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*LC Steve Alder
my spam
9-3/03 as*

September 1, 2003

VIA FAX 595-3265

Jeff Devashrayee
Union Pacific Railroad
280 S 400 W # 250
Salt Lake City, UT 84110

*Jheo jg
C/007/009
e-mail White
Oak Team*

**RE: WHISKEY CREEK LOADOUT COAL DUMP BY UNION PACIFIC RR
DATE OF OCCURRENCE: 8-03
MY CLIENT: GEORGE LIODAKIS**

We have not heard from you since our fax correspondence of August 25, 2003. Since that time we have obtained new information concerning Union Pacific's actions at the Whiskey Creek Loadout on my client's property.

We have learned that Union Pacific or its contractors intentionally dumped, not spilled, hundreds of tons of coal on my client's property. I have photos which I will gladly e-mail to you if you provide me your address which shows some of the extent of the coal dump created by Union Pacific. Union Pacific apparently dumped coal on land that had been partially reclaimed under contract with the Division of Oil, Gas and Mining (DOG M) of the state of Utah. The coal dump has destroyed much of the reclamation work done at the behest of DOGM.

Rather than respect the rights of landowners adjoining its tracks and rights of way, Union Pacific made an economically-based judgment to dump hundreds of tons of coal upon my client's property, polluting the land and impacting the watershed. Rather than transport the damaged cars to the nearest repair facility, permitted and contemplated by Utah Code Annotated, Section 56-2-2, Union Pacific decided to set up a scrap metal shop on my client's property without so much as a courtesy call.

The additional photographic evidence we have obtained clearly demonstrates Union Pacific's financially-motivated intent and consequent liability for trespass, nuisance, and negligence.

We have not received any additional information from you regarding

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DIV. OF OIL, GAS & MINING

documentation of any rights of way, easements, or agreements permitting you access to my client's property. Please provide that documentation to us immediately.

We have not received a response to our questions concerning Cessation Order No. C03-51-1-1, bonds, coal pile registration with DOGM, and notices to DEQ of your intentional dumping.

We reiterate our suggestion for an interim solution: we mutually agree to a licensed, bonded, third party remediation contractor who can exercise the necessary degree of care to protect my client's property. These include runoff conveyance channels, erosion control devices, and re-vegetated areas, trees, and water systems, including DOGM and DEQ involvement and approval, with indemnity and hold harmless agreement in favor of my client from all parties.

We request a prompt response. If you fail to respond, you will force us to take legal action against Union Pacific including, but not limited to, seeking injunctive relief. If you would like to investigate and negotiate a mutually agreeable resolution, my client and I will meet with representatives of Union Pacific, DOGM, other appropriate governmental representatives this week.

The following are a more detailed version of the facts as I understand them and which are subject to change and new information; please correct any misinformation:

The site of the Union Pacific derailment, coal dump and salvage operation is beautiful creek side land (the Whiskey Creek Loadout site) upstream from a reservoir, surrounded by mountains nearly 10,000 feet high. There is a summer school directly across the road from the site, a few hundred yards away.

It has small stands of evergreen and aspen, sagebrush and springs.

About 26 years ago it was leased by a coal mining company on a thirty year lease and used as a "loadout" or place where coal is transferred from trucks to train cars. It has a rail line running through it roughly 100 yards from the stream that flows parallel to it. It is subject to agreements and laws mandating reclamation to restore it to its original condition.

The coal mine lessee (the latest lease successor owned by a consortium, Wexford, in Connecticut) is bankrupt (now in Chapter 7). The bond company (Frontier) that insured the lessee's performance of its reclamation obligations is under supervision by the New York Insurance Department and slow to step up to its obligations to reclaim the land. Apparently, there is at least one reinsurer willing to pay for present reclamation work.

Some portion of vegetation replanted pursuant to a reclamation

agreement with the the Utah State Division of Oil, Gas and Mining was paid for with some excess coal left on the land and valued at about \$100,000. The Division asked for and received permission from the owner, George Liodakis, to access the site through a locked gate. DOGM and my client have an agreement that only contractors who were reclaiming the loadout area on account of loadout operations were allowed access to the lock combination and the property.

