

14th day begins Wednesday

Where are PCB hearings going?

By JAMES THOM
H-T Environmental Writer

The Environmental Management Board's hearings on polychlorinated biphenyl (PCB) pollution have become transient in nature, drifting from one Bloomington church to another, to the National Guard Armory, then to Indianapolis twice and back again, to resume next Wednesday in the Utilities Service Center.

BUT IF IT'S HARD to tell where they're going physically, it's even harder to tell where they're going in terms of philosophy and purpose.

The hearing officer in the case brought up that question last Tuesday during a break in the 13th day of the inquiry which originally had been expected to last only a few days.

Faced with a mountain of transcribed technical testimony about Westinghouse Corporation's longtime use and discharge of the chemical into the Monroe County environment, Joseph Karen asked the participating lawyers:

"Where is this hearing going? I'm wondering if we should go on with it. Where do we stand relative to a Westinghouse settlement offer? What are the plaintiffs asking for? Doesn't the Board want to know whether all this expenditure is justified?"

KAREN SAID HE COULDN'T understand why there is no testimony addressed to the matter of a remedy for Monroe County's pollution plight.

Assistant Attorney General Michael Schaefer, who has been conducting the case against Westinghouse,

Analysis

seemed surprised by the questions. "I'm not empowered to negotiate a settlement with Westinghouse," he said. "I'm following the directions given by the Environmental Management Board at its last meeting. That is, to try this case."

Schaefer's efforts to date have been aimed primarily at producing technical witnesses who collected and analyzed water, soil, sludge and biological samples downstream from the place where Westinghouse's waste water enters the city's sewers, and from the vicinity of landfills where Westinghouse solid manufacturing wastes have been dumped. He has also brought to the witness stand the Westinghouse Division manager, Donald Sauter, some gardeners who unwittingly used PCB-contaminated sewage sludge on their gardens, and a couple of out-of-state scientists who have studied health effects of PCBs.

THEIR DETAILED AND technical testimony, both direct and under cross-examination by Westinghouse counsel Joseph Carney, makes up the bulk of the voluminous transcript, which is produced at a cost of several hundred dollars a day. Carney's relentless cross-examinations have virtually doubled the already staggering amount of data.

But, Schaefer believes, this is exactly the kind of a

case he was directed to put together: documented facts linking Westinghouse with the pollution and indicating the seriousness of it.

And he believes the case is moving. "The bulk of it is over," he said last week. "We're over the hill."

But the hearing officer, who has been preparing a progress report to present to the EMB at its meeting next Friday, feels disappointed in the hearings, and thinks the public is, too.

"IF I WERE A MEMBER OF the general public, expecting to be educated about PCBs and about the situation in Bloomington, I'd be very disappointed. It hasn't been educational. I don't blame people for not attending these boring sessions," Karen said. "On the other hand, to justify all the expense, you should have more than five or six members of the public sitting in."

More disturbing to Karen than the educational aspect, though, are what he calls the legal peculiarities of the case.

"The Board has accused Westinghouse," he said, "but it doesn't seem to know yet exactly what to charge. In the practice of law, you don't try someone, hoping that the trial will bring up facts on which to base your charges. A policeman arresting someone, for example, would have done all his fact-finding and named the charge before bringing that person to trial. Here we seem to be expecting the testimony to reveal what the charges will be."

(C) L. Back Page, This Sec.)

NOV 14 1976

Hard to tell where the PCB hearings are going

(Continued from page 1)

"I THINK THE PUBLIC'S been misled about this case. It's not supposed to be a fact-finding process. You're supposed to know your facts before you begin your hearing."

Karen also complains that the case doesn't seem to address itself at all to finding a remedy or settlement.

"I suggested Tuesday that in a legal proceeding, the possibility of settlement is always open. Westinghouse made a settlement offer some time ago, and apparently that's still on a back burner. Joe Carney said Tuesday that Westinghouse is still willing to explore the possibility of a settlement."

Essentially, Westinghouse's settlement offer was to make engineering changes in the plant which would prevent any more PCBs from escaping into the environment.

THESE INCLUDE INSTALLATION of a closed solvent bath to replace the old system of water-washing the PCB-impregnated capacitors; if manufacturers at the plant, controlled disposal of solid manufacturing wastes; sealing of vacuum

pumps and incineration of PCB-bearing vapors — measures the firm is already putting into operation.

The Bloomington Utilities Service Board has ordered Westinghouse to reduce its effluent contamination to 3 parts per million of PCBs. A Westinghouse spokesman said last week that he expects the new equipment to keep it at an even lower level. And the firm has announced that it is switching from PCBs to a hydrocarbon compound, an isopropylbenzene called WEMCOL, which will go into use in January.

The plaintiffs say those measures aren't enough, because they do nothing about cleaning up high residual concentrations of PCBs in Monroe County sewers and streams or in the hundreds of tons of accumulated sewage sludge.

THE CITY UTILITIES DIRECTOR has estimated that it would cost from \$5 million to \$40 million to replace the contaminated sewer lines between Westinghouse and the southside sewage treatment plant, plus nearly a quarter of a million more for one proposed sludge-disposal plan. The utilities board has expressed its opinion that Westinghouse, not the

rest of the sewer customers, should pay those costs.

Also totally unexplored yet in the hearings is the plight of several individuals whose property is thought to have been ruined for food production by PCB contamination. It is not known whether or how the state case against Westinghouse will weigh in their suits against the firm.

And in the meantime, other area residents await some indication, from out-of-state PCB experts who have yet to testify, what levels of PCB contamination constitute a hazard to their health.

MOST OF THE TESTIMONY of the state technicians, which makes up perhaps half of all the testimony to date, remains in a dubious state, not admitted yet as valid evidence by Karen. The data has been assailed by Westinghouse on all sides: its veracity, accuracy and relevance. Westinghouse's counsel has stated frequently that the firm has been falsely accused of polluting "the waters of the State of Indiana," because it purrs its waste in the sewer system, not in the streams.

This distinction, his brought sneers from the public, particularly environmentalists, but it cannot

be laughed off. One state witness, formerly water pollution enforcement chief, remarked during his testimony that, technically, it's true. The city, he said, poured the stuff into the waters of the State of Indiana, in the form of treated sewage effluent.

THE COMPLEXITY OF THE case makes much of the testimony all but incomprehensible. For example, almost an hour was spent last Friday in an argument about whether a standard chemical reference handbook, with data on the solubility of ethyl ether, benzene and water, could be admitted as evidence in a dispute over ways of recovering PCBs left on the insides of laboratory vessels. Westinghouse said it couldn't be admitted because it was only "hearsay" — the lab technicians didn't write the book.

Earlier last week, a witness was required to spend half an hour describing in detail how to read the numbers on a scale upon which a beaker was weighed in the lab. Such quibbles as these, Karen suspects, are the reasons why the public stays away from the hearing in droves.

So the case laboriously unfolds, like a chemical

de+ictive story in which all the characters are molecules. And hovering in the background are two giants:

MONSANTO CORPORATION, which until it dropped out of the PCB business a few weeks ago, was the sole U.S. manufacturer of PCBs. A legal representative of Monsanto has not waded into the Westinghouse lawyers' every day since the hearing began.

And the Environmental Protection Agency, which launched a nationwide program against PCBs last year, has taken contamination specimens from Monroe County, seeks in so the case from time to time, and will issue official guidelines for PCB levels soon under the new Toxic Substances Act.

In the meantime, Westinghouse waits between the proverbial rock and hard place: its worst public relations crisis ever and the possibility of a multi-million-dollar cleanup bill.

And Bloomington, in the weird position of being a respondent argument on the side of the plaintiffs, patiently counts its PCBs and waits to see where the case will go from here.