NO. 54535-3-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

RABANCO LTD., Appellant

vs.

KING COUNTY, Respondent.

APPELLANT'S BRIEF

CORR CRONIN LLP

Kelly P. Corr, WSBA No. 555
Kevin J. Craig, WSBA No. 29932
Laurie Thornton, WSBA No. 35030
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

Attorneys for Plaintiff-Appellant
Rabanco Ltd.

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I. INTRODUCTION

This appeal presents a simple question of statutory interpretation. By statute, a county has limited authority to establish a designated disposal site for solid waste collected from unincorporated areas of that county:

> A county may designate a disposal site or sites for all solid waste collected in the unincorporated areas pursuant to the provisions of a comprehensive solid waste plan adopted pursuant to chapter 70.95 RCW. However, for any solid waste collected by a private hauler operating under a certificate granted by the Washington utilities and transportation commission under the provisions of chapter 81.77 RCW and which certificate is for collection in a geographic area lying in more than one county, such designation of disposal sites shall be pursuant to an interlocal agreement between the involved counties.

RCW 36.58.040 (emphasis added). Thus, the statute's plain language provides that when a private hauler collects solid waste pursuant to a permit from the Washington Utilities and Transportation Commission (WUTC) covering an area in more than one county, any designation of a disposal site must be made by an interlocal agreement between those counties. Contrary to the statute's plain language, the trial court interpreted RCW 36.58.040 to include a new and additional requirement – namely, that the hauler's collection routes must cross county borders – a requirement that simply does not exist.

Here, this interpretation is critical. The WUTC has issued a permit authorizing appellant Rabanco Ltd. to collect municipal solid waste (MSW) in an area encompassing parts of several counties, including King County, Snohomish County, Kitsap County, Klickitat County, Skamania

County, and Yakima County. Despite this multi-county permit and the admitted absence of any interlocal agreements with these other counties, respondent King County has insisted Rabanco comply with King County's "flow control" ordinance restricting the disposal of solid waste from unincorporated King County at the Cedar Hills landfill. King County charges $82.50 per ton for disposal at Cedar Hills, yet the charge for disposal at a landfill in Klickitat County is only $19.50 per ton. Because the trial court erroneously interpreted the statute and granted summary judgment for King County, this Court should reverse and direct the trial court to enter judgment for Rabanco as a matter of law.

II. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

The sole question before the Court is whether RCW 36.58.040 allows a county to designate a disposal site for solid waste collected under a WUTC certificate covering more than one county absent an interlocal agreement between those counties.

III. STATEMENT OF THE CASE

A. Factual Background

1. The Parties

Rabanco and its affiliates collect solid waste, process solid waste at a private transfer station in Seattle, and own landfills in Oregon, Montana, and Klickitat County, Washington. King County, which also owns transfer stations and a landfill, is in the unique position of regulating Rabanco's handling and disposal of solid waste while simultaneously

competing with Rabanco by operating both transfer station and landfill businesses. Rabanco brought this case because King County has abused its dual positions in an effort to eliminate Rabanco's transfer station business by illegally increasing the disposal rate it charges Rabanco while at the same time unlawfully restricting the disposal of the solid waste that Rabanco collects to the county-owned Cedar Hills landfill.

2. Rabanco's WUTC Certificate

By statute, the Washington Utilities and Transportation Commission ("WUTC") regulates the collection of solid waste in unincorporated parts of Washington counties. The WUTC issues permits that grant private hauling companies territorial franchises for providing collection services. Rather than awarding franchises on a county-by-county basis, the WUTC grants franchises in parts of counties. The WUTC defines each private hauler's franchise by issuing permits that use landmarks such as roads, bodies of water, and city or county boundaries to describe the parts of counties comprising the hauler's franchise territory. *See* CP 126-40.

The WUTC has awarded Rabanco a multi-county collection franchise. *Id.* Rabanco's WUTC permit authorizes Rabanco to collect solid waste in a geographic area lying in parts of several counties, including King, Snohomish, Pierce, Kitsap, Klickitat, Skamania, and Yakima Counties. *Id.*

King County has threatened Rabanco that it must comply with King County Code § 10.08.020 even with respect to solid waste collected pursuant to Rabanco's WUTC permit or else face an enforcement action by King County "using all available means"[1] and possible repercussions regarding Rabanco's current and future business with King County. *See* CP 102-04, 120. King County, however, does not have an interlocal agreement with Snohomish County, Klickitat County, or any other counties included in Rabanco's WUTC permit. CP 260-65.

