September 17, 2025

Via E-Mail

Commissioner Shawn LaTourette
Department of Environmental Protection
401 E State St.
Trenton, NJ 08625

CC: Kandyce Perry, Director, Office of Environmental Justice
David Pepe, Director, Office of Permitting and Project Navigation

RE: Environmental Justice Decision, Corning Pharmaceutical Glass, LLC, Project ID 34120350

Dear Commissioner Shawn LaTourette:

As organizations accountable to the environmental justice communities impacted by the landmark 2020 Environmental Justice Law (EJ Law) and allies of the environmental justice (EJ) movement, we pen this letter to share our concerns regarding the recent Environmental Justice Decision for Corning Pharmaceutical Glass, LLC. This decision - being only the second of its kind under the Environmental Justice Rules (EJ Rules) - continues to set precedent for how the Department of Environmental Protection (DEP) will enforce the EJ Rules both in the near future and in the long-term. Therefore, it is of paramount importance that the DEP establish policies for engaging with communities, facilities, and all types of communication/documentation submitted throughout the permit process. This includes full transparency and accountability into DEP's interpretation of various arguments made, regardless of the stakeholder type.

Therefore, on this subject, we write to express our concern over the implementation of the EJ Rules and EJ Law in the Corning Pharmaceutical Glass, LLC Environmental Justice Decision (Corning Decision). As explained further below, Commenters raised technical issues and deficiencies in Corning's EJIS and proposed additional permit conditions, and Corning's Response to Comments disputed some of Commenters' points, but then DEP's EJ Decision was

entirely silent on the issue. So nowhere is the public made aware of DEP's position on the issues in contention or reasoning behind that position.

The Need for Thorough and Robust Response from DEP

As the New Jersey Supreme Court has explained, "[i]t is axiomatic in this State . . . that an administrative agency acting quasi-judically must set forth basic findings of fact, supported by the evidence and supporting the ultimate conclusions and final determination, for the salutary purpose of informing the interested parties and any reviewing tribunal of the basis on which the final decision was reached so that it may be readily determined whether the result is sufficiently and soundly grounded or derives from arbitrary, capricious or extralegal considerations."[1] Other reasons for agency findings of fact include "to prevent judicial usurpation of administrative functions, to help parties plan their cases for rehearing and for judicial review, and to keep administrative agencies within their jurisdiction."[2] In addition, "[i]t is not only the duty of the agency to find the necessary facts, but also to explain its reasoning. In other words, it is obliged '. . . to tell us why.'"[3]

The EJ Rule requires that DEP, as part of its review, "shall consider" not only "the EJIS and any supplemental information" but also "testimony, written comments, the applicant's response to comments, and any other information deemed relevant by [DEP] to evaluate its decision."[4] DEP's evaluation of conditions on the construction and operation of the facility "shall not be limited to those conditions proposed by the applicant."[5] The EJ Rule even provides that DEP can contract with outside experts in its analysis of the EJIS.[6]

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[1] Application of Howard Sav. Inst. of Newark, 32 N.J. 29, 52 (1960).
[2] Mackler v. Bd. of Ed. of City of Camden, 16 N.J. 362, 370 (1954).
[3] Petition of Hackensack Water Co. to Watershed Prop. Review Bd., 249 N.J. Super. 164, 175 (App. Div. 1991) (quoting Drake v. Human Services Dept., 186 N.J. Super. 532, 538, 453 A.2d 254 (App. Div. 1982)).
[4] N.J.A.C. 7:1C-9.1(a).
[5] N.J.A.C. 7:1C-9.1(b).
[6] N.J.A.C. 7:1C-9.1(c).

In short, then, the EJ Rule requires DEP to consider EJIS comments and response to comments – including but not limited to comments concerning additional proposed conditions – and New Jersey administrative law then requires DEP to explain its reasoning for accepting or rejecting any such issues, and the factual basis for this reasoning.

But here, DEP's EJ Decision fails to mention live issues from the public comments and Corning's response to comments, as explained further in the next section. The EJ Decision's silence on these issues gives no indication about whether DEP fulfilled its basic duty under the EJ Law to consider the public comments and the responses thereto. And while the EJ Decision does not mention Commenters' proposed permit conditions, for example, it nevertheless authorizes Corning to proceed with the permit application without those conditions, resulting in DEP's implicit and silent rejection of Commenters' proposed conditions. But the EJ Decision fails to explain DEP's reasoning for rejecting these conditions or the factual bases for these rejections.

