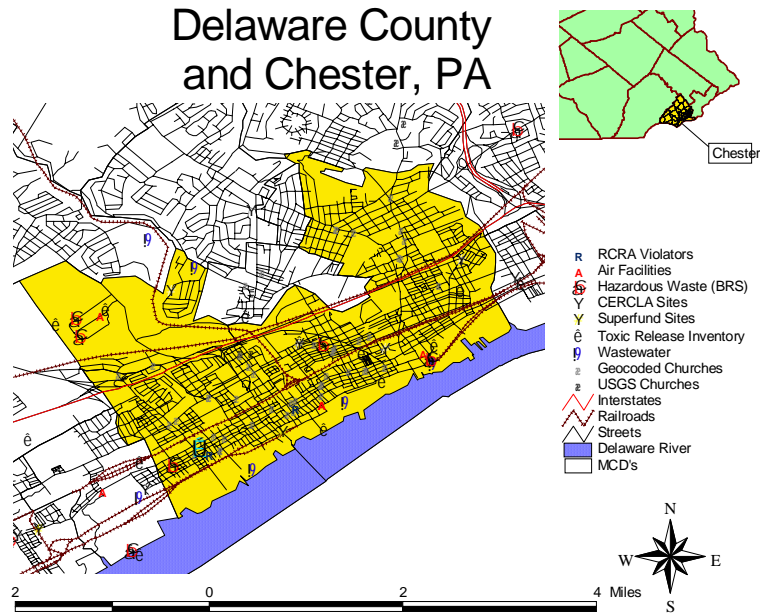


The Case for Environmental Justice in Chester, Pennsylvania

Introduction

Chester Residents Concerned for Quality Living (CRCQL) is a grassroots community organization that has been fighting for environmental justice in Chester, Pennsylvania. CRCQL has focused on waste disposal operations over the past few years. We have held protests, sit ins and community rallies. We've protested in the business offices of the major property owners. We've fought all the way to the Supreme Court on our claim that the

permitting decisions behind the clustering of polluting facilities in our community, particularly the waste disposal operations, violate Title VI of the Civil Rights Act. We've stopped the placement of additional facilities in the area and we continue our efforts to shut down the trash incinerator, keep the medical waste facility shut, and stop tire incineration. This report is intended to document our argument that Chester is national example of environmental racism.



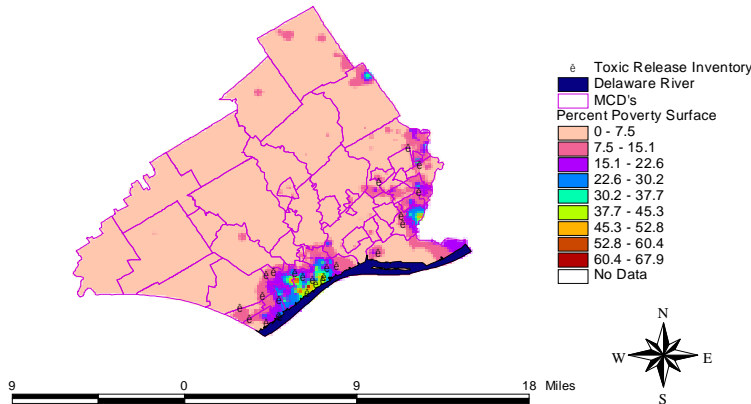
Background

History

Chester Pennsylvania is located in Delaware County. Delaware County is immediately adjacent to Philadelphia to the southwest. Delaware County is the fourth largest county in the state in terms of population, though it is the third smallest county in terms of land mass. The town of Chester, which is on the Delaware River, was first settled in 1644 as "Upland" and was incorporated in 1701. The city courthouse in Chester is the oldest public building in the United States. Chester also played a major role in the shaping of modern America. It was once a magnet for industrial production. At the beginning of the twentieth century...

The waterfront area became a powerful industrial complex, contributing significantly to the needs of the country during both World Wars. On the waterfront were Sun Shipbuilding and Drydock company, the oil refineries, The Baldwin Locomotive Works, The Ford Motor Company assembly plant, Westinghouse Electric Company, The American Viscose Company, which housed the world's first synthetic fiber plant and Scott Paper (www.co.delaware.pa.us/nwmunic.html).

Delaware County Percent in Poverty



In spite of its historical legacy, Chester has experienced the neglect characteristic of urban decline. What was once a thriving port and industrial area has been largely abandoned and is now suffering from some of the worst urban blight in Pennsylvania. Like many cities in the Northeast, Chester was hit hard in the postwar era by a restructuring of the U.S. economy. Increasing competition from abroad put industry on the defensive and with the advent of new

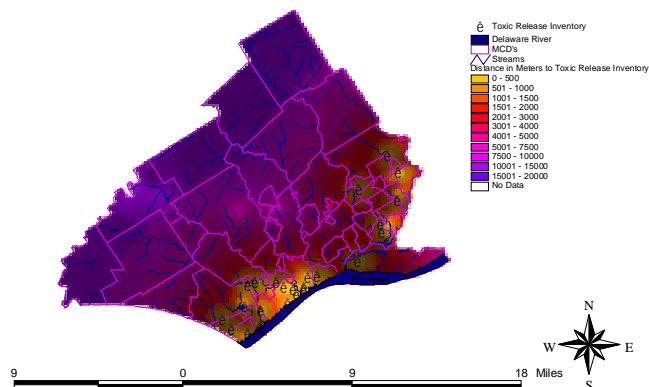
technologies industries gained mobility, and they began to consolidate and move out of the cities. Chester's experience was especially brutal because it had been so dependent on manufacturing.

Between 1950 and 1980, the local economy collapsed as 32 percent of the jobs in Chester disappeared. Much of the more upwardly mobile population moved away. Those that were left were predominantly minorities, transforming the racial makeup of the city. From 1950 to 1990 the population declined from 66,000 to 42,000. During the same time period the proportion of the population that was African-American increased from 20% to 65%. The pattern of demographic shift in Chester is not only characteristic of industrial decline. The demographic shift is indicative of massive white flight in the face of racial blockbusting by real estate speculators - a practice banned in 1968, days after the assassination of Martin Luther King, Jr..

Community Structure and Demographics

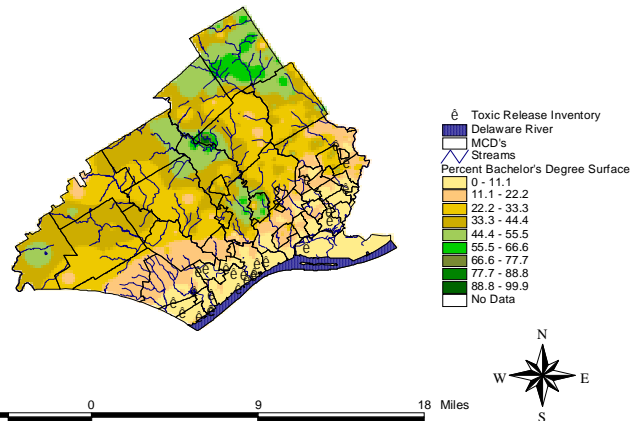
According to the 1990 Census 7.6 % of the population of Delaware County lives in Chester City. 10.1% of the population of Delaware County lives in 5 municipalities centered around Chester (Chester City, Chester Township, Eddystone, Trainer, and Upland). There are 49 separate municipal divisions in Delaware County so those five municipalities constitute 10% of the municipalities in the county.

Distance Buffers from Manufacturing
Lighter Areas Represent High Percent Minority



An examination of the characteristics of the population in this area highlights disparities. Chester City is the fourth largest municipality in Delaware County. The city has the highest percentage of minority residents and the highest poverty rate in the county. Chester has the lowest median income, the third lowest rate of home ownership, and one of the lowest rates of educational attainment in the county.

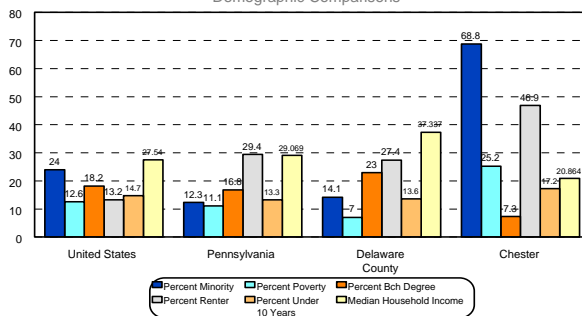
Delaware County Percent Bachelor's Degree



The structure of environmental risk in the county speaks to this apparent disparity as well. 9 of 25 manufacturing facilities in Delaware County are in Chester and an additional 7 are within 1 1/4 miles of the city limits in the municipalities of Chester Township, Eddystone, Trainer and Upland. Almost all chemical emissions from manufacturing activity in Delaware County in 1995 (90.7%), came from these manufacturing facilities. 41.7% of all minority residents in Delaware County live in those municipalities. 32.1% of the persons living in poverty live in those 5 communities.

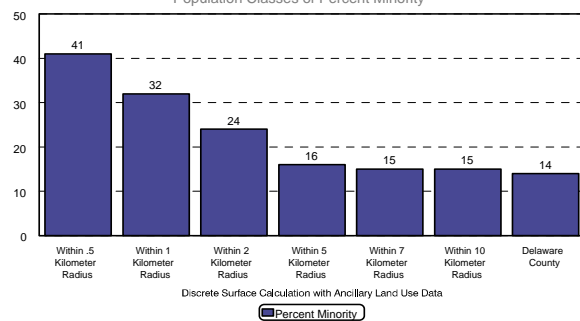
The fourth largest trash incinerator in the United States is located in Chester, next door to a shuttered medical waste facility and the Sewage Treatment Plant for the entire county. 9900

Delaware County and Chester Pennsylvania
Demographic Comparisons



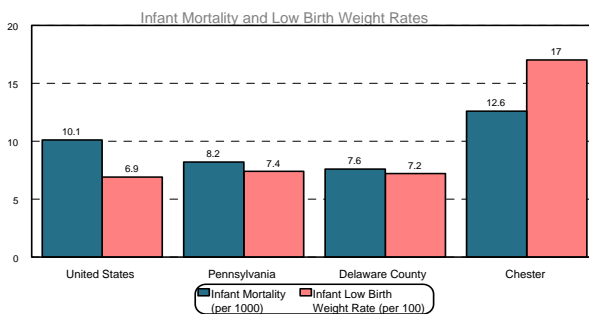
Source: 1990 U.S. Census

Proximity to Toxic Chemical Releases in Delaware County, PA
Population Classes of Percent Minority



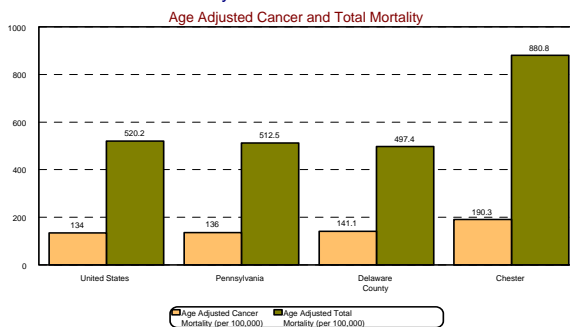
Sources: U.S. EPA, 1990 U.S. Census Bureau

Delaware County and Chester: Infant Health Outcomes



Sources: 1990 Census, U.S. Department of Public Health, Pennsylvania Department of Public Health

Delaware County and Chester: Health Outcomes



Sources: 1990 Census, U.S. Department of Public Health, Pennsylvania Department of Public Health
Age Adjusted Figures are 1940 Standard Million

people live within 1 mile of this complex of waste disposal operations. 67.8 % are minority, 27.4% are living in poverty. Overall, manufacturing facilities in Delaware County are located in areas which have high rates of poverty, high rates of minority population, and lower educational attainment than other areas of the county that do not have manufacturing facilities that release toxins into the environment and that do not have major waste disposal operations.

Existing Health Problems

From 1992-1996, Chester Township and Chester City had the 1st and 2nd highest rate of low birth weight babies in Delaware County respectively. Chester City had the second highest infant death rate in the county, the second highest age adjusted total mortality rate and the 11th highest cancer mortality rate in the county. Chester's health levels are well below national, state, and county rates.

