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January 28, 2009

VIA ELECTRONIC MAIL: stacy.h.degabriele@state.ma.us

Ms. Stacy H. DeGabriele
Department of Environmental Protection
Bureau of Waste Prevention
One Winter Street 8th Floor
Boston, MA 02108

RE: 310 CMR 7.71; Mandatory Greenhouse Gas Reporting Regulations

Dear Ms. DeGabriele

Pursuant to the request for comments issued by the Massachusetts Department of Environmental Protection (“DEP”) at the Stakeholder Meeting on the mandatory reporting of greenhouse gases held on January 22, 2009, the New England Power Generators Association, Inc. (“NEPGA”) hereby respectfully files these comments¹. NEPGA represents sixteen companies and approximately 26,000 megawatts of the generation in New England, and approximately 12,000 megawatts in Massachusetts.

As a part of the Massachusetts Global Warming Solutions Act (GWSA), signed into law by Governor Patrick on August 7, 2008, the DEP was required to promulgate mandatory greenhouse gas reporting regulations by January 1, 2009. In accordance with the GWSA, the DEP issued emergency regulations on December 29, 2008, and gave notification of scheduled stakeholder meetings. On January 22, 2009, the DEP held its second stakeholder meeting to discuss the provisions of 310 CMR 7.71 and propose amendments to address statutory requirements that are not included in the emergency regulation.

I. Comments of NEPGA

While NEPGA supports initiatives to reduce greenhouse gas emissions within the Commonwealth, we believe the effort must be implemented in an economically efficient manner that does not compromise the integrity of the competitive energy markets or the economy in New England. Appropriate initiatives should achieve the goals of reduced emissions without producing unintended negative effects. Creating unnecessary layers of bureaucracy only

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.

increases the burden on compliance entities without yielding the anticipated benefits to regulatory agencies or consumers.

1. What changes should be made to the draft Greenhouse Gas Emissions Registration Form?

The DEP issued a draft Greenhouse Gas Emissions Registration Form at the January 22nd hearing. The form is intended to be completed by facilities required to report air emissions data pursuant to 310 CMR 7.00. However, NEPGA believes that Section C, entitled “Fuel Use & Emissions”, should be removed because it does not fall within the statutory requirements. The original intent of the regulations was to collect and report data beginning in 2009. Because entities emitting in excess of 5,000 short tons of greenhouse gases were not notified that the DEP would be collecting data from 2008 in advance, this information may be unavailable or difficult to accurately acquire and report by April 15, 2009. Given that the form requires a certification statement for the data provided, entities without complete and thorough data due to lack of time and reporting may be uncomfortable signing the certification statement.

Should the DEP decide to keep Section C as part of the form, NEPGA requests that the table reflect emissions “estimates” for 2008, rather than exact numbers. Further, emissions estimates should be provided by “source” rather than by “fuel”. NEPGA also requests that Section C be amended to include aggregated annual CO₂ data from Continuous Emissions Monitors which can be very useful tools in the reporting of emissions.

2. Should the MassDEP require the use of “best effort,” or specify tiers for specific categories?

NEPGA suggests that the comprehensive regulations require “the use of best efforts.” The use of best efforts will allow entities to choose the most accurate method available to them rather than locking them into a tier which may require retrofitting instrumentation onto existing units.

3. Should MassDEP require specific data elements such as unit-level emissions or material throughput?

Consistent with the General Reporting Protocol², which automatically aggregates an entity’s emissions once a facility reports the levels to the Climate Change Registry, NEPGA requests that the DEP allow for aggregation of emissions for an entire facility rather than require unit-level emissions or material throughput.

4. Should MassDEP amend the motor vehicle provisions to clarify which vehicles must be reported by facilities?

NEPGA does not deem it appropriate to change the motor vehicle provisions for reporting. Altering the definition to include a larger scope of vehicles will likely create additional

² Version 1.1 of The Climate Registry’s General Reporting Protocol (GRP). The GRP provides guidance to reporting entities on how to calculate and report greenhouse gas emissions to The Climate Registry.

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costs for reporting entities and, in turn, consumers, while having minimal bearing on the overall emissions levels. NEPGA believes that the comprehensive regulation should retain the same clear definition of a motor vehicle that the emergency regulation provides.

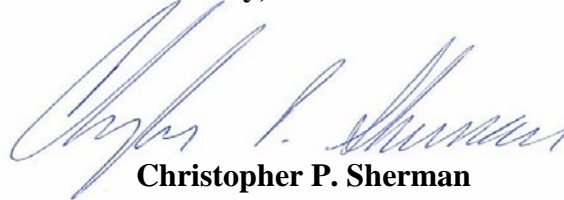
5. Should MassDEP require reporters to hire a third party verifier to sign off on reports?

The DEP should not require reporters to provide third party verification due to the costs that entities will incur as a result. Instead, the DEP should require entities to provide a "verification statement" to be authorized by a company's responsible official. However, if the DEP does, in fact, amend the regulation to require third party verification, facilities which have participated in the Regional Greenhouse Gas Initiative (RGGI) should be exempt from this process. RGGI compliance entities have previously been subject to extensive data reporting in order to move toward achieving the initiative's reduction targets.

It should be noted that if a system of early action credit reporting is adopted, RGGI facilities should also be exempt from third party verification when reporting previous emission reductions. This data has already been accurately provided to and verified by RGGI, Inc.

NEPGA appreciates this opportunity and requests that the DEP consider its comments as submitted herein. Please contact me if I can provide any further information.

Sincerely,



Christopher P. Sherman
General Counsel