

Flow Control/Construction and Demolition Waste: Washington Appellate Court Addresses Challenge to King County Code



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

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The Court of Appeals of Washington, Division 2 (“Court of Appeals”) addressed in a February 13th Opinion a challenge to a King County Code (“KCC”) involving flow control. See *SkyCorp Ltd. v. King County*, 2024 WL 562169.

The KCC addresses nonrecyclable construction and demolition waste.

KCC 10.30.020 requires that anyone who:

... generates, handles, or collects mixed or nonrecyclable construction and demolition waste within King County must dispose of such waste in county designated facilities.

King County is stated to have designated facilities in three counties for this purpose.

The KCC is arguably an ordinance that involves “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, or other facility.

The issue has been the subject of strident debate for years among local government, waste management, recycling industries, and environmental groups. Many flow control disputes have been addressed by the courts.

SkyCorp Ltd (“SkyCorp”) disposed of mixed construction and demolition waste that was generated and then collected within King County at a licensed, but not designated, facility in Yakima County. King County issued a citation to SkyCorp for alleged violation of KCC 10.30.020.

SkyCorp filed a lawsuit against King County in Superior Court arguing that KCC 10.30.020:

- Constitutes an unconstitutional exercise of King County’s policy power beyond its jurisdictional borders
- Is an unconstitutional restriction on SkyCorp’s fundamental right to freely dispose of its property under the privileges and immunities clause of the Washington State Constitution.

The Superior Court granted summary judgment in favor of King county and SkyCorp appealed.

SkyCorp argued that the county’s application of KCC 10.30.020 is a violation of two provisions of the Washington Constitution:

- Article XI, Section 11 (addressing local governments' police power to impose local sanitary regulations)
- Article I, Section 12 (privileges and immunities clause)

The Court of Appeals rejected both arguments.

First, KCC 10.30.020 was deemed local in nature because the regulation of disposal of waste generated and collected is within King County.

Further, the Court of Appeals stated that the code is:

- Not contrary to the state statutes
- Is a reasonable exercise of King County's police power to regulate sanitation (a power expressly granted to local governments in the Washington Constitution)

As a result, King County's enforcement action against SkyCorp was held to not violate Article XI, Section 11.

Second, the Court of Appeals held that the Washington Constitution's privileges and immunities clause was not violated. SkyCorp was deemed to not possess a fundamental right to dispose of waste as it desires without county regulation.

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