B. Procedural Background

On March 30, 2004, Rabanco commenced this action against King County challenging two distinct actions by the county. CP 3-32. In one of its claims, Rabanco alleged that King County was unlawfully restricting the disposal of solid waste collected in the county because King County's "flow control" ordinance, King County Code § 10.08.020, violated RCW 36.58.040. CP 23-25. Rabanco's remaining claims alleged that King County illegally increased the Regional Direct rate that it charges to Rabanco and other commercial haulers in order to improperly fund the King County Solid Waste Division's new "rent" obligation for the use of its own landfill. CP 21-23, 25-31. The trial court has enjoined King County from enforcing the increased rate through November 8, 2004.

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[1] A violation of the flow control ordinance is a misdemeanor pursuant to King County Code § 10.08.110.

Rabanco moved for partial summary judgment solely on its claim that King County's flow control ordinance violated RCW 36.58.040. In opposition to Rabanco's motion, King County asked the trial court to grant partial summary judgment for King County on this issue, interpreting RCW 36.58.040's interlocal agreement requirement to apply only when the collection areas cross county borders.

In an order dated July 1, 2004, the trial court granted partial summary judgment for King County and, finding no just reason for delay, entered its ruling as a final judgment pursuant to CR 54(b). *See* Appendix. This Court granted Rabanco's motion for accelerated review.

IV. ARGUMENT

A. Summary Judgment Standards

"On review of summary judgment, the appellate court engages in the same inquiry as the trial court." *Gossett v. Farmers Ins. Co.*, 133 Wn.2d 954, 962-63, 948 P.2d 1264 (1997). Summary judgment is appropriate when, viewing the facts and inferences therefrom in the light most favorable to the nonmoving party, there are no material issues of disputed fact and the moving party is entitled to judgment as a matter of law. *Id.* at 963; CR 56(c). Moreover, "issues of statutory construction are questions of law which this court reviews de novo." *Caven v. Caven*, 136 Wn.2d 800, 806, 966 P.2d 1247 (1998) (reversing trial court's interpretation of statute where trial court failed to apply the statutory language's "plain and ordinary meaning"); *Boag v. Farmer's Ins. Co.*, 117

Wn. App. 116, 123, 69 P.3d 370 (2003) (reversing trial court's interpretation of statute and remanding with instruction to grant appellant's motion for partial summary judgment); *McFreeze Corp. v. State, Dept. of Revenue*, 102 Wn. App. 196, 198, 6 P.3d 1187 (2000) (reversing trial court's summary judgment based on erroneous interpretation of statute and remanding for entry of summary judgment in favor of appellant).

B. The Trial Court Erroneously Interpreted RCW 36.58.040.

1. The trial court failed to follow the statute's plain language.

Under the plain language of RCW 36.68.040, a county cannot designate a certain location for disposal of solid waste collected pursuant to a WUTC permit covering geographic areas in more than one county unless those counties have an interlocal agreement about such disposal:

> [F]or any solid waste collected by a private hauler operating under a certificate granted by the Washington utilities and transportation commission under the provisions of chapter 81.77 RCW and which certificate is for collection in a geographic area lying in more than one county, such designation of disposal sites shall be pursuant to an interlocal agreement between the involved counties.

RCW 36.58.040 (emphasis added). In this case, the trial court erred as a matter of law by not applying this statute's plain meaning.

"In judicial interpretation of statutes, the first rule is the court should assume that the legislature means exactly what it says. Plain words do not require construction." *Sidis v. Brodie/Dohrmann, Inc.*, 117 Wn.2d 325, 329, 815 P.2d 781 (1991) (citations omitted) (reversing summary

judgment where trial court rejected "literal reading" of the statute). In other words, the "plain language and ordinary meaning" of the statute is the starting point, and ending point, of the court's analysis. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003); *Fraternal Order of Eagles v. Grand Aerie of Fraternal Order of Eagles*, 148 Wn.2d 224, 239, 59 P.3d 655 (2002). "If the statute is unambiguous, its meaning is [to] be derived from the plain language of the statute alone." *Fraternal Order of Eagles*, 148 Wn.2d at 239; *see J.P.*, 149 Wn.2d at 450 ("When the plain language is unambiguous – that is, when the statutory language admits of only one meaning – the legislative intent is apparent and [courts] will not construe the statute otherwise."). Nor should language in an unambiguous statute be deleted or ignored to adopt a different meaning, as "[s]tatutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous." *J.P.*, 149 Wn.2d at 450.

