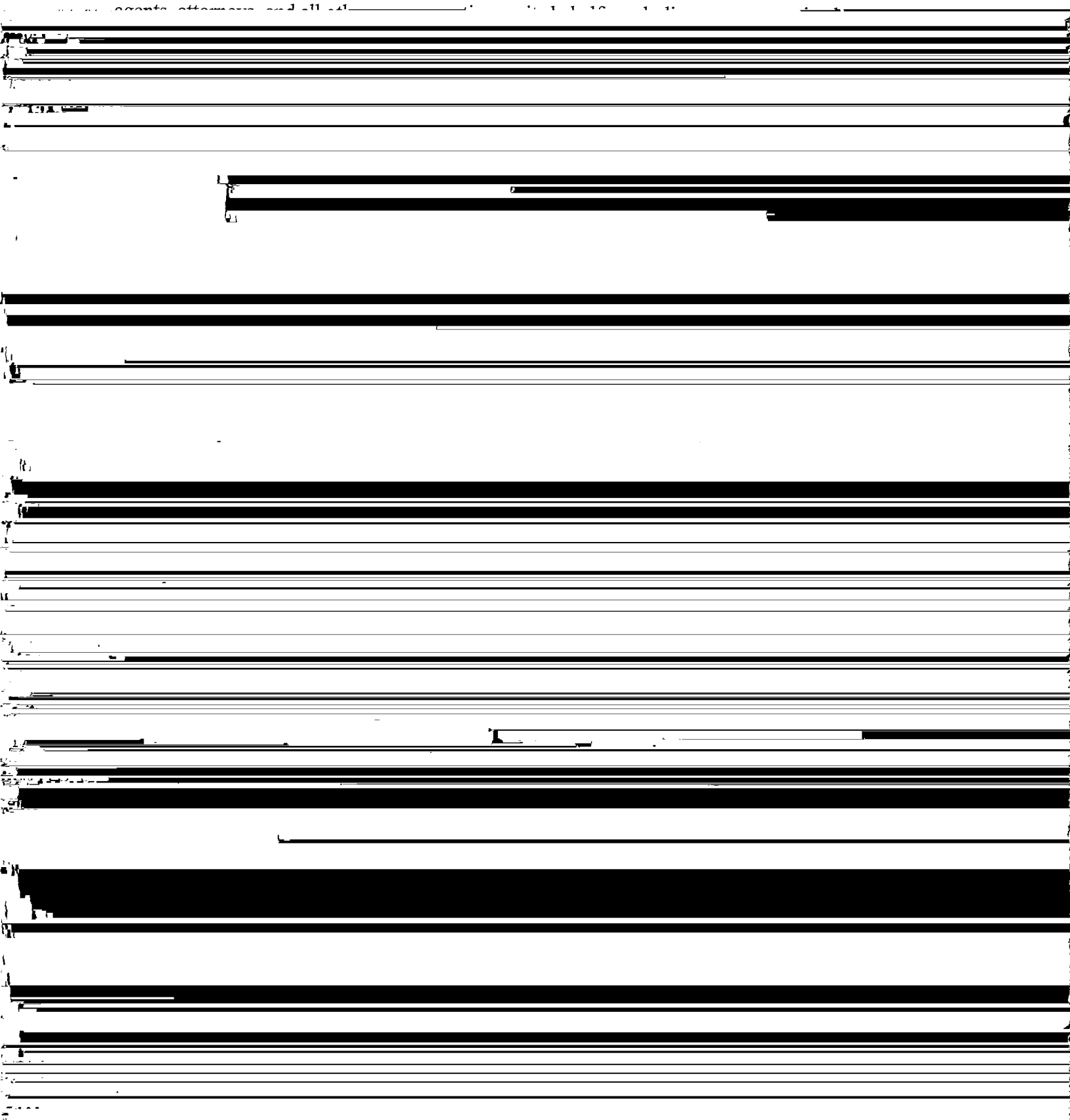


FEDERAL TRADE COMMISSION

2. "Commission" or "FTC" means the Federal Trade Commission, or any of its employees,



3. "Arch Cool, Inc." means Arch Cool, Inc. (the "Company")

8. "Outside Counsel" means the law firms that are counsel of record for Respondents in this Matter and their associated attorneys; or other persons regularly employed by such law firms, including legal assistants, clerical staff, and information management personnel and temporary personnel retained by such law firm(s) to perform legal or clerical duties, or to provide logistical

Counsel shall not be a director, officer or employee of Respondents. The term Outside Counsel does not include persons retained as consultants or experts for the purposes of this Matter.