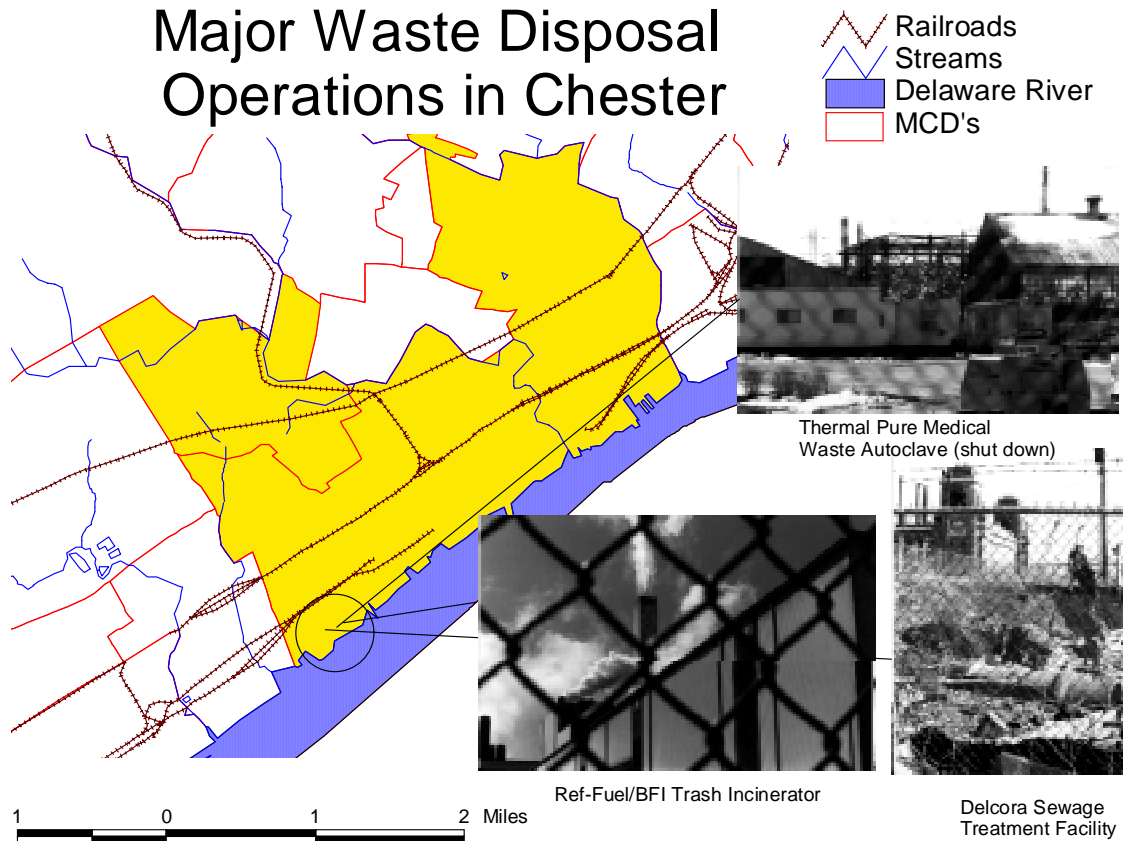
Some of CRCQL's Environmental Concerns

Setting aside for the moment, any further discussion of emissions from manufacturing facilities, CRCQL has grave and longstanding concerns about the presence of several major waste disposal operations in Chester. The 4th largest garbage-burning *incinerator* in the nation is located directly across the street from residential houses in Chester's west end. The incinerator was originally operated by Westinghouse, but was sold to American Ref-Fuel in early 1997. Over half of the waste burned there is from out-of-state, coming from New York, New Jersey, Maryland and Delaware as well as from all over Pennsylvania. The plant has had several air emissions and odor violations but few penalties have been assessed by the state. In 1993, a highly radioactive pellet of Cesium-137 was lost. The community wasn't notified until many months after the fact. The pellet was either vaporized in the incinerator or melted down in the steel plant of one of Westinghouse's contractors. This means that it's either in the air and ash from the incinerator or is now a part of metal consumer products that were manufactured by Lukens Steel Co. No fines were assessed.

Literally next door to the incinerator, lies the largest infectious and chemotherapeutic *medical waste autoclave* in the nation, Thermal Pure Systems. The plant has been shut down for a few years and Thermal Pure has been in bankruptcy. While operating, Thermal Pure brought in about three times the total amount of medical waste produced in the entire state of Pennsylvania. Waste was trucked in, sterilized and shipped back out to a landfill near Harrisburg. While operating, it wasn't unusual to find medical waste lying in the grass outside the boundaries of the plant, where children play. Multiple workers at the plant have been stabbed by needles while handling the waste. Some have been fired after the incidents, leaving the workers with recurring rashes and other health problems that medical personnel cannot identify. In one case, a worker's wife divorced him for fear of being infected by him.

Only a stone's throw away from the Thermal Pure plant lies the DELCORA sewage treatment facility. DELCORA treats about 90% of the sewage from Delaware County, but this only accounts for 20% of their capacity. The other 80% comes from local industries in Chester, like the Sunoco and British Petroleum (now Tosco) refineries as well as Witco Chemical spanning the western horizon and from Kimberly Clark Paper on the east end. This highly toxic industrial

Major Waste Disposal Operations in Chester



sludge is then burned in DELCORA's sludge incinerator, releasing pollutants including arsenic which the EPA found to be at unsafe levels in the community. Sludge from 3 other county sewage plants is also sent to be burned in DELCORA's incinerator.

Background of Waste Facility Operators

American Refuel's Trash Incinerator

The incinerator in Chester was the result of political end games which began in the mid 1980's. Both the city and the county wanted to build their own trash incinerators in Chester. The Chester mayor sought to obstruct the county effort, but the county delivered more political muscle to their initiative.

In 1985, a firm called Russell, Rae and Zappalla (RR&Z) purchased the land where Westinghouse and Thermal Pure now sit. To avoid sounding like bad guys from out-of-town, RR&Z partnered with Westinghouse and created a company called Chester Solid Waste Associates to be the official owners of the land. This name -- Chester Solid Waste Associates -- is in itself an indication of a long-term plan on the part of RR&Z to create a multi-business waste mecca in Chester. The diagram shows how the partners in RR&Z and James Cronin of Westinghouse are top level managers and or part owners of the Westinghouse Incinerator, Thermal Pure Systems, Soil Remediation Services, LCA Leasing, and Chester Solid Waste Associates.

As part of its plan, RR&Z began talking to Delaware County officials about the idea of building a mass-burn trash-to-steam plant (incinerator) as a solution to the county's rising waste disposal costs and the region's dwindling landfill space. In the mean time, they set up the first of many businesses at the site, a trash transfer station called LCA Leasing, which brought the first glimpse of waste, trucks, and trash odors to the neighborhood. The next company to arrive was a demolition debris recycling company called Abbonizio Recycling Corporation, whose irresponsible practices continue to create an enormous amount of dust in the neighborhood.

In 1988, the deal between RR&Z and Delaware County was finalized when the incinerator was granted an operating permit by the Pennsylvania Department of Environmental Resources or DER (now called the Penn. Dept. of Environmental Protection, DEP). Westinghouse, which like RR&Z is headquartered in Pittsburgh, won the contract to operate the facility. Part of the deal was that while the County would help finance the facility and pay for its waste to be disposed there, Westinghouse in turn had to landfill the incinerator ash in a landfill owned by Delaware County. The County official who brokered the deal with Westinghouse soon became the highest paid county official in the state.

