## Four years ago, a whistleblower and I broke NC's aggag law. The environment and public health are better for it. | The Pulse

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By <u>Lisa Sorg</u> February 26, 2023 In Courts & the Law, Environment



The sludge from DAK Americas that was shipped to McGill Environmental. This sample is from the same batch that contained 20,400 parts per billion of 1,4-Dioxane. The colored specks in the sludge are bits of plastic. (File photo: Lisa Sorg)

Now that the Fourth Circuit Court of Appeals has ruled North Carolina's ag-gag law — as it applies to news-gathering — is unconstitutional, I can tell you that I violated it.

To be clear, I did not trespass, but I checked several of the law's boxes. Likewise, the worker who agreed to document and obtain evidence did so at considerable financial and personal risk, and could also have been fined.

Four years ago I received a tip from the worker, who thought wastewater sludge being shipped to a compost facility in Sampson County was making him sick. To get a handle on the story, I needed to verify the shipper, DAK Americas, and the recipient, McGill Compost. And I needed sludge to take to an EPA-certified lab to learn what it contained.

But the worker and I had to defy the state's ag-gag law to find out.

The Private Property Protection Act forbids employees from entering "non-public areas of a workplace" and "without authorization captures or removes the employer's data, paper, records, or any other documents and uses the information to breach the person's duty of loyalty to the employer." That same provision applies to photographs and video.

Yes, the worker did that.

The law applies not just to employees but to "any person who intentionally directs, assists, compensates, or induces another person to violate this section."

I induced. I directed. I assisted. Intentionally.

Had this story turned out differently, both the worker and I could have faced a fine of \$5,000 per day, plus legal fees. Moreover, should he be penalized, I felt ethically obliged to cover his fine.

This is what happened. To protect the employee, I'm honoring my original promise to him and keeping his identity and workplace confidential.

After the worker described his illness, I suspected it might be due to his exposure to the sludge. Even if I couldn't establish cause-and-effect, it would still be worth knowing what the sludge contained.

DAK Americas makes plastic resins and discharges a byproduct of that manufacturing — the known carcinogen, 1,4-Dioxane — into the Cape Fear River. I thought it was possible, if not likely that 1,4-Dioxane was also present in the wastewater, a major component of sludge.

- Day 1: I asked the worker to photograph shipping manifests so I could verify the sender and the recipient of the sludge. Potential fines: \$5,000 for his documentation, \$5,000 for my "inducing" him to do so.
- **Day 2:** The worker sent me video of sludge in a company truck. Now we're in for another \$10,000.
- **Day 3:** Having verified the origin, destination and the existence of the potentially contaminated sludge, I needed to test the material without trespassing. I asked the worker if he could obtain some, and he agreed.

I delivered four sterile quart-sized mason jars to the worker's home, along with a cooler. The plan was for him to immediately text me after he had filled the jars and packed them in ice. I would drive an hour to a prearranged meeting spot, where he would hand off the cooler and I would rush it to an EPA-certified lab.

Add \$10,000 to the previous potential fines, and we're looking at \$30,000 — not chump change.

Within 10 days, the lab results arrived via email. The levels of 1,4-Dioxane were so high that I called the technician to see if there had been an error. No error, the technician said. There really was 20,400 parts per billion of 1,4-Dioxane in the sludge.

The EPA has not set a legally enforceable maximum for 1,4-Dioxane — in sludge, water, soil, or any material — but for context, the agency has established a health advisory level for drinking water supplies. That level is 0.35 parts per billion, which means if the concentrations in the sludge were applied to drinking water, they would have been 57,000 times greater than recommended.

And this sludge was converted into compost and soil builder, to be spread on gardens, farm fields, even playgrounds and soccer fields.

This presented another ethical dilemma. The story wasn't ready for publication yet, but the test results were so alarming that I considered the material to be a possible public health risk. I had no choice but to notify the companies and state regulators of what I had found. That could expose the subterfuge the worker and I had engaged in to get the sludge.

The companies did not respond, but the Division of Waste Management sent investigators to both McGill and DAK Americas. The state found high levels of 1,4-Dioxane in the sludge as well, confirming my testing. There was not 1,4-Dioxane in the finished compost—the state and I independently sampled it—likely because the chemical had evaporated along with the water.

However, the state found toxics in the compost that I had not even tested for: 20 types of PFAS, or perfluorinated compounds, totaling 138 parts per trillion, far above what we now know is hazardous to public health.

Within five months of the story publishing, the Environmental Management Commission approved new rules governing compost facilities.

Previously a loophole in state regulations allowed compost operators and the suppliers of raw materials to operate on a tenuous honor system: Composters didn't have to test for 1,4-Dioxane or any emerging contaminants. And industrial plants didn't have disclose to the composters if those compounds were present in the material they're sending.

Now the state can require those operations to test their "feedstock" — the material that is used to make compost — and their finished product for 1,4-Dioxane.

Because of the worker's bravery, North Carolina has a stronger compost rule. Had he and I been cowed by the ag-gag law and allowed it to chill legitimate news gathering, it's possible the compost rule would have never passed; a known carcinogen could still be entering compost facilities.

The 1,4-Dioxane investigation underscores a brief that the Reporters Committee for Freedom of the Press filed with the federal court: The right to gather information plays a distinctly acute role in journalism. First-hand accounts, buttressed by video evidence, enhance accuracy and credibility in reporting and increase transparency and reader trust, allowing the press "to tell more complete and powerful stories."

The Fourth Circuit's decision is important for journalists. And it's important for whistleblowers.

Shortly after our stories were published in 2019, the worker found a different job, one that is safer.