

Toxic Trial

State, City concerned about chemicals—Mernin

By DAN KENNEDY

cited in the lawsuit do not cause leukemia.

BOSTON — Woburn and state officials were concerned that chemicals dumped as far as 3,000 feet from municipal wells G and H could contaminate those wells, Woburn City Engineer Thomas Mernin testified Tuesday.

Mernin, in his second and final day on the witness stand in the Woburn leukemia trial, was cross examined by plaintiffs' attorney Jan R. Schlichtmann about the May 1979 barrel-dumping incident that led to the closing of the wells.

Schlichtmann's examination was aimed at countering Mernin's statements the previous day that neither the city nor the state considered a property formerly owned by Beatrice Foods Co. a threat to the wells.

Schlichtmann suggested that officials would have tested the well water had they been informed that chemicals were present on the Beatrice property.

The U.S. District Court trial involves a claim by eight East Woburn families that chemicals dumped at the Riley Leather Co. tannery, 228 Salem St., and at W.R. Grace & Co.'s Cryovac manufacturing plant, 369 Washington St., flowed through groundwater and contaminated wells G and H, which were closed in 1979 after 15 years of use.

Beatrice owned the Riley tannery from 1978 to 1983 and retains liability.

The plaintiffs say the contamination led to six leukemia deaths and two illnesses. The defendants counter that they did not pollute the wells, and that even if they did, the chemicals



Thomas Mernin

On Monday, Mernin told Beatrice attorney Jerome P. Facher that neither city nor state officials believed the Riley property was a threat to the wells.

The Riley property is 700 feet southwest of the wells, and the Aberjona River flows between the wells and the property. Mernin said he believed the river was a barrier that would prevent groundwater from flowing from the Riley site to the wells.

Tests ordered in 1979

On Tuesday, Mernin said the state Department of Environmental Quality Engineering (DEQE) ordered that wells G and H be tested when 184 barrels were discovered some 3,000 feet to the north in May 1979.

The barrels were north of Route 128 and west of the Boston and Maine Railroad tracks, on the west side of the Aberjona River. Wells G and H are on the east side of the river.

The well tests revealed the presence of various organic chemicals, including trichloroethylene and tetrachloroethylene. The city ordered the wells closed immediately.

It was later determined the barrel incident had nothing to do with the contamination of the wells.

Schlichtmann asked why the DEQE ordered tests of wells more than half a mile from where the barrels were discovered. "It's the standard policy of the department," Mernin replied.

When Schlichtmann asked Mernin if he agreed with the decision to test, Mernin responded, "Absolutely."

Schlichtmann then asked Mernin if anyone associated with the tannery or the Cryovac plant ever informed the city that chemicals had been dumped on their properties. (The Grace property is about 2,400 feet northeast of the wells.)

Mernin replied they had not.

Facher had originally put Mernin on the witness stand because Judge Walter Jay Skinner has ruled that Beatrice cannot be held liable unless the plaintiffs show the tannery acted negligently.

Mernin's testimony that neither he nor the DEQE considered the Beatrice property a threat to the wells bolstered Facher's argument that former tannery owner John J. Riley Jr. could not have known that groundwater on his property flows toward G and H.

Schlichtmann's cross examination attempted to turn that argument on its head. His line of questioning, and Mernin's responses, indicated that the state and the city would have considered any nearby chemical dumping a threat to the wells.

Negligence alleged

Schlichtmann suggested that, far from being absolved of negligence because of city and state action, Riley was negligent by not informing the city that chemicals had been dumped on his property. (Facher contends chemicals were never dumped on tannery property.)

The negligence issue is not as important in the Grace portion of the trial. Skinner has ruled that if the jury finds Grace employees dumped chemicals on company property, as several present and former employees have testified, then the company must be held to a standard of strict liability, in



Attorney Jan R. Schlichtmann

which the plaintiffs would have to prove only that the chemicals contaminated G and H.

Later Tuesday, during Facher's redirect examination of Mernin, Facher pointed to a DEQE memo that stated DEQE official Richard Chalpin did not consider the barrels to be a source of contamination of wells G and H.

The same memo quoted DEQE engineer Robert Cleary as reporting that the Aberjona River valley had a history of industrial contamination dating back to 1853, and that that was a more likely source of the chemicals in the wells.

In response to a question by Facher, Mernin said the barrels concerned him because of the possibility that chemicals in them would leak into the Aberjona River. He said he did not believe it was possible that the barrels could pose a threat to the wells.

Facher and Grace attorney William Cheeseman, as lawyers for both defendants have on numerous occasions during the 58-day trial, questioned Mernin about other possible sources of contamination of wells G and H.

Those possible sources, they said, included a drainage ditch running along the Boston and Maine Railroad tracks and into the aquifer serving G and H, sewer line overflows, present and former city dumps, and a January 1979 flood.

Role of Aberjona River

Also Tuesday, Facher questioned Ellis Koch, a hydrogeologist with Geraghty & Miller, an engineering firm that conducted an evaluation of the Riley site for Beatrice.

Koch repeated testimony offered Monday by Geraghty & Miller geochemist Dr. Olin C. Braids — that data taken from a December 1985 pumping test of wells G and H showed it would be impossible for groundwater at the Beatrice site to flow into the wells.

Koch said pressure from the wells forces water out of the Aberjona River and into the underground aquifer, forming a "long mound" forcing anything west of the river to flow to the west.

Koch added that, once the wells are turned on, it would take two to three months for river water to reach the wells.

Both Beatrice and Grace lawyers have pointed out that the river has a history of industrial contamination dating back to at least 1900.

The plaintiffs' hydrogeologist, Dr. George Pinder of Princeton University, has testified that the pumping action of the wells pulls groundwater at the Beatrice site under the river and into the wells.

It is also Pinder's opinion that the wells would have to pump continuously for some 10 to 20 years before any river water would be drawn into them.