Giving effect to the statute's plain language, the interlocal agreement requirement applies when a private hauler's WUTC certificate authorizes "collection in a geographic area lying in more than one county." RCW 36.58.040. It is undisputed that Rabanco's WUTC certificate authorizes Rabanco to collect in a "geographic area lying in more than one county," as Rabanco's collection territory includes parts of King, Snohomish, Pierce, Kitsap, Klickitat, Skamania, and Yakima Counties. CP 126-40. Because the WUTC permit grants Rabanco a collection area lying in more than one county, King County only has authority to regulate the disposal of solid waste pursuant to interlocal

agreements with those other counties. It is also undisputed, however, that King County has no interlocal agreements with those counties. CP 260-65. As a result, the trial court erred as a matter of law by denying Rabanco's motion for summary judgment and granting King County's cross-motion for summary judgment.

In granting summary judgment for King County, the trial court erroneously based its ruling on the statute's use of the singular term "a geographic area," suggesting that each individual area listed in the permit must cross county borders for the interlocal agreement requirement to apply. But such a reading violates Washington's statutory rule of construction that use of the singular necessarily includes the plural. RCW 1.12.050 ("Words importing the singular number may also be applied to the plural of persons and things; words importing the plural may be applied to the singular . . . ."); *Hinton v. Johnson*, 87 Wn. App. 670, 942 P.2d 1061 (1997) ("we construe 'a' as applying to the plural as well as the singular"), *review denied*, 134 Wn.2d 1022, 958 P.2d 316 (1998). Employing this rule of construction, the statute must be read to apply when a certificate is for collection in a geographic area or geographic areas lying in more than one county. As Rabanco's WUTC certificate demonstrates, the WUTC lists a hauler's franchise territory by the describing the geographic areas in which a hauler has authority to collect. CP 126-40. Under the statute's language, if the certificate authorizes collection in geographic areas located in more than one county, the interlocal agreement requirement applies. Here, Rabanco's WUTC

certificate authorizes collection in geographic areas lying in more than one county, including, among others, King, Snohomish, and Klickitat Counties. The Court should reject the trial court's erroneous interpretation.

Giving effect to RCW 36.58.040's "plain language and ordinary meaning" does not create an absurd or irrational result. *J.P.*, 149 Wn.2d at 450. Under the plain language of RCW 36.58.040, when a private hauler has a WUTC certificate granting a franchise in multiple counties, one county cannot limit the hauler's disposal sites unless the other counties agree pursuant to an interlocal agreement. The benefits are obvious. The WUTC certificates grant private haulers such as Rabanco a franchise territory that is composed of parts of different counties. A franchise operating in more than one county has multiple disposal options, so it can select the least expensive disposal option, which keeps disposal rates low. This in turn keeps the collection rates that a franchise charges its customers low (which the WUTC must approve). For example, King County currently charges a basic disposal rate of $82.50 per ton for MSW disposal at its own Cedar Hills landfill, yet in Klickitat County (which is included in Rabanco's WUTC collection franchise), the landfill disposal rate is only $19.75 per ton for MSW. CP 253. If Rabanco could dispose of MSW from unincorporated King County at the significantly less expensive Klickitat landfill, Rabanco could seek a lower collection rate for its customers in unincorporated King County from the WUTC, thereby

fulfilling the purpose of the statute to protect citizens from artificially high waste collection rates. *Id.*

Finally, contrary to the interpretation adopted by the trial court, nothing in the statute contemplates that the counties in the WUTC must be adjacent or that the hauler's collection routes actually cross those counties' borders. While at the time of RCW 36.58.040's enactment, most of the WUTC franchises may have operated in only one county or only neighboring counties, the Legislature did not make that the requirement. Rather, the Legislature made the focus of RCW 36.58.040 the fact that the WUTC permit included areas in multiple counties, not that the counties were adjacent. The Court should interpret the statute as written. Accordingly, the Court should reverse the trial court and hold that the interlocal agreement requirement applies when, as here, a WUTC certificate grants a private hauler a collection franchise territory lying in more than one county.

2. The trial court erred by relying on policy considerations to alter the statute's unambiguous language.

In adopting its strained interpretation of the statute, it appears that the trial court relied on King County's arguments that its interpretation would result in allegedly better policy. The balancing of policy issues, however, is a matter already resolved by the Legislature. When a government's action does not conform to its statutory authority, a court cannot authorize such action simply because it was "useful" or "beneficial" to the public. *Washington Indep. Telephone Ass'n (WITA) v.*

Telecomm. Ratepayers Ass'n, 75 Wn. App. 356, 363-64, 368-69, 880 P.2d 50 (1994) (holding that although agency's imposition of telecommunications charges to create a community fund may have been "in the public interest," the charges nonetheless were invalid where the statutes in question did not authorize them). "If the legislature has not authorized the action in question, it is invalid no matter how necessary it might be" or "how desperate the needs of the counties" are. *Hillis Homes, Inc. v. Snohomish County*, 97 Wn.2d 804, 808, 810-11, 650 P.2d 193 (1982) (holding that county's severe financial strain did not justify county's imposition of development fee absent statutory authority to do so) *superseded in part on other grounds by* RCW 82.02.020. Because the statute is unambiguous, policy considerations are irrelevant.[2]

3. The legislative history also supports Rabanco's interpretation of the statute.

Because the statute is unambiguous on its face, this Court need not resort to legislative intent in construing the statute or applying it. But even if the Court considers the legislative history, it strongly supports Rabanco's interpretation of the statute.

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[2] In any event, policy considerations favor Rabanco's interpretation. King County wants to preserve its flow control ordinance because it gives King County a monopoly on solid waste disposal and generates significant revenue by allowing King County to set artificially high disposal rates. The U.S. Supreme Court, however, has rejected such economic protectionism by local governments as a proper purpose of flow control. *See C.A. Carbone & Sons, Inc. v. Clarkstown*, 511 U.S. 383 (1994); *id.* (O'Connor, J., concurring); *see also National Solid Waste Management Ass'n v. Pine Belt Solid Waste Management Authority*, 261 F. Supp. 2d 644 (S.D. Miss. 2003).

The statute's history demonstrates that the Legislature intended a limited county authority. Before 1975, counties had no authority to control the flow of solid waste in unincorporated areas. That changed in 1976, but county authority was limited by the interlocal agreement requirement. As stated in the Senate, "if a private collection group wants to take its garbage to another county then it would be up to an inter-local cooperation agreement between the two counties to work this out so that it is very clear as to who is receiving the ultimate garbage disposal." CP 285-88.

The statute was originally introduced into the House of Representatives as House Bill 721 on February 19, 1975. CP 266-69. It was immediately referred to the House Committee on Local Government. At that time, counties had almost no authority over solid waste in unincorporated areas, which was generally the province of the WUTC. The statute was designed to address the concern that a "comprehensive area-wide," "multi-jurisdictional" approach be taken in regards to collection and disposal of solid waste. *See id.*

The bill originally proposed to give counties authority over a system of garbage collection and disposal in unincorporated areas, and would have allowed counties to cancel franchise certificates that had been issued by the WUTC and become the issuing authority for any certificates. *See id.* The House committee roundly rejected this proposition as granting more powers to the counties than what was necessary or appropriate. CP 272-73.

Instead, after negotiation among the affected parties, a substitute bill was proposed in April 1975 that contained the language at issue here – providing a limited authority over disposal of solid waste from unincorporated areas, while requiring cooperation among jurisdictions but also specifically precluding a county from operating a solid waste collection system. CP 278-80. Authority over collection issues was to remain with the state-level WUTC, and the WUTC's directives remained superior to any local government action.[3]

The Legislature is "presumed to know the existing state" of the areas it is legislating when considering and passing new laws. *Woodson v. State,* 95 Wn.2d 257, 262, 623 P.2d 683 (1980). Therefore, the Legislature was aware when considering SHB 721 that it was granting new authority to King County. The Legislature specifically chose to limit that authority in situations where the WUTC had granted a collection certificate that covered multi-county areas. Had the Legislature wished to give local governments more authority, as King County's interpretation would grant, the Legislature is clearly aware of how to give that authority. *See Wilson v. City of Seattle*, 122 Wn.2d 814, 824, 863 P.2d 1336 (1993) (noting that if Legislature had wanted to preserve broader requirements it would have expressly included provision in statute and "it did not"). Here, the Legislature chose not to give local governments unlimited authority

[3] King County has publicly admitted that "[u]nder RCW 81.77 and 36.58, counties are prohibited from collecting MMSW or regulating solid waste collection companies." CP 283.

over solid waste disposal sites – having considered and rejected any broader grant to authority in the previous versions of the statute.[4]

In short, the legislative history supports Rabanco's interpretation that if King County opposes the disposal of solid waste at a less expensive landfill such as the one in Klickitat County (where Rabanco also has collection authority pursuant to its WUTC certificate), King County must reach an agreement with Klickitat County. Before 1976, counties had virtually no authority to designate a disposal site for unincorporated areas' solid waste, and any regulation giving them even the most limited of authority would be an increase in power. At that time, the hauling industry consisted primarily of many independent hauling companies, generally operating in a single county, with few companies hauling solid waste over county lines for disposal. *See* CP 252. Therefore, requiring those counties to have interlocal agreements would not have been unduly burdensome, since they were few in number, and because it was the legislature's purpose to increase agreement between counties regarding the ultimate disposal site. Since the mid-1970s, the hauling industry has experienced significant consolidation, with more companies operating across county lines. CP 252-53. While the realities of today may make the interlocal agreement requirement slightly more inconvenient for King

[4] The Legislature has revisited RCW 36.58.040 three times (1986, 1989 and 1992) since this language was added to the statute and reaffirmed the interlocal agreement provision, without amendment, each time.

County, it does not support King County's revisionist construction of the statute and its legislative history.

As a result, King County's authority to regulate disposal of solid waste from unincorporated areas of the county is limited to the extent it conflicts with authority given by the WUTC to a hauler unless there are the requisite multi-county interlocal agreements. The WUTC has granted Rabanco a certificate of collection that encompasses a multi-county area. Under RCW 36.58.040, it is clear that this franchise granted by the WUTC overrides the County's limited authority to control solid waste disposal from unincorporated areas – and that it was the intent of the legislature to do so. In order for King County to mandate Rabanco to take its solid waste to the more expensive Cedar Hills landfill, King County must have interlocal agreements with the other counties. King County does not have such agreements. Accordingly, King County's flow control ordinance is currently invalid as applied to Rabanco.

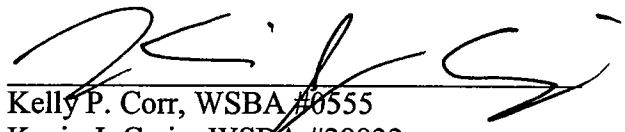
V. CONCLUSION

For the foregoing reasons, Plaintiff-Appellant respectfully requests that this Court reverse the trial court's order granting partial summary judgment to King County and remand this case with instructions for the trial court to enter partial summary judgment for Rabanco.

RESPECTFULLY SUBMITTED,

DATED this 31st day of August, 2004.

CORR CRONIN LLP



Kelly P. Corr, WSBA #0555
Kevin J. Craig, WSBA #29932
Laurie M. Thornton, WSBA #35030

Attorneys for Plaintiff-Appellant Rabanco, Ltd.

APPENDIX

Conform

THE HONORABLE DOUGLASS NORTH

SUPERIOR COURT OF WASHINGTON FOR KING ~~COUNTY~~

RABANCO LTD., a Washington corporation,

Plaintiff,

v.

KING COUNTY, a political subdivision of the State of Washington,

Defendant.

No. 04-2-06720-1SEA

NOTICE OF APPEAL TO COURT OF APPEALS, DIVISION I

Pursuant to RAP 2.2(d), Plaintiff Rabanco Ltd. seeks review by the designated appellate court of the Court's Order Denying Rabanco's Motion for Partial Summary Judgment and Granting Partial Summary Judgment to King County on Rabanco's Second Claim, which was entered as a final judgment pursuant to CR 54(b) on July 1, 2004. A copy of the decision is attached to this notice.

DATED this 6th day of July, 2004.

CORR CRONIN, LLP

Kelly P. Corr, WSBA No. 00555
Kevin J. Craig, WSBA No. 29932
Attorneys for Plaintiff

CORR CRONIN LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

RABANCO LTD., a Washington corporation,

Plaintiff,

v.

KING COUNTY, a political subdivision of the State of Washington,

Defendant.

The Honorable Douglass North

No. 04-2-06720-1 SEA

O, A, N.

