



COALEX STATE INQUIRY REPORT - 261

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Department of Natural Resources
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TOPIC: Signatures on the 300 foot waiver

INQUIRY: Must the waiver allowing a permittee to mine closer than 300 feet to an occupied dwelling be signed by both parties if the property is jointly owned or is one signature sufficient?

SEARCH RESULTS: The COALEX Library and other materials in LEXIS were used to research this inquiry.

Only one case was identified that had any relevance to the fact situation and issue of this inquiry. In *SMITH v NATURAL RESOURCES & ENVIRONMENTAL PROTECTION CABINET (CABINET)*, 712 SW 2d 951 (Ky Ct App 1986), the court found that the Cabinet had erred in denying an administrative hearing to Muriel Smith, occupant and co-owner of a home, who did not execute a "300-foot waiver". The waiver had been signed by Smith's ex-husband, the nonoccupant and co-owner of the home.

While the court did not issue a ruling on whether the nonoccupant/co-owner of a dwelling may execute a waiver that is sufficient under Kentucky regulations to deprive the occupant/co-owner of the protection of state and federal statutes, it did find that the issue was not a property rights question.

The case was remanded to the Cabinet to take appropriate inspection and enforcement action.

ATTACHMENTS

SMITH v NATURAL RESOURCES & ENVIRONMENTAL PROTECTION CABINET (CABINET), 712 SW 2d 951 (Ky Ct App 1986).