 2014, Gress interviewed Radeski, who specifically told him that he observed a supervisor step away from his post as a hole watch for a confined space entrant, and that the supervisor left his post to smoke.

(g) Between May 6, 2014 and May 9, 2014, Gress interviewed the other workers at this worksite, for a total of 14 interviews. No one, except Radeski, spoke of the supervisor leaving his watch to smoke.

(h) On May 7, 2014, EMS left a message for Radeski indicating that work was available, but by the time Radeski returned the call, another worker had come in.

(i) On May 10, 2014, Radeski sent an email to the Operations Manager, Nicholas Daly, advising that for the next eight weeks, he was able to work Monday through Wednesday and possibly Thursday and Friday.

(j) Since May 7, 2014, Radeski was assigned work only once, in February 2015. He was called to clean the warehouse, which he did. He was never called in to work again.

(k) At some point after May 5, 2014, Radeski was removed from the part time call-in list.

(l) On or about June 2, 2014, Radeski lodged a complaint with the Secretary alleging that EMS discriminated against him in violation of Section 11(c)(1) of the Act (“11(c) complaint”), in that EMS effectively terminated him for calling OSHA on May 5, 2014 to make a safety complaint.

(m) The Secretary thereafter investigated Radeski’s complaint in accordance with Section 11(c)(2) of the Act.

IV.

As a consequence of Radeski’s safety complaint to OSHA, EMS discriminated against him by terminating him, in that it failed to assign him work (other than on a single, isolated occasion), despite his availability to work.

V.

By the acts described above, EMS knowingly discriminated and is continuing to discriminate against Radeski because of his exercise of rights under or related to the Act, and

thereby engaged in, and is continuing to engage in conduct in violation of Section 11(c) of the Act.

WHEREFORE, cause having been shown, the Secretary prays for judgment permanently enjoining and restraining EMS, its officers, agents, servants, employees and those persons in active concert or participation with it from discharging or discriminating against any employee for filing a complaint with OSHA or discussing occupational safety or health matters with EMS or its management, and for such other and further relief as may be necessary and appropriate.

FURTHER, the Secretary prays for judgment against EMS for reinstatement; payment of lost wages and benefits, including interest thereon; removal of the disciplinary action from Radeski's record; expunction of any mention of his protected activity from his employment records; the posting of a notice for employees stating that EMS will not in any manner discriminate against employees because of their engaging in protected activities under Section 11(c) of the Act; for such other and further relief as may be necessary and appropriate; and for costs.

Dated: September 15, 2017

/s/ Matthew M. Scheff
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Trial Attorney

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

R. Alexander Acosta, Secretary of Labor, U.S. Department of Labor

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Matthew M. Scheff, U.S. Dept. of Labor, Office of the Solicitor 1240 E. 9th Street, Suite 881, Cleveland, OH 44199 (216) 522-3878, scheff.matthew@dol.gov

DEFENDANTS

Environmental Management Specialists, Inc.

County of Residence of First Listed Defendant Jefferson (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 29 U.S.C. § 660(c)(2)

Brief description of cause: Discharge or discrimination against employee for exercise of rights under the Occupational Safety and Health Act.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 09/15/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Matthew M. Scheff

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE