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Toxic Trial

Grace opens its defense

By DAN KENNEDY

BOSTON — W.R. Grace & Co. will open its defense today in the Woburn leukemia trial by presenting a geologist the company hired to test groundwater and soil at its Cryovac manufacturing plant in East Woburn.

Steven Maslansky, president of Geo Environmental of White Plains, N.Y., will testify about his findings concerning chemical contamination at the 369 Washington St. facility, Grace attorney Michael B. Keating told the Daily Times Chronicle.

Today is the 61st day of the U.S. District Court trial, but it is the first opportunity for Grace — the better known of the two defendants — to make its case.

Grace's presentation is expected to take about two weeks, with the case going to the six-member, five-alternate jury by the end of the month.

The plaintiffs, eight East Woburn families, charge that chemicals dumped at Cryovac and at a property formerly owned by Beatrice Foods Co. flowed through groundwater and into municipal wells G and H.

The wells operated from 1964 to 1979, and were closed when chemical contaminants were discovered.

The families say using the tainted water resulted in six leukemia deaths and two illnesses.

The defendants deny they polluted the wells, and argue that even if they did, the chemicals cited in the lawsuit do not cause leukemia.

The case, *Anderson v. Grace*, takes its name from Anne Anderson, an East Woburn resident whose son Jimmy died of leukemia in 1981 after suffering from the illness for nine years.

Anderson was the first person to notice that her neighborhood was afflicted with an abnormally high incidence of childhood leukemia. She spent years pushing for an investigation of the dirty, foul-tasting, foul-smelling drinking water she and her neighbors received.

The Cryovac plant manufactures food-packaging equipment. Workers use chemical solvents to clean machinery, dilute paint and cool tools. The plant is located approximately 2,400 feet northeast of the wells.

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The plaintiffs' case against Grace is heavily dependent on testimony by Dr. George Pinder, a hydrogeologist from Princeton University, that the underground water table slopes downhill from the plant to the wells.

Three major points

Cross examination conducted thus far by Keating and other Grace lawyers indicates that the company's defense depends on three major points:

•Unlike Beatrice, Grace will not contest that chemical dumping took place on the Cryovac property during the years the wells were open.

During the 51-day presentation by plaintiffs' attorney Jan R. Schlichtmann, present and former Cyrovac employees testified that they dumped chemicals into a ditch behind the plant, down a drainpipe running into the same ditch, and into a pit dug expressly for that purpose.

But Keating is expected to attempt to show that the concentrations of chemicals at the property are far too low to be able to flow half a mile from the site.

The highest groundwater concentrations of trichloroethylene (TCE), the most important chemical in the case, on the Cryovac property are in the range 2,600 parts per billion, which works out to 2.6 parts per million. That means the ratio of TCE to groundwater is 0.0000026 to 1.

•Pinder testified that his estimate of the hydraulic conductivity, or permeability, of the soil lying between the Cryovac site and the wells would allow TCE to flow to the wells in three years.

Keating, however, is expected to present a witness who will contend Pinder used a hydraulic conductivity estimate that was about 40 times too low. That would mean it would take 120 years for TCE to reach the wells. The Cryovac plant did not open until 1960.

•Wells G and H are on the east bank of the Aberjona River. Keating contends the wells draw fully half of their water directly from the river, which has a history of industrial pollution dating back to at least the early 1900s.

Keating believes such a situation makes it impossible to blame individual companies for contaminating the wells.

Pinder said the wells pull very little river water into the underground aquifer because the river bottom is covered with a layer of relatively impermeable peat.

Pinder also said the river represents the lowest point in the East Woburn aquifer, meaning water pressure from the surrounding groundwater would tend to keep water in the river.

Such a situation, he said, would mean that it would take 10 to 20 years of continuous pumping from wells G and H before any river water would reach the wells.

But last week, Ellis Koch, a hydrogeologist hired by Beatrice, said the peat bottom of the river is actually very porous. When the wells are turned on, he added, the river becomes the highest point in the aquifer, creating a pressure gradient that forces water into the aquifer — at a rate of more than 850,000 gallons a day when both wells are pumping.

River water would reach the wells in no more than a month, Koch said.

Although Koch was brought in to attempt to show that ground water at the Beatrice site, to the west of the river, could not flow under the river and into the wells, his testimony about the behavior of the river is expected to help Grace, too.

Grace's task harder

Two weeks ago, Judge Walter Jay Skinner issued a ruling that makes Grace's task considerably more difficult than Beatrice's.

The Beatrice property is part of the Riley Leather Co. tannery, 228 Salem St., which Beatrice owned from 1978 to 1983. Skinner ruled that the plaintiffs had failed to present evidence that the tannery engaged in deliberate chemical dumping on the property.

Therefore, he said, the jury may only consider whether the tannery was negligent in allowing others to dump barrels and other debris on the site. (Of course, the jury must also consider factual matters, such as whether that dumping led to contamination during the years the wells were open, and whether that contamination could flow into the wells.)

In Grace's case, Skinner ruled that testimony concerning dumping behind the Cryovac plant meant the jury may hold Grace to the standard of "strict liability" — a standard that requires the jury to find Grace liable if they are persuaded that Grace contaminated the wells.

Since it would appear unlikely that Keating will be able to discredit the testimony of present and former employees concerning chemical dumping, that means he must disprove Pinder's theory of how the East Woburn aquifer works.

Judge Skinner has divided the trial into three phases. In this first phase, the jury will vote only on whether Grace and Beatrice are liable for contaminating wells G and H.

If the defendants win, the trial will be over. But if either or both of them lose, the trial will then move on to a second phase, in which the plaintiffs will contend that TCE and the other chemical solvents in the case cause leukemia and other diseases.

If the jury rules in favor of the plaintiffs on phase two, a third phase will be held to determine monetary damages to be awarded. Such an award could be in the range of tens of millions of dollars, according to observers.