
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934

Date of report (Date of earliest event reported): December 10, 2008 (December 5, 2008)

Arch Coal, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation)

1-13105
(Commission File Number)

43-0921172
(I.R.S. Employer Identification No.)

CityPlace One
One CityPlace Drive, Suite 300
St. Louis, Missouri 63141
(Address, including zip code, of principal executive offices)

Registrant's telephone number, including area code: (314) 994-2700

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
-
-

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On December 5, 2008, the Board of Directors of Arch Coal, Inc. (the “Company”) approved amendments to the Company’s bylaws, effective immediately. The amendments revise Articles I, II and V of the Company’s bylaws. The principal features of the amendments are as follows:

Advance Notice Requirements

Article II (Board of Directors) of the bylaws require stockholders intending to make a director nomination or bring other business at a stockholders’ meeting to have provided the Company advance written notice of such nominations or business, generally between 70 and 90 days before the stockholders’ meeting. The amended bylaws (i) explicitly provide that the bylaws apply to all stockholder nominations and proposals of business and are the exclusive means for a stockholder to submit such business, other than proposals governed by Rule 14a-8 of the federal proxy rules (which provides its own procedural requirements), and (ii) expands the required disclosure regarding the stockholders making such proposals or nominations to include, among other things, all ownership interests, hedges, economic incentives (including synthetic and temporary stock ownership) and rights to vote any shares of any security of the Company. In addition, the amended bylaws provide that a stockholder making a director nomination or bringing other business at a stockholders’ meeting must not only be a stockholder at the time of the notice, but also at the time of the annual meeting.

Indemnification

Article V (Indemnification) of the bylaws provides a summary of the indemnification rights of directors and officers of the Company. The amended bylaws clarify that those indemnification rights shall be deemed to be a contract between the Company and the directors and officers of the Company and provide that those rights may not be retroactively amended or modified without the consent of the director or officer.

Director Removal

Article II (Board of Directors) of the bylaws provides the means by which a director may be removed. The amended bylaws eliminate the ability of stockholders to remove a director without cause.

Miscellaneous

Article I (Meetings of Stockholders) and Article II (Board of Directors) of the bylaws (i) provide the means by which special stockholders’ meetings may be called and (ii) describe the extent to which stockholders may act by written consent. The amended bylaws reconcile these provisions with the corresponding provisions of the Company’s Restated Certificate of Incorporation. Specifically, the Company’s Restated Certificate of Incorporation currently provides that special stockholder meetings may be called only by the Board of Directors and that stockholders may not act by written consent in lieu of a meeting. The amended bylaws make the corresponding provisions consistent with those contained in the Company’s Restated Certificate of Incorporation.

The amended bylaws, and a copy marked to show changes from the prior bylaws, are included as Exhibits 3.1 and 3.2, respectively, to this Current Report on Form 8-K and are incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

The following exhibit is attached hereto and filed herewith.

Exhibit No.	Description
3.1	Arch Coal, Inc. Bylaws, as amended effective as of December 5, 2008.
3.2	Arch Coal, Inc. Bylaws, marked to show amendments effective as of December 5, 2008.

Signatures

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Dated: December 10, 2008

Arch Coal, Inc.

By: /s/ Robert G. Jones

Robert G. Jones

Senior Vice President, General Counsel and
Secretary

Exhibit Index

Exhibit No.	Description
3.1	Arch Coal, Inc. Bylaws, as amended effective as of December 5, 2008.
3.2	Arch Coal, Inc. Bylaws, marked to show amendments effective as of December 5, 2008.

BYLAWS
OF
ARCH COAL, INC.
(as of December 5, 2008)

BYLAWS
of
ARCH COAL, INC.
TABLE OF CONTENTS

	<u>Page</u>
Article I — Meetings of Stockholders	1
Section 1. Annual Meeting	1
Section 2. Special Meeting	1
Section 3. Notice of Meetings	1
Section 4. Quorum	1
Section 5. Conduct of Business	2
Section 6. Proxies and Voting	2
Section 7. Waiver of Notice	3
Section 8. No Stockholder Action by Written Consent	3
Section 9. Adjournments	3
Section 10. Record Date	3
Section 11. Inspectors of Election	4
Section 12. List of Stockholders Entitled to Vote	4
Section 13. Advisory Stockholder Votes	4
Article II — Board of Directors	4
Section 1. Power of the Directors	4
Section 2. Number and Term of Office; Election	5
Section 3. Notice of Stockholder Business and Nominations	5
Section 4. Election	8
Section 5. Vacancies	8
Section 6. Resignation	8
Section 7. Removal	8
Section 8. Regular Meetings	8
Section 9. Special Meetings	9
Section 10. Notice of Meeting	9
Section 11. Quorum	9
Section 12. Manner of Acting	9
Section 13. Participation in Meetings by Conference Telephone	10
Section 14. Action by Consent	10
Section 15. Organization	10
Section 16. Board Committees	10
Section 17. Waiver of Notices	10
Section 18. Compensation of Directors	10
Article III — Officers	11
Section 1. Election and Appointment; Term of Office	11
Section 2. Resignation; Removal; Vacancies	11

	<u>Page</u>
Section 3. Duties and Functions	11
Article IV — Notes, Loan Agreements, Checks, Bank Accounts, Etc.	13
Section 1. Execution of Documents	13
Section 2. Deposits	13
Article V — Indemnification	13
Section 1. Indemnification of Directors and Officers	13
Section 2. Right to Indemnification	14
Section 3. Expenses	14
Section 4. Other Rights	14
Article VI — Shares and Their Transfer	15
Section 1. Certificates for Shares	15
Section 2. Transfer	15
Section 3. Record	16
Article VII — Third Parties	16
Article VIII — Seal	16
Article IX — Fiscal Year	16
Article X — Amendments	16
Article XI — Notices	16
Article XII — Computation of Time Periods	16

BYLAWS
of
ARCH COAL, INC.

Article I — Meetings of Stockholders

Section 1. Annual Meeting.

The annual meeting of the stockholders of the Corporation shall be held at such date, time and place as shall be designated by the Board of Directors and stated in the notice of the meeting.

Section 2. Special Meeting.

Unless otherwise provided by the General Corporation Law of Delaware, special meetings of the stockholders may be called pursuant to resolution of the Board of Directors. The Board of Directors shall have the sole right to determine the proper purpose or purposes of such meeting. Business transacted at a special meeting of stockholders shall be confined to the purpose or purposes of the meeting as stated in the notice of such meeting. Special meetings of the stockholders shall be held at such date, time and place within the United States as shall be designated in the notice thereof.

Section 3. Notice of Meetings.

Written notice of the place, date and time of each meeting of the stockholders shall be given in the manner provided in Article XII, not less than ten nor more than sixty days before the date on which the meeting is to be held, to each stockholder entitled to vote at such meeting, except as otherwise provided herein or required by law (meaning, here and hereinafter, as required from time to time by the General Corporation Law of Delaware). The notice of any special meeting shall state the purpose or purposes for which the special meeting is called and shall indicate that such notice is being issued upon the request of the person or persons calling the meeting.

Upon the written request of the person or persons calling any special meeting, notice of such meeting shall be given by the Secretary of the Corporation on behalf of such person or persons. Every request to the Secretary for the giving of notice of a special meeting of stockholders shall state the purpose or purposes of such meeting.

If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation.

Section 4. Quorum.

Subject to the provisions required by law, the Restated Certificate of Incorporation, as amended from time to time (hereafter the Certificate of Incorporation) and these Bylaws in respect of the vote required for a specified action, at any meeting of the stockholders, the holders of a majority of the outstanding shares of stock entitled to vote, present in person or by proxy, shall constitute a quorum for

the transaction of business. The stockholders present at any duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of sufficient stockholders to otherwise render the remaining stockholders less than a quorum.

Notwithstanding the foregoing, if a quorum shall fail to attend any meeting, the presiding person of the meeting or the holders of a majority of the stock, present in person or by proxy, may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 5. Conduct of Business.

The Board of Directors of the Corporation may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chairman of any meeting of stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chairman of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 6. Proxies and Voting.

Except as may be otherwise provided by law, the Certificate of Incorporation or these Bylaws, (i) each stockholder of record present in person or by proxy shall be entitled, at every stockholders' meeting, to one vote for each share of capital stock having voting power standing in the name of such stockholder on the books of the Corporation, and (ii) the affirmative vote of a majority of the shares voting thereon at a duly organized meeting and entitled to vote on the subject matter shall be the act of the stockholders.

Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such person by proxy. Every proxy must be in writing and signed by the stockholder or such stockholder's attorney-in-fact or executed in such other manner as may be permitted by law and approved by the Board of Directors. No proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable for the period stated therein if the proxy states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power.

Section 7. Waiver of Notice.

Notices of meetings need not be given to any stockholder who submits a written waiver of notice, signed in person or by proxy, whether before or after the meeting. The purpose or purposes of any meeting of stockholders shall be specified in any such waiver of notice. Attendance of a stockholder at a meeting, in person or by proxy, shall constitute a waiver of notice of such meeting, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Section 8. No Stockholder Action by Written Consent.

Any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing in lieu of a meeting of such stockholders.

Section 9. Adjournments.

Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 10. Record Date.

In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders, or to receive payment of any dividend or other distribution or allotment of any rights or to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted and which record date shall not be more than sixty nor less than ten days before the date of any meeting of stockholders, nor more than sixty days prior to the time for such other action as hereinbefore described; provided, however, that if no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held, and, for determining stockholders entitled to receive payment of any dividend or other distribution or allotment of rights or to exercise any rights of change, conversion or exchange of stock or for any other purpose, the record date shall be at the close of business on the day on which the Board of Directors adopts a resolution relating thereto.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

Section 11. Inspectors of Election.

The Corporation may, and shall if required by law, in advance of any meeting of stockholders, appoint one or more inspectors of election, who may be employees of the Corporation, to act at the meeting or any adjournment thereof and to make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. In the event that no inspector so appointed or designated is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of such inspector's duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of such inspector's ability. The inspector or inspectors so appointed or designated shall (i) ascertain the number of shares of capital stock of the Corporation outstanding and the voting power of each such share, (ii) determine the shares of capital stock of the Corporation represented at the meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares of capital stock of the Corporation represented at the meeting and such inspectors' count of all votes and ballots. Such certification and report shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the Corporation, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for an office at an election may serve as an inspector at such election.

Section 12. List of Stockholders Entitled to Vote.

The Secretary shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof and may be inspected by any stockholder who is present. Upon the willful neglect or refusal of the Directors to produce such a list at any meeting for the election of Directors, they shall be ineligible for election to any office at such meeting. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to vote in person or by proxy at any meeting of stockholders or to examine the stock ledger, the list of stockholders or the books of the Corporation.

Section 13. Advisory Stockholder Votes.

In order for stockholders to adopt or approve any precatory proposal submitted to them for the purpose of requesting the Board of Directors to take certain actions, the affirmative vote of the holders of shares of capital stock having at least a majority of the vote which could be cast by the holders of all shares of capital stock entitled to vote thereupon, voting as a single class, must be voted in favor of the proposal.

Article II — Board of Directors

Section 1. Power of the Directors.

The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors, which may exercise all the powers of the Corporation and do all lawful acts and

things which are not conferred upon or reserved to the stockholders by law or by the Certificate of Incorporation.

Section 2. Number and Term of Office; Election.

Subject to the provisions of the Certificate of Incorporation and the restriction that the number of Directors shall not be less than the number required by the laws of the State of Delaware, the number of Directors shall be fixed, from time to time, by a resolution adopted by the affirmative vote of not less than two-thirds of the members of the entire Board of Directors.

Each Director, including any Director elected to fill a vacancy as set forth in Section 5 of this Article II, shall hold office until the earlier of such Director's death, resignation, removal in the manner hereinafter provided, or the election and qualification of such Director's successor.

Only persons who are nominated in accordance with the procedures set forth in these Bylaws shall be eligible for election as Directors.

Section 3. Notice of Stockholder Business and Nominations.

A. Annual Meetings of Stockholders.

(1) Nominations of persons for election to the Board of Directors of the Corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders (a) pursuant to the Corporation's notice of meeting delivered pursuant to Section 3 of Article I of these Bylaws, (b) by or at the direction of the Chairman or the Board of Directors, (c) with respect to those persons to be elected by any class or classes of Preferred Stock of the Corporation, by any holder of such class or classes of Preferred Stock, or (d) other than with respect to those persons to be elected by any class or classes of Preferred Stock of the Corporation, by any stockholder of the Corporation who is entitled to vote at the meeting who complied with the procedures set forth in this Bylaw and who was a stockholder of record at the time such notice is delivered to the Secretary of the Corporation and at the time of the meeting. Subparagraph (A)(2) of this Bylaw sets forth the exclusive means for a stockholder of the Corporation to nominate persons for election to the Board of Directors of the Corporation or to propose business to be considered by the stockholders at any annual meeting of stockholders (other than matters properly brought under Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and included in the Corporation's notice of meeting) before an annual meeting of stockholders.

(2) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (d) of subparagraph (A) (1) of this Bylaw, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not less than seventy days nor more than ninety days prior to the first anniversary of the preceding year's Annual Meeting; provided, however, that in the event that the date of the Annual Meeting is advanced by more than twenty days, or delayed by more than seventy days, from such anniversary date, notice by the stockholder to be timely must be so delivered not later than the tenth day following the day on which public announcement of the date of such meeting is first made. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth (a) as to each person whom the stockholder proposes to nominate

for election or reelection as a Director, (i) all information relating to such person that is required to be disclosed in solicitations of proxies for election of Directors, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act, including such person's written consent to being named in the proxy statement as a nominee and to serving as a Director if elected and (ii) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among such stockholder and beneficial owner, if any, on whose behalf the nomination is being made, and their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K if the stockholder making the nomination and the beneficial owner on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant; (b) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting, any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made and a description of all agreements, arrangements and understandings between such stockholder and beneficial owner, if any, and any other person or persons (including their names) in connection with the proposal of such business by the stockholder; (c) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address, as they appear on the Corporation's books, of such stockholder and of such beneficial owner, (ii) the class or series and number of shares of the Corporation which are, directly or indirectly, owned beneficially and of record by such stockholder and such beneficial owner, (iii) any option, warrant, convertible security, stock appreciation right or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of capital stock of the Corporation or otherwise (a "Derivative Instrument") directly or indirectly owned beneficially by such stockholder or beneficial owner and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation, (iv) any proxy, contract, arrangement, understanding or relationship pursuant to which such stockholder or beneficial owner has a right to vote any shares of any security of the Corporation, (v) any short interest of such stockholder or beneficial owner in any security of the Corporation (for purposes of this subparagraph (A) (2) of this Bylaw a person shall be deemed to have a short interest in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), (vi) any rights to dividends on the shares of Corporation owned beneficially by such stockholder or beneficial owner that are separated or separable from the underlying shares of the Corporation, (vii) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder or beneficial owner is a general partner or, directly or indirectly, beneficially owns an interest in a general partner, (viii) any performance-related fees (other than an asset-based fee) that such stockholder or beneficial owner is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, as of the date of such notice, including without limitation any such interests held by members of such stockholder's or beneficial owner's immediate family sharing the same household (which information shall be supplemented by such stockholder and beneficial owner not later than 10 days after the record date for the meeting to disclose such ownership as of the record date), and (ix) any other information relating to such stockholder and beneficial owner that would be required to be

disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder; (d) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such nomination; and (e) a representation as to whether the stockholder or the beneficial owner, if any, intends, or is or intends to be part of a group that intends, (i) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to elect the nominee or approve a proposal to conduct such other business, as applicable, and/or (ii) otherwise to solicit proxies from stockholders in support of such nomination or approval, as applicable.

(3) Notwithstanding anything in the second sentence of subparagraph (A) (2) of this Bylaw to the contrary, in the event that the number of Directors to be elected to the Board of Directors of the Corporation is increased and there is no public announcement naming all of the nominees for Director or specifying the size of the increased Board of Directors made by the Corporation at least eighty days prior to the first anniversary of the preceding year's Annual Meeting, a stockholder's notice required by this Bylaw shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth day following the day on which such public announcement is first made by the Corporation.

B. Special Meetings of Stockholders.

Only such business shall be conducted at a Special Meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting pursuant to Section 3 of Article I of these Bylaws. Nominations of persons for election to the Board of Directors may be made at a Special Meeting of stockholders at which Directors are to be elected pursuant to the Corporation's notice of meeting (a) by or at the direction of the Board of Directors or (b) by any stockholder of the Corporation who is entitled to vote at the meeting, who complies with the notice procedures set forth in this Bylaw and who is a stockholder of record at the time such notice is delivered to the Secretary of the Corporation and at the time of the meeting. Nominations by stockholders of persons for election to the Board of Directors may be made at such a Special Meeting of stockholders if the stockholder's notice as required by subparagraph (A) (2) of this Bylaw shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the ninetieth day prior to such Special Meeting and not later than the close of business on the later of the seventieth day prior to such Special Meeting or the tenth day following the day on which public announcement is first made of the date of the Special Meeting and of the nominees proposed by the Board of Directors to be elected at such meeting.

C. General.

(1) Only persons who are nominated in accordance with the procedures set forth in this Bylaw shall be eligible to serve as Directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Bylaw. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the Chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made in accordance with the procedures set forth in this Bylaw and, if any proposed nomination or business is not in compliance with this Bylaw, to declare that such defective proposal or nomination shall be disregarded.

(2) For purposes of this Bylaw, “public announcement” shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(3) Notwithstanding the foregoing provisions of this Bylaw, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Bylaw. Nothing in this Bylaw shall be deemed to affect any rights of stockholders to request inclusion of or the obligation of the Corporation to include proposals in the Corporation’s proxy statement pursuant to Rule 14a-8 under the Exchange Act.

Section 4. Election.

Except as otherwise provided in the Certificate of Incorporation, at each meeting of the stockholders for the election of Directors at which a quorum is present, the persons receiving the greatest number of votes, up to the number of Directors to be elected, shall be the Directors.

Section 5. Vacancies.

Any vacancy on the Board of Directors (other than a vacancy caused by the death, resignation or removal of any Director elected by the holders of any class or classes of Preferred Stock, voting separately as a class or classes, as the case may be) or newly created directorship shall be filled only by a majority of the Board of Directors then in office, provided that a quorum is present, and any other vacancy occurring in the Board of Directors shall be filled by a majority of the Directors then in office, even if less than a quorum, or by the sole remaining Director.

Section 6. Resignation.

Any Director may resign at any time by giving written notice of resignation to the Board of Directors, the Chairman of the Board, the President or the Secretary. Any such resignation shall take effect at the time specified therein, or, if the time when it shall become effective shall not be specified therein, then it shall take effect when accepted by action of the Board of Directors. Except as aforesaid, the acceptance of such resignation shall not be necessary to make it effective.

Section 7. Removal.

Any or all of the Directors (other than the Directors elected by the holders of any class or classes of Preferred Stock of the Corporation, voting separately as a class or classes, as the case may be) may be removed by the stockholders, with cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of Directors.

Section 8. Regular Meetings.

Regular meetings of the Board of Directors shall be held at such place or places, on such date or dates, and at such time or times as shall be established by the Board of Directors and publicized among all Directors.

Section 9. Special Meetings.

Special meetings of the Board of Directors may be called by any two of the Directors, the Chairman of the Board, the President or Chief Executive Officer and shall be held at such place within the United States, on such date and at such time as the person or persons calling the meeting shall fix.

Section 10. Notice of Meeting.

Notice of the date, place, time and purpose or purposes of each meeting of the Directors shall be given to each Director in the manner provided in Article XII at such Director's usual place of business at least three business days before the day on which the meeting is to be held. Upon written request of the person or persons calling any special meeting, notice of such meeting shall be given by the Secretary on behalf of such person or persons and shall indicate the person or persons calling the meeting.

Section 11. Quorum.

At all meetings of the Board of Directors, the presence of a majority of the whole Board of Directors fixed by or in the manner provided in these Bylaws shall constitute a quorum for the transaction of business.

Section 12. Manner of Acting.

A. Except as otherwise provided by law or in subsection B of this Section 12, the vote of a majority of the Directors present at a meeting at which a quorum is present shall be necessary for the passage of any resolution or act of the Board of Directors.

B. The vote of not less than two-thirds of the entire Board of Directors shall be necessary for the passage of any resolution or act of the Board of Directors in respect of the following:

(i) the declaration of a dividend or distribution on any capital stock of the Corporation not otherwise entitled to such dividend or distribution pursuant to the terms thereof;

(ii) the approval of the Corporation's budget or operating plan and any material modification thereof, including any capital expenditure in excess of Ten Million Dollars (\$10,000,000) not provided for in the approved budget;

(iii) the election or removal of the Chief Executive Officer, Chief Financial Officer or Chief Operating Officer (if any) of the Corporation;

(iv) except for the issuance of Common Stock pursuant to a compensation plan approved by the Board of Directors, the issuance of more than One Million (1,000,000) shares of Common Stock or any shares of Preferred Stock in any one transaction or a series of related transactions;

(v) the adoption of a share purchase rights plan of a nature commonly referred to as a "poison pill";

(vi) the repurchase or redemption of any capital stock of the Corporation;

(vii) an establishment or change in the number of Directors of the Corporation; or

(viii) the amendment of this Section 12 of these Bylaws.

Section 13. Participation in Meetings by Conference Telephone.

Members of the Board of Directors, or of any committee thereof, may participate in a meeting of such Board or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear and speak to each other, and such participation shall constitute the presence in person at such meeting.

Section 14. Action by Consent.

Any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting, prior notice, or vote if a consent in writing, which writing may be in counterparts which may bear telecommunicated facsimile signatures, setting forth the action so taken, is signed by all members of the Board or committee, and such writing is filed with the minutes of the proceedings of the Board or committee.

Section 15. Organization.

Meetings of the Board of Directors shall be presided over by the Chairman of the Board or in the Chairman's absence by the Chief Executive Officer, or in their absence by a chairman chosen at the meeting. The Secretary shall act as secretary of the meeting, but in the Secretary's absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

Section 16. Board Committees.

The Board of Directors may, by resolution passed by a majority of the whole Board, designate one or more committees, each of which shall consist of one or more Directors. The Board may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Each such committee shall have and may exercise such powers and authority of the Board of Directors in the management of the business and affairs of the Corporation as the Board shall provide in the resolution designating such committee, except as otherwise provided by statute. The term of office of the members of each committee shall be as fixed from time to time by the Board; provided, however, that any committee member who ceases to be a member of the Board shall automatically cease to be a committee member.

Section 17. Waiver of Notices.

Notice of a meeting need not be given to any Director who submits a written waiver of notice signed by such Director, including a telecommunicated facsimile waiver, whether before or after the meeting. The purpose or purposes of any meeting of the Directors must be specified in any such waiver of notice. Attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except when the Director attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Section 18. Compensation of Directors.

Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, the Board of Directors shall have the authority to fix the compensation of Directors. The Directors may be paid their

expenses, if any, for attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as Director, or both. No such payment shall preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation and expense reimbursement for attending committee meetings.

Article III — Officers

Section 1. Election and Appointment; Term of Office.

The officers of the Corporation shall be a Chairman of the Board, a President, one or more Vice Presidents (the number thereof to be determined from time to time by the Board), a Treasurer, a Secretary and a Controller. The Board shall designate either the Chairman of the Board or the President as the Chief Executive Officer of the Corporation. Each such officer shall be elected by the Board at its annual meeting to serve at the will and pleasure of the Board and shall hold office until the next annual meeting of the Board and until such officer's successor is elected or until such officer's earlier death, resignation or removal in the manner hereinafter provided. The Board may elect or appoint such other officers (including one or more Assistant Treasurers and one or more Assistant Secretaries) as it deems necessary who shall have such authority and shall perform such duties as the Board may prescribe. If additional officers are elected or appointed during the year, each of them shall hold office until the next annual meeting of the Board at which officers are regularly elected or appointed and until such officer's successor is elected or appointed or until such officer's earlier death, resignation or removal in the manner hereinafter provided. To the extent the Board shall deem appropriate, more than one of the offices authorized herein may be held by the same person.

Section 2. Resignation; Removal; Vacancies.

A. Resignation. Any officer may resign at any time by giving written notice to the Chief Executive Officer or the Secretary of the Corporation, and such resignation shall take effect upon receipt unless specified therein to be effective at some other time (subject always to the provisions of Section 2.B). No acceptance of any such resignation shall be necessary to make it effective.

B. Removal. All officers and agents elected or appointed by the Board shall be subject to removal at any time by the Board with or without cause.

C. Vacancies. A vacancy in any office may be filled for the unexpired portion of the term in the same manner as provided for election or appointment to such office.

Section 3. Duties and Functions.

A. Chairman of the Board. The Chairman of the Board shall preside at all meetings of the stockholders and directors and shall perform such other duties as the Board may prescribe.

B. President. In the absence, refusal or incapacity of the Chairman of the Board, or the Chief Executive Officer (if the President shall not be designated as such) the President shall perform the duties of such office, except those of presiding at meetings of directors. If the President shall not be designated as the Chief Executive Officer by the Board pursuant to Section 1, the President shall act under the control of the Chief Executive Officer.

C. Chief Executive Officer. Subject to the direction and control of the Board, the Chief Executive Officer shall have responsibility for the management and control of the affairs and business of the Corporation and shall perform all duties and have all powers which are commonly incident to the office of the Chief Executive Officer, including the power to enter into commitments, execute and deliver contracts and do and perform all such other acts and things as are necessary and appropriate to accomplish the Corporation's business and operations and to manage the business and affairs of the Corporation. The Chief Executive Officer may assign such duties to other officers of the Corporation as the Chief Executive Officer deems appropriate.

D. Chief Operating Officer. In the event the President is not designated as Chief Executive Officer pursuant to Section 1, the President may, in the Board's discretion, be designated as the Chief Operating Officer of the Corporation and shall have such powers and duties as the Board, or Chief Executive Officer, may prescribe.

E. Vice Presidents. The Vice Presidents shall have such powers and perform such duties as the Board or the Chief Executive Officer may prescribe. One or more Vice Presidents may be given and shall use as part of the title such other designations, including, without limitation, the designations "Executive Vice President" and "Senior Vice President," as the Board or the Chief Executive Officer may designate from time to time. One of the Vice Presidents may also be given and shall use as part of the title such other designations as may be descriptive of descriptive responsibilities, including, without limitation, designations such as "Chief Financial Officer" or "General Counsel," as the Board or the Chief Executive Officer may designate from time to time. In the absence, refusal or incapacity of the Chairman of the Board and the President, the powers and duties of the Chief Executive Officer shall be vested in and performed by such Vice Presidents as have the designation "Executive Vice President," in the order of their seniority or as otherwise established by action of the Board from time to time, or by such other officer as the Board or the Chief Executive Officer shall have most recently designated for that purpose in a writing filed with the Secretary.

F. Treasurer. The Treasurer shall act under the direction of the Chief Executive Officer. The Treasurer shall have charge and custody of and be responsible for all funds and securities of the Corporation and the deposit thereof in the name and to the credit of the Corporation in such depositories as may be designated by the Board or by the Treasurer pursuant hereto. The Treasurer shall be authorized at any time, and from time to time, by a writing countersigned by the Chief Executive Officer, to open bank accounts in the name of the Corporation in any bank or trust company for the deposit therein of any funds, drafts, checks or other orders for the payment of money to the Corporation; and the Treasurer shall be authorized at any time, and from time to time, by a writing countersigned by the Chairman of the Board, to authorize and empower any representative or agent of the Corporation to draw upon or sign for the Corporation either manually or by the use of facsimile signature, any and all checks, drafts or other orders for the payment of money against such bank accounts which any such bank or trust company may pay without further inquiry.

G. Secretary. The Secretary shall act under the direction of the Chairman of the Board. The Secretary shall attend all meetings of the Board and the stockholders and record the proceedings in a book to be kept for that purpose and shall perform like duties for committees designated by the Board. The Secretary shall duly give or cause to be given, in accordance with the provisions of these Bylaws or as required by law, notice of all meetings of the stockholders and special meetings of the Board. The Secretary shall be the custodian of the records and the corporate seal or seals of the Corporation and shall cause the corporate seal to be affixed to all documents, the execution of which, on behalf of the Corporation, under its seal, is duly authorized and when so affixed may attest to same. The Secretary may sign, with the Chief Executive Officer or with the President, certificates of stock of the Corporation.

H. Controller. The Controller shall act under the direction of the Chief Financial Officer of the Corporation, or, if none, the Chief Executive Officer. Subject to the direction of the Chief Financial Officer of the Corporation or, if none, the Chairman of the Board, the Controller shall have charge of the accounting records of the Corporation, shall keep full and accurate accounts of all receipts and disbursements in books belonging to the Corporation, shall maintain adequate internal control of the Corporation's accounts, and may perform such other duties as may be prescribed by the Chief Financial Officer of the Corporation or, if none, the Chief Executive Officer, and by the Board.

**Article IV — Notes, Loan Agreements,
Checks, Bank Accounts, Etc.**

Section 1. Execution of Documents.

The Board shall from time to time by resolution authorize the officers, employees and agents of the Corporation to execute and deliver checks and other orders for the payment of money and notes, bonds and other securities, together with mortgages, loan agreements and other instruments securing or relating thereto and other contracts and commitments for and in the name of the Corporation and may authorize such officers, employees and agents to delegate such power (including authority to redelegate) by written instrument to other officers, employees or agents of the Corporation.

Section 2. Deposits.

All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation or otherwise as the Board or any officer of the Corporation to whom power in that respect shall have been delegated by the Board shall select.

Article V — Indemnification

Section 1. Indemnification of Directors and Officers.

A. Every person who is or was a Director or officer of the Corporation, or of any other corporation or entity which such person served as such at the request of the Corporation shall in accordance with Section 2 of this Article V be indemnified by the corporation against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any claim, action, suit or proceeding (other than any claim, action, suit or proceeding brought by or in the right of the Corporation), civil or criminal, administrative or investigative, or in connection with an appeal relating thereto, in which such person may be involved, as a party or otherwise, by reason of such person being or having been a Director or officer of the Corporation or such other corporation or entity, or by reason of any action taken or not taken in such capacity as such Director or officer, whether or not such person continues to be such at the time such liability or expense shall have been incurred, provided that such person acted, in good faith, and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe that such conduct was unlawful. The termination of any claim, action, suit or proceeding, civil or criminal, by judgment, order, settlement (whether with or without court approval), conviction or upon a plea of guilty or nolo contendere, or its equivalent shall not create a presumption that a Director or officer did not meet the standards of conduct set forth in this Section 1.A.

B. Every person who is or was a Director or officer of the Corporation, or of any other corporation or entity which such person served as such at the request of the Corporation, shall in accordance with Section 2 of Article V be indemnified by the Corporation against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of any claim, action, suit or proceeding brought by or in the right of the Corporation, or in connection with an appeal or otherwise, by reason of such person being or having been a Director or officer of the Corporation or such other corporation or entity, or by reason of any action taken or not taken in such person's capacity as such Director or officer, whether or not such person continues to be such at the time such expense shall have been incurred, provided that such person acted in good faith, and in a manner such person reasonably believed to be the best interests of the Corporation, and provided further, that no indemnification shall be made in respect of any claim, action, suit or proceeding as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the court in which such claim, action, suit or proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

Section 2. Right to Indemnification.

Every person referred to in Section 1 or Section 2 of this Article V who has been wholly successful, on the merits or otherwise, with respect to any claim, action, suit or proceeding of the character described in said Sections shall be entitled to indemnification as of right. Except as provided in the preceding sentence, any indemnification under Section 1 or Section 2 of this Article V may be made by the Board of Directors, in its discretion, but only if (a) the Board of Directors, acting by a quorum consisting of Directors who are not parties to such claim, action, suit or proceeding, shall have found that the Director or officer has met the applicable standard of conduct set forth in Section 1 or Section 2, as the case may be, of this Article V or (b) there be no such disinterested quorum, independent legal counsel (who may be the regular outside counsel of the Corporation) shall have delivered to the Corporation written advice to the effect that in their judgment such applicable standard has been met, or (c) by the stockholders of the Corporation.

Section 3. Expenses.

Expenses incurred with respect to any claim, action, suit or proceeding of the character described in Section 1 of this Article V may be paid by the Corporation prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the Director or officer to repay such amount unless it shall ultimately be determined that such person is entitled to indemnification by the Corporation.

Section 4. Other Rights.

The rights of indemnification provided in this Article V shall be in addition to any other rights to which a Director or officer of the Corporation or such other corporation or entity may otherwise be entitled by contract, vote of disinterested stockholders or Directors or otherwise or as a matter of law; and in the event of such person's death, such rights shall extend to such person's heirs and legal representatives.

The indemnification procedures set forth in this Article V shall be deemed to be a contract between the Corporation and each director, officer, employee and agent who serves in any such capacity at any time while the indemnification provisions set forth in this Article V are in effect, and any repeal or

modification thereof shall not affect any right or obligation then existing with respect to any state of facts then or previously existing or any action, suit or proceeding previously or thereafter brought or threatened based in whole or in part upon any such state of facts. Such a contract right may not be modified retroactively without the consent of such director, officer, employee or agent.

Article VI — Shares and Their Transfer

Section 1. Certificates for Shares.

The interests of each stockholder of the Corporation shall be represented by certificates signed in the name of the Corporation by (a) either the Chairman of the Board of Directors or the President or a Vice President and (b) either the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation or by registration in book-entry accounts without certificates for shares of stock in such form as the appropriate officers of the Corporation may from time to time proscribe.

If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of any certificate which the Corporation may issue to represent such class or series of stock, provided that, except as otherwise provided in Section 202 of the General Corporation Law of Delaware, or in any act amending, supplementing or substituted for such Section, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the Corporation may issue to represent such class or series of stock, a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Any of or all the signatures on a certificate may be facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

The Board of Directors may direct a new certificate or certificates to be issued, or a book-entry account be established or adjusted, in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed.

Section 2. Transfer.

Upon surrender to the Corporation or its transfer agent of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, or by appropriate book-entry procedures, and upon payment of any applicable transfer taxes as the Corporation or its agents may reasonably require, it shall be the duty of the Corporation to record the transaction upon its books.

Section 3. Record.

The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

Article VII — Third Parties

Any party dealing with the Corporation shall be entitled to rely conclusively as to the due authorization of any act of the Corporation upon a certificate provided to it and signed by (a) the President or any Vice President and (b) the Secretary or any Assistant Secretary to the effect that such act was duly authorized by all necessary action of the Corporation.

Article VIII — Seal

The Board of Directors may by resolution provide for a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary.

Article IX — Fiscal Year

The fiscal year of the Corporation shall end on the last calendar day of each year.

Article X — Amendments

Subject to the provisions of Article II, these Bylaws may be adopted, repealed, altered or amended by the Board of Directors at any regular or special meeting thereof. Except as otherwise fixed pursuant to the provisions of the Certificate of Incorporation hereof relating to the voting rights of the holders of any class or series of Preferred Stock, the stockholders of the Corporation shall have the power to adopt, repeal, alter or amend Article II of these Bylaws by the affirmative vote of not less than two-thirds of the shares of the Common Stock voting thereon.

Article XI — Notices

All notices and other communications hereunder shall be in writing and delivered personally or sent, if in the United States by first class mail return receipt requested, or if outside the United States by air mail, return receipt requested, or in either case by telex, telecopy, or other facsimile telecommunications. Any notice or other communication so transmitted shall be deemed to have been given at the time of delivery, in the case of a communication delivered personally, on the business day following receipt of answer back, telecopy, or facsimile confirmation, in the case of a communication sent by telex, telecopy or other facsimile telecommunication, respectively, or as provided in Section 3 of Article I of these Bylaws in the case of a communication sent by mail.

Article XII — Computation of Time Periods

The words “day” or “days” as used in these Bylaws with respect to the computation of periods of time shall mean calendar days and the words “business day” or “business days” as used in these Bylaws with respect to the computation of periods of time shall mean any day that is not a Saturday, Sunday or

other holiday in New York, New York; provided, however, that if the last day of any period of time shall fall on a day other than a business day, such period shall be extended to include the next succeeding business day in each such location. All computations of time shall be based on New York, New York time.

BYLAWS
OF
ARCH COAL, INC.
(as of ~~February 22, 2004~~ December 5, 2008)

BYLAWS

of

ARCH COAL, INC.

TABLE OF CONTENTS

	<u>Page</u>
Article I Meetings of Stockholders	1
Section 1. Annual Meeting	1
Section 2. Special Meeting	1
Section 3. Notice of Meetings	1
Section 4. Quorum	1
Section 5. Conduct of Business	2
Section 6. Proxies and Voting	2
Section 7. Waiver of Notice	3
Section 8. Consent of Stockholders in Lieu of Meeting ; <u>No Stockholder Action by Written Consent</u>	3
Section 9. Adjournments	3
Section 10. Record Date	3
Section 11. Inspectors of Election	4
Section 12. List of Stockholders Entitled to Vote	5
Section 13. Advisory Stockholder Votes	5
Article II Board of Directors	5
Section 1. Power of the Directors	5
Section 2. Number and Term of Office; Election	5
Section 3. Notice of Stockholder Business and Nominations	6
Section 4. Election	9
Section 5. Vacancies	9
Section 6. Resignation	9
Section 7. Removal	9
Section 8. Regular Meetings	9
Section 9. Special Meetings	10
Section 10. Notice of Meeting	10
Section 11. Quorum	10
Section 12. Manner of Acting	10
Section 13. Participation in Meetings by Conference Telephone	11
Section 14. Action by Consent	11
Section 15. Organization	11
Section 16. Executive Committee ; <u>Board Committees</u>	11
Section 17. Audit Committee ; <u>Waiver of Notices</u>	11
Section 18. Other Committees <u>Compensation of Directors</u>	12
Section 19. Waiver of Notices	
<u>Article III — Officers</u>	13

	<u>Page</u>
Section 20. Compensation of Directors-1.Election and Appointment; Term of Office	13
Article III — Officers <u>Section 2. Resignation; Removal; Vacancies</u>	13
Section 1. Election and Appointment; Term of Office-3.Duties and Functions	13
Section 2. Resignation; Removal; Vacancies- <u>Article IV Notes, Loan Agreements, Checks, Bank Accounts, Etc</u>	15
Section 3. Duties and Functions-1.Execution of Documents	15
Article IV Notes, Loan Agreements, Checks, Bank Accounts, Etc- <u>Section 2. Deposits</u>	15
Section 1. Execution of Documents- <u>Article V Indemnification</u>	15
Section 2. Deposits-1. Indemnification of Directors and Officers	15
Article V <u>Section 2. Right to Indemnification</u>	16
Section 1. Indemnification of Directors and Officers-3.Expenses	16
Section 2. Right to Indemnification-4.Other Rights	16
Section 3. Expenses- <u>Article VI Shares and Their Transfer</u>	17
Section 4. Other Rights-1.Certificates for Shares	17
Article VI Shares and Their <u>Section 2. Transfer</u>	17
Section 1. Certificates for Shares-3.Record	18
Section 2. Transfer- <u>Article VII Third Parties</u>	18
Section 3. Record- <u>Article VIII Seal</u>	18
Article VII Third Parties <u>Article IX Fiscal Year</u>	18

	<u>Page</u>
Article VIII <u>Seal X Amendments</u>	18
Article IX <u>Fiscal Year XI Notices</u>	18
Article X <u>Amendments Article XII Computation of Time Periods</u>	18
Article XI <u>Notices</u>	18
Article XII <u>Computation of Time Periods</u>	18

BYLAWS
of
ARCH COAL, INC.

Article I — Meetings of Stockholders

Section 1. Annual Meeting.

The annual meeting of the stockholders of the Corporation shall be held at such date, time and place as shall be designated by the Board of Directors and stated in the notice of the meeting.

Section 2. Special Meeting.

~~Special meetings of the stockholders may be called at any time by the President, the Chief Executive Officer, any two or more members of the Board of Directors or holders of 10% or more of the outstanding capital stock of the Corporation entitled generally to vote for the election of Directors to be~~ Unless otherwise provided by the General Corporation Law of Delaware, special meetings of the stockholders may be called pursuant to resolution of the Board of Directors. The Board of Directors shall have the sole right to determine the proper purpose or purposes of such meeting. Business transacted at a special meeting of stockholders shall be confined to the purpose or purposes of the meeting as stated in the notice of such meeting. Special meetings of the stockholders shall be held at such date, time and place within the United States as shall be designated in the notice thereof.

Section 3. Notice of Meetings.

Written notice of the place, date and time of each meeting of the stockholders shall be given in the manner provided in Article XII, not less than ten nor more than sixty days before the date on which the meeting is to be held, to each stockholder entitled to vote at such meeting, except as otherwise provided herein or required by law (meaning, here and hereinafter, as required from time to time by the General Corporation Law of Delaware). The notice of any special meeting shall state the purpose or purposes for which the special meeting is called and shall indicate that such notice is being issued upon the request of the person or persons calling the meeting.

Upon the written request of the person or persons calling any special meeting, notice of such meeting shall be given by the Secretary of the Corporation on behalf of such person or persons. Every request to the Secretary for the giving of notice of a special meeting of stockholders shall state the purpose or purposes of such meeting.

If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation.

Section 4. Quorum.

Subject to the provisions required by law, the Restated Certificate of Incorporation, as amended from time to time (hereafter the Certificate of Incorporation) and these Bylaws in respect of the vote required for a specified action, at any meeting of the stockholders, the holders of a majority of the outstanding shares of stock entitled to vote, present in person or by proxy, shall constitute a quorum for the transaction of business. The stockholders present at any duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of sufficient stockholders to otherwise render the remaining stockholders less than a quorum.

Notwithstanding the foregoing, if a quorum shall fail to attend any meeting, the presiding person of the meeting or the holders of a majority of the stock, present in person or by proxy, may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 5. Conduct of Business.

The Board of Directors of the Corporation may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chairman of any meeting of stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chairman of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 6. Proxies and Voting.

Except as may be otherwise provided by law, the Certificate of Incorporation or these Bylaws, (i) each stockholder of record present in person or by proxy shall be entitled, at every stockholders' meeting, to one vote for each share of capital stock having voting power standing in the name of such stockholder on the books of the Corporation, and (ii) the affirmative vote of a majority of the shares voting thereon at a duly organized meeting and entitled to vote on the subject matter shall be the act of the stockholders.

Each stockholder entitled to vote at a meeting of stockholders ~~or to express consent to corporate action in writing without a meeting~~ may authorize another person or persons to act for such person by proxy. Every proxy must be in writing and signed by the stockholder or such stockholder's attorney-in-fact or executed in such other manner as may be permitted by law and approved by the Board of Directors. No proxy shall be voted or acted upon after three years from its date, unless the proxy

provides for a longer period. A duly executed proxy shall be irrevocable for the period stated therein if the proxy states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power.

Section 7. Waiver of Notice.

Notices of meetings need not be given to any stockholder who submits a written waiver of notice, signed in person or by proxy, whether before or after the meeting. The purpose or purposes of any meeting of stockholders shall be specified in any such waiver of notice. Attendance of a stockholder at a meeting, in person or by proxy, shall constitute a waiver of notice of such meeting, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Section 8. ~~Consent of Stockholders in Lieu of Meeting~~ No Stockholder Action by Written Consent.

~~Any action required or permitted to be taken by the stockholders of the Corporation must be effected at any a duly called annual or special meeting of stockholders of the Corporation, or any action which and may be taken at any annual or special meeting of the stockholders, may not be taken without a meeting, without prior notice and without a vote, if a effected by any consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take in lieu of a meeting of such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested.~~

~~Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within sixty days of the date the earliest dated consent is delivered to the Corporation, a written consent or consents signed by a sufficient number of holders to take action are delivered to the Corporation in the manner prescribed in this Section 8.~~

Section 9. Adjournments.

Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 10. Record Date.

In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders, or to receive payment of any dividend or other distribution or allotment of

any rights or to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted and which record date shall not be more than sixty nor less than ten days before the date of any meeting of stockholders, nor more than sixty days prior to the time for such other action as hereinbefore described; provided, however, that if no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held, and, for determining stockholders entitled to receive payment of any dividend or other distribution or allotment of rights or to exercise any rights of change, conversion or exchange of stock or for any other purpose, the record date shall be at the close of business on the day on which the Board of Directors adopts a resolution relating thereto.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

~~In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall be not more than ten days after the date upon which the resolution fixing the record date is adopted. If no record date has been fixed by the Board of Directors and no prior action by the Board of Directors is required by law, the record date shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation in the manner prescribed by Article I, Section 8 hereof. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by law with respect to the proposed action by written consent of the stockholders, the record date for determining stockholders entitled to consent to corporate action in writing shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.~~

Section 11. Inspectors of Election.

The Corporation may, and shall if required by law, in advance of any meeting of stockholders, appoint one or more inspectors of election, who may be employees of the Corporation, to act at the meeting or any adjournment thereof and to make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. In the event that no inspector so appointed or designated is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of such inspector's duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of such inspector's ability. The inspector or inspectors so appointed or designated shall (i) ascertain the number of shares of capital stock of the Corporation outstanding and the voting power of each such share, (ii) determine the shares of capital stock of the Corporation represented at the meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares of capital stock of the Corporation represented at the meeting and such inspectors' count of all votes and ballots. Such certification and report shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots

cast at any meeting of stockholders of the Corporation, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for an office at an election may serve as an inspector at such election.

Section 12. List of Stockholders Entitled to Vote.

The Secretary shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof and may be inspected by any stockholder who is present. Upon the willful neglect or refusal of the Directors to produce such a list at any meeting for the election of Directors, they shall be ineligible for election to any office at such meeting. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to vote in person or by proxy at any meeting of stockholders or to examine the stock ledger, the list of stockholders or the books of the Corporation.

Section 13. Advisory Stockholder Votes.

In order for stockholders to adopt or approve any precatory proposal submitted to them for the purpose of requesting the Board of Directors to take certain actions, the affirmative vote of the holders of shares of capital stock having at least a majority of the vote which could be cast by the holders of all shares of capital stock entitled to vote thereupon, voting as a single class, must be voted in favor of the proposal.

Article II — Board of Directors

Section 1. Power of the Directors.

The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors, which may exercise all the powers of the Corporation and do all lawful acts and things which are not conferred upon or reserved to the stockholders by law or by the Certificate of Incorporation.

Section 2. Number and Term of Office; Election.

Subject to the provisions of the Certificate of Incorporation and the restriction that the number of Directors shall not be less than the number required by the laws of the State of Delaware, the number of Directors shall be fixed, from time to time, by a resolution adopted by the affirmative vote of not less than two-thirds of the members of the entire Board of Directors.

Each Director, including any Director elected to fill a vacancy as set forth in Section 5 of this Article II, shall hold office until the earlier of such Director's death, resignation, removal in the manner hereinafter provided, or the election and qualification of such Director's successor.

Only persons who are nominated in accordance with the procedures set forth in these Bylaws shall be eligible for election as Directors.

Section 3. Notice of Stockholder Business and Nominations.

A. Annual Meetings of Stockholders.

(1) Nominations of persons for election to the Board of Directors of the Corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders (a) pursuant to the Corporation's notice of meeting delivered pursuant to Section 3 of Article I of these Bylaws, (b) by or at the direction of the Chairman or the Board of Directors, (c) with respect to those persons to be elected by any class or classes of Preferred Stock of the Corporation, by any holder of such class or classes of Preferred Stock, or (d) other than with respect to those persons to be elected by any class or classes of Preferred Stock of the Corporation, by any stockholder of the Corporation who is entitled to vote at the meeting who complied with the procedures set forth in this Bylaw and who was a stockholder of record at the time such notice is delivered to the Secretary of the Corporation and at the time of the meeting. Subparagraph (A)(2) of this Bylaw sets forth the exclusive means for a stockholder of the Corporation to nominate persons for election to the Board of Directors of the Corporation or to propose business to be considered by the stockholders at any annual meeting of stockholders (other than matters properly brought under Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and included in the Corporation's notice of meeting) before an annual meeting of stockholders.

(2) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (d) of subparagraph (A) (1) of this Bylaw, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not less than seventy days nor more than ninety days prior to the first anniversary of the preceding year's Annual Meeting; provided, however, that in the event that the date of the Annual Meeting is advanced by more than twenty days, or delayed by more than seventy days, from such anniversary date, notice by the stockholder to be timely must be so delivered not ~~earlier than the ninetieth day prior to such Annual Meeting and not later than the close of business on the later of the seventieth day prior to such Annual Meeting or the tenth day following the day on which public announcement of the date of such meeting is first made. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.~~ Such stockholder's notice shall set forth (a) as to each person whom the stockholder proposes to nominate for election or reelection as a Director, (i) all information relating to such person that is required to be disclosed in solicitations of proxies for election of Directors, or is otherwise required, in each case pursuant to Regulation 14A under the ~~Securities Exchange Act of 1934, as amended (the "Exchange Act"),~~ including such person's written consent to being named in the proxy statement as a nominee and to serving as a Director if elected; ~~(b) as to any other business that the stockholder proposes to bring before the meeting; and (ii) a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; all direct~~ and (c) ~~as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the Corporation's books, indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and of any other~~

material relationships, between or among such stockholder and beneficial owner, if any, on whose behalf the nomination is being made, and their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K if the stockholder making the nomination and the beneficial owner on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the “registrant” for purposes of such rule and the nominee were a director or executive officer of such registrant;(b) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting, any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made and a description of all agreements, arrangements and understandings between such stockholder and beneficial owner, if any, and any other person or persons (including their names) in connection with the proposal of such business by the stockholder;(c) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address, as they appear on the Corporation’s books, of such stockholder and of such beneficial owner, (ii) the class or series and number of shares of the Corporation which are, directly or indirectly, owned beneficially and of record by such stockholder and such beneficial owner, (iii) any option, warrant, convertible security, stock appreciation right or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of capital stock of the Corporation or otherwise (a “Derivative Instrument”) directly or indirectly owned beneficially by such stockholder or beneficial owner and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation, (iv) any proxy, contract, arrangement, understanding or relationship pursuant to which such stockholder or beneficial owner has a right to vote any shares of any security of the Corporation, (v) any short interest of such stockholder or beneficial owner in any security of the Corporation (for purposes of this subparagraph (A) (2) of this Bylaw a person shall be deemed to have a short interest in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), (vi) any rights to dividends on the shares of Corporation owned beneficially by such stockholder or beneficial owner that are separated or separable from the underlying shares of the Corporation, (vii) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder or beneficial owner is a general partner or, directly or indirectly, beneficially owns an interest in a general partner, (viii) any performance-related fees (other than an asset-based fee) that such stockholder or beneficial owner is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, as of the date of such notice, including without limitation any such interests held by members of such stockholder’s or beneficial owner’s immediate family sharing the same household (which information shall be supplemented by such stockholder and beneficial owner not later than 10 days after the record date for the meeting to disclose such ownership as of the record date), and (ix) any other information relating to such stockholder and beneficial owner that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder;(d) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at

the meeting to propose such nomination; and (e) a representation as to whether the stockholder or the beneficial owner, if any, intends, or is or intends to be part of a group that intends, (i) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to elect the nominee or approve a proposal to conduct such other business, as applicable, and/or (ii) otherwise to solicit proxies from stockholders in support of such nomination or approval, as applicable.

(3) Notwithstanding anything in the second sentence of subparagraph (A) (2) of this Bylaw to the contrary, in the event that the number of Directors to be elected to the Board of Directors of the Corporation is increased and there is no public announcement naming all of the nominees for Director or specifying the size of the increased Board of Directors made by the Corporation at least eighty days prior to the first anniversary of the preceding year's Annual Meeting, a stockholder's notice required by this Bylaw shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth day following the day on which such public announcement is first made by the Corporation.

B. Special Meetings of Stockholders.

Only such business shall be conducted at a Special Meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting pursuant to Section 3 of Article I of these Bylaws. Nominations of persons for election to the Board of Directors may be made at a Special Meeting of stockholders at which Directors are to be elected pursuant to the Corporation's notice of meeting (a) by or at the direction of the Board of Directors or (b) by any stockholder of the Corporation who is entitled to vote at the meeting, who complies with the notice procedures set forth in this Bylaw and who is a stockholder of record at the time such notice is delivered to the Secretary of the Corporation and at the time of the meeting. Nominations by stockholders of persons for election to the Board of Directors may be made at such a Special Meeting of stockholders if the stockholder's notice as required by subparagraph (A) (2) of this Bylaw shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the ninetieth day prior to such Special Meeting and not later than the close of business on the later of the seventieth day prior to such Special Meeting or the tenth day following the day on which public announcement is first made of the date of the Special Meeting and of the nominees proposed by the Board of Directors to be elected at such meeting.

C. General.

(1) Only persons who are nominated in accordance with the procedures set forth in this Bylaw shall be eligible to serve as Directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Bylaw. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the Chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made in accordance with the procedures set forth in this Bylaw and, if any proposed nomination or business is not in compliance with this Bylaw, to declare that such defective proposal or nomination shall be disregarded.

(2) For purposes of this Bylaw, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant

to Section 13, 14 or 15(d) of the Exchange Act.

(3) Notwithstanding the foregoing provisions of this Bylaw, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Bylaw. Nothing in this Bylaw shall be deemed to affect any rights of stockholders to request inclusion of or the obligation of the Corporation to include proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

Section 4. Election.

Except as otherwise provided in the Certificate of Incorporation, at each meeting of the stockholders for the election of Directors at which a quorum is present, the persons receiving the greatest number of votes, up to the number of Directors to be elected, shall be the Directors.

Section 5. Vacancies.

Any vacancy on the Board of Directors (other than a vacancy caused by the death, resignation or removal of any Director elected by the holders of any class or classes of Preferred Stock, voting separately as a class or classes, as the case may be) or newly created directorship shall be filled only by a majority of the Board of Directors then in office, ~~though provided that a quorum is present, and any other vacancy occurring in the Board of Directors shall be filled by a majority of the Directors then in office, even if~~ less than a quorum, or by the sole remaining Director.

Section 6. Resignation.

Any Director may resign at any time by giving written notice of resignation to the Board of Directors, the Chairman of the Board, the President or the Secretary. Any such resignation shall take effect at the time specified therein, or, if the time when it shall become effective shall not be specified therein, then it shall take effect when accepted by action of the Board of Directors. Except as aforesaid, the acceptance of such resignation shall not be necessary to make it effective.

Section 7. Removal.

Any or all of the Directors (other than the Directors elected by the holders of any class or classes of Preferred Stock of the Corporation, voting separately as a class or classes, as the case may be) may be removed by the stockholders, with ~~or without~~ cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of Directors, ~~provided that if less than all the Directors are to be removed, no one of the Directors may be removed without cause if the votes cast against such Director's removal would be sufficient to elect such Director if then cumulatively voted at an election of the entire Board.~~

Section 8. Regular Meetings.

Regular meetings of the Board of Directors shall be held at such place or places, on such date or dates, and at such time or times as shall be established by the Board of Directors and publicized among all Directors.

Section 9. Special Meetings.

Special meetings of the Board of Directors may be called by any two of the Directors, the Chairman of the Board, the President or Chief Executive Officer and shall be held at such place within the United States, on such date and at such time as the person or persons calling the meeting shall fix.

Section 10. Notice of Meeting.

Notice of the date, place, time and purpose or purposes of each meeting of the Directors shall be given to each Director in the manner provided in Article XII at such Director's usual place of business at least three business days before the day on which the meeting is to be held. Upon written request of the person or persons calling any special meeting, notice of such meeting shall be given by the Secretary on behalf of such person or persons and shall indicate the person or persons calling the meeting.

Section 11. Quorum.

At all meetings of the Board of Directors, the presence of a majority of the whole Board of Directors fixed by or in the manner provided in these Bylaws shall constitute a quorum for the transaction of business.

Section 12. Manner of Acting.

A. Except as otherwise provided by law or in subsection B of this Section 12, the vote of a majority of the Directors present at a meeting at which a quorum is present shall be necessary for the passage of any resolution or act of the Board of Directors.

B. The vote of not less than two-thirds of the entire Board of Directors shall be necessary for the passage of any resolution or act of the Board of Directors in respect of the following:

(i) the declaration of a dividend or distribution on any capital stock of the Corporation not otherwise entitled to such dividend or distribution pursuant to the terms thereof;

(ii) the approval of the Corporation's ~~annual~~ budget or operating plan and any material modification thereof, including any capital expenditure in excess of Ten Million Dollars (\$10,000,000) not provided for in the ~~annual~~approved budget;

(iii) the election or removal of the Chief Executive Officer, Chief Financial Officer or Chief Operating Officer (if any) of the Corporation;

(iv) except for the issuance of Common Stock pursuant to a compensation plan approved by the Board of Directors, the issuance of more than One Million (1,000,000) shares of Common Stock or any shares of Preferred Stock in any one transaction or a series of related transactions;

(v) the adoption of a share purchase rights plan of a nature commonly referred to as a "poison pill";

(vi) the repurchase or redemption of any capital stock of the Corporation;

(vii) an establishment or change in the number of Directors of the Corporation; or

(viii) the appointment of members to or dissolution of the Executive Committee; or

(ix) the amendment of this Section 12 of these Bylaws.

Section 13. Participation in Meetings by Conference Telephone.

Members of the Board of Directors, or of any committee thereof, may participate in a meeting of such Board or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear and speak to each other, and such participation shall constitute the presence in person at such meeting.

Section 14. Action by Consent.

Any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting, prior notice, or vote if a consent in writing, which writing may be in counterparts which may bear telecommunicated facsimile signatures, setting forth the action so taken, is signed by all members of the Board or committee, and such writing is filed with the minutes of the proceedings of the Board or committee.

Section 15. Organization.

Meetings of the Board of Directors shall be presided over by the Chairman of the Board or in the Chairman's absence by the Chief Executive Officer, or in their absence by a chairman chosen at the meeting. The Secretary shall act as secretary of the meeting, but in the Secretary's absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

Section 16. Executive Committee.

~~The Board of Directors may establish an Executive Committee to consist of such Directors as the Board shall from time to time designate. The Executive Committee shall to the extent permitted by law have and may exercise such powers and authority as the Board shall from time to time determine. The Executive Committee shall record minutes of each of its meetings and shall submit the same to the Board at the first meeting of the Board held subsequent to such meeting of the Executive Committee. At all meetings of the Executive Committee, a majority of the total number of the members thereof shall constitute a quorum for the transaction of business. A majority vote of the members of the Executive Committee who are present shall be the act of the Executive Committee.~~

The Board of Directors may, by resolution passed by a majority of the whole Board, designate one or more committees, each of which shall consist of one or more Directors. The Board may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Each such committee shall have and may exercise such powers and authority of the Board of Directors in the management of the business and affairs of the Corporation as the Board shall provide in the resolution designating such committee, except as otherwise provided by statute. The term of office of the members of each committee shall be as fixed from time to time by the Board; provided, however, that any committee member who ceases to be a member of the Board shall automatically cease to be a committee member.

Section 17. Audit Committee.

The Board may by resolution designate an Audit Committee consisting of three or more Directors. Vacancies on the Audit Committee may be filled by the Board at any time and any member of the Audit Committee shall be subject to removal, with or without cause, at any time by resolution passed by the Board.

The Audit Committee shall review with the independent public accountants for the Corporation the scope of their examination, receive copies of the reports of such accountants, meet with representatives of such accountants for the purpose of reviewing and considering questions relating to such accountants' examination and such reports, review, either directly or through such accountants, the internal accounting and auditing procedures of the Corporation, report the results of the foregoing to the Board and act upon such other matters as may be referred to it by the Board.

At each meeting of the Board the Audit Committee shall make a report of all action taken by it since its last report to the Board.

The Audit Committee shall meet as often as may be deemed necessary and expedient at such times and places as shall be determined by the members of the Audit Committee. A majority of the members of the Audit Committee shall constitute a quorum. In the absence of the Chairman of the Audit Committee, the Audit Committee may appoint any member to preside at meetings thereof.

Section 18. Other Committees.

The Board of Directors may, by resolution passed by a majority of the whole Board, designate one or more other committees, each of which shall consist of one or more Directors. The Board may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Each such committee shall have and may exercise such powers and authority of the Board of Directors in the management of the business and affairs of the Corporation as the Board shall provide in the resolution designating such committee, except as otherwise provided by statute.

Section 19. Waiver of Notices.

Notice of a meeting need not be given to any Director who submits a written waiver of notice signed by such Director, including a telecommunicated facsimile waiver, whether before or after the meeting. The purpose or purposes of any meeting of the Directors must be specified in any such waiver of notice. Attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except when the Director attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Section 20. Compensation of Directors.

Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, the Board of Directors shall have the authority to fix the compensation of Directors. The Directors may be paid their expenses, if any, for attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as Director, or both. No such payment shall preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation and expense reimbursement for attending committee meetings.

Article III — Officers

Section 1. Election and Appointment; Term of Office.

The officers of the Corporation shall be a Chairman of the Board, a President, one or more Vice Presidents (the number thereof to be determined from time to time by the Board), a Treasurer, a Secretary and a Controller. The Board shall designate either the Chairman of the Board or the President as the Chief Executive Officer of the Corporation. Each such officer shall be elected by the Board at its annual meeting to serve at the will and pleasure of the Board and shall hold office until the next annual meeting of the Board and until such officer's successor is elected or until such officer's earlier death, resignation or removal in the manner hereinafter provided. The Board may elect or appoint such other officers (including one or more Assistant Treasurers and one or more Assistant Secretaries) as it deems necessary who shall have such authority and shall perform such duties as the Board may prescribe. If additional officers are elected or appointed during the year, each of them shall hold office until the next annual meeting of the Board at which officers are regularly elected or appointed and until such officer's successor is elected or appointed or until such officer's earlier death, resignation or removal in the manner hereinafter provided. To the extent the Board shall deem appropriate, more than one of the offices authorized herein may be held by the same person.

Section 2. Resignation; Removal; Vacancies.

A. Resignation. Any officer may resign at any time by giving written notice to the Chief Executive Officer or the Secretary of the Corporation, and such resignation shall take effect upon receipt unless specified therein to be effective at some other time (subject always to the provisions of Section 2.B). No acceptance of any such resignation shall be necessary to make it effective.

B. Removal. All officers and agents elected or appointed by the Board shall be subject to removal at any time by the Board with or without cause.

C. Vacancies. A vacancy in any office may be filled for the unexpired portion of the term in the same manner as provided for election or appointment to such office.

Section 3. Duties and Functions.

A. Chairman of the Board. The Chairman of the Board shall preside at all meetings of the stockholders and directors and shall perform such other duties as the Board may prescribe.

B. President. In the absence, refusal or incapacity of the Chairman of the Board, or the Chief Executive Officer (if the President shall not be designated as such) the President shall perform the duties of such office, except those of presiding at meetings of directors. If the President shall not be designated as the Chief Executive Officer by the Board pursuant to Section 1, the President shall act under the control of the Chief Executive Officer.

C. Chief Executive Officer. Subject to the direction and control of the Board, the Chief Executive Officer shall have responsibility for the management and control of the affairs and business of the Corporation and shall perform all duties and have all powers which are commonly incident to the office of the Chief Executive Officer, including the power to enter into commitments, execute and deliver contracts and do and perform all such other acts and things as are necessary and appropriate to

accomplish the Corporation's business and operations and to manage the business and affairs of the Corporation. The Chief Executive Officer may assign such duties to other officers of the Corporation as the Chief Executive Officer deems appropriate.

D. Chief Operating Officer. In the event the President is not designated as Chief Executive Officer pursuant to Section 1, the President may, in the Board's discretion, be designated as the Chief Operating Officer of the Corporation and shall have such powers and duties as the Board, or Chief Executive Officer, may prescribe.

E. Vice Presidents. The Vice Presidents shall have such powers and perform such duties as the Board or the Chief Executive Officer may prescribe. One or more Vice Presidents may be given and shall use as part of the title such other designations, including, without limitation, the designations "Executive Vice President" and "Senior Vice President," as the Board or the Chief Executive Officer may designate from time to time. One of the Vice Presidents may also be given and shall use as part of the title such other designations as may be descriptive of descriptive responsibilities, including, without limitation, designations such as "Chief Financial Officer" or "General Counsel," as the Board or the Chief Executive Officer may designate from time to time. In the absence, refusal or incapacity of the Chairman of the Board and the President, the powers and duties of the Chief Executive Officer shall be vested in and performed by such Vice Presidents as have the designation "Executive Vice President," in the order of their seniority or as otherwise established by action of the Board from time to time, or by such other officer as the Board or the Chief Executive Officer shall have most recently designated for that purpose in a writing filed with the Secretary.

F. Treasurer. The Treasurer shall act under the direction of the Chief Executive Officer. The Treasurer shall have charge and custody of and be responsible for all funds and securities of the Corporation and the deposit thereof in the name and to the credit of the Corporation in such depositories as may be designated by the Board or by the Treasurer pursuant hereto. The Treasurer shall be authorized at any time, and from time to time, by a writing countersigned by the Chief Executive Officer, to open bank accounts in the name of the Corporation in any bank or trust company for the deposit therein of any funds, drafts, checks or other orders for the payment of money to the Corporation; and the Treasurer shall be authorized at any time, and from time to time, by a writing countersigned by the Chairman of the Board, to authorize and empower any representative or agent of the Corporation to draw upon or sign for the Corporation either manually or by the use of facsimile signature, any and all checks, drafts or other orders for the payment of money against such bank accounts which any such bank or trust company may pay without further inquiry.

G. Secretary. The Secretary shall act under the direction of the Chairman of the Board. The Secretary shall attend all meetings of the Board, ~~the Executive Committee~~ and the stockholders and record the proceedings in a book to be kept for that purpose and shall perform like duties for committees designated by the Board. The Secretary shall duly give or cause to be given, in accordance with the provisions of these Bylaws or as required by law, notice of all meetings of the stockholders and special meetings of the Board. The Secretary shall be the custodian of the records and the corporate seal or seals of the Corporation and shall cause the corporate seal to be affixed to all documents, the execution of which, on behalf of the Corporation, under its seal, is duly authorized and when so affixed may attest to same. The Secretary may sign, with the Chief Executive Officer or with the President, certificates of stock of the Corporation.

H. Controller. The Controller shall act under the direction of the Chief Financial Officer of

the Corporation, or, if none, the Chief Executive Officer. Subject to the direction of the Chief Financial Officer of the Corporation or, if none, the Chairman of the Board, the Controller shall have charge of the accounting records of the Corporation, shall keep full and accurate accounts of all receipts and disbursements in books belonging to the Corporation, shall maintain adequate internal control of the Corporation's accounts, and may perform such other duties as may be prescribed by the Chief Financial Officer of the Corporation or, if none, the Chief Executive Officer, and by the Board.

**Article IV — Notes, Loan Agreements,
Checks, Bank Accounts, Etc.**

Section 1. Execution of Documents.

The Board shall from time to time by resolution authorize the officers, employees and agents of the Corporation to execute and deliver checks and other orders for the payment of money and notes, bonds and other securities, together with mortgages, loan agreements and other instruments securing or relating thereto and other contracts and commitments for and in the name of the Corporation and may authorize such officers, employees and agents to delegate such power (including authority to redelegate) by written instrument to other officers, employees or agents of the Corporation.

Section 2. Deposits.

All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation or otherwise as the Board or any officer of the Corporation to whom power in that respect shall have been delegated by the Board shall select.

Article V — Indemnification

Section 1. Indemnification of Directors and Officers.

A. Every person who is or was a Director or officer of the Corporation, or of any other corporation or entity which such person served as such at the request of the Corporation shall in accordance with Section 2 of this Article V be indemnified by the corporation against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any claim, action, suit or proceeding (other than any claim, action, suit or proceeding brought by or in the right of the Corporation), civil or criminal, administrative or investigative, or in connection with an appeal relating thereto, in which such person may be involved, as a party or otherwise, by reason of such person being or having been a Director or officer of the Corporation or such other corporation or entity, or by reason of any action taken or not taken in such capacity as such Director or officer, whether or not such person continues to be such at the time such liability or expense shall have been incurred, provided that such person acted, in good faith, and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe that such conduct was unlawful. The termination of any claim, action, suit or proceeding, civil or criminal, by judgment, order, settlement (whether with or without court approval), conviction or upon a plea of guilty or nolo contendere, or its equivalent shall not create a presumption that a Director or officer did not meet the standards of conduct set forth in this Section 1.A.

B. Every person who is or was a Director or officer of the Corporation, or of any other

corporation or entity which such person served as such at the request of the Corporation, shall in accordance with Section 2 of Article V be indemnified by the Corporation against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of any claim, action, suit or proceeding brought by or in the right of the Corporation, or in connection with an appeal or otherwise, by reason of such person being or having been a Director or officer of the Corporation or such other corporation or entity, or by reason of any action taken or not taken in such person's capacity as such Director or officer, whether or not such person continues to be such at the time such expense shall have been incurred, provided that such person acted in good faith, and in a manner such person reasonably believed to be the best interests of the Corporation, and provided further, that no indemnification shall be made in respect of any claim, action, suit or proceeding as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the court in which such claim, action, suit or proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

Section 2. Right to Indemnification.

Every person referred to in Section 1 or Section 2 of this Article V who has been wholly successful, on the merits or otherwise, with respect to any claim, action, suit or proceeding of the character described in said Sections shall be entitled to indemnification as of right. Except as provided in the preceding sentence, any indemnification under Section 1 or Section 2 of this Article V may be made by the Board of Directors, in its discretion, but only if (a) the Board of Directors, acting by a quorum consisting of Directors who are not parties to such claim, action, suit or proceeding, shall have found that the Director or officer has met the applicable standard of conduct set forth in Section 1 or Section 2, as the case may be, of this Article V or (b) there be no such disinterested quorum, independent legal counsel (who may be the regular outside counsel of the Corporation) shall have delivered to the Corporation written advice to the effect that in their judgment such applicable standard has been met, or (c) by the stockholders of the Corporation.

Section 3. Expenses.

Expenses incurred with respect to any claim, action, suit or proceeding of the character described in Section 1 of this Article V may be paid by the Corporation prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the Director or officer to repay such amount unless it shall ultimately be determined that such person is entitled to indemnification by the Corporation.

Section 4. Other Rights.

The rights of indemnification provided in this Article V shall be in addition to any other rights to which a Director or officer of the Corporation or such other corporation or entity may otherwise be entitled by contract, vote of disinterested stockholders or Directors or otherwise or as a matter of law; and in the event of such person's death, such rights shall extend to such person's heirs and legal representatives.

The indemnification procedures set forth in this Article V shall be deemed to be a contract between the Corporation and each director, officer, employee and agent who serves in any such capacity at any time while the indemnification provisions set forth in this Article V are in effect, and any repeal or

modification thereof shall not affect any right or obligation then existing with respect to any state of facts then or previously existing or any action, suit or proceeding previously or thereafter brought or threatened based in whole or in part upon any such state of facts. Such a contract right may not be modified retroactively without the consent of such director, officer, employee or agent.

Article VI — Shares and Their Transfer

Section 1. Certificates for Shares.

The interests of each stockholder of the Corporation shall be represented by certificates signed in the name of the Corporation by (a) either the Chairman of the Board of Directors or the President or a Vice President and (b) either the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation or by registration in book-entry accounts without certificates for shares of stock in such form as the appropriate officers of the Corporation may from time to time proscribe.

If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of any certificate which the Corporation may issue to represent such class or series of stock, provided that, except as otherwise provided in Section 202 of the General Corporation Law of Delaware, or in any act amending, supplementing or substituted for such Section, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the Corporation may issue to represent such class or series of stock, a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Any of or all the signatures on a certificate may be facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

The Board of Directors may direct a new certificate or certificates to be issued, or a book-entry account be established or adjusted, in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed.

Section 2. Transfer.

Upon surrender to the Corporation or its transfer agent of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, or by appropriate book-entry procedures, and upon payment of any applicable transfer taxes as the Corporation or its agents may reasonably require, it shall be the duty of the Corporation to record the transaction upon its books.

Section 3. Record.

The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

Article VII — Third Parties

Any party dealing with the Corporation shall be entitled to rely conclusively as to the due authorization of any act of the Corporation upon a certificate provided to it and signed by (a) the President or any Vice President and (b) the Secretary or any Assistant Secretary to the effect that such act was duly authorized by all necessary action of the Corporation.

Article VIII — Seal

The Board of Directors may by resolution provide for a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary.

Article IX — Fiscal Year

The fiscal year of the Corporation shall end on the last calendar day of each year.

Article X — Amendments

Subject to the provisions of Article II, these Bylaws may be adopted, repealed, altered or amended by the Board of Directors at any regular or special meeting thereof. Except as otherwise fixed pursuant to the provisions of the Certificate of Incorporation hereof relating to the voting rights of the holders of any class or series of Preferred Stock, the stockholders of the Corporation shall have the power to adopt, repeal, alter or amend Article II of these Bylaws by the affirmative vote of not less than two-thirds of the shares of the Common Stock voting thereon.

Article XI — Notices

All notices and other communications hereunder shall be in writing and delivered personally or sent, if in the United States by first class mail return receipt requested, or if outside the United States by air mail, return receipt requested, or in either case by telex, telecopy, or other facsimile telecommunications. Any notice or other communication so transmitted shall be deemed to have been given at the time of delivery, in the case of a communication delivered personally, on the business day following receipt of answer back, telecopy, or facsimile confirmation, in the case of a communication sent by telex, telecopy or other facsimile telecommunication, respectively, or as provided in Section 3 of Article I of these Bylaws in the case of a communication sent by mail.

Article XII — Computation of Time Periods

The words “day” or “days” as used in these Bylaws with respect to the computation of periods of time shall mean calendar days and the words “business day” or “business days” as used in these Bylaws with respect to the computation of periods of time shall mean any day that is not a Saturday, Sunday or

other holiday in New York, New York; provided, however, that if the last day of any period of time shall fall on a day other than a business day, such period shall be extended to include the next succeeding business day in each such location. All computations of time shall be based on New York, New York time.