~~[PROPOSED]~~ ORDER DENYING RABANCO'S MOTION FOR PARTIAL SUMMARY JUDGMENT, GRANTING PARTIAL SUMMARY JUDGMENT TO KING COUNTY ON RABANCO'S SECOND CLAIM, AND ENTERING FINAL JUDGMENT PURSUANT TO CR 54(b)

THESE MATTERS came on for hearing before the Court on Friday, May 21, 2004 on Plaintiff Rabanco's Motion for Partial Summary Judgment, Plaintiff's Motion for Leave to File an Overlength Brief, as well as cross-motions by the parties to strike certain materials submitted on summary judgment.

The Court has received and considered the following:

1.	Plaintiff Rabanco's Motion for Partial Summary Judgment.	Sub # 34
2.	Complaint and attached exhibits	Sub # 1
3.	Declaration of Pete Keller and attached exhibit	Sub # 4C
4.	King County's Opposition to Plaintiff Rabanco's Motion for Partial Summary Judgment.	Sub # 87
5.	Declaration of Eugene Echhardt and attached exhibits.	Sub # 86
6.	Declaration of Rod Dembowski and attached exhibits.	Sub # 92
7.	Declaration of Theresa Jennings and attached exhibits.	Sub # 91
8.	Plaintiff Rabanco's Motion to Strike Washburn Letter and Eckhardt Declaration or Alternatively, for a CR 56(F) Continuance of the Summary Judgment Hearing.	Sub # 100

CORR CRONIN LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

9.	Declaration of Kelly Corr in Support of Rabanco's Request for a CR(f) Continuance.	Sub # 98
10.	Plaintiff's Motion to Shorten Time Re: Plaintiff's Motion for Leave to File An Overlength Brief	Sub # 105
11.	Plaintiff's Motion for Leave to File Overlength Brief	Sub # 106
12.	Declaration of Kelly P. Corr in Support of Plaintiff's Motion For Leave to File Overlength Brief	Sub # 111
13.	Plaintiff Rabanco's Reply Supporting its Motion for Partial Summary Judgment	Sub # 114
14.	Declaration of Kevin J. Craig in Support of Plaintiff's Motion for Partial Summary Judgment and attached exhibits.	Sub # 112
15.	Declaration of James K. Sells and attached exhibits	Sub # 113
16.	Declaration of Nick Harbert in Support of Plaintiff's Motion for Partial Summary Judgment and attached exhibits	Sub # 107
17.	Defendant King County's Opposition to Rabanco's Motion to Strike and Motion to Continue.	Sub # 124
18.	Declaration of Bill Reed and attached exhibits.	Sub # 123
19.	Second Declaration of Eugene Eckhardt.	Sub # 121
20.	Defendant King County's Motion to Shorten Time Re: Defendant's Motion to Strike	Sub # 119
21.	King County's Motion to Strike Declaration of James K. Sells and Exhibits Thereto.	Sub # 120
22.	Rabanco's Reply in Support of Motion to Strike of for a CR 56(f) Continuance.	Sub # 130
23.	Plaintiff Rabanco LTD's Opposition to King County's Motion to Strike Declaration of James K. Sells and Exhibits Thereto.	Sub # 129
24.	Plaintiff's Supplemental Submission in Support of its Motion for Partial Summary Judgment.	Sub # 126
25.	Second Declaration of Kevin J. Craig.	Sub # 128
26.	Third Declaration of Kevin J. Craig and attached exhibits.	Sub # 137
27.	King County's Objection to Plaintiff's Supplemental Submission in Support of its Motion for Partial Summary Judgment.	Sub # 131
28.	Plaintiff Rabanco's Response To King County's Cross-Motion For Partial Summary Judgment	Sub # 139

The Court heard oral argument from counsel on May 21, 2004. Plaintiff Rabanco's Response to King County's Cross Motion for Partial Summary Judgment (Sub # 139) was subsequently filed on June 1, 2004. The Court, having considered the above, and the records and files in this matter, and being fully informed, and IT IS HEREBY ORDERED that:

CORR CRONIN LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

1. Plaintiff's Motion for Leave to File an Overlength Brief is GRANTED. The Court accepts plaintiff's twelve (12) page reply memorandum in support of its Motion for Partial Summary Judgment.

