

Toxic trial

1978 report said aquifer draws from Aberjona River

By DANKENNEDY

BOSTON — An engineering report conducted for the city of Woburn in 1978 concluded that the Aberjona River provides water for the aquifer which serves two contaminated municipal wells.

The report was read in U.S. District Court Thursday by Jerome Facher, an attorney for Beatrice Foods Co., one of two defendants in the Woburn leukemia trial.

The plaintiffs in the trial, eight East Woburn families, claim that Beatrice Foods and W.R. Grace & Co. are responsible for polluting municipal wells G and H, which were closed in 1979 after 15 years of use.

They claim the contamination caused six deaths and two illnesses, an accusation the companies deny.

Among the defenses offered by Beatrice and Grace is a contention that the wells drew their water directly from the Aber-

jona River, which has a history of industrial pollution dating back to the early 1900s.

Dr. George Pinder, a Princeton University hydrogeologist hired by the plaintiffs, has argued that the Aberjona River has an impermeable peat-moss bottom, and therefore cannot serve as a direct source of water to the wells.

The wells would have to pump for some 10 years before any river water would be drawn into them, he contends.

But Facher produced a report written by the engineering firm Dufresne Henry of Springfield, Vt., on a study that was conducted for the city when it was considering drilling a drinking-water well between wells G and H. (The proposed well was never constructed.)

Facher, quoting from the report, stated: "The Aberjona River provides recharge of the groundwater reservoir from which the wells draw their water."

When asked if he agreed with that statement, Pinder replied, "I think there's some amount of recharge, yes," but denied that would have any impact on his testimony.

Pinder stuck by his opinion that it would take 10 years of pumping from wells G and H before any river water would be drawn directly into the wells. He added that, once that started to happen, river water would constitute about 10 percent of the water coming out of the wells.

Kevin Conway, a lawyer for the plaintiffs, later told reporters that any contaminants in the river would take even longer than 10 years to flow into the wells.

Conway said most of the contaminants would be filtered out by the peat moss, and that any chemicals which did get through flow more slowly than water.

But Facher told the Daily Times Chronicle he isn't trying to prove that the river polluted the wells.

Instead, since the river lies between the wells and the Beatrice property, he said he is attempting to show that the wells drew all the water they needed from the river. If he is able to show that, he said, it would follow that no water from the Beatrice property could have entered the wells.

The properties in question are the Riley Leather Co. tannery, 228 Salem St., and Grace's Cryovac manufacturing plant, 369 Washington St. Beatrice owned the tannery from 1978 to 1983 and retains legal liability.

Thursday, Pinder's fourth full day of cross examination, was the first time he appeared comfortable while being questioned by Facher, an experienced, aggressive trial lawyer.

In contrast to his testimony earlier in the week, Pinder appeared to be more at ease and in command of the facts he used as the basis of his opinion that wells G and H drew contaminated groundwater from the Beatrice and Grace sites.

Also Thursday, Facher introduced a 1978 report by the state Department of Environmental Quality Engineering giving the city permission to drill a new drinking-water well between G and H.

The report stated that water in the aquifer was "of good chemical quality," although it said the water would have to be treated for manganese and several other inorganic chemicals.

Plaintiffs' chief counsel Jan Schlichtmann objected that the 1978 test did not include any of the organic chemical solvents named in the lawsuit, but Judge Skinner overruled him.

Beatrice attorney Neil Jacobs later told the Daily Times Chronicle that Facher was not trying to show that the water was clean in 1978, but was merely trying to demonstrate that no one could have expected that it was polluted.

Such a showing relates to the "foreseeability" issue of the trial, Jacobs said.

Skinner has ruled that for Beatrice and Grace to be found liable, the plaintiffs must show the defendants should have foreseen the damage their alleged actions would cause.

Facher went over procedures used in measuring the water table during a pumping test of the wells in December 1985. Changes in the water table are at the heart of Pinder's computer model.

Facher, reading from reports, said there were problems in taking measurements ranging from kinks in measuring tape to a car being parked over a test well.

Pinder conceded there would be some problems in any undertaking of that nature, but said proper methodology and computer analysis were used to point out "inconsistencies."

At the end of Thursday's proceedings, after the jury had left the courtroom, Skinner ruled in favor of Schlichtmann by upholding a motion to quash a subpoena issued by Grace attorneys.

The subpoena had been served on the Economic Planning Group, which is connected with the law firm Schlichtmann, Conway & Crowley, to supply information on how much money the plaintiffs were paying Pinder.

Schlichtmann argued that serving a subpoena on the Planning Group was akin to serving a subpoena on the law firm itself. Skinner agreed, although he let stand a Grace subpoena on Pinder to reveal his financial arrangements.