PUBLIC

031-0191

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of ARCH COAL, INC., a corporation, NEW VULCAN COAL HOLDINGS, LLC, a limited liability company, and TRITON COAL COMPANY, LLC, a limited liability company.	Docket No. 9316

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondents Arch Coal, Inc. ("Arch"), a corporation, and New Vulcan Coal Holdings, LLC ("New Vulcan"), a limited liability company, entered into an agreement, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, for the acquisition by Arch of Triton Coal Company, LLC ("Triton") from New Vulcan, which acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

RESPONDENT ARCH

1. Respondent Arch is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at One CityPlace Drive, Suite 300, St. Louis, Missouri 63141.

2. Respondent Arch is the second largest coal producer in the United States, operates approximately 30 coal mines in the United States, and had $1.4 billion in revenues in 2003. Arch is one of five significant producers of coal in the Southern Powder River Basin in Wyoming ("SPRB") and is one of only four producers of 8800 Btu SPRB coal.

RESPONDENTS NEW VULCAN AND TRITON

3. Respondent New Vulcan is a limited liability company, wholly owned by Vulcan Partners, an investment partnership. New Vulcan is organized and exists under the laws of the State of Delaware, with its principal place of business at 141 Market Place Drive, Suite 100, Fairview Heights, Illinois 62208.

4. Respondent Triton is a limited liability company, wholly owned by New Vulcan and organized and existing under the laws of the State of Delaware, with its principal place of business at 113 South Gillette Ave, Suite 203, Gillette, Wyoming 82716.

5. Respondent Triton is one of five significant producers of coal in the SPRB and is one of only four producers of 8800 Btu SPRB coal.

JURISDICTION

6. Arch is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

7. New Vulcan and Triton are, and at all times relevant herein have been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and are limited liability companies whose businesses are in or affect commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

THE ACQUISITION AND THE PROPOSED SALE OF BUCKSKIN

8. Pursuant to a Merger and Purchase Agreement ("Agreement") dated May 29, 2003, Arch proposes to acquire all the assets of Triton, including principally Triton's North Rochelle mine, from New Vulcan for approximately $364 million in cash (the "Acquisition").

9. Arch also has entered into an executory contract, in or about January 2004, to transfer another mine that it is acquiring from Triton, Triton's Tier 3 Buckskin mine assets (valued at approximately $80 million, or approximately 22% of the value of the Acquisition), to Peter Kiewit Sons', Inc. ("Kiewit"), a competing initial bidder for Triton and a competing final bidder for Triton's Buckskin mine assets. This executory contract does not materially change the Acquisition or its likely effect on competition.

10. Arch's acquisition of Triton, both as originally agreed among respondents and as further agreed between Arch and Kiewit, is an acquisition of "the whole or any part of the stock" and "the whole or any part of the assets" of Triton, within the meaning of Section 7 of the Clayton Act.

11. On March 30, 2004, the Commission authorized the commencement of an action under Section 13(b) of the FTC Act to seek a preliminary injunction barring the Acquisition during the pendency of administrative proceedings.

RELEVANT MARKET

12. The relevant product markets in which the competitive effects of the proposed Acquisition may be assessed are SPRB coal and any narrower markets therein.

13. The price differential between 8800 Btu SPRB coal and 8400 Btu SPRB coal depends on the demand and supply balance for each of the two products. Consequently, supply restrictions by producers of 8800 Btu SPRB coal, relative to the growing demand for the product, can cause the price of 8800 Btu SPRB coal to increase relative to the price of 8400 Btu SPRB coal.

GEOGRAPHIC MARKET

14. The relevant geographic market within which to assess the competitive effects of the proposed Acquisition is the SPRB (and any narrower markets therein). The SPRB is the only area with mines to which customers can turn for supply of SPRB coal, and Tier 1 of the SPRB is the only area with mines to which customers can turn for supply of 8800 Btu SPRB coal. The Acquisition will adversely affect electricity customers in areas throughout the United States.