2. The following documents are **STRICKEN** as untimely:

Declaration of Eugene Echhardt and attached exhibits.	Sub # 86
Exhibit A to Declaration of Theresa Jennings.	Sub # 91
Second Declaration of Eugene Eckhardt.	Sub # 121
Declaration of James K. Sells.	Sub # 113
Second Declaration of Kevin J. Craig.	Sub # 128

3. The Court entered its memorandum decision ("Letter Ruling") on June 7, 2004. The Court's Letter Ruling is attached as Attachment A and incorporated by this reference;

4. Rabanco's Motion For Partial Summary Judgment is **DENIED**; and

5. Partial summary judgment is **GRANTED** to King County, and Plaintiff Rabanco's Second Claim for Relief (Complaint Part VI (Sections 76-87)) is dismissed with prejudice.

The Court, having considered the above, and the records and files in this matter, and being fully informed, further finds that:

1. Plaintiff Rabanco's Second Claim for Relief challenges King County's "flow control" ordinance, King County Code § 10.08.020, on grounds that it violated RCW 36.58.040 ("the flow control claim"). While based on different legal theories, Rabanco's other claims all challenge King County's decisions to increase the Regional Direct rate that it charges Rabanco for the disposal of municipal solid waste and to require the King County Solid Waste Division to use those funds to pay rent on the Cedar Hills landfill ("the Regional Direct claims").

2. The flow control claim and the Regional Direct claims can be separately enforced and provide more than one form of recovery that are not mutually exclusive. The claims are separable because they rely on entirely distinct factual bases and involve discrete questions of law. The only facts pertinent to the flow control claim are the contents of

CORR CRONIN LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

Rabanco's solid waste collection certificate from the Washington Utilities and Transportation Commission and whether King County has solid waste interlocal agreements with the other counties in Rabanco's permit. Those facts have no bearing on the legality of King County's decisions to increase the Regional Direct rate and to require its Solid Waste Division to pay rent on the Cedar Hills landfill. Similarly, the legal question of whether King County's flow control ordinance violates RCW 36.58.040 has no bearing on whether the Regional Direct rate increase and the rent obligation are legal. The flow control claim and the Regional Direct claims also provide different forms of recovery that are not mutually exclusive, as a ruling that the flow control ordinance is invalid would not preclude a ruling that the Regional Direct rate increase and the rent transaction are also invalid.

3. Accordingly, Rabanco has presented more than one claim for relief under Civil Rule 54(b).

4. Other than the involvement of the same parties, there is no relationship between the adjudicated flow control claim and the unadjudicated Regional Direct claims. As described above, the flow control and the Regional Direct claims are neither closely related nor stem from essentially the same factual allegations. Rather, none of the factual allegations relevant to the flow control claim overlap with the factual allegations relevant to the Regional Direct claims regarding the increase in a solid waste disposal rate and the rent transaction on the Cedar Hills landfill.

5. No questions that the appellate court would review on the Regional Direct claim are still before this Court for determination in the unadjudicated portion of the case. The flow control claim's legal issues, underlying facts, and evidence necessary to prove those facts do not overlap with the Regional Direct claims' legal issues, facts, or evidence.

6. It is unlikely that the future developments in this Court on the Regional Direct claims will moot the need for appellate review of the flow control claim. As noted above, the flow control and Regional Direct issues present separate claims for relief that are not mutually

CORR CRONIN LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

exclusive. It appears that Rabanco has an incentive to pursue the flow control on appeal regardless of the outcome in the trial court on the Regional Direct claims. Even if Rabanco prevails on the Regional Direct claims and that rate remains at $59.50 per ton, Rabanco has submitted evidence that its landfill in Klickitat County, which charges $19.75 per ton, would present a less expensive alternative if King County's flow control ordinance is invalidated. *See* Harbert Decl. ¶ 10; Keller Decl. ¶¶ 11-12.

7. The potential advantages of an immediate appeal in terms of simplifying and facilitating the trial on the Regional Direct claims would offset the delay, if any, in that trial. Because the legal and factual issues concerning the flow control and Regional Direct claims do not overlap, an immediate appeal of the flow control claim is unlikely to delay the trial of the Regional Direct claims. Furthermore, an appellate decision invalidating the flow control ordinance would moot the need for any trial on the Regional Direct claims, as Rabanco could alleviate the impact of the Regional Direct increase by re-routing the solid waste to its less expensive landfill in Klickitat County. Because this Court granted partial summary judgment at an early stage of the litigation, it is likely that the Court of Appeals will issue its opinion before the trial on the remaining Regional Direct claims. The remaining claims are currently set for trial on August 22, 2005, and although this Court and the parties have discussed setting the trial for an earlier date, the earliest possible trial date is mid-November 2004. Thus, an immediate appeal would serve judicial economy.

