

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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FEDERAL TRADE COMMISSION,		)
		)
Plaintiff,		)
		)
v.	Case No. 1:04CV00534 (JDB)	)
		)
ARCH COAL, INC.,		)
		)
and		)
		)
NEW VULCAN COAL HOLDINGS, LLC		)
141 Market Place Drive, Suite 100		)
Fairview Heights, IL 62208		)
		)
and		)
		)
TRITON COAL COMPANY, LLC		)
113 South Gillette Ave., Suite 203		)
Gillette, WY 82716		)
		)
Defendants.		)
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**ANSWER OF DEFENDANTS NEW VULCAN COAL HOLDINGS, LLC AND TRITON  
COAL COMPANY, LLC TO FEDERAL TRADE COMMISSION’S COMPLAINT FOR  
PRELIMINARY INJUNCTION**

Defendants New Vulcan Coal Holdings, LLC and Triton Coal Company, LLC  
(collectively, “Triton”), by counsel, answer the Complaint for Preliminary Injunction  
 (“Complaint”) filed by the Federal Trade Commission (“FTC”). In so doing, Triton adopts the  
preliminary statement in the Answer filed by defendant Arch Coal, Inc. (“Arch”).

**Jurisdiction And Venue**

1. The allegations as to jurisdiction and venue state legal conclusions to which no  
response is required.

**The Parties**

2. Triton admits the allegations contained in Paragraph 2.

3. Triton admits the allegations contained in Paragraph 3.

4. Triton denies the allegations contained in the first sentence, and admits the allegations contained in the second sentence of Paragraph 4.

5. Triton denies the allegations contained in the first sentence, and admits the allegations contained in the second sentence of Paragraph 5.

6. The allegations contained in Paragraph 6 are legal conclusions to which no response is required.

**Section 13(b) of the FTC Act**

7. Triton admits that Paragraph 7 accurately quotes portions of 15 U.S.C. § 53(b).

**The Proposed Acquisition and the Commission's Response**

8. Triton admits that, pursuant to a Merger and Purchase Agreement dated May 29, 2003, Arch agreed to acquire all of the assets of Triton Coal Company, LLC from New Vulcan Coal Holdings, LLC, for approximately \$364 million. Triton further states that, pursuant to an Asset Purchase Agreement, dated as of January 30, 2004 between Peter Kiewit Sons', Inc. ("Kiewit") and Arch, Arch agreed to divest Triton's Buckskin mine and related assets to Kiewit concurrent with Arch's acquisition of the assets of Triton Coal Company, LLC. In all other respects, the allegations contained in Paragraph 8 are denied.

9. Triton admits that, pursuant to an Asset Purchase Agreement, dated January 30, 2004, between Kiewit and Arch, Arch has agreed to divest, for \$82 million, Triton's Buckskin mine and related assets to Kiewit concurrent with its acquisition of the assets of Triton Coal Company, LLC. In all other respects, the allegations contained in Paragraph 9 are denied.

10. Triton admits that, on March 30, 2004, it was informed by the FTC that, over the dissent of Commissioner Leary, the FTC Commissioners had voted to commence this action.

The remainder of the allegations contained in Paragraph 10 state legal conclusions to which no response is required.

11. Triton admits the allegations contained in Paragraph 11 as to Triton.

12. Triton lacks knowledge or information sufficient to admit or deny the allegations contained in Paragraph 12, and therefore denies them. Triton further states that the Transactions are in the public interest, and will violate neither Section 7 of the Clayton Act nor Section 5 of the FTC Act, but, instead, will result in substantial procompetitive benefits without any lessening of competition in any purported relevant market.

### **Coal From the SPRB**

13. Triton admits that coal is a leading energy source in the United States, and further admits that coal-fired generating plants account for a significant percentage of coal consumption and electric-power generation in the United States, but otherwise denies the allegations contained in the first and second sentences of paragraph 13. The allegations contained in the third sentence of Paragraph 13 are admitted. Triton further admits that coal produced in the Powder River Basin (“PRB”), including the Southern PRB (“SPRB”), like coal produced in other regions throughout the United States, is burned by electric generators. The approximations contained in the last sentence of Paragraph 13 are just that, approximations, and require neither an admission nor a denial.

14. Triton admits that the PRB, including SPRB, is a region in the United States that serves as a source of low sulfur coal for consumers in the United States, and states that such coal typically has an energy content of along a spectrum that includes approximately 8100 and 8900 BTU per pound, which complies with current sulfur emission limits imposed on coal-fired generators by the 1990 Clean Air Act. Triton further admits that coal mined in the SPRB is low in ash and sodium content. In all other respects, the allegations contained in Paragraph 14 are denied.

**The Three Tiers in the SPRB**

15. Triton denies the allegations contained in the first sentence of Paragraph 15. Triton admits that the allegations contained in the second sentence are generally correct.

16. Triton denies the allegations contained in Paragraph 16.

17. Triton admits that mines north, south, and east of Gillette, Wyoming, produce 8400 BTU coal, and that some of these mines to the south of Gillette, Wyoming, also produce 8800 BTU coal. In all other respects, the allegations in Paragraph 17 are denied.

18. Triton denies the allegations contained in Paragraph 18.

19. Triton admits that Arch, Peabody, Kennecott, and Triton are four of the largest coal producers in the SPRB. All operate mines in the southern portion of the PRB, as well as elsewhere in the PRB. Arch's Black Thunder mine and Triton's North Rochelle mine are both located in the southern portion of the PRB. Arch's Coal Creek mine and Triton's Buckskin mine are located near Gillette, Wyoming. Triton further admits that R.A.G. is another significant producer of coal that has mines located in the PRB, including SPRB. In all other respects, the allegations in Paragraph 19 are denied.

**Use of SPRB Coal**

20. Triton denies the allegations contained in Paragraph 20.

21. Triton denies the allegations contained in Paragraph 21.

22. Triton denies the allegations contained in Paragraph 22.

23. Triton admits that coal mined in the PRB, including SPRB, is available to customers in states nationwide, but otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23, and therefore denies them.

24. Triton admits the allegations contained in the second sentence of Paragraph 24. In all other respects, the allegations contained in Paragraph 24 are denied.

25. Triton denies the allegations contained in Paragraph 25.

**Arch and Triton Each Control Significant Excess Capacity for Production of SPRB Coal**

26. Triton lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26, and therefore denies them.

27. Triton lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27, and therefore denies them.

28. Triton denies the allegations contained in Paragraph 28.

**The SPRB Coal Market is Susceptible to Coordination**

29. Triton denies the allegations contained in Paragraph 29.

30. Triton denies the allegations contained in Paragraph 30 insofar as they have reference to Triton. In all other respects, Triton lacks knowledge or information sufficient to form a belief as to said allegations, and therefore denies them.

31. Triton denies the allegations contained in Paragraph 31.

32. Triton denies the allegations contained in Paragraph 32.

33. Triton denies the general allegations contained in Paragraph 33 and each of its subparts insofar as they have reference to Triton. In all other respects, Triton lacks knowledge or information sufficient to form a belief as to said allegations, and therefore denies them.

34. Triton denies the general allegations contained in Paragraph 34 and each of its subparts insofar as they have reference to Triton. In all other respects, Triton lacks knowledge or information sufficient to form a belief as to said allegations, and therefore denies them.

**Prior to the Proposed Acquisition, Triton's North Rochelle Mine Has Been the Principal Source of Output Expansion in the SPRB During the Past Five Years**

35. Triton admits there has been consistent and substantial expansion of output by coal producers with mines in the PRB, including SPRB, since 1998, but otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 35, and therefore denies them.

36. Triton admits that EBITDA for Triton Coal Company, LLC in 2002 was in excess of \$50 million. In all other respects, the allegations contained in Paragraph 36 are denied.

37. Triton lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 37, and therefore denies them.

**Likelihood of Success on the Merits and Need for Relief**

38. The allegations contained in Paragraph 38 state a legal conclusion to which no response is required.

39. Triton denies the allegations in Paragraph 39 in their entirety, including the allegations contained in the subparts thereof.

40. Triton denies the allegations in Paragraph 40.

41. Triton denies the allegations in Paragraph 41 in their entirety, including the allegations contained in the subparts thereof.

42. Triton denies the allegations in Paragraph 42.

Except as specifically admitted above, the allegations contained in the Complaint are denied.

**FIRST DEFENSE**

The Complaint fails to state a claim upon which relief can be granted.

**SECOND DEFENSE**

An injunction would not be in the public interest.

**THIRD DEFENSE**

A preliminary injunction is not necessary to preserve an effective remedy for the FTC.

**FOURTH DEFENSE**

The Transactions will result in substantial merger-specific efficiencies.

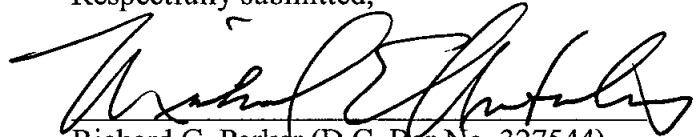
**OTHER DEFENSES**

Triton reserves the right to assert other defenses as discovery proceeds.

WHEREFORE, Triton respectfully requests that the Court (i) deny the FTC's request for a preliminary injunction, (ii) dismiss the Complaint in its entirety with prejudice, (iii) award Triton its costs of suit, including attorneys' fees, and (iv) award such other and further relief as the Court may deem proper.

April 5, 2004

Respectfully submitted,



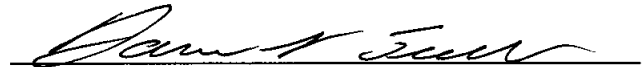
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Company, LLC

**CERTIFICATE OF SERVICE**

I HEREBY certify that copies of the Answer and Disclosure of Corporate Affiliations and Financial Interests of Defendants New Vulcan Coal Holdings, LLC and Triton Coal Company, LLC to Federal Trade Commission's Complaint for Preliminary Injunction were served electronically and by first-class mail to all counsel of record this 5th day of April, 2004.

A handwritten signature in cursive script, appearing to read "Darren S. Tucker", is written over a horizontal line.

Darren S. Tucker