9. "Producing Party" means a Party or Third Party that produced or intends to produce Confidential Discovery Material to any of the Parties. For purposes of Confidential Discovery Material of a Third Party that either is in the possession, custody or control of the FTC or has been produced by the FTC in this Matter, the Producing Party shall mean the Third Party that

non-identical copies of any written or graphic matter, no matter how produced, recorded, stored

or reproduced, including but not limited to:

minute, memorandum statement, affidavit, declaration, book, record, survey, map, study,

handwritten note, working paper, chart, index, table, list, or other document.

the disclosure of which to Respondents or Third Parties would cause substantial commercial

examples of information that likely will qualify for treatment as Confidential D: 14

them; and (2) any other legal obligation imposed upon the Commission. The Parties, in

conducting discussions with the Commission, the Parties have agreed to the following:

[REDACTED]

9316" by placing on or affixing such legend on each page of the document. It is anticipated that documents to be designated Restricted Confidential, Attorney Eyes Only may include certain

marketing plans, sales forecasts, business plans, the financial terms of contracts, operations, and

pricing and cost data, price terms, analyses of pricing or competition information, and limited

proprietary personnel information; and that this particular restrictive designation is to be

Confidential, Attorney Eyes Only material within five business days of receiving notice of an intent to disclose the Restricted Confidential, Attorney Eyes Only material to an individual by

providing the disclosing Party with a written objection to the disclosure of the

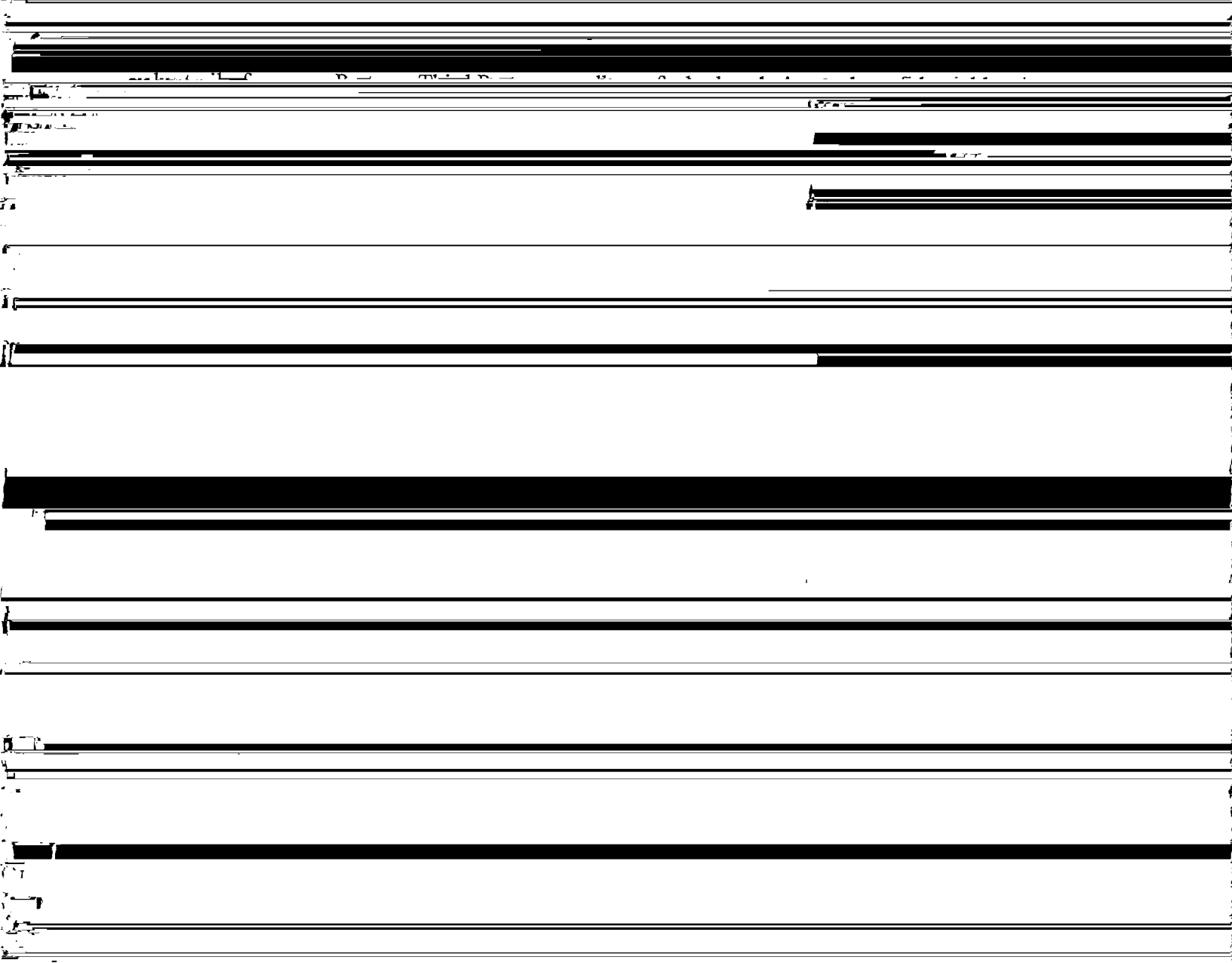
Producing Party timely objects, the disclosing Party shall not disclose the Restricted Confidential, Attorney Eyes Only material to the identified individual, absent a written agreement with the Producing Party, order of the Administrative Law Judge or ruling on appeal. The Producing Party lodging an objection and the disclosing Party shall meet and confer in good faith in an attempt to determine the terms of disclosure to the identified individual.