COAL FROM THE SPRB

15. Coal is a leading energy source in the United States. Coal-fired generating plants account for about 92% of all coal consumption and about 50% of all electric power produced in the United States. Of the approximately 1.1 billion tons of coal produced annually in the United States, about one-third is produced in the SPRB, which is located in Wyoming. SPRB coal is burned by electric generators in at least 26 states, including generators extending from Oregon to Arizona in the west, to Lake Michigan, Georgia, and Alabama in the east. Electric generators account for virtually all consumption of SPRB coal. In 2003, mines in the SPRB produced about 363 million tons of coal with an approximate value in excess of $2 billion.

16. The SPRB is a source of low sulfur coal that has an energy content of between approximately 8300 and 8800 British Thermal Units ("Btus") per pound. SPRB coal is lower in sulfur than most coals mined in the United States and is one of the few coals that comply with the current sulfur emission limits imposed on coal-fired generators by the 1990 Clean Air Act. SPRB coal is also low in ash and sodium content. These properties, combined with exceptionally low mining costs, give SPRB coal a strong economic advantage in supplying many electric generators compared to coal produced in other regions of the United States.

THE THREE TIERS IN THE SPRB

17. SPRB coal suppliers and customers have established two distinct price points for SPRB coal based on the heat content of the coal – 8800 Btu and 8400 Btu. Coal contracts specify sulfur content and the Btu range of the coal and provide price adjustment for actual sulfur content and Btu content of the coal transferred from the mine.

18. The most highly valued SPRB coal is 8800 Btu coal, which is produced in the southern portion of the SPRB, known as "Tier 1" or as the "Wright Area." This 8800 Btu coal commands a substantial price premium over 8400 Btu coal, which comes from mines in Tiers 2 and 3, the adjacent areas to the north in the SPRB. The price premium for 8800 Btu SPRB coal reflects its lower sulfur content, higher energy content, and easy access to competing rail transport service.

19. The mines that produce 8400 Btu coal are divided between Tiers 2 and 3. Tier 2 mines are located just south of Gillette, Wyoming. These mines typically produce coal that has not only a lower heat content but also generally a higher sulfur content than coal from Tier 1. Tier 3 mines include those mines located immediately north and east of Gillette, Wyoming. These mines also produce coal with approximately 8400 Btu/lb., but with higher sulfur content than the Tier 2 mines to the south.

20. Coal mines in Tier 1 and Tier 2 of the SPRB have a transportation advantage because they have access to the joint line of the Burlington Northern Santa Fe ("BNSF") and Union Pacific ("UP") railroads. Consequently, shippers of coal from mines in Tier 1 and Tier 2 of the SPRB are able to contract with either BNSF or UP to transport the coal to the customer's generating plant. Tier 3 mines have access only to the BNSF railroad. Tier 3 producers are competitively disadvantaged relative to producers in Tiers 1 and 2 of the SPRB, because they produce a lower Btu coal with a higher sulfur content than mines in other regions of the SPRB, and have access to only the BNSF railroad.

21. Four significant producers in the SPRB – Arch, Peabody, Kennecott, and Triton – all operate mines in the Tier 1 Region. Arch's Black Thunder mine and Triton's North Rochelle mine are located in the Tier 1 region and produce 8800 Btu coal. Each of these producers also conducts one or more coal mining operations in Tiers 2 and 3 of the SPRB. Arch's Coal Creek mine, which Arch has kept idle since 2000, is located in the Tier 2 region. Triton's Buckskin mine is located in the Tier 3 region. Another SPRB producer, R.A.G., is a significant producer of 8400 Btu SPRB coal, but produces coal only in Tiers 2 and 3.

USE OF SPRB COAL

22. Coal-fired generating plants are optimized to use coal from a certain source, or a specific mixture of coals. Switching to, or away from, SPRB coal often entails significant costs.