We believe that this holds profound implications, not just as a matter of process for rule implementation, but for court challenges and subsequent legal questions. By not explaining its reasoning or the facts that support that reasoning, DEP's EJ Decisions could be subject to legal challenge for failing to comply with the basic tenets of administrative law.[7] Furthermore, we note the concerning lack of explanation in the June 3, 2025 decision regarding Safety-Kleen's application, whereby DEP similarly approved the application under the EJ Law but did not adequately address the comments made in the public comment period. Without the explanations required by law, it becomes incredibly unclear how the DEP is engaging with these documents or the logic behind EJ Law and EJ Rule implementation.

Likewise, we also wish to draw attention to the manner in which the rule is being implemented and interpreted: either in a narrow reading of the regulatory text or in a broader reading of the rule which is more inclusive and protective of communities. This connects back to our original concerns with the Safety-Kleen EJ Decision in which we note that under the plain text of the EJ

[7] See, e.g., Petition of Hackensack Water Co. to Watershed Prop. Review Bd., 249 N.J. Super. 164, 184 (App. Div. 1991) (vacating decision of the Watershed Property Review Board and Board of Public Utilities that failed to explain its reasoning).

Rule, the facility should have been required to treat its new emissions sources as a 'new facility' under the EJ Law. However, this assertion was not addressed in the DEP's EJ Decision. In the same spirit, there are several points throughout both our comments as well as Corning's response in which Corning misinterpreted the requirements of the law, which were highlighted in our public comment. We believe it is incumbent upon the DEP to expressly make a decision about these discrepancies and explain the logic behind their analysis within each EJ Decision for each and every permit applicant, whether applying for a new permit or a renewal.

The following portion of this letter highlights key areas of contention between our comments and Corning's response which were not addressed in DEP's EJ Decision for Corning.

Points of Contradiction, Contention

Examining Total (Ongoing & New) Contributions versus Only 'New' Contributions

A central and critical point of contention between our comments and Corning's response to comments, is the question of which emissions are being scrutinized for review. By Corning's own table, the community in which the facility is located is adverse for 17 of the 26 stressors listed by the DEP, including air quality stressors that Corning clearly contributes to. However, Corning states in their EJIS that, "none of the stressor categories are further affected by the operation of the existing CPG Vineland facility or the CPG Vineland Modernization Project."[8] This is contradictory with the EJ Law and DEP's guidance that a facility examines all contributions to stressors, which include not only any new contributions, but also pre-existing and ongoing contributions.[9] The permit renewal application must consider a facility's ongoing contributions to stressors and not - as Corning suggests - look only to whether the categories are 'further' or additionally affected above and beyond pre-existing impacts.

Corning's response to our concerns on this area can be found in a generalized answer in its response to comments when they say, "The CPG facility's contribution to all adverse

[8] Corning Pharmaceutical Glass, Environmental Justice Impact Statement, 98 (Nov. 2024), https://dep.nj.gov/wp-content/uploads/ej/corning-pharma-glass-ejis-november-2024.pdf (emphasis added).
[9] Environmental Justice Rules, 55 N.J.R. 661(b), 690 (April 17, 2023)

environmental and public health stressors in the overburdened community were then summarized in Table 23;[10] this illustrated that the facility's contribution to disproportionate impacts were only found to be adverse for the categories related to stationary and mobile sources of air pollution."[11]

This response demonstrates a misreading of both the protective spirit and the technical requirements of the EJ Law. As stated in our original comments, the EJ Law "requires the Department to undertake an assessment of facility stressor contributions at renewal of each major source/Title V permit."[12] Therefore, regardless of what portion of the permit is responsible for contributing to disproportionate impacts, the entire facility must be scrutinized for feasibility and opportunity to reduce emissions in aggregate for the safety and health of the surrounding community. The EJ Decision must, at the very least, address and reject Corning's misreading of this standard in order to ensure the proper functioning of the EJ Law and EJ Rule here and in future proceedings.

<u>Interpreting the Scope of the LICT Analysis</u>

As highlighted in our comments, the Corning facility's EJIS describes a 'Localized Impact Control Technology' (LICT) analysis[13] only for their batch-house modernization project. To merely analyze this singular element of their operation is in contradiction with the EJ Law and Rules. As stated in our original comments:

> "DEP's EJ Rule Requires, in the case of new or modified permits, a LICT analysis for the entire facility, not just the modified emission units. The EJ Rule states that for 'a new *major source facility* … or an expansion of an existing *major source facility* … the applicant shall document Localized Impact Control Technology (LICT) for the *source*."
>
> - Comments submitted April 4, 2025

[10] Based on our reading of the Corning documents, we believe that Corning is actually referring to Table 29.
[11] Corning Pharmaceutical Glass, EJIS Comments and Responses, at pdf 55.
[12] Environmental Justice Rules. 55 N.J.R. 661(b), 690. April 2023.
[13] N.J.A.C. 7:1C-7.1.

The challenge in this area of disagreement arises in interpretation of the word '*source*'. In Corning's response to comments, Master Response 4 - Scope of the LICT Analysis, Corning argues that the LICT analysis is only required for the batch house modernization portion of the EJIS and permit. Corning disagrees with our analysis that LICT should apply to the entire facility based upon their reading of the Environmental Justice Law. However, it should be noted that the EJ Rule repeatedly refers to the major source facilities with the shorthand 'source'.

In the EJ Decision, there is no mention of this disagreement between our comments and the response by Corning. Therefore, we can only assume that the DEP has elected to agree with Corning's reading and review of the Environmental Justice Law and Rules. This is deeply concerning for two reasons. First, a clear lack of explanation and logic behind DEP's analysis and decision leaves communities in the dark as to how to understand the application of the rules in their communities. This is contradictory with the goals of transparency and accountability to communities who have been subjected to environmental racism in the state. Secondly, the EJ Law is clear in that the state must make all efforts to clean up both existing levels of pollution in overburdened communities and ensure that further pollution is not generated by facilities in new permit applications as well as renewals for existing applications. Therefore, a narrow interpretation of what is defined as a 'source' subject to an LICT analysis limits the DEP's ability to analyze and put forth requirements for emissions reductions on the facility as a whole.

<u>Technical Feasibility Analyses</u>

In the same vein as the likely misinterpretation of the LICT analysis, we noted in our comments that Corning also misinterpreted its requirement to conduct a technical feasibility analysis for all equipment that is:

(1) Installed at least 20 years prior to the permit's expiration date
(2) Not subject to review under the EJ Rule in 15 years prior to the permit's expiration date
(3) Has a <u>total</u> potential to emit from <u>all</u> equipment or control apparatus that meet the above criteria which comprise at least 20% of the facility's overall potential to emit.

To that end, the facility - in this case - Corning - must conduct a technical feasibility analysis for all pieces of equipment that are older than 20 years, have not been previously reviewed and have a collective potential to emit 20% or more of the facility's overall potential to emit. Our comments noted that the plain language of the EJ Rule says that the 20% threshold applies to the "total" potential to emit of "all" older equipment emissions, and not that the 20% applies to each individual piece of older equipment, as Corning's EJIS states. We also noted that there is no "insignificant source" exemption to the technical feasibility analysis, as Corning's EJIS suggested. However, as seen in Corning's EJIS, they have misinterpreted this provision and only conducted a feasibility analysis for significant source operations alone.

> "Equipment meeting the criteria of an insignificant source operation […] will not be included in the analysis as the PTE of any individual insignificant source operations do not meet the criteria of emitting more than 20 percent of the facility's PTE, and […] are not subject to the technical feasibility analysis. In addition, there are no substantive requirements for insignificant source operations within the air permit or N.J.A.C. 7:27."
>
> - EJIS for Corning Pharmaceutical Glass, LLC November 2024

The final EJ decision states, "CPG evaluated all equipment and conducted a technical feasibility analysis for applicable equipment." In saying this, DEP implicitly agrees with Corning's interpretation by seemingly approving Corning's list of equipment covered under the technical feasibility analysis, but DEP has not provided a comprehensive or straight forward explanation as to why Corning's proposition is an accurate reflection of the requirements in spite of the plain language of the EJ Rule. DEP should review all equipment within a facility and ensure that emissions are mitigated to the maximum extent possible, and thereby communities are protected under current law.

Electrification

In the matter of electrification, we believe that this requirement is one of the most straightforward requirements the DEP can impose upon a facility. While the transition to total

electrification will be both a lengthy process and has repercussions for EJ communities with regards to power plant and electricity production, at the site of the facility - electrification continues to be both an effective control measure and a feasible near-term solution for reducing toxic air emissions in overburdened communities. In our original comments, we argued that Corning could adopt electrification of its furnaces which would not only yield emissions reductions, but provide advantages over natural-gas combustion furnace models and keep the facility in line with best business practices held up by similar facilities around the globe.[14] To that end, implementing a switch to electrified furnaces presents not only a public and environmental health benefit, but a smart business decision.

In response, Corning argued that localized emissions reductions would be counterbalanced by "upstream emissions" to construct such furnaces as well as the "off-site emissions to generate electricity at a power plant and the distribution losses of electricity so that much more energy would be required." Corning provided no support for this conclusory statement. Corning also argued that an "all electric-furnace consumes more energy than a natural gas furnace with an electric boost. This additional energy requirement supports the use of electric boost and natural-gas firing."[15] Corning's support for their argument is an Environmental Protection Agency (EPA) document from the early 1990s, which is now over 30 years old and does not - and cannot - include an analysis of modern fully electric furnaces which have come online and entered the market.

Corning's analysis is wrong. In addition to the many sources highlighted in the footnotes of our original comments, a 2021 study by the Lawrence Berkeley National Laboratory finds that the electrification of industrial boilers in New Jersey's glass manufacturing industry, specifically, would yield both economic benefits (i.e. save money and decrease costs) as well as decrease greenhouse gas emissions on the current grid.[16] That study finds that, since glass manufacturing boilers in New Jersey are dirtier than the average electric generating station on the state's grid,

[14] New Jersey Environmental Justice Alliance et al., EJ Rule Comments on Corning Glass Vineland, 10-16 (April 4, 2025).
[15] Corning Pharmaceutical Glass, EJIS Comments and Responses, Appx. F at 4 (June 20, 2025) [hereafter Response to Comments].
[16] https://static1.squarespace.com/static/5877e86f9de4bb8bce72105c/t/62fb89dfb827c92c3340eed9/1660652049933/Boiler+Electrification-final+Rev2.pdf

electrifying the state's glass manufacturing boilers would result in a decrease of 12,000 tons of CO2 in 2018, 25,000 tons in 2030, 35,000 tons in 2040, and 44,000 tons in 2050.[17] Furthermore, as greenhouse gas emissions decrease, it is likely that greenhouse gas co-pollutant emissions would also decrease. These savings and emission reductions will only grow as New Jersey continues on the path of decarbonizing the grid, modernizing transmission, and bringing more renewable projects online.

In addition, in response to our comments that Corning should consider higher levels of electric boost, Corning's Response to Comments document claimed that "[i]ncreasing electric boost from the current levels negatively impacts glass quality for Vineland-based borosilicate compositions."[18] To the contrary, electric furnaces are known for their precise temperature control, which is why they are most often used in cases where high-quality glass is required such as in pharmaceuticals. As we noted in our comments, because all-electric furnaces control electrical resistance, slight changes can be made to increase or reduce batch thickness (the viscosity of the molten glass) and the pull rates (the rate that glass rods are pulled from the molten glass) to produce higher-quality glass.[19] Corning's contention that electric furnaces would decrease glass quality does not hold water.

However, the debate regarding electric furnaces is not at all addressed in the EJ Decision. While DEP's summary of the EJIS notes that "the facility evaluated 100 percent electric boost and determined it is not viable because of the redesign and reconstruction required, the electrical supply and infrastructure upgrades required, the energy penalty associated with using an all-electric furnace for glass melting when using oxy-firing [...], and the heat input from natural as required to melt raw materials from a coal state/during tank start-ups," in no part of the EJIS does DEP note whether it agrees with Corning's assessment or not, or provide a logical explanation its reasoning.

[17] Id. at 65, 67, 69, 71.
[18] Response to Comments at 3-16.
[19] All Electric Furnaces, Horn Glass Industries, https://www.hornglass.com/products/melting-furnaces-andequipment/all-electric-furnaces [https://perma.cc/F66Y-5P8M].

To this end, it appears that DEP wholesale accepts Corning's argument without any examination into the counter argument or potential benefits of an all electric furnace system. In doing so, DEP accepts the broad assumptions Corning makes regarding electric furnace efficiency and accuracy which is demonstrably successful but Corning contends is not viable for their process as well as Corning's argument regarding energy consumption. Whether or not Corning is accurate in their analysis, which we strongly disagree with, in completely supporting the facility's analysis without any counter-analysis or exploration of oppositional argument stated in the public comment period, the DEP has sided with the facility, without sufficient explanation, to the detriment of the community living near and around the facility.

Pursuing the Most Protective Permit Conditions

In addition to the points of contention raised above, we also call the DEP's attention to its responsibility to impose permit conditions which go beyond the scope of the facility's proposal and include measures which are most protective of the surrounding environmental justice community. In quite clear and plain language, the EJ Law addresses the history of systemic racism and the ongoing, detrimental effects this history has on overburdened communities throughout the state.

> "The legacy of siting sources of pollution in overburdened communities continues to pose a threat to the health, well-being, and economic success of the State's most vulnerable residents; and that it is past time for the State to correct this historical injustice."
>
> - New Jersey Environmental Justice Law

And the EJ Rule expressly requires DEP to consider permit conditions in addition to those raised by the applicant.[20]

Therefore, it is incumbent upon the DEP to correct this 'historical injustice' not just by accepting a facility's proposed modifications to reduce emissions, but also by instituting additional

[20] N.J.A.C. 7:1C–9.1(b).

requirements which can yield actualized benefits in reducing localized air pollution in environmental justice communities.

In light of this, we are deeply concerned that the only imposed requirements for the Corning facility stated within the EJ Decision is to implement an anti-idling program which includes posted signage, vehicle/equipment decals, education materials, and a facility process for administering compliance checks. Within these imposed conditions, there is no method of tracking compliance, the rate at which the program is developed and implemented, or monitoring enforcement of this program. Although the decision states that the plan must be submitted to the DEP within 90 days of decision, the Department created no mechanism by which to monitor Corning in enforcing their process of tracking that these anti-idling measures had any real impact in reducing overall emissions from the facility. To be clear, this is not to say that anti-idling programs can not be a valuable addition to imposed requirements. However, it should not be the *only* imposed requirement on the facility.

The DEP should have considered an array of other imposed requirements including:

- Adoption of electric glass boilers;
- Continuous emissions monitoring to ensure compliance and accuracy of the permit conditions;
- Requiring Selective Catalytic Reduction;
- Requiring Studies and Implementation Plans for the "future pollution abatement systems (i.e., PA2)" that Corning references in its Response to Comments at page 3-17, but DEP ignores in the EJ Decision;
- Implementation of battery electric storage to reduce electricity costs, increase savings, and support a transition to electric furnaces;
- Installation of heat pumps as a replacement for natural gas-fired boilers and hot water heaters; and,
- Adoption of an electric vehicle fleet.

All of these potential additions to the permit held potential to reduce emissions from the Corning facility in a significant way and to support reduction of not only greenhouse gas emissions, but

greenhouse gas co-pollutant emissions as well. The EJ Law - both in letter and spirit of the law - sought not only to add another step and review check to the permit process, but to ensure that there was an opportunity for the public to comment with their expertise and lived experience as well as for the DEP to institute additional requirements which could go beyond the proposed measures of the facility. Without realizing the full potential of the DEP's scope and jurisdiction in instituting emissions reduction measures and imposing additional requirements on facilities in the EJ decision, the full capability of the EJ Law to protect communities cannot and will not be reached.

In all, we hope that these thoughts in conjunction with our previous letter on the Safety-Kleen Systems, Inc. provides guidance and a new perspective on the diligence and commitment needed from the Department in enforcing, upholding, and implementing the state's Environmental Justice Law. We welcome a response to these comments and an opportunity to engage in continued conversations with the Department of Environmental Protection, the Office of Environmental Justice, the Murphy Administration, and all future administrations in the state.

Respectfully,

New Jersey Environmental Justice Alliance
Center for the Urban Environment, John S. Watson Institute for Public Policy, Kean University
Clean Water Action
Earthjustice
Ironbound Community Corporation
Native American Advancement Corp.
Tishman Environment & Design Center, The New School University