Sometime in mid August of 2003 a Union Pacific train carrying coal from another coal mine derailed on the land. Union Pacific, or its contractor, obtained the combination to the lock from an employee of the DOGM without the permission of the owner, the Liodakises, in violation of the agreement regarding the gate and access to the gate. To save money, the railroad decided to dump the coal on the land, cut up rail cars outside the right of way and remove them to trucks outside the right of way on my client's land. A scrap metal company from Ogden, Durbano, contracted with the Division to perform the salvage and remove the coal by truck, too. Without the permission of the owner of the land, Union Pacific commenced its salvage operation. Unbeknownst to the owner of the land, Union Pacific dumped approximately 700 tons of coal on the land. In doing so, much of the reclamation work that had been done under the supervision of the Division by the reclamation contractor was destroyed, according to recent photos. Union Pacific commenced its salvage operation up to 240 feet away from the railroad track on the Liodakis' land without their permission. At no point prior to the owner learning by himself of the coal spill and salvage operation by Union Pacific did anyone including Union Pacific or DOGM notify the Liodakis' nor their attorneys of the derailment and salvage operation on their land. Indeed, the Liodakises were locked out by Union Pacific from their own land, adding insult and injury. Mr. Liodakis contacted the Carbon County Sheriff's office about the trespass. The Sheriff's office investigated the site and measured the distance from the track to Union Pacific's salvage operation at about 250 feet. The investigative report should be available shortly. The Sheriff's office advised Mr. Liodakis to lock his gate on the truck road leading up to the loadout and leave a note to contact him or me for questions or access. He did this on about August 23, 2003.

On Monday, August 25, 2003 Mr. Liodakis and I began receiving urgent calls from Union Pacific and its contractor, Durbano. They wanted permission from Mr. Liodakis to work on the land for just one day in order not to waste the trip by his workers with their three semi trucks and other equipment. They guaranteed that Union Pacific would protect the land and be responsible for their actions and any problems or damage that occur therefrom. In consideration of the promises and guarantees by Union Pacific and Durbano, Mr. Liodakis allowed them two days, August 25 and August 26, 2003, to finish removing the cars and remove their trucks and other equipment on the land. In the meantime all parties discussed reaching an agreement between Union Pacific and Mr. Liodakis to remediate the spill caused

by Union Pacific. I reiterated to Union Pacific's attorneys Mr. Liodakis' desire to have an agreement on the cleanup of the derailed cars and dumped coal. Mr. Durbano indicated that the cleanup of the coal and repair of damage to the land would take an additional ten to 15 days. Mr. Liodakis requested that Union Pacific indemnify him for damages caused by the derailment, Union Pacific's trespass, and its illegal and unauthorized activities on the land. Union Pacific's attorney said "we're not interested in paying any money," and accused my client of being "greedy." Union Pacific made it clear that it wanted to avoid responsibility for the damage it caused to the land and the owner, conduct a perfunctory and inexpensive cleanup and not compensate the owner for his damages. Later on August 25 I faxed a letter to Union Pacific with a copies to the DOGM, Durbano and the Utah State Division of Environmental Quality putting all parties on notice, inter alia, that Union Pacific has violated the law and the rights of my client. I pointed out that environmental problems and interference with the reclamation of the loadout has resulted from Union Pacific's actions. I discussed other problems and damages occurring on account of Union Pacific and their negligent, intentional, surreptitious and illegal actions on my client's land. I asked you whether Union Pacific could clean up the land by using their existing rails. You said you would find out. Later that same day, Mr. Durbano pleaded with my client and me for one additional day to remove his equipment from the site. We gave him that extra day (August 27) based on his assurances that that was all he would do and reaffirming that Union Pacific and he would take care of the land while they were on it and would be responsible for any damage or problems that occur. At the end of the day, I spoke with you about the extra day and the need for a more reasonable response from Union Pacific. You indicated to me that you would speak with your people and respond. As I am writing this, I have not received a response from Union Pacific. From the photos I first reviewed yesterday, it appears that the coal spill and salvage operation has caused extensive damage to the recently and partially reclaimed land. Its hard to imagine how 700 tons of coal dumped intentionally and indiscriminately on fragile land with springs and above a fragile waterway could not have caused extensive damage. I received information yesterday indicating that Union Pacific's actions have seriously slowed down and interfered with the owner's use of the land and the reclamation of the loadout. The owner has also suffered

extensive damage to his realty and pecuniary interests on account of Union Pacific's carelessness and intentional acts.

I look forward to your response.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Lawrence D. Buhler". The signature is fluid and somewhat stylized, with a large initial "L" and "B".

Lawrence D. Buhler

cc: George Liodakis
DEQ
DOGM
Durbano Metals