

requirements located at § 264.16(a)(3) and § 265.16(a)(3).

While many of the commenters supported the proposal, we received a number of comments expressing concern that two of the RCRA emergency response training requirements are not covered in OSHA's requirements, which could lead to gaps in workplace safety and health. After consultation with OSHA, we determined that the two requirements identified in comments (key parameters for automatic waste feed cut-off systems and response to ground-water contamination incidents) would be captured under the OSHA performance standard that employees must be trained in the safe use of engineering controls and equipment on the site, and the OSHA requirement that a site safety and health plan must contain a spill containment program. Moreover, the RCRA requirements are duplicated elsewhere in the RCRA regulations, where we establish requirements for safe facility operations. For example, § 266.102(e)(7)(ii) establishes automatic waste feed cutoff requirements for combustors, § 264.194(b)(2) establishes controls for tanks, and § 264.193 requires groundwater release training. Thus, we do not find any gaps between the two programs on the subject of emergency response training.

Deferring to the standards of other organizations whose expertise is greater than ours has precedent in the RCRA regulations. An example is § 264.198(b), which establishes special requirements for ignitable or reactive wastes. We require facilities storing or treating these wastes to comply with the standards of the National Fire Protection Association, a non-profit organization that develops consensus codes and standards to protect the public against fire dangers.

However, a number of commenters suggested that the Agency provide additional flexibility to this change by allowing the facility owner/operator to determine whether to follow the RCRA or OSHA requirements (as opposed to the proposed rule's approach of requiring facilities to follow the OSHA regulations), especially for those facilities which are not otherwise required to comply with OSHA training requirements. This seems a reasonable accommodation to facilities, that, for any of a number of reasons, have elected to comply with the RCRA regulation and would be burdened by the need to demonstrate compliance under the OSHA rule. Therefore, we request comment on this approach.

#### *D. Professional Certifications*

Currently, the RCRA regulations require an independent, qualified, registered professional engineer (or registered geologists for some requirements) to certify the effectiveness of the design and operation of certain hazardous waste treatment units. We received a comment on our "Notice of Data Availability" dated June 18, 1999 (64 FR 32859) from the Certified Hazardous Materials Managers' organization asking that their members also be allowed to make certifications. Based on our review of the qualifications of Certified Hazardous Materials Managers, it appeared to the Agency that these certified professionals were qualified to provide the certifications, increasing marketplace competition and potentially reducing the cost of those certifications. As a result, the Agency proposed to add Certified Hazardous Materials Managers as professionals qualified to make these certifications. We did not receive similar requests from other professional organizations.

In response to this proposal, the Agency received about 1,900 comments, mostly requesting that we expand the list of individuals who can do such certifications to include other kinds of professionals, such as expanding the list of certifications to registered geologists. These commenters believe that the Agency was being arbitrary in allowing only two disciplines to certify operations.

On the other hand, professional engineers were strongly opposed to the proposal. They suggested that Certified Hazardous Materials Managers are not qualified to certify the design, construction, and structural integrity of hazardous waste management units.

States likewise suggested that the certifications we proposed to modify involve the design, installation, and assessment of structures, and that their laws allow only licensed engineers to make these kinds of certifications. The States also indicated that their licensing boards can investigate complaints of negligence or incompetence, and may impose fines and other disciplinary actions such as cease-and-desist orders or license revocation. This personal liability of the professional engineer is one of the reasons why the States believe that RCRA certifications should only be done by state-licensed professional engineers.

Other commenters suggested that, rather than deciding which professions are qualified to make certifications, we should instead establish an environmental professional performance

standard based on membership in a recognized professional organization. This would be consistent with our principle of allowing the regulated community to meet our standards at the lowest possible cost. The challenge we faced in developing a performance standard was determining which professional organizations are legitimate. Commenters helped by offering the suggestion that we recognize only the organizations which meet the criteria for assessing certification programs for environmental professionals established by the American Society for Testing and Materials (ASTM). ASTM is a nonprofit organization that provides a forum for the development and publication of voluntary, consensus standards for materials, products, systems, and services. The advantage of an ASTM standard is that it is developed by individuals with a diversity of backgrounds, expertise, and knowledge. Through a consensus approach, the standards that are developed reflect the needs of all the stakeholders.

ASTM E1929-98, Standard Practice for the Assessment of Certification Programs for Environmental Engineers: Accreditation Criteria assesses the credibility of certification programs for environmental professionals. Under these standards, the certifying body must have a program to evaluate individual competence for certification that is objective and based on the knowledge, skills, and abilities needed to function in the specialty area. Applicants must document their level of education, supply reference materials, sign and abide by a code of ethics established by the certifying body, and pass a comprehensive examination. The ASTM standard also requires that environmental certification programs be accredited by an independent entity. This ASTM standard is available for review at the OSWER Docket in the EPA Docket Center.

Therefore, we are considering allowing only professionals certified by organizations meeting the ASTM standard to conduct a limited number of the certifications. Under this standard, anyone who certifies the operation of facilities must (a) be licensed to practice in the state where the facility is located or recognized by a certification program that is compliant with ASTM E1929-98 Standard Practice for the Assessment of Certification Programs for Environmental Professionals: Accreditation Criteria, and (b) have the knowledge and experience to undertake the tasks required for the certification. Based on comments from and extensive discussions with the States, we may