U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

July 26, 2022

Mr. Tim Carter
Environmental Consultant
Dominion Energy
120 Tredegar Street
Clearinghouse, 4th Floor
Richmond, VA 23219

Reference No. 21-0098

Dear Mr. Carter:

This letter is in response to your October 14, 2021, email and subsequent telephone conversation with a member of my staff requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to prohibited marking. You state that your Very Small Quantity Generator (VSQG) facilities generate "hazardous waste" as defined by the Environmental Protection Agency (EPA) in 40 CFR 261.3; however, they are not required to generate a uniform hazardous waste manifest as your facility is a VSQG. Consequently, the material does not meet the definition of a "hazardous waste" as defined in § 171.8 of the HMR.

You also state that while the material is being accumulated on-site—i.e., before transportation—in non-bulk containers, your facilities apply "Hazardous Waste" markings to the containers as a best management practice to identify the material and generation date, etc. Finally, you state that EPA regulations allow for the use of the "Hazardous Waste" markers even though they are not required for VSQG wastes.

Please be aware that some states have regulations that are more stringent than the federal regulations and may require VSQGs to use the manifest, and/or have generator categories with lower thresholds (i.e., a facility that is considered a VSQG according to the federal regulations may be regulated as a Small Quantity Generator or Large Quantity Generator by their state). When inquiring about compliance policies and procedures at Dominion Energy facilities at the national level, it is important to ensure that your facilities are in compliance with the state regulations where they are located.[a]

We have paraphrased and answered your questions as follows with the assumption that the facilities in question are not required by their state to use the manifest and are regulated by their state as VSQGs or equivalent:

[a] The Resource Conservation and Recovery Act (42 U.S.C. §6901 (1976)) hazardous waste regulations are implemented and enforced at the state level in all states except for Iowa and Alaska.

Q1. You ask whether the "Hazardous Waste" markings must be removed from a drum containing your material when it is offered for transportation.

A1. The answer is no. Section 172.303(a) prohibits the marking of a package with the proper shipping name, the identification number of a hazardous material or any other markings indicating that the material is hazardous unless the package contains the identified hazardous material or its residue. While your material does not meet the definition of a "hazardous material" or "hazardous waste" as defined in § 171.8 of the HMR, it would not be a violation to have a "Hazardous Waste" marking on a drum containing your material. As you noted, this material is a waste material that is exempt from the EPA hazardous waste manifest requirements as a VSQG but is otherwise considered a hazardous waste by the EPA. Therefore, marking the package with "Hazardous Waste" does not misrepresent the hazard present and does not violate § 172.303(a).

Q2. You ask whether marking a non-bulk package containing waste material which is exempt from the EPA hazardous waste manifest requirements—but would otherwise be considered a hazardous waste by EPA—with a "Hazardous Waste" mark is a violation of § 172.303.

A2. See answer A1.

Q3. You ask whether marking a non-bulk package containing waste material, which is exempt from the EPA hazardous waste manifest requirements—but would otherwise be considered a hazardous waste by EPA—with "waste" is a violation of § 172.303.

A3. The answer is no. The term "waste" is not a marking requirement of the HMR to indicate transportation of a hazardous material. See answer Al.

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,

T. Glenn Foster
Chief, Regulatory Review and Reinvention Branch
Standards and Rulemaking Division