Most generating plants burning SPRB coal that were brought on line in the last 20 years are designed specifically to burn SPRB coal and cannot economically burn other coal. Prior to the development of the SPRB coal mines, coal-fired generating plants were designed to burn the highest Btu coal, generally bituminous coal with a heat content up to 12,000 Btu/lb., from the closest mines to the plants without regard to sulfur content. Following passage of the Clean Air Act of 1990, many of these older plants converted their facilities to burn SPRB coal in order to comply with stricter sulfur emissions limitations. Converting a coal-fired electric generating facility from high-Btu bituminous coal to SPRB coal is costly, in the tens of millions of dollars, and takes a significant amount of time. Plant modifications to burn SPRB coal include upgrading the coal conveying and handling systems to deliver the higher volume of SPRB coal needed by the electric generating units at the plant, and modifying the plants' boiler and heat absorption and cleaning systems. Many older plants that currently burn SPRB coal would require installation of scrubbers to reduce emission of sulfur compounds before they could switch to non-SPRB (*e.g.*, Appalachian) coal in any significant volume. Installing a scrubber is an expensive procedure, which can cost hundreds of millions of dollars and take several years.

23. Montana coals from the Northern Powder River Basin ("NPRB") are not competitive with Wyoming coals from the SPRB. NPRB coals have high sodium content, which can lead to operational problems at the generating plant. The high sodium content associated with NPRB coals tends to create excessive slagging in the boilers that adversely affects the boilers' efficiency. In addition, Montana imposes a significantly higher severance tax on its coal than does Wyoming. The higher tax puts Montana NPRB coal at a competitive disadvantage to Wyoming's SPRB coal. Transportation from the NPRB mines is also limited to one rail line. NPRB coal production is small relative to that in the SPRB, and shipments of NPRB coal have declined in recent years.

24. Even if coal from outside the SPRB possessed physical characteristics that would allow its use in lieu of SPRB coal, coals from other regions are too costly on a delivered cost basis to be an economic substitute for SPRB coal for most generators that use SPRB coal. For many generators that burn SPRB coal, Colorado and Uinta Basin coals are much more expensive, on a delivered cost per Btu, sulfur-adjusted basis, than SPRB coals. Appalachian coal is significantly more expensive on a delivered cost per Btu basis than SPRB coal, and moreover most Appalachian coal has high sulfur content.

25. SPRB coal is sold exclusively at the mine-mouth in the SPRB. Customers ship the coal on one of the two rail lines serving the SPRB and negotiate a freight rate with the railroad.

26. 8800 Btu SPRB coal produced in Tier 1 of the SPRB is functionally and economically distinct from the 8400 Btu SPRB coal produced in Tier 2 and Tier 3 of the SPRB. More 8400 Btu coal must be transported and burned in order to generate the same heat output as would be generated from a given quantity of 8800 Btu coal. Because more 8400 Btu coal is required to generate the same heat value as a given amount of 8800 Btu coal, in general the

greater the distance from the SPRB to a customer's generating facility, the more uneconomical it is for a customer with a given type of generator that is burning 8800 Btu SPRB coal to switch to 8400 Btu SPRB coal in response to an increase in the mine price of 8800 Btu SPRB coal.

27. Performance problems associated with burning 8400 Btu SPRB coal make use of this coal uneconomic for some 8800 Btu SPRB coal customers. When low-Btu coal is used to fuel a boiler designed to burn higher Btu coal, more coal must be moved through the boiler to generate the same quantity of heat. It is often not possible, however, to move a sufficient volume of coal through the boiler unit to achieve the boiler's full rated steam output level, causing the rated maximum electric generating capacity of the generating facility to be reduced, a consequence referred to in the electricity industry as a "derate." For some 8800 Btu coal customers, use of 8400 Btu coal causes a derate. Growth in demand for electricity has increased, and is likely to continue to increase, the demand for 8800 Btu SPRB coal relative to the demand for 8400 Btu SPRB coal.

MARKET STRUCTURE

28. The relevant markets are highly concentrated.

29. Arch is one of five significant producers of SPRB coal and is one of only four producers of 8800 Btu SPRB coal.

30. Triton is one of five significant producers of SPRB coal and is one of only four producers of 8800 Btu SPRB coal.

31. Arch idled its 8400 Btu SPRB coal mining operations at Coal Creek in or about July 2000 because of what Arch regarded as unfavorable conditions existing in the market environment.