In the course of the development of the project, the county and Westinghouse began meeting with the former mayor of Chester, Jack Nacrelli, to squeeze city politicians into backing the county project, undermining the current mayor's opposition. John Nacrelli, a convicted racketeer, thus played a principle role in brokering the final outcome, the placement of the 4th largest trash incinerator in a low income minority community. This fact prompted the Pennsylvania Crime Commission to observe.

In Chester we find Jack Nacrelli, a convicted racketeer, being called upon to mediate a dispute. The perception that government must rely upon or call upon convicted racketeers to mediate disputes in an industry historically tainted with organized crime involvement serves no other end but to suggest to the citizens of Chester that racketeers still decide public policy issues (PCC, 1988).

What is perhaps more important than the city using convicted felons to finalize touchy political deals is the fact that a major multinational corporation, Westinghouse, would do so. It might also be noted that the one of the principles in Chester Solid Waste Associates parent, RRZ, is the brother of a Pennsylvania Supreme Court justice Stephen Zappalla, who was accused of illegal wiretaps and kickbacks by his colleague on the bench, Justice Rolf Larsen in 1992. In particular, Larsen alleged that Zappala had worked to facilitate municipal bond packages involving his brother's firm. In the resulting flap, the Attorney General's office conducted a grand jury investigation and dismissed the corruption allegations.

The AG's office went on to prosecute and convict Larsen on two counts of criminal conspiracy in a scheme to buy anti-depressants without putting his name on the prescriptions. Shortly thereafter, Attorney General Ernie Preate would be convicted of taking bribes from video poker rackets in Altoona that the Pennsylvania Crime Commission had tied Nacrelli to in 1989, the day of the groundbreaking ceremony for the incinerator in Chester. The Crime Commission itself was effectively dismantled by Preate after they tied him to those video gambling rackets before he was convicted. Having spent two years in prison, Preate is now an anti-death penalty

advocate. The incinerator's presence in Chester spurred the creation of CRCQL. Zappala is still a Pennsylvania Supreme Court Justice.

BFI

Browning Ferris Corporation has been for some time the second largest waste disposal firm in the United States. The company has a substantial record of violations. These violations have included multiple and repeated criminal, civil and administrative violations of antitrust and environmental laws. What follows is an abbreviated listing of some of the company's legal violations and compliance problems.

Anti-Trust/Miscellaneous Violations

BFI's violations in this respect tend to center on illegal attempts to take over/monopolize individual markets by forcing out competitors and/or establishing price fixing and customer allocation schemes. In more than one instance, BFI and/or state officials involved with their permits or applications have plead guilty to, or paid penalties to settle charges of bribery.

- 1990:** \$30.5 million out of court settlement resulting from a class action lawsuit brought by customers against BFI and WMI alleging price fixing and customer allocation.¹
- 1994:** \$4.2 million fine in Kane County, IL, for price fixing.²
- 1995:** Texas state employee with The Natural Resource Conservation Commission pleads guilty to accepting a bribe from BFI in exchange for a favorable permit ruling.³
- 1996:** Settlement reached by BFI and WMI with Justice Dept. in Memphis Tenn., Georgia, Iowa and Louisiana for illegal contracts and other anti-trust violations. BFI agreed to stop the practices and no penalties were assessed. Concerning BFI's practices, the Justice Dept said, "BFI intentionally used restrictive contracts to inhibit competition and enhance its power over commercial customers"⁴
- 1998:** BFI reached an agreement with the US Dept. of Labor. The company was cited for gender discrimination against 11 women who had applied for positions as truck drivers. The agreement included \$213,754 in back wages and guaranteed employment for the women.²³
- BFI reached a \$682,000 settlement with the Solid Waste Authority in Contra Costa County Ca., considerably less than the fines of \$1.5 million originally proposed by the Waste Authority.²⁴
- BFI was sued by the federal Equal Opportunity Employment Commission in Pittsburgh Pa. The suit alleges that BFI discriminated against a job applicant because of his age, and that the company hired a younger, less qualified applicant.²⁵
- BFI was fined \$331,000 for missed pickups in Jefferson Parish, La.²⁶
- 1999:** BFI paid Daugherty Township Pa, \$800,000 to settle a lawsuit filed in federal court. The township had accused BFI of avoiding tax payments by illegally altering the manner in which it calculated gross receipts for a landfill.²⁷

Environmental Violations

The Clarion Ledger, (Jackson Miss.) had this to say about BFI after concluding a ten month investigative report into environmental problems resulting from the company's waste disposal practices: "BFI and its analogs offer essential services. BFI's role is not at issue: *its performance is.*"²⁸ (italics added)

- 1990:** \$3.525 million in penalties paid in a plea bargain arrangement where BFI pleaded guilty

to discharging hazardous waste into drinking water supplies in Williamsburg Ohio.³⁸

- \$1.55 million for over 1,400 violations at hazardous waste landfill in Calcasieu, La.³⁹

- \$659,000 in penalties to EPA for failure to obey post closure monitoring requirements of solid waste landfill in South Brunswick NJ.⁴⁰

- 1993:** \$1.1 million settlement with state of California for the bay area's worst sediment spill ever, which resulted from a BFI landfill and severely damaged two streams.⁴²

- 1996:** Part of \$11 million settlement in Johnson County KS., to clean up Doepke-Holliday landfill that had been used from 1950-1970 to store waste from homes, pesticides plants, oil refineries etc.⁴³

- 1997:** \$5+million in fines and restitution in West Chester, PA for illegal disposal of wastewater treatment sludge from 1989-1992. Previously, BFI had pled guilty to a 23-count indictment charging them with conspiracy, mail fraud, and Clean Water Act charges involving the illegal disposal of the sludge at five plants in Pennsylvania and Delaware by BFI Services West Chester waste hauling operation. BFI was ordered not only to pay \$3 million, but restitution of \$6.4 million to four wastewater treatment plants, as well as \$1.5 million to organizations that handle environmental concerns of the PA/DE region.⁴⁴

- 1998:** \$1.5 million in penalties paid by BFI for violations of the Clean Water Act in Washington D.C. by its Maryland subsidiary. BFI admitted three criminal violations stemming from the release of wastewater contaminated with improperly treated medical waste. BFI corporate spokeswoman, Barbara Brescian said the company settled, "in the interest of putting this two year old situation behind us. BFI vigorously maintains our subsidiary committed no wrong."⁴⁵

Allied Waste Systems

Allied Waste Industries of Stockdale, AZ is currently seeking to acquire Browning Ferris. The financial backers and majority owners of Allied are Apollo Management and Blackstone Capital Partners. Leon Black, a top officer in Blackstone is a former ally and protege of convicted junk bond king, Mike Milken. Black was a managing director at Drexel and a Milken Protege in 1988 when the company plead guilty to 6 felony charges and paid a \$650 million fine for securities fraud.⁵ In 1999, Blackstone Capital Partners II was fined \$2.785 million by the federal government for failing to produce required documents for review by the Federal Trade Commission in another unrelated merger involving a funeral home package. Howard Lipson, a top Blackstone official, was fined \$50,000 for claiming that the documentation filed with the FTC regarding the merger was accurate and complete when he knew, or should have known, that in fact it was not accurate and complete.

- Allied's former Chief Executive Officer, Roger Ramsey, was the Vice President and Chief Financial Officer for BFI from 1968 to 1976. In 1983, BFI pleaded no contest to charges of price-fixing and conspiracy in Atlanta from 1974 to 1979.

- Allied's current Chief Executive Officer, Thomas H. Van Weelden worked at Waste Management from 1974-1976 and then ran his own trash firm in Illinois, Van Weelden Brothers.

- Allied Waste Industry, Inc.'s Fort Mill transfer station was issued a consent order in response to charges of leakage and operational problems. Container Corp., a South Carolina subsidiary of Allied that was responsible for the Fort Mill transfer station, paid a \$55,000 fine and the station

was closed.

Air Products

Air Products is an industrial gas manufacturing firm with some construction and engineering business based in Allentown, PA. The company has a number of violations of environmental laws on its record and has been named as a potentially responsible party at least 25 Superfund hazardous waste sites. EPA records indicate violations of RCRA hazardous waste treatment, storage and disposal regulations at Air Products facilities in Delaware, Florida, Pennsylvania, Tennessee, Kentucky, Texas, New Jersey, and South Carolina. A number of Air Products facilities have had reported accidents, spills and leaks of chemical many as the result of raptures, valve failures and other equipment type problems. Some of these spills resulted in injuries. One accidental release required that 75 workers be sheltered in place. This observation is relevant to the Ref-Fuel facility because it underscores the kinds of problems that might arise there if aging equipment is not aggressively monitored and maintained.

AllyCapital

The Thermal Pure medical waste facility in Chester was owned by BioMedical Waste Systems, a firm out of Boston, MA. The Thermal Pure Facility was shut down by state order in 1995. The Company filed for Chapter 11 on September 15, 1995. Ally Capital is now attempting to reopen the facility. Ally Capital is an investment firm headed by Steven M. Pickens, Alan Gold and Gary Abriem, and what follows is an attempt to explain how Ally got hold of the facility and who they are.

In 1993, Ally Capital owned at least 21,429 shares of common stock in Biomedical Waste Systems. Though the company won a Pennsylvania Supreme Court ruling, 5-0, overturning the state's shutdown of the facility, this did not change the circumstances for the facility and BioMedical remained in bankruptcy partly because the company had defaulted on a \$1 million promissory note in June, 1995. This note was secured by a variety of BioMedical assets including certain accounts receivable and was guaranteed by William M. DeArman and Don Sanders, each of whom were members of BioMedical's Board of Directors.

On July 20, 1995, DeArman and Sanders purchased and accelerated the note. DeArman and Sanders also filed and received a temporary order which required that the collateral on the notes be paid to them. As a result of these factors, BioMed lacked sufficient liquidity to operate. On September 15, 1995, BioMed and certain subsidiaries filed for bankruptcy and in October 1995, other subsidiaries also filed.

Biomedical Waste Services' Thermal Pure assets were split off and the bankruptcy case against Thermal Pure was dismissed. Thermal Pure was then transferred to Ally Capital in settlement of its secured claims. Part of that settlement appears be related to a 2/28/92 host community agreement between Chester Solid Waste Associates and Thermal Pure Systems. The manner in which these matters were worked out is summarized in a court docket sheet from the bankruptcy proceedings.

In November, 1997, an application to approve an amended stipulation settling claims and controversies among the debtors, Ally Capital Corporation, Environmental Allies International, N.V. and Environmental Allies, N.V. by American Medical Waste Systems, Inc.

On December 10 a hearing was held on a motion to deem the debtors' interest in the lease in Chester, Pennsylvania terminated and abandoned by Chester Solid Waste Associates. That same day an order agreement between the debtors, Ally Capital Corporation, Environmental Allies, N.V. and Environmental Allies International was filed.

Ally Capital does not appear to have any real operating experience in the field of environmental treatment, particularly medical waste handling. The company is primarily an investment firm and some of its investments involve bankruptcies. In addition to being an investor in BioMedical Waste prior to the company going bankrupt, Ally Capital has been involved in financing Chemfix Technologies of Maitairie, Louisiana and Perma-Fix Environmental of Atlanta, Georgia. When Chemfix announced Ally Capital's financial backing in 1993, Allen Gold, the founder of Ally Capital, also joined the board of Chemfix. At the time, Gold claimed that Ally was the nation's first "Environmental Equipment Finance Company."

Specifically, Gold mentioned that the company's focus in just financing equipment, differentiates Environmental Allies from other financing vehicles which are investing in the equity capital of environmental concerns. Another aspect of Ally Capital's strategic approach which should benefit investors is its diversified portfolio (Business Wire, 1992).

Ostensibly, it seems reasonable to suppose that the stake that Ally had in the Thermal Pure operation might have been related to their financial backing of the purchase of some treatment equipment for the facility. Chester Solid Waste Associates stake appears to have been the result of that group's as the landowner.

At this stage, the facility permit process is held up as the state rejected the company's initial permit renewal request pointing out 49 deficiencies in the application. Among deficiencies noted were the fact that the company had not provided adequate information on the identities, experience, and compliance record of the individuals, firms and other related entities involved in the ownership and operation of the facility. The state also noted the possibility that the facility may need a new permit because of the change in ownership that had occurred.

Tire Burning at Scott/Kimberly Clark facility in Eastern Chester

The Kimberly Clark facility in Eastern Chester is proposing to burn tires to produce energy as a means of offsetting energy costs associated with their operations. The paper plant was the second largest emitter of environmental releases in 1996 and the third largest in 1995. From 1991 to 1996, total production related waste increased at the facility by 297%. Elsewhere, Kimberly Clark has experienced environmental problems related to hazardous waste management. EPA records indicate violations at facilities in CT, WA, WI, AL, CA, NC, and MS. They have also experienced a number of leaks and spills. We think that the community is already burdened with enough waste disposal issues, Kimberly Clark is not doing anything to benefit the surrounding neighborhoods of Chester. This proposal is like a slap to the face of the community.

Environmental Releases, Transfers, and Production-Related Waste (Pounds from TRI sources) from Kimberly Clark Facility in Chester								
Year	Stack Air Releases	Fugitive Air Releases	Water Releases	Underground Injection	Land Releases	Total Environmental Releases	Total Off-Site Transfers	Total Prod.-Related Waste
1988	198,500	86,300	0	0	0	284,800	82,089	NA
1989	108,200	59,800	0	0	0	168,000	51,728	NA
1990	154,300	21,701	0	0	0	176,001	18,222	NA
1991	151,600	15,700	0	0	0	167,300	25,120	451,235
1992	229,500	14,100	0	0	0	243,600	11,280	765,285
1993	273,400	11,100	0	0	0	284,500	7,800	1,069,805
1994	304,500	29,000	0	0	0	333,500	2,105	466,102
1995	372,600	21,000	0	0	0	393,600	1,905	1,455,902
1996	215,800	24,000	0	0	0	239,800	532	1,341,150

"NA" means that no data are available because "Total-Production Related Waste" was not reported until 1991.

Environmental Justice

This following text of this section is drawn directly from an internal EPA briefing memo discussing the CRCQL case that the State of Pennsylvania appealed to the U.S. Supreme Court. The analysis offered by the EPA's acting General Counsel is succinct and accurate. The fact that it was circulated to the highest levels of the EPA indicates that the agency considers the matter of special importance given President Clinton's executive order on environmental justice in February of 1994.

