**74:27:12:25.  Small-town exemption criteria.** A MSWLF must supply written documentation to the secretary that it meets the following criteria in order to qualify for a small-town exemption:

(1)  It disposes of less than 20 tons of solid waste daily, based on an annual average;

(2)  It exhibits no groundwater contamination at the disposal site;

(3)  It is located in an area receiving less than 25 inches of precipitation annually; and

(4)  It has no practicable waste management alternative, defined as follows:

(a)  The MSWLF is not located in an aquifer and at least 100 feet of unweathered till or unweathered shale separate the facility bottom from an aquifer;

(b)  The MSWLF is located more than 50 miles from a regional MSWLF; and

(c)  The annual cost of solid waste disposal exceeds 1.0 percent of the average annual median household income of the population served.

A MSWLF that meets all of the criteria in this section is automatically granted the exemption.

A new MSWLF that meets the criteria in subdivisions (1), (2), and (3) of this section as defined in 40 C.F.R. Part 258 as published on 56 Fed. Reg. 51,017 (October 9, 1991) but does not meet one or more of the criteria in subdivision (4) may petition the board for a hearing. The hearing may be held either separately or in conjunction with a hearing on the solid waste permit for their landfill. During the hearing on the small-town exemption, the applicant may present facts to the board to support that it has no practicable alternative. After hearing all testimony, the board may either approve, deny, or approve with conditions a small-town exemption.

Before April 9, 1994, an existing MSWLF that meets the criteria in subdivisions (1), (2), and (3) of this section but does not meet one or more of the criteria in subdivision (4) may petition the secretary for a small-town exemption. The owner or operator must present facts in the petition to the secretary to show that it does not have a practicable alternative because the regional facility is not yet constructed through no fault of the existing MSWLF. The secretary may either approve, deny, or approve with conditions, a small-town exemption. The secretary may not grant a small-town exemption that is effective beyond October 8, 1995.

If a MSWLF fails to conform with one or more of the criteria of subdivisions (1) to (3), inclusive, of this section, the MSWLF's small-town exemption becomes void.

**Source:** 19 SDR 186, effective June 10, 1993; 20 SDR 56, effective October 24, 1993; 20 SDR 125, effective February 9, 1994.

**General Authority:** SDCL 34A-6-1.6.

**Law Implemented:** SDCL 34A-6-1.6.