

MEMO

Subject: Grounds for a Yes vote on Arch Coal, Inc (ACI) shareholder resolution requesting a report on the company's efforts to reduce environmental and health hazards associated with Mountaintop Removal (MTR) and other Appalachian mining.

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Lead Filer: Sisters of St. Joseph of Carondelet, St. Louis Province (Midwest Coalition for Responsible Investment)

Arch Coal Shareholders are encouraged to vote FOR the following resolution:

RESOLVED: Shareholders request a report, prepared at reasonable cost within six months after the 2012 annual meeting, omitting confidential information, on the company's efforts to reduce environmental and health hazards associated with its Appalachian mining operations, and how those efforts may reduce legal, reputational and other risks to the company's finances. The report should include complete, detailed information for these Global Reporting Initiative (GRI) performance indicators:

- Total water withdrawal by source.
- Water sources significantly affected by withdrawal of water.
- Percentage and total volume of water recycled and reused.
- Total water discharged by quality and destination.
- Total weight of waste by type and disposal method.
- Identity, size, protected status, and biodiversity value of water bodies and related habitats significantly affected by the reporting organization's discharges of water and runoff.

Background on this proposal:

Arch Coal Inc.'s mining operations have a significant impact on the waters of Appalachia. Arch uses vast quantities of water across its coal operations, including coal-washing activities at coal preparation plants at its mining complexes.¹ In addition, Arch is actively engaged in mountaintop removal mining, which results in environmental damage to streams and aquatic life as portions of mountains are blasted away and deposited in the valleys below.² Scientists have also linked mountaintop mining with increased health risks to local communities.³

Arch Coal has recently incurred substantial penalties and economic loss due to the water pollution impacts of its Appalachian mining operations, particularly mountaintop removal mining.

Rationale for a 'FOR' vote:

- I. **Arch's Appalachian mining practices, including mountaintop removal, expose the Company to significant financial and regulatory risks** due to water pollution impacts.
- II. **Arch's public disclosure on this issue is insufficient.** The resolution requests detailed information on six Global Reporting Initiative performance indicators with specific reference to water. While the company produced a Corporate Responsibility Report, *Our Charge, 2009 - 2010*, with two pages on water resources, it has not provided the information requested in the proposal. Without improved disclosure, shareholders cannot adequately assess the risk of their investment in Arch.
- III. **Rebuffing Arch's request to exclude the resolution from its proxy materials, SEC staff determined that the resolution is appropriate as to subject matter and that Arch has not already provided shareholders or the public with the information the resolution requests.**

- I. **Arch's Appalachian Mining Practices, Including Mountaintop Removal, Expose the Company to Significant Financial and Regulatory Risks.**
 - A. As of its last annual report, Arch Coal derived 36% of its earnings from Central Appalachian mining.⁴
 - B. The Company recognizes that it must comply with numerous federal, state, and local environmental regulations, including those regulating the disposal of mining waste in valley streams.⁵
 - C. Arch Coal states: "[W]e adhere to the requirements of the Clean Water Act."⁶ In addition, Arch claims: "In 2009 and 2010, Arch delivered its best environmental compliance years on record."⁷ The Report neglects to note these major environmental enforcement cases recently brought against the Company.
 - 1) In March 2011, Arch settled an enforcement case brought by the United States and the states of West Virginia and Kentucky, alleging more than 800 violations between 2003 and 2010 of water pollution discharge permits at four Arch mining complexes in West Virginia, Kentucky, and Virginia. Arch agreed to pay a \$4 million penalty and to implement a

program designed to ensure Clean Water Act compliance at its mining operations.⁸

- 2) In September 2011, Arch settled a Clean Water Act suit filed by several environmental organizations, alleging violations of selenium discharge limits in Arch's water pollution permits. Arch agreed to pay a \$2 million civil penalty and to complete construction of a new selenium treatment system.⁹
- D. In January 2011, EPA vetoed a Clean Water Act discharge permit for Arch's 2,300-acre Spruce No. 1 mountaintop removal mine in Logan County, West Virginia.¹⁰ It was only the 13th time in 40 years that EPA exercised this veto power, and the first time it did so regarding a previously-permitted mine.¹¹ The Company's Spruce No. 1 mine would have been one of the largest mountaintop mining projects authorized in West Virginia. If fully constructed, it would disturb 2,278 acres and bury over 7 miles of streams under 110 million cubic yards of removed mountaintop.¹²
- E. Several major U.S. and European banks have decided to limit or cease financing for mountaintop mining. For example: "Credit Suisse will not finance or provide advice on operations to extract coal or other resources where mountaintop removal mining practices are used."¹³ Wells Fargo: "Our involvement with the practice of MTR is limited and declining."¹⁴
- F. Examining the water pollution and other impacts of mountaintop mining, a group of scientists has called for a moratorium on permits for this form of coal mining.¹⁵

II. Arch Coal Inc.'s Public Disclosure on This Issue is Insufficient.

- A. The Company's "Our Charge" Corporate Social Responsibility Report acknowledges the Global Reporting Initiative (GRI) indicators, but provides virtually no meaningful information responsive to the water impact items requested by the resolution.
- B. The Our Charge report contains four paragraphs (p. 15) and one graphic (p. 16 top left) that address water. Almost one-half of the text is devoted to two community service projects that the Company undertook. Those projects, while admirable, are independent of and unrelated to the impacts of Arch's mining activities. The remainder of the text is so vague that it offers no information that a shareholder would not already know.
- C. The Our Charge report does not meaningfully address the GRI indicators requested by the resolution, and fails to inform shareholders of the impacts of the company's Appalachian mining operations on water resources. It is primarily a public relations brochure, with pretty pictures and vague statements, rather than a factual report on

a serious, controversial topic of great concern to shareholders. The following compares the information requested in the resolution with that provided in the Our Charge report:

- 1) Total water withdrawal by source: This pertains to GRI item EN8. Whereas the Our Charge report (p. 25) claims to partially address this item, the only conceivably-responsive information in the report is that Arch's "mining complexes rely on a mix of surface water, groundwater and public water supplies." (p. 15) This example highlights Arch's generous view of what it describes as "partial" compliance with some of the GRI indicators. Arch provides no information regarding the amount of water it withdraws for mining activities, and no information regarding the extent of its reliance on surface water, groundwater, and public water supplies.
- 2) Water sources significantly affected by withdrawal of water (GRI item EN9): The Our Charge report does not mention this indicator, and nothing in the report provides any information responsive to this critically-important issue.
- 3) Percentage and total volume of water recycled and reused (GRI item EN10): While the report provides the total volume of water recycled, (text p. 15 and graphic p. 16), it provides no information regarding the percentage of water used that was then recycled and/or reused. Without that information, the totals are of limited value.
- 4) Total water discharged by quality and destination (GRI item EN21): Although the Our Charge report claims "partial" compliance with this item, citing page 15 of the report, that claim is illusory. There is no information on page 15, or anywhere else, that describes or otherwise addresses the quality and destination of water discharged by Arch. As noted in the statement accompanying the proposed resolution, this is an area of great concern as Arch has been sued by federal and state governments and citizen organizations for substantial water pollution discharge violations.
- 5) Total weight of waste by type and disposal method (GRI item EN22): As with the item above, Arch claims "partial" compliance but provides no support for that claim. The report contains no information addressing Arch's waste disposal methods, let alone the weight of waste.
- 6) Identity, size, protected status, and biodiversity value of water bodies and related habitats significantly affected by the reporting organization's discharges of water and runoff (GRI item EN 25): This is probably the most important of the six requested items in terms of the substantial impacts of mountaintop mining on water resources. The Our Charge report makes no mention of this item, and contains no responsive information.

III. Rebuffing Arch’s request to exclude the resolution from its proxy materials, SEC staff determined that the resolution is appropriate as to subject matter and that Arch has not already provided shareholders or the public with the information the resolution requests.

- A. On December 26, 2011, Arch asked the Securities and Exchange Commission for a no action letter pursuant to Rule 14a-8. Arch stated that it intended to exclude this resolution from the 2012 proxy solicitation materials because, according to Arch, the proposal relates to a matter that Arch has substantially implemented and the proposal relates to the Company’s ordinary business operations. Shareholders responded, urging the SEC to deny the no-action letter request.
- B. On February 10, 2012, the SEC Office of Chief Counsel, Division of Corporate Finance, determined that Arch had not demonstrated grounds for excluding the proposal and denied the Company’s request for a no-action letter.
- C. The SEC rejected Arch’s contentions that the Our Charge Report, together with other information made publicly available by Arch, contains the information requested by the resolution. “Based on the information you have presented, it does not appear that Arch’s public disclosures compare favorably with the guidelines of the proposal.”¹⁶

Conclusion:

Arch Coal, Inc. has a significant involvement in mountaintop removal mining in Central Appalachia. This controversial practice endangers the environment and public health, and subjects the Company to substantial financial and regulatory risks. The Company has not provided meaningful public disclosure regarding the environmental and public health impacts of this practice necessary to assist shareholders in assessing the risks of their investment. Shareholders should vote FOR this proposal.

¹ Arch Coal Inc., 10-K, Filed March 3, 2011 for year ending December 31, 2010 (“2010 10-K”), pp. 12-13, available at <http://investor.archcoal.com/phoenix.zhtml?c=107109&p=irol-investorKit>.

² Palmer, M.A., et al., Mountaintop Mining Consequences. *Science*, Vol. 327, pp. 148-149 (Jan. 8, 2010), available at http://www.filonverde.org/images/Mountaintop_Mining_Consequences_Science1%5B1%5D.pdf.

³ Ahern MM, et al., The association between mountaintop mining and birth defects among live births in central Appalachia, 1996-2003. *Environ Res.* 2011 Aug;111(6):838-46.

⁴ Arch Coal, Inc. 2010 Annual Report, p. 14, available at <http://investor.archcoal.com/phoenix.zhtml?c=107109&p=irol-reportsAnnual>.

⁵ 2010 10-K, pp. 17-25.

⁶ Arch Coal Inc., Our Charge: 2009-2010 Corporate Social Responsibility Report, p. 15, available at <http://responsible.archcoal.com/>.

⁷ *Id.*, p. 16.

⁸ United States v. Arch Coal, Inc., No. 2:11-cv-0133 (S.D.W.Va.), Consent Decree available at <http://www.dep.wv.gov/pio/Documents/Arch%20Coal%20-%20Consent%20Decree.pdf>

⁹ Ohio Valley Environmental Coalition, Inc. v. Coal-Mac, Inc., No. 3:10-0833 (S.D.W. Va.), Consent Decree available at <http://wvgazette.com/static/coal%20tattoo/archseleniumsettle.pdf>.

¹⁰ Final Determination of the U.S. EPA Pursuant to § 404(c) of the Clean Water Act Concerning the Spruce No. 1 Mine, Logan County, West Virginia (“Spruce Veto Decision”), available at http://water.epa.gov/lawsregs/guidance/cwa/dredgdis/upload/Spruce_No-1_Mine_Final_Determination_011311_signed.pdf.

¹¹ Chronology of 404(c) Actions, available at <http://water.epa.gov/lawsregs/guidance/wetlands/404c.cfm>; EPA Proposed Veto of Mine Permit Under Clean Water Act, Mar. 26, 2010, available at <http://yosemite.epa.gov/opa/admpress.nsf/0/D19F832B77DBB0AF852576F200567BA5>.

¹² Spruce Veto Decision, pp. 15 and 6.

¹³ Credit Suisse: Summary of Credit Suisse’s Sector Policies and Guidelines, Summary of Mining Policy, p. 3, available at https://www.credit-suisse.com/responsibility/doc/policy_summaries_en.pdf.

¹⁴ Wells Fargo, 2010 Environmentally Responsible Lending, p. 2, available at https://www.wellsfargo.com/downloads/pdf/about/csr/reports/environmental_lending_practices.pdf. See also Rainforest Action Network, Policy and Practice: 2011 Report Card on Banks and Mountaintop Removal, available at http://ran.org/sites/default/files/mtr_reportcard_2011.pdf.

¹⁵ Palmer, M.A., et al., Mountaintop Mining Consequences. *Science*, Vol. 327, pp. 148-149 (Jan. 8, 2010), available at http://www.filonverde.org/images/Mountaintop_Mining_Consequences_Science1%5B1%5D.pdf.

¹⁶ SEC, Response of the Office of Chief Counsel, Division of Corporate Finance, RE: Arch Coal, Inc., Feb. 10, 2012, available at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2012/sistersofstjoseph021012-14a8.pdf>. Arch’s no action request and shareholders’ response are also available at that location.