"On August 17, 1998, the Supreme Court dismissed as moot *Seif V. Chester Residents Concerned for Quality Living*, 1998 WL 477242, an important environmental justice case filed in federal district court under Title VI of the Civil Rights Act. The dismissal came at the request of the plaintiffs, a group of residents in Chester, Pennsylvania. They had sued the State's environmental agency over a permit for a solid waste facility in the city of Chester, which is a predominantly African American community. In their lawsuit, the plaintiffs alleged that the permit violated EPA's Title VI regulations because it would have racially discriminatory human health, environmental, and other effects on members of their community, which already is overburdened by polluting facilities. Unexpectedly, they asked the Supreme Court to end the case after learning that the State agency recently had revoked the permit for the proposed facility at the request of the permittee.

"The issue before the Court was whether the plaintiffs had the right to bring their lawsuit under Title VI without alleging intentional discrimination. Title VI prohibits recipients of federal funds from discriminating on the basis of race, color, or national origin in their programs and activities. While the statute itself bans intentional discrimination only, it allows federal agencies to adopt implementing regulations that also ban unintentional discriminatory effects. It is well settled that Title VI creates an implied right for a private party to sue a recipient for intentional discrimination. However, the Supreme Court has not squarely addressed the question

of whether a private party may sue to enforce the agency's Title VI regulation that prohibits discriminatory effects -- a proposition that is widely accepted among the federal courts of appeals.

“As a recipient of EPA grant funds, the State's environmental agency is subject to the requirements of Title VI and EPA's implementing regulations. In lieu of filing an administrative complaint in federal district court alleging that the permit at issue violated EPA's Title VI regulations that bans discriminatory effects. The district court granted the State agency's motion to dismiss the complaint. It ruled that, unlike intentional discrimination claims under Title VI itself, there is no private right of action to enforce EPA's regulation. The district court's dismissal of the case was reversed on appeal by the Third Circuit Court of Appeals. As a result, the State agency petitioned the Supreme Court to review the case, which the Court accepted for review in early June.

“In their last filing, the plaintiffs requested that the Court dismiss the case as moot and suspend the briefing schedule while it considered the mootness question. They also argued that, if the Court dismissed the case, it should not vacate the appeals court's decision because the case became moot after that decision but before the Court had accepted the case for review. One day before the State agency's opening brief was due, the Court suspended the briefing schedule. Less than two weeks later, it summarily dismissed the case as moot and remanded it to the appeals court with instructions for dismissal. In doing so, the Court followed its usual practice of vacating the judgement below to preserve the rights of parties in future litigation. This leaves to a future case the Court's views on the important legal issue raised in this case.”

Under the circumstances, with three ongoing environmental issues under development in Chester, it is reasonable to assume that the case for environmental justice in Chester is far from moot in the real world.

Summary

This report documents the injustices associated with manufacturing and waste disposal activity in Chester, PA. The poor and minority neighborhoods of Chester are a sacrifice zone. This observation holds equally true for other areas of Delaware County. Poor people, people of minority status, people with lower educations and people with poor health are being exposed to environmental hazards in Chester and elsewhere in Delaware County while people who are relatively healthier, better educated, of higher economic class, and much more likely to be white are not being exposed to those hazards. What is particularly disturbing is what this tells us about the flow of benefits from these manufacturing and waste disposal operations. It seems reasonable to suppose that manufacturing activities which expose neighboring communities to toxic emissions should, at the very least, be offset by some improvement in the living conditions of those people. This is not happening. What is really galling about this situation is that no apparent social benefit at all whether in the form of jobs, better health care, better education systems or relief from the conditions of poverty, is accruing to people in the host community (ies). They are not getting access to more and better educations, they are not getting access to more jobs, they are not getting access to many even basic amenities. They are just getting flushed.

This is not to say that any one individual or group of individuals is solely responsible for the situation in Chester. The people of Delaware County need to ask themselves a question: What type of community do I wish to belong to? There is a longstanding historic dispute about political power in Delaware County. In 1850 the denizens of Chester fought a protracted battle to keep the county seat in their town but the wealthier inhabitants of Media won the new seat. In 1988, the county officials in Media decided they wanted a trash incinerator and put it in Chester over the objection of the mayor who claimed to want to build an incinerator that would be owned by the city. This ugly political conflict is over 150 years old and manifests itself in the form of a low profile civil war that plays itself out on the streets of Chester day to day. It's time to call a truce and do something to stop the hemorrhaging.

1. Zuckerman, Laura . Trash Talk:BFI. The Hutchinson News, 9/22/96. p. 13
2. Yip, Pamela. Feb. 24, 1994. Browning Ferris Hit with Anti-trust Ruling. The Houston Chronicle, The Houston Chronicle Publishing Company.
3. The Dallas Morning News: "Ex-panel Employee Given Probation" July 1, 1995.
4. "Justice Department Puts an End to the Two Largest Solid Waste Hauling and Disposal Companies Monopolistic Practices." Department of Justice Memo, 2/15/96.
5. "Allied Waste Announces Completion of Shareholder Transactions Closes Senior Discount Note Offering," PR Newswire, May 15, 1997.