UPDATE 4/29: AP reports that the Justice Department's filing requests that the rule be vacated and remanded on the grounds that it was not preceded by ESA consultation. (Hat tip: PLF on ESA).

Interior Secretary Ken Salazar announced today that his department would ask the court hearing a challenge to a key Bush-era rule on mountaintop mining to vacate the rule and remand it to Interior. The rule, issued by the Office of Surface Mining in December under the Surface Mining Control and Reclamation Act and effective just a week before Obama's inauguration, was one part of a double-barreled policy (together with generous Corps of Engineers Clean Water Act permitting) for easing the pathway to mountaintop removal. It replaced a 25-year-old requirement that had prohibited the dumping of mining waste within 100 yards of a stream unless Interior expressly found that there would be no adverse environmental effects with a discretionary provision essentially barring waste disposal near streams unless Interior chose to permit it. As Salazar put it, the Bush rule "just doesn't pass the smell test."

The announcement nicely encapsulates the love-hate relationship developing between environmental groups and Secretary Salazar. While they welcomed the announcement, environmentalists noted that returning to the 1983 rule would provide little help for mountain streams if it also meant a return to an era of notoriously lax enforcement. And they expressed dismay that in making the announcement Salazar also delivered a paean to the responsible development of the nation's coal reserves, emphasizing that "coal must and will remain an important component of our nation's energy portfolio." There is some concern, fueled by Salazar's call for coordination between SMCRA and CWA requirements, that Interior may try to put the brakes on EPA's recent move to challenge several Corps valley fill permits.

The Washington Post's coverage is here. EarthJustice has a press release here. The 1983 rule to which Interior plans to return is here.