32. Arch has much of the infrastructure in place to support coal production of 18 million tons per year at its Coal Creek mine. Through its idle Coal Creek mine, Arch controls the principal excess capacity for production of 8400 Btu SPRB coal.

33. Through its North Rochelle mine, Triton controls the principal excess capacity for production of 8800 Btu SPRB coal.

34. Arch and Triton are direct and actual competitors in each of the relevant markets. They compete with each other on price and on reliability of supply, among other things.

THE SPRB COAL MARKET IS SUSCEPTIBLE TO COORDINATION

35. The SPRB coal market (and any narrower market therein) possesses several structural features that make coordination more likely, including a small number of competitors, high barriers to entry, homogeneity of the relevant product, relatively inelastic demand, availability of substantial market and competitor information, and close geographic proximity of

competitors.

36. Respondents and others, including Kiewit, recognized that consolidation in the SPRB has led and will lead to producer restraint and higher SPRB prices.

37. Detailed information regarding SPRB coal market and competitor output, sales, prices, capacity, forecasts, and plans is readily available to mine owners through the trade press and through other public and private sources of information.

38. Behavior by the major SPRB producers facilitates coordination. The major SPRB producers regularly signal their intent with respect to coal production, and competitors keenly follow these signals and ascertain whether production announcements are actually implemented. This signaling includes open communications by coal companies and coal company executives at investor conferences and trade association meetings and through press releases and statements in the trade press.

39. Arch has been a leading proponent of limiting SPRB coal production. With the acquisition of Triton, Arch will have greater incentive and ability to limit supply of SPRB coal from the mines it already owns and those it would acquire. Arch has publicly encouraged SPRB competitors to restrict output to stabilize or increase prices for SPRB coal. Arch's output restriction and signals concerning output and prices facilitate coordination by reducing uncertainty among Arch's SPRB competitors. For example:

> a. On May 18, 2000, Arch announced its plans to reduce production at Coal Creek in a press release in which Arch President and CEO Steven Leer stated, "We are committed to earning an adequate return for our shareholders, and we will not resume higher levels of production at Coal Creek until such a return is possible." Speaking at the Western Coal Council's Spring Forum on May 23, 2000, before an audience that included Arch's competitors, Mr. Leer noted that overproduction had eroded coal prices. Mr. Leer urged coal suppliers to "Produce Less Coal" in response to the problem of oversupply. Advocating cutbacks in coal production, Mr. Leer said that coal companies would benefit from matching supply and demand and that Arch, Kennecott, and Peabody were all moving to reduce production. He stressed to his audience that "Arch has been conscientious" in reducing capacity, including idling Coal Creek (removing 10 million tons per year of output and idling 18 million tons per year of capacity) and limiting expansion at Black Thunder to about 60 million tons per year (the original plan had called for about 80 million tons per year).
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> b. At an April 17, 2001, Western Coal Transportation Association meeting, Mr. Leer delivered the keynote address to the group, which included his competitors and customers. In that speech, Mr. Leer explained that the reason for the price increase in the SPRB was the "supply/demand balance," due, in part, to the fact that in the "Southern PRB, [there were] fewer producers, so greater potential for discipline." Even though coal prices had more than doubled from the previous year, Mr. Leer defended his

and his competitors' decisions to constrain supply – "We've had offers to open up Coal Creek Mine for one year at extremely attractive pricing. And the answer is no. I think other producers are in the same boat." Arch's message got through to Triton, and indeed was discussed within a few days internally among Triton's management.

c. On March 18, 2002, PRNewswire-FirstCall reported that Arch announced production cuts during a period of increasing prices and even though such cuts would adversely impact Arch's earnings. Quoting Mr. Leer, the report stated:

> "While we are seeing the initial signs of an economic recovery, and forward pricing for 2003 has begun to increase, we believe that the best course for Arch is to act aggressively to bring production in line with demand.
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> * * *
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> "We are committed to being a market-driven producer," Leer said. "We believe it would be a mistake to sell coal into an oversupplied market, at prices that will not provide an adequate return.
>
> "We have not taken these steps lightly," he added. "The reductions will have an adverse impact on earnings, particularly in the first and second quarters, given the relatively fixed nature of our cost structure in the near term."

