

Flow Control Legal Q & A

1. What is flow control?

Flow control refers to the legal right of localities to control the disposal location of waste generated within their borders. This legal authority has been an important element in the financing and development of waste disposal systems for localities across the United States.

2. What is the legal history of flow control?

Flow control was widely used until the U.S. Supreme Court ruled in 1994 (Carbone case) that flow control was unconstitutional. In 2007, the Court reversed this decision (United Haulers case) for localities that direct waste to a publicly owned facility. The United Haulers case affords many localities across the country, including the SPSA localities, the ability to return to their original financing model through the re-institution of flow control.

3. What is the history of flow control in the SPSA localities?

The entire SPSA system was built from 1976 to 1985 under the assumption that SPSA localities could control the flow of waste (and thus generate enough disposal revenue to finance the construction and maintenance of the system). The Carbone decision devastated this model and resulted in a 39% drop in commercial waste in a single year (SPSA localities could still control residential waste). Since Carbone, the taxpayers have absorbed this loss of revenue through numerous increases in the fees charged by SPSA to its members for disposal.

4. Do the SPSA localities have the authority to impose flow control now?

The United Haulers case removes the constitutional barrier to flow control for authorities like SPSA. Under state law, flow control is authorized under Va. Code 15.2-931 which states that “localities may adopt ordinances requiring the delivery of all or any portion of the garbage, trash or refuse generated or disposed of within such localities to waste disposal facilities located therein, or to waste disposal facilities located outside of such localities.” This section requires that the locality hold a public hearing and make several findings regarding existing disposal facilities. In any court review of these findings, substantial deference is given to the judgment of the locality.

The imposition of flow control by SPSA localities is further supported under Va. Code 15.2-5147 which states that localities may “contract, jointly or severally, with any authority for the collection, treatment or disposal of sewage, industrial waste or refuse; and grant to such authority the right to receive, use and dispose of all or any portion of the refuse generated or collected by or within the jurisdiction.”

5. Would SPSA localities have to pay compensation to private waste haulers if flow control is implemented?

No. State law provides for compensation only if private haulers are “displaced” by the actions of the locality. Flow control would not result in the displacement of private haulers who collect and haul commercial waste. Furthermore, the law specifically provides that these displacement statutes do not apply to flow control adopted under Va. Code 15.2-931.