8. An immediate appeal also would provide several practical benefits. As discussed above, the flow control claim is wholly unrelated to the remaining Regional Direct claims. An appellate decision on the flow control claim may moot the need for a trial on the more complicated and fact-based Regional Direct claims, and it is likely that the Court of Appeals would issue its opinion in advance of the trial on the remaining claims. Furthermore, because the flow control involves a question of first impression regarding the interpretation of a state

CORR CRONIN LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

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Seattle, Washington 98154-1051
Tel (206) 625-8600
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statute, the resolution of that issue may have statewide impact. The Court notes that one industry association attempted to intervene in this case.

9. Accordingly, there is no just reason for delay in entering a partial final judgment for King County on Plaintiff Rabanco's Second Claim for Relief under Civil Rule 54(b).

Based on the above findings, IT IS HEREBY ORDERED that:

1. Pursuant to Civil Rule 54(b), a partial final judgment for King County on Plaintiff Rabanco's Second Claim for Relief shall be entered.

2. In the alternative, this Court certifies that pursuant to Rule of Appellate Procedure 2.3(b)(4) this Order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that, for the reasons discussed above, immediate review of the order may materially advance the ultimate termination of the litigation.

3. The proceedings before this Court are hereby stayed pending the appeal of the Civil Rule 54(b) judgment on Plaintiff Rabanco's Second Claim for Relief.

Entered this 1st day of July, 2004.

Douglass A. North
HONORABLE DOUGLASS A. NORTH

Presented by:

CORR CRONIN LLP

Kelly P. Corr WSBA No. 00555
Kevin J. Craig, WSBA No. 29932
Attorney for Plaintiffs

CORR CRONIN LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

Superior Court of the State of Washington
for the County of King

Douglass A. North
Judge

King County Courthouse
Seattle, Washington 98104-2381

June 7, 2004

Kelly Corr
1001 Fourth Ave., STE 3900
Seattle, WA 98154

Stephen DiJulio
1111 Third Ave., STE 3400
Seattle, WA 98101

Re: Rabanco v. King County, Cause No. 04-2-06720-1 SEA

Counsel,

I have reviewed the Memorandum filed by Rabanco in response to King County's Motion for Summary Judgment on the requirements of RCW 36.58.040. I remain convinced that the interpretation of the statute advanced by King County is the correct one and will therefore sign a order granting partial summary judgment to the County on this issue when the County presents one to me.

I believe that the language of RCW 36.58.040 ("which certificate is for collection in a geographic area lying in more than one county") refers to a collection area which crosses county borders so that it lies in more than one county. Rabanco is correct that RCW 1.12.050 provides that: "Words importing the singular number may also be applied to the plural of persons and things; words importing the plural may be applied to the singular..." The statute is phrased in terms of "may," however. The court must consider the language in its context. Here, logic and legislative history dictate that the legislature was addressing a potential problem when a collection area crossed county borders. It was not concerned with a need for an interlocal agreement between King and Spokane counties if a garbage hauler were to collect garbage in Seattle and Spokane.

Similarly, Rabanco's citation of Hinton v. Johnson, 87 Wn. App. 670, 942 P.2d 1061 (1997) is of little help to its cause. The Hinton court states (at p. 675): "Generally, we construe "a" as applying to the plural as well as the singular, unless a contrary intention appears on the face of the statute." Here such a contrary intent does appear on the face of the statute. The statute is directed at (emphasis added): "collection in a geographic area lying in more than one county."

I have considered the CR 30(b)(6) deposition of Theresa Jennings, but do not find it persuasive of Rabanco's position. King County simply seems to be taking sensible steps to remedy a problem it would face if the court were to adopt a different interpretation of RCW 36.58.040.

Ph. (206) 296-9110 E-m Fax No. (206) 296-0986

I note that counsel have not yet submitted anything to the court concerning a trial date in this matter. The court's schedule is filling up and you should move quickly to pick a trial date if you want one this Fall.

Very Truly Yours,

Douglass A. North

Douglass A. North