

BUG-BE-GONE

GreenEarth Chemicals, Inc. custom manufactures organic intermediate chemicals that are the active ingredients in the chemical products, such as herbicides and pesticides, of its customers. Normally this means that a customer presents the Company with a technical manufacturing specifications package from which the Company, following research, engineering and laboratory and safety reviews, produces a detailed manufacturing process plan. This plan comprises various "Batch Records" containing specific and precise handling and mixing instructions as well as research, production, and safety instructions for various chemicals at each stage in the production process. Operators are then trained on the manufacturing equipment for the product using the Batch Records prior to production start-up and retrained whenever any portion of the production process is altered.

GreenEarth manufactures a chemical ingredient known as nexelophine, or "240", for its customer, AMCHEM. Product 240 is the active ingredient in "Bug-Be-Gone," a retail commercial pesticide produced and marketed by AMCHEM. Product 240 is manufactured in two stages. First a "wet cake" is produced and stored in 55 gallon steel drums. Batches of the 240 wet cakes are later mixed together by an Operator according to specific Batch Record instructions and dried in a room-sized, double cone industrial dryer to produce an ingredient meeting the specifications set by the customer. Batches of 240 are mixed together to control product quality and are never mixed with any other product. The drums are black with red lids and must be tagged with a standard manila label tag identifying the ingredients wired to the drum lid.

Operators are trained using the detailed Batch Record instructions and are expected to follow them precisely. Before discharging any product from a drum for further operations, such as mixing or drying, Operators are required to review the drum tags and labels to be certain that the appropriate process is being applied to the correct components according to the specified procedure. Until last month, the Company also was manufacturing for AMCHEM a much smaller quantity of another wet cake chemical product known as "100." Product 100 was stored in the same type of black drums with red tops as 240 but differentiated by its specific information on the manila tags attached to the drum lids.

On the shift prior to his Monday day shift two weeks ago, the Shift Manager instructed Operator Stanford de Minimis at approximately 4:30 a.m. to charge six drums of 240 into the dryer. De Minimis went to the storage area of the warehouse to secure the drums. The storage bays themselves are not lighted and the drums were stacked three high. De Minimis used a flashlight and located four drums labeled BA2 and two drums labeled BA17. He did not know there were any drums of 100 in the storage area and consequently he looked only at the Batch numbers on the drums. When he took the drums to the scale to weigh them prior to mixing/charging them into the dryer, the scale was malfunctioning. By the time it was repaired, there was insufficient time left to complete the charging operation and the Shift Manager instructed him to take the six drums and place them outside the dryer for charging on the day shift. He did so.

Operator Horace Bugby has been employed by GreenEarth for 26 years. During shift change, de Minimis identified the six drums to be charged to Bugby. At the beginning of the shift, the Day Shift Manager instructed Bugby to charge the six drums of 240 into the dryer. Bugby charged the six drums that de Minimis had identified and completed the Batch Record Production Sheet stating that he had charged six drums of 240. About 45 minutes later, Production Manager Melissa Rayde was inventorying product and noticed that there were more 240 drums and fewer 100 drums than expected.

After looking at the drum tags for the material that was in the dryer, she concluded that Bugby had charged six drums of 100 rather than six drums of 240. She brought her findings to Bugby's attention and he agreed that he must have inadvertently done so by charging the six drums that had been staged by de Minimis on the prior shift. Once the error was discovered, the product in the dryer had to be discharged immediately and then the dryer, the only one the company has, had to be repeatedly cleaned and sampled for 100 residue.

The matter also had to be reported immediately by GreenEarth to customer AMCHEM which began, within four hours, faxing a long series of detailed, written directives to the Company outlining

precisely the procedures for dryer cleaning and testing that it required the GreenEarth to take. AMCHEM expressed extreme concern about whether the Company would be able to meet the customer's product requirements in terms of quality control and especially in terms of amount of material that AMCHEM needed to fulfill its own obligations. Two days after the incident, AMCHEM also began to express in writing its interpretation of the business agreement between the GreenEarth and AMCHEM and to propose assignments of costs for various items such as reimbursement for lost raw material, disposal of the improperly mixed material, dryer cleaning and testing methods to either AMCHEM and, mostly, to GreenEarth.

In addition to inspecting all facilities and product involved in the error, the Employer evaluated the Grievant's record as part of its investigation. He has a satisfactory performance and attendance record. With respect to prior discipline over the past five years, Bugby received a written warning 18 months ago, not grieved, for not following a Batch Record involving the proper procedure for avoiding a discharge of chlorine gas. Six months after the chlorine incident, Bugby received a written warning, not grieved, for improper operation of a centrifuge causing product loss. His second written warning included notice that "any future unsatisfactory performance incident will be treated more severely, including the possibility of termination if appropriate to the circumstances in management's judgment."

Following discovery of the error, the Grievant was called to a meeting with Plant Manager Irene "Love" Canale and his union steward, Rachel Carson. Plant Manager Canale told him he was being "suspended immediately for one week pending completion of the Company's investigation, for unsatisfactory work and falsifying Batch Record documents." Steward Carson responded by asking that the Employer reconsider, asserting that the Union believed a one week suspension too severe and not for just cause under all the circumstances. Canale replied, "We'll see after the investigation is completed."

On the fourth day after the incident, Canale was informed by AMCHEM of the total costs it expected GreenEarth to bear and of AMCHEM's decision to pull the product from the GreenEarth because of its determination that the dryer could not be cleaned sufficiently to meet AMCHEM's quality standards. That afternoon, Canale sent Bugby a certified letter, copied to the local union, reporting the AMCHEM decision and concluding: "As a result of our further investigation and the obvious extreme seriousness of the incident, you are found negligent in your job causing loss and destruction to the Company and are being terminated."

PERTINENT EXCERPTS FROM THE AGREEMENT

ARTICLE II MANAGEMENT

The management and operation of the Plant and the direction of the working forces are vested exclusively in the Company. The right to hire, lay off, discipline, suspend, discharge for just cause, and to promote, subject to the seniority provisions herein, are retained by the Company. The Company retains all functions of Management except as otherwise expressly limited by provision(s) of this Agreement.

ADDITIONAL UNDISPUTED FACTS

1. There is no difference in the physical appearance of products 100 and 240 in their wet cake form.
2. The drums containing 100 and 240 have identical outward appearances. Only by looking at the drum tags could one tell what was inside.
3. The drums of 240 and 100 were stored in a large warehouse, with 240 and 100 stored near each other in a three bay storage unit. Product 240 was stored in the storage area in the left bay while 100 was stored in the right bay. Other raw materials, many in similar drums, including drums of both 100 and 240, were stored in the bay between them.
4. Operators have no particular responsibility for or knowledge of storage locations of the various raw materials. They are regularly required as part of their duties to find the proper raw materials for an operation by going to the warehouse. They are at all times responsible for following Batch

Records, including making accurate identifications of product being secured, by reading the drum tags Personnel managing the warehouse are available to answer any questions.

5. AMCHEM exercised its rights under its business contract with GreenEarth to pull product 240 from GreenEarth and assign it to a GreenEarth competitor, with the GreenEarth having to bear all of the transportation and disposal costs. The immediately calculable loss to GreenEarth, including testing, cleanup, transportation and disposal costs and lost revenue from the AMCHEM contract for 240 was approximately \$239,000. In addition, late in the afternoon following Canale's mailing of the discharge letter to Bugby, AMCHEM also pulled product 100. AMCHEM said it needed the exact, small quantity of 100 it had ordered from GreenEarth in order to meet European Union testing standards for another product proposed to be manufactured in Belgium and that AMCHEM had lost confidence in GreenEarth's ability to supply the quantity of 100 needed to the quality standards AMCHEM required.
6. There was no risk of explosion or dangerous chemical reaction resulting from Bugby's error.
7. Over the years, many employees have been disciplined for Batch Record offenses. The most serious discipline taken to date for a single such offense is a one week suspension for falsifying Batch Records.
8. The Company does not routinely calculate the costs of employee's errors in its disciplinary considerations. In many cases, doing so is impossible because costs may not be known until substantially later than timely discipline must be imposed. To the best of anyone's recollection, however, no past unsatisfactory performance incident has resulted in anywhere near such serious consequences to the Company.
9. Stanford de Minimis, a three year employee with a clean disciplinary record, was given a written warning, which he did not grieve, for failure to follow properly his supervisor's instructions.
10. Tag Example: **GE-AC BA17 240**