

# Construction and Demolition Debris/Flow Control: Federal Court Addresses Challenge to King County, Washington Ordinance



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01/19/2021

A United States District Court (W.D. Washington) (“Court”) addressed in a January 14th Order a challenge to certain provisions of a solid waste flow control ordinance (“Ordinance”). See *Skycorp LTD v. King County*, 2021 WL 135846.

The provisions of the Ordinance being challenged involve the disposal of construction and demolition (“C&D”) debris.

Local government’s directing the movement or disposition of refuse or waste is often denominated “flow control.” Flow control describes a scenario in which local government utilizes a law or regulation to direct one or more types of solid waste to a particular disposal, processing, transfer or other facility. The issue has been a subject of debate for years among local government, waste management and recycling industries, and environmental groups.

Many flow control disputes have been addressed by the courts.

King County, Washington’s Ordinance included a provision addressing the disposal of C&D debris. The Ordinance mandates that solid waste generated within the county’s unincorporated area (or any other jurisdiction with a solid waste interlocal agreement with King County) be disposed of at a facility designated by King County to receive the particular waste. An exception is provided involving authorization from the King County Division Director of Solid Waste for disposal to a non-county designated disposal facility.

In the case of C&D debris, the Ordinance requires that:

. . . generators, handlers and collectors of mixed and nonrecyclable C&D waste generated within the county's jurisdiction deliver, or ensure delivery to, a designated C&D receiving facility specified by the division director. KCC § 10.30.20.

Plaintiff Skycorp LTD (“Skycorp”) is stated to be in the business of demolishing buildings and removing C&D debris.

The King County Division of Solid Waste (“Division”) issued a citation to Skycorp in July 2020 for an alleged violation of the referenced Ordinance. The citation alleged that Skycorp took C&D waste that the company generated within the territorial borders of King County to a site in Naches, Washington that had not been designated to accept such waste.

Skycorp was assessed a fine of \$100.

Skycorp subsequently filed a Complaint with the Court seeking a declaratory judgment invalidating Section 10.30.20 on the basis that it violates:

- Dormant Commerce Clause of the United States Constitution
- Due Process Clause of the Fourteenth Amendment
- Privileges and Immunities Clause of Article I, Section 12 of the Washington constitution

Skycorp also argued that the Ordinance provision was not authorized under King County's police power.

King County moved to dismiss.

In addressing the argument, the Court notes that the dormant Commerce Clause is a limitation upon the power of the States which prohibits discrimination against interstate commerce and bars state regulations that unduly burden interstate commerce. The company conceded that the Ordinance provision did not discriminate on its face against interstate commerce.

The Court rejected two alternative arguments by Skycorp that included:

- The Ordinance provision dictates that extraterritorial disposal facilities otherwise capable of taking C&D waste generated in King County first be approved by a King County solid waste division director before receiving such waste, resulting in impermissible regulation of extraterritorial conduct (The Court noted that the approved and unapproved disposal facilities are located within Washington and the impact is merely incidental to its local regulatory impact)
- Interstate burden imposed by the ordinance is "excessive in relation to putative local benefits" (the Court found that the Complaint fails to allege facts showing the burdens on interstate commerce from the Ordinance "clearly" exceed local benefits)

The Due Process Clause provides that no state shall deprive any person of life, liberty, or property, without due process of law. Skycorp argued that its substantive due process rights were violated because it owns the C&D debris and the Ordinance irrationally limits how it may dispose of that property.

The Court noted that Skycorp is required to demonstrate that the Ordinance provision "serves no legitimate governmental purpose." It found that the Complaint made such a claim. However, it further held that the company failed to provide sufficient facts to support the allegation.

The Court also concluded that King County could establish a legitimate governmental purpose or, i.e., preserve and protect public health, welfare and safety through assuring that there will be C&D disposal facilities to serve King County. This was deemed a legitimate government interest that "the Ordinance's C&D provisions rationally relate to."

Skycorp's remaining claims were deemed based on state law. As a result, the Court dismissed them as outside of its supplemental jurisdiction.

A copy of the Order can be downloaded [here](#).