

In April, [Interior Secretary Ken Salazar asked a federal court](#) to vacate a last-minute Bush administration rule relaxing stream buffer zone requirements for dumping waste from mountaintop removal mining. Salazar said that [the rule didn't pass the smell test](#), and that it had been improperly issued without ESA consultation. Environmental groups which had challenged the rule welcomed Salazar's announcement, but the National Mining Association, which had intervened in support of the rule, [vigorously opposed it](#). Yesterday, Judge Henry Kennedy of the federal district court in Washington, D.C., [denied Salazar's motion](#). Where no court has ruled on the merits, he said, an agency cannot unilaterally repeal a rule without going through the normal notice and comment procedure required by the Administrative Procedure Act.

The ruling is frustrating for opponents of mountaintop removal mining, who are convinced that the Bush rule was unlawful. But the dangers of allowing a new administration to duck the public rulemaking process by simply declaring that its predecessor had made a legal error are obvious. If the administration is really serious about stopping mountaintop removal (which is not entirely clear, given [its equivocal behavior](#) over the past several months), it has plenty of other tools at its disposal in the short run, while it goes through the notice and comment procedure to restore the old buffer rule. And of course Salazar's public proclamation that the Bush rule was improperly adopted ought to help plaintiffs persuade Judge Kennedy to enjoin implementation of the Bush rule pending judicial review. (Hat tip: [Charleston Gazette](#).)