According to Mr. Leer, being "market driven" means exercising production discipline, *i.e.*, when demand is less than supply at Arch's desired price, Arch reduces its output rather than its price. Mr. Leer's statements were not merely posturing for public consumption. Privately Mr. Leer urged that Arch should continue to restrict output even in light of rising prices, because output increases would cause the price rebound to stall.

d. Four months after Arch announced its decision to restrict production, the July 18, 2002, edition of Coal & Energy reported that Arch had, in fact, reduced its coal shipments. The article further reported Arch's most recent pricing for SPRB coal. The report quoted Mr. Leer:

> "Although we are continuing to restrict production, we are seeing signs that the market is progressing towards a healthier balance between supply and demand. . . . In the West, we have committed in recent weeks approximately 3 million tons of Powder River Basin coal for delivery in 2003 or 2004, at an average price of approximately $7 per ton. . . . We are very comfortable with our position and feel no sense of urgency to sign contracts at current

pricing levels. . . . We continue to believe that the current market has far more upside potential than downside."

e. Throughout 2002 and into 2003, Mr. Leer continued to tout the benefits of restricting production. On April 21, 2003, one month before Arch announced it was acquiring Triton, Mr. Leer stated in a release announcing Arch's First Quarter 2003 results that "we continue to believe that our strategic decision to leave uncommitted tons in the ground, rather than sell them at a price that does not provide an adequate return, is sound." At the same time, Mr. Leer reaffirmed privately that Arch had been doing the right thing by restricting production and cautioned that Arch's ability to continue to lead the charge would depend on gaining market support. However, Mr. Leer warned that if prices did not improve soon, Arch would ramp up the mines to full production. Such a ramp-up would send Arch's competitors a strong signal that Arch was prepared to punish other producers if they failed to support Arch's output curtailment initiative.

40. Arch's SPRB competitors also understand the importance of limiting production to tighten the supply/demand balance in the market and have signaled their own production intentions. For example:

a. Privately, an executive of a major SPRB producer observed, in May 2000, that while the company could not enter into express or implied understandings with its competitors as to market matters influencing or affecting price, it could set a rational, independent example for the PRB industry. The company examined the message it would send to the PRB industry by curtailing expansion and expressed hope that competitors would consider these factors in their own market behavior, in light of preclusion, under antitrust law, of express or implied understandings or communications on these topics.

b. Irl Engelhardt, Chairman and CEO of Peabody Coal, made the following statement in his April 25, 2000, speech to the Western Coal Transportation Association:

> "The growing demand for Powder River Basin coals should point to robust market conditions. The opposite is true; conditions are soft at present. Why? Our 'firm' believes that too many producers relied upon those optimistic market projections discussed earlier, and some made investments that resulted in oversupply situations."

Mr. Engelhardt then described the steps Peabody had taken to reduce "oversupply," including:

- In early 1999, Peabody suspended the 10-million-ton-per-year Rawhide Mine, "one of the most productive mines in the United States;"

- Also in 1999, Peabody delayed a 30-million-ton-per-year capacity expansion at North Antelope/Rochelle "until margins will generate the proper returns;" and

- In April 2000, Peabody idled a truck/shovel fleet at Caballo, reducing output by 8 million tons per year, "until market conditions improve."

c. In an internal evaluation of its own SPRB coal supply strategy, another major SPRB producer noted with interest Mr. Engelhardt's speech, including his statements regarding the damage oversupply had wrought and Peabody's output reductions until market conditions improve.

d. On May 8, 2000, a few days after the Engelhardt speech, Kennecott issued a press release announcing its intent to "temporarily curtail production" at its mines. A week later, on May 15, 2000, Coal Outlook reported that "these reductions would come from the Cordero Rojo complex, 5.5 million tons; Jacobs Ranch, 2 million tons; and Colowyo, 500,000 tons." The article quotes Kennecott's president Gary Goldberg as stating that Kennecott elected to curtail output "rather than accept prices that do not provide a return on its investment."