No presumption or other inference shall be drawn that material designated Restricted Confidential, Attorney Eyes Only is entitled to the protections of this paragraph.

(f) Due Process Savings Clause.

Nothing herein shall be used to argue that a Party's right to attend the trial of, or other proceedings in, this Matter is affected in any way by the designation of material as Restricted Confidential, Attorney Eyes Only.

3. All documents heretofore obtained by the Commission through compulsory process or



of Practice;

(b) Outside Counsel;

(d) witnesses or deponents at trial or deposition;

(e) the Administrative Law Judge and the hearing officer;

assignment or retention or the conclusion of this Matter;

(c) to not disclose such Confidential Discovery Material to anyone, except as permitted by the Protective Order; and

(d) to use such Confidential Discovery Material and the information contained therein solely for the purpose of rendering consulting services to a Party to this Matter, including providing testimony in judicial or administrative proceedings arising out of this Matter.

rights, and the challenging Party shall meet and confer in good faith in an attempt to negotiate changes to any challenged designation. If at the end of five business days of negotiating the parties have not resolved their differences or if counsel determine in good faith that negotiations have failed, the challenging Party may make written application to the Administrative Law Judge

shall maintain the pre-application status of the Confidential Discovery Material. Nothing in this Protective Order shall create a presumption or alter the burden of persuading the Administrative

Law Judge of the propriety of a requested disclosure or change in designation.

7. Confidential Discovery Material shall not be disclosed to any person described in subparagraphs 4(c) and 4(d) of this Protective Order until such person has executed and

transmitted to Respondents' counsel or Complaint Counsel, as the case may be, a declaration or declarations, as applicable, in the form attached.

writing that such material should be so designated and provides all the Parties with an

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

commercially labeled and exempt. The D. C. 1-11-92 4-11-92 1-1-92

[REDACTED]

[REDACTED]

[REDACTED]

Administrative Law Judge or the Commission.

11. This Order covers the disclosure of information to the Commission.

not constitute an *in camera* order as provided in Section 3.45 of the Commission's Rules of Practice, 16 C.F.R. § 3.45.

12. Nothing in this Protective Order shall be construed to conflict with the provisions of

Section 6.10 and 6.11 of the Federal Trade Commission's 16 C.F.R. §§ 46.50-57.0.

16 C.F.R. § 4.12.

14. The provisions of this Protective Order, insofar as they restrict the communication and use of Confidential Discovery Material shall, without written permission of the Producing Party or further order of the Administrative Law Judge hearing this Matter, continue to be binding after the conclusion of this Matter.

15. This Protective Order shall not apply to the disclosure by a Producing Party or its Counsel of such Producing Party's Confidential Discovery Material to such Producing Party's employees, agents, former employees, board members, directors, and officers.

16. The production or disclosure of any Discovery Material made after entry of this

[REDACTED]

[REDACTED]

(b) If a Producing Party requests the return, pursuant to this paragraph, of any such Discovery Material from another Party, the Party to whom the request is made shall return immediately to the Producing Party all copies of the Discovery Material within its possession, custody, or control—including all copies in the possession of experts, consultants, or others to whom the Discovery Material was provided—unless the Party asked to return the Discovery Material in good faith reasonably believes that the Discovery Material is not privileged. Such good faith belief shall be based on either (i) a facial review of the Discovery Material, or (ii) the inadequacy of any explanations provided by the Producing Party, and shall not be based on an argument that production or disclosure of the Discovery Material waived any privilege. In the event that only portions of the Discovery Material contain privileged subject matter, the Producing Party shall substitute a redacted version of the Discovery Material at the time of making the request for the return of the requested Discovery Material.

(c) Should the Party contesting the request to return the Discovery Material

submit to this paragraph, decline to return the Discovery Material, the Producing Party seeking

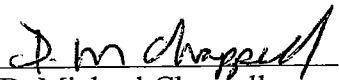
[REDACTED]

[REDACTED]

[REDACTED]

Third Parties to apply for further protective orders or for modification of any provisions of this Protective Order.

ORDERED:


D. Michael Chappell
Administrative Law Judge

Date: May 17, 2004

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of)

ARCH COAL, INC.,)

NEW VULCAN COAL HOLDINGS, LLC, and)

TRITON COAL COMPANY, LLC)

Respondents.)

Docket No. 9316

DECLARATION CONCERNING PROTECTIVE
ORDER GOVERNING DISCOVERY MATERIAL

c. that upon the termination of my participation in this proceeding I will promptly return all Confidential Discovery Material, and all notes, memoranda, or other papers containing Confidential Discovery Material, to Complaint Counsel or ~~Plaintiff's counsel, as appropriate.~~

4. I understand that if I am receiving Confidential Discovery Material as an Expert/Consultant, as that term is defined in this Protective Order, the restrictions on my use of Confidential Discovery Material also include the duty and obligation: