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March 11, 2009

VIA ELECTRONIC MAIL: DEP.waterpermitting@state.ma.us

Mr. Glenn Haas
Bureau of Resource Protection
Massachusetts Department of Environmental Protection
One Winter Street, 5th Floor
Boston, MA 02108

Re: Proposed New Stormwater Regulations and Draft Regulated Impervious Area General Stormwater Permit - 314 CMR 21.00

Dear Mr. Haas:

Pursuant to the request for comments issued by the Massachusetts Department of Environmental Protection (“DEP”) on the Massachusetts Proposed Stormwater regulations and Draft Regulated Impervious Area General Stormwater Permit, the New England Power Generators Association, Inc. (“NEPGA”) hereby respectfully files these comments.¹ NEPGA represents eighteen companies and approximately 26,000 megawatts (or over 85 percent) of the generation in New England, and approximately 12,000 megawatts in Massachusetts.

NEPGA opposes subjecting electric generating facilities in Massachusetts to these dramatic and costly stormwater management regulations because they are redundant to the extensive regulations that currently apply to these facilities, and would likely serve no incremental benefit for the environment. The vast majority of NEPGA’s facilities that would be affected by these regulations are currently governed by one or more programs under the federal National Pollutant Discharge Elimination System (NPDES) permit, the federal Multi-Sector General Permit for industrial activities or the federal Construction General Permit.

¹ The views expressed in these comments do not necessarily represent the positions of each of NEPGA’s members. In addition, nothing in these comments should be deemed to waive any rights that NEPGA or any of its members may have to challenge the administrative, procedural or substantive validity of the proposed regulations. These comments do not represent the the views, positions or opinions of Mirant.

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NEPGA facilities in Massachusetts have consistently been forced to comply with both the DEP and the EPA in the unique permitting regimen pertaining to our state. Currently, the EPA is responsible for issuing NPDES permits in Massachusetts because the Commonwealth has not assumed NPDES program delegation. Although the NPDES permit program is administered by EPA Region 1, the DEP reviews the conditions of each permit, and certifies the program unconditionally or with specific conditions according to the requirements of Section 401 of the Federal Clean Water Act. In addition, DEP signs each NPDES permit, creating a separate state and federal permit. NEPGA has concerns that these new regulations will create further bureaucratic complexity without any clear environmental benefit, and substantially add to the compliance cost for each entity.

Finally, NEPGA urges the DEP to give strong consideration to the financial implications of these regulations and the ultimate affect on the associated ongoing costs of doing business. Given that the regulations would affect facilities containing more than five-acres of impervious area (roofs and all paved areas), almost all of NEPGA's twenty-six facilities would be burdened with the cost of expensive retrofits to their current stormwater infrastructure. More alarming is that the regulations will apply not only to new energy infrastructure development, but also normal facility maintenance.

To that end, NEPGA is alarmed that the DEP did not perform a cost benefit analysis before releasing the regulations for public comment. NEPGA has been made aware of multiple studies estimating that the compliance costs for a typical property required retrofitting to be a minimum of \$100,000 per acre, without zoning or physical feature impediments, and without regard to business disruption or planning and permitting costs. By this calculation, the cost to NEPGA's Massachusetts fleet could very likely be in the tens, or even hundreds, of millions of dollars. Such additional costs could threaten the viability of certain facilities and endanger the livelihood of the hundreds of workers that are employed.

For the foregoing reasons, NEPGA opposes the enactment of 314 CMR 21.00 as drafted. NEPGA appreciates this opportunity and requests that the DEP consider its comments as submitted herein. Please contact me at the information provided above if I can provide any further information.

Sincerely,



Christopher P. Sherman
General Counsel