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Little 'goodwill among men' as PCB hearings recess

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There was little goodwill among men as the Environmental Management Board's polychlorinated biphenyl (PCB) hearing recessed for the holiday season.

Sarcastic remarks were exchanged by the hearing officer and attorneys Wednesday evening when hearing officer Joseph Karen stood by his decision to have all subsequent direct testimony pre-submitted in written form, despite objections from the lawyers on both sides of the case.

ASSISTANT ATTORNEY general Michael Schaefer called Karen's ruling "arbitrary and capricious," and said he would "pursue all avenues" to see that every witness will have an opportunity to testify in person.

Karen then referred to Schaefer's remarks as "a veiled threat that you're going to go over my head."

Karen aroused more ire when he announced that the first 1977 session of the hearing, on Jan. 4, will be held in Indianapolis instead of Bloomington. The location of the hearings has been a point of argument for several weeks, an argument which state and local attorneys presumed they had won.

KAREN DESIGNATED Indianapolis, he said, because the scheduled witness for that day is Indiana Board of Health chemist John J. Feld, who ran laboratory tests to determine PCB contamination levels in fish from Clear and Salt Creeks.

The decision to switch to written direct testimony "was my own," Karen said. He explained that Board of Health Hearing Commissioner W.D. Christen had asked him to do what he could to control the length of the case, but had not told him to resort to pre-written testimony.

Schaefer argued that the direct testimony in the hearing so far had not been inordinately long. Cross examination and arguments have consumed more than twice as much time as the presentation of state's evidence in direct testimony, he said. "If you're worried about cutting down on time, you could concentrate on having the lawyers keep their arguments down," he added.

GUY LOFTMAN, Bloomington attorney representing several Monroe County residents whose property has been presumed harmed by PCBs originating at the Westinghouse Corporation factory, objected to the pre-written testimony on grounds that Westinghouse lawyers could examine it in advance "and come up with even longer cross-examinations."

He also warned that the hearing officer might be prejudiced by hearing only the cross-examination of a witness, in which "all emphasis would be on the potential areas of weakness." Besides, he added, no party to the case suggested or requested that such a method be used.

City attorney Steve Richardson joined the objection, noting that it would be very difficult to get direct testimony from adverse witnesses in written form.

EVEN WESTINGHOUSE spoke against Karen's ruling. Attorney Joseph Carney said, "It seems the ground rules are being changed in midstream, and just at the time Westinghouse prepares to present its own case."

Despite the unanimous objections, Karen said written testimony will be required, arguing that it would improve the quality of the record by eliminating such errors as wrong exhibit numbers, misspelled scientific terms and words or phrases misunderstood by the court recorder. He also suggested that it might cause the direct testimony to become better organized.

Under the rules for pre-written testimony, the lawyers must mail the testimony 7 business days before the scheduled appearance of the witness, or

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hand-deliver it 3 business days early, to the hearing officer and opposition attorneys. Verbal cross-examination than will be conducted on the day the witness is sworn in.

BEFORE THE argument broke out, Richard Ray Neal of Bloomington testified that he hauled solid wastes from the Westinghouse plant to landfills owned by his father, the late Ray Neal, in Monroe County and Owen County from 1966 to 1971.

He said the waste included rejected capacitors and waste paper and sawdust saturated with Inerteen, which is the name Westinghouse used to designate the PCB fluid it used to impregnate the electrical capacitors made at the plant.

Neal said he dumped the waste in a landfill of 10 to 11 acres near Whitehall Pike and Richland Creek until late in 1967 or early 1968, when Westinghouse advised him by letter that Inerteen was being considered a hazardous compound and should no longer be dumped where it could seep into crevices in underground limestone.

SHORTLY THEREAFTER, he said, two Westinghouse chemists and two state Board of Health employees inspected another of his father's properties, in Owen County, and pronounced it safe for the dumping and burial of the PCB-saturated wastes.

Neal said his contract with Westinghouse was terminated in 1971 when Westinghouse learned that he had hauled one truckload of the Inerteen waste to the Monroe County landfill site instead of the Owen County location.

A forthcoming civil suit against Westinghouse and Monsanto Corporation charging damage to the property and lifestyle of several individuals by PCB pollution, will have a change of venue from Monroe County, attorney Loftman learned Wednesday.

THE MOTION for changing the court to an adjacent county was filed in Monroe Superior Court. It was signed by attorneys Carney for Westinghouse and John Cochran for Monsanto. Monsanto, the sole U.S. manufacturer of PCBs, announced its withdrawal from PCB production this fall.