e. Communications among the major SPRB producers are not limited to speeches, but include direct conversations concerning expansion plans and mine operations. Competitors also discuss with one another supply contracts with individual customers. In considering how to respond to a customer's expressed interest in purchasing coal, a major SPRB producer drew on its discussions with Arch personnel regarding the customer's future purchase commitments with Arch. Discussions between competitors also involve SPRB price projections and the SPRB supply and demand balance.

f. Triton, well aware of the cutbacks by the three largest of the five SPRB producers, ordered the development of plans for the public announcement – at a May 15, 2000, speech to a Coaltrans conference – of its own plan to reduce production at North Rochelle until pricing improved. But Triton ultimately decided to expand output at the North Rochelle mine rather than cut back its production. Triton continued to operate the North Rochelle mine at close to full practical capacity until after entering into the acquisition agreement with Arch, entering into a joint defense agreement with Arch, and engaging in due diligence discussions with Arch. More recently, Triton also has indicated that it has plans to reduce production at the North Rochelle mine.

PRIOR TO THE PROPOSED ACQUISITION, TRITON'S NORTH ROCHELLE MINE HAS BEEN THE PRINCIPAL SOURCE OF OUTPUT EXPANSION IN THE SPRB DURING THE PRECEDING FIVE YEARS

41. Shipments of SPRB coal increased by 70 million tons over the period 1998 through 2003. While other SPRB producers exercised production discipline, Triton rapidly expanded production at its North Rochelle mine, the newest mine in the SPRB. Triton's North Rochelle mine has been the largest source of increased supply of SPRB coal over the period 1998 through 2003. The increase in coal shipments from the North Rochelle mine accounted for 34.1% of the total increase in coal shipments from the SPRB over that period. The expansion at North Rochelle has been the largest expansion of supply of SPRB coal over that period.

42. Output expansion has been profitable for Triton. Triton's EBITDA was over $50 million in 2002, and Triton has continued to have a strong operating income and EBITDA. The vast majority of Triton's operating income and EBITDA in 2002 and 2003 came from Triton's North Rochelle mine.

43. Arch Coal management recognized that an acquisition of Triton will provide an "insurance policy" for Arch in the SPRB, by eliminating an "undisciplined" producer and enabling Arch more effectively to control production to match demand.

ANTICOMPETITIVE EFFECTS OF THE ACQUISITION

44. The Acquisition would combine two of only four producers of 8800 Btu SPRB coal and would combine two of the leading producers of SPRB coal.

45. The Acquisition would combine the two firms that hold the principal sources of excess capacity in the SPRB and would bring under Arch's control the principal source of excess capacity for production of 8800 Btu SPRB coal.

46. The transfer by Arch of Triton's Tier 3 Buckskin mine to Kiewit does not remedy the potential anticompetitive effects of the Acquisition in the SPRB or in 8800 Btu coal. Buckskin and R.A.G. would be unable to constrain a coordinated price increase in the SPRB.

47. The Acquisition may substantially lessen competition in the following ways, among others:

a. It would combine two of the leading producers of SPRB coal, would substantially increase concentration in the SPRB market and result in a highly concentrated SPRB market, would eliminate the existing substantial competition between Arch and Triton, and would substantially reduce competition in the SPRB market.

b. It would combine the two firms that hold the principal sources of excess capacity in the SPRB and would bring under Arch's control the principal source of excess capacity for production of 8800 Btu SPRB coal.

c. It would combine two among only four producers in Tier 1 of the SPRB, would substantially increase concentration in 8800 Btu SPRB coal and result in high concentration among 8800 Btu coal producers, would eliminate the existing substantial competition between Arch and Triton, and would substantially reduce competition in 8800 Btu SPRB coal.

d. It would increase the likelihood of coordination in the market for SPRB coal (and narrower markets therein), a market that is already susceptible to coordination. Following the Acquisition, Arch could more easily coordinate profitably with either or both of the other two remaining major producers to restrict output, limit capacity expansion, or raise price as demand for SPRB coal continues to grow. The Acquisition would make coordination among SPRB producers, and among producers of 8800 Btu SPRB coal, easier, more likely, more successful, and more durable.

ENTRY CONDITIONS

48. Entry into the relevant markets would not be timely, likely, or sufficient in its magnitude, character, and scope to deter or counteract the anticompetitive effects of the Acquisition.

VIOLATIONS CHARGED

COUNT I -- ILLEGAL ACQUISITION

49. The allegations contained in Paragraphs 1-48 are repeated and realleged as though fully set forth here.

50. The effect of the Acquisition may be substantially to lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

COUNT II -- ILLEGAL ACQUISITION AGREEMENT

51. The allegations contained in Paragraphs 1-48 are repeated and realleged as though fully set forth here.

52. Arch and Triton, through the Agreement described in Paragraph 8, have engaged in unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

NOTICE

Proceedings on the charges asserted against you in this complaint will be held before an Administrative Law Judge (ALJ) of the Federal Trade Commission, under Part 3 of the Commission's Rules of Practice, 16 C.F.R. Part 3. A copy of Part 3 of the Rules is enclosed with this complaint.

This complaint will be made public on the 6th day following its issuance, unless one or more respondents object thereto before the expiration of said period. A respondent objecting to the Commission's making the complaint public shall file a statement of the basis for its objection(s) with the ALJ, who shall consider such objection(s) and complaint counsel's response thereto and shall issue an order prescribing what portions of the complaint, if any, shall be redacted before it is made public.

You may file an answer to this complaint. Any such answer must be filed within 20 days after service of the complaint on you. If you contest the complaint's allegations of fact, your answer must concisely state the facts constituting each ground of defense, and must specifically admit, deny, explain, or disclaim knowledge of each fact alleged in the complaint. You will be deemed to have admitted any allegations of the complaint that you do not so answer.

If you elect not to contest the allegations of fact set forth in the complaint, your answer shall state that you admit all of the material allegations to be true. Such an answer will constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the ALJ will file an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding. Such an answer may, however, reserve the right to submit proposed findings and conclusions and the right to appeal the initial decision to the Commission under Section 3.52 of the Commission's Rules of Practice.

If you do not answer within the specified time, you waive your right to appear and contest the allegations of the complaint. The ALJ is then authorized, without further notice to you, to find that the facts are as alleged in the complaint and to enter an initial decision and a cease and desist order.

The ALJ will schedule an initial prehearing scheduling conference to be held not later than 7 days after the last answer is filed by any party named as a respondent in the complaint. Unless otherwise directed by the ALJ, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the prehearing scheduling conference, and Rule 3.31(b) obligates counsel for each party, within 5 days of receiving a respondent's answer, to make certain initial disclosures without awaiting a formal discovery request.

A hearing on the complaint will begin on the sixth day of July, 2004, at 10:00 A.M. in Room 532, or such other date as determined by the ALJ. At the hearing, you will have the right to contest the allegations of the complaint and to show cause why a cease and desist order should not be entered against you.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that the Merger and Purchase Agreement described in Paragraph 8 violates Section 5 of the Federal Trade Commission Act, as amended, or that the proposed acquisition challenged in this proceeding would, if consummated, violate Section 7 of the Clayton Act, as amended, or Section 5 of the Federal Trade Commission Act, as amended, the Commission may order such relief against respondents as is supported by the record and is necessary and appropriate, including, but not limited to:

1. An order to cease and desist from any action to effect the acquisition by Arch of any assets or securities of Triton.

2. Rescission of the Merger and Purchase Agreement between respondents.

3. Divestiture of an ongoing, operating business, including all assets, tangible and intangible, including, but not limited to, all intellectual property, knowhow, trademarks, trade names, research and development, and customer contracts.

4. Such other or additional relief as is necessary to ensure the creation of one or more viable, competitive, independent entities to compete against Arch in the relevant markets.

5. A requirement, for a ten (10) year period, that Arch and Triton provide the Commission with notice in advance of acquiring the assets or securities of, or any other combination with, any person engaged in the mining and sale of SPRB coal.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C. this sixth day of April, 2004.

By the Commission.

C. Landis Plummer
Acting Secretary

SEAL: