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## News Release

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### **Salazar Moves to Withdraw 11<sup>th</sup> Hour Mountaintop Coal Mining Rule** *Restores Protections Against Dumping in Streams*

**WASHINGTON, D.C.** – Secretary of the Interior Ken Salazar today announced his determination that the mountaintop coal mining “stream buffer zone rule” issued by the Bush Administration is legally defective. Salazar directed the United States Department of Justice (DOJ) to file a pleading with the U.S. District Court in Washington D.C. requesting that the rule be vacated due to this deficiency and remanded to the Department of the Interior for further action.

“In its last weeks in office, the Bush Administration pushed through a rule that allows coal mine operators to dump mountaintop fill into streambeds if it’s found to be the cheapest and most convenient disposal option,” said Secretary Salazar. “We must responsibly develop our coal supplies to help us achieve energy independence, but we cannot do so without appropriately assessing the impact such development might have on local communities and natural habitat and the species it supports.”

Under the Bush rule, coal mine operators are able to dispose of excess mountaintop spoil in perennial and intermittent streams and within 100 feet of those streams whenever alternative options are deemed "not reasonably possible." Disposal into streambeds is permissible when alternatives are considered "unreasonable," which occurs under the Bush rule whenever the cost of pursuing an alternative "is substantially greater" than normal costs.

The Bush rule replaced a rule that had been on the books since the Reagan era rule of 1983. The Reagan era rule provides greater protection for communities and habitat by allowing the dumping of overburden within 100 feet of a perennial or intermittent stream only upon finding that such activities “will not adversely affect the water quantity or quality or other environmental resources of the stream. Two lawsuits were filed immediately after the Bush rule was published.

“The so-called ‘stream buffer zone rule’ simply doesn’t pass muster with respect to adequately protecting water quality and stream habitat that communities rely on in coal country,” added Salazar.

If the court accepts the United States' request and vacates and remands the rule, the 1983 rule will continue to remain in force in all of the states that have delegated authority under the Surface Mining Control and Reclamation Act (SMCRA). (Only two states, Washington and Tennessee, do not have delegated authority under SMCRA.)

OSM expects to issue guidance to states regarding application of the 1983 rule. Also, OSM expects to solicit comment on the potential development of a comprehensive new stream buffer zone rule that would update the 1983 rule, address ambiguities and fill interpretational gaps, while implementing the statutory requirements set forth in the Surface Mining Control and Reclamation Act and ensuring that SMCRA requirements are coordinated with Clean Water Act obligations that are administered by the U.S. Army Corps of Engineers and the Environmental Protection Agency.

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