

limit the flexibility to use persons meeting the criteria of the new performance standard to three certifications:

Subject to New Performance Standard

264.573(a)(4)(ii),(g);

265.443(a)(4)(ii),(g) *Drip pads—evaluate drip pads.*

264.574(a); 265.444(a) *Drip pads—inspections.*

266.111(e)(2) *BIF Direct transfer equipment—assessment of equipment.*

At the same time, EPA is persuaded by commenters—particularly the States—who suggested that the remaining RCRA certifications are inherently “engineering” activities and should only be conducted by a qualified professional engineer. We solicit comment on this revised approach.

Some commenters further suggested that we streamline the existing professional engineer requirement by changing it from “independent, qualified, registered professional engineer” to “qualified professional engineer.” They believe that this retains the most important requirements—that the engineer be qualified to perform the task, and that she or he be a professional (following a code of ethics and the potential of losing his/her license for negligence) engineer. The professional engineers who commented, as well as the professional engineer advocacy organizations, emphasized the importance of the “professional” part of the engineering requirement, rather than the “independent” part. Making this change in the RCRA regulations would allow certifications to be done by a professional engineer employed by the facility. Commenters believe that this would save facilities money without compromising environmental safety. This would also be consistent with the approach we have taken in some newer requirements for certifications. See the 265.1101(c)(2) containment building design certification, and the 266.103(b)(2)(ii)(D) evaluation of data for boilers and industrial furnaces, which allow for certification by “qualified, registered professional engineers.”

As a point of reference to check the reasonableness of this change, we examined the certification requirements of another federal regulatory agency responsible for ensuring the safety of the public, the Department of Transportation’s Federal Highway Administration. The Federal Highway Administration (FHA) recently proposed revisions and improvements to its National Bridge Inspection Standards (68 FR 53063). These standards ensure the safety of the

traveling public by establishing proper safety inspection and evaluation requirements for highway bridges. The standards apply to publicly-owned bridges, and are strongly advised for privately-owned bridges. FHA points out in their preamble discussion that it is extremely important that privately owned highway bridges be inspected to a nationally-recognized standard, for at a minimum, private bridge owners that do not inspect their highway bridges to the standards can open themselves to liability for deaths or injuries because of possible highway bridge failure. The standards currently require the person responsible for inspecting bridges to be a professional engineer. Interestingly, FHA’s proposed rule’s preamble discussion on the professional engineer requirement covers the necessity of these professional engineers having adequate experience to do the job, which is emphasized in today’s notice—and FHA does not require, nor does it discuss in its proposal for improving the standards, the need for the professional engineer be “independent.”

The Occupational Safety and Health Administration (OSHA) Safety and Health Regulations for Construction; Specific Requirements for Excavation (see 29 CFR 1926.651) provide another example of a federal regulatory agency requiring certification by professional engineers, but not requiring that the engineers be “independent.” Under these regulations, OSHA requires structural ramps that are used to access or exit excavations to be designed by a “competent person” qualified in structural design. OSHA also requires professional engineers to ensure the stability of structures adjacent to excavations.

In addition, our understanding of what it means to be “registered” is that it means one who is licensed by a State. Since only States license professional engineers and geologists, we believe that “registered” and “professional” mean the same thing in the context of “registered professional engineer or geologist.” Thus, “registered” appears to be a redundant requirement. We request comment on whether to make this conforming change to provide consistency to our rules, which sometimes include the term “registered” and in other cases do not.

In summary, we have identified the following certifications as needing a qualified professional engineer:

Only Qualified Professional Engineers

264/265.115 *Certification of closure.*

264/265.120 *Certification of post-closure care.*

264/265.191(a), (b)(5)(ii) *Assessment of tank system’s integrity.*

264/265.192(a), (b) *Assessment of new tank system and components (also may be done by a qualified installation inspector).*

264/265.196(f) *Tank systems—submit certification of completion of major repairs.*

264.280(b) *Land treatment units, certification of closure (also may be done by a qualified soil scientist).*

264.571(a), (b), (c); 265.441(a), (b), (c) *Drip pads—submit written plan, as-built drawings, and certification for upgrading, repairing and modifying the drip pad.*

265.1101(c)(2) *Containment building design certification.*

266.103(b)(2)(ii)(D) *BIFs—Evaluation of data.*

270.16(a) *Assessment of tank system structural integrity.*

270.17(d) *Assessment of surface impoundment structural integrity.*

The Agency solicits comments on whether the ASTM standard is appropriate; whether the Agency made the right choices in determining which certifications must be conducted by qualified professional engineers, as opposed to persons that are accredited by programs meeting the ASTM standard; and whether the Agency should modify the requirement to allow “qualified professional engineers” to conduct the certification instead of “independent, qualified, registered professional engineers.”

E. General Facility Standards

When the Agency promulgated the operating record requirements in the hazardous waste regulations, we believed that records should routinely be kept for the life of the facility. Our rationale for this position was that if an issue or problem came up about an earlier practice at a facility, the records would be available.

After many years of experience in implementing the RCRA hazardous waste rules, we are better able to distinguish those records that must be kept for the life of the facility from those which can be discarded after some period of time without affecting protections of human health and the environment.

As discussed in the Proposed rule, information about which wastes are disposed of at a facility and where the disposed waste is located must be kept for the life of the facility. More routine information, such as whether certain notices were filed and records of inspections, can be discarded after three years. In the RCRA regulations, we have generally settled on three years as a