

company should be adequately deterred both by the issuance and confirmation of some penalty and by the related action Fire Chief Foster brought against James LaMountain that will have cost the company both the penalty amount and the time and effort to defend against the assessment of a penalty. Since Justice Fein's ruling, the Fire Chief has resumed issuing permits for burns on the site and none of the witnesses related any subsequent problems. See 310 CMR 5.25(8).

The parties did not draw my attention to any other instance in which DEP has penalized anyone for failure to obtain an open burn permit, but given the absence of any apparent problem with obtaining compliance with the permit requirement, the issuance of a penalty here and the subsequent lengthy litigation over it should serve as an adequate deterrence against violations by others. See 310 CMR 5.25(9).

The public interest would be served best if the company and the town reached an understanding as to what burning is allowed on the property, thereby freeing up town (and DEP) officials to perform other tasks important to the public. As far as the penalty is concerned, which relates solely to the need for a burn permit, upholding the penalty in any amount confirms that need. There is reason to believe the company has received that message because permits for burns at the site have been applied for and received from the Fire Chief. See 310 CMR 5.25(11).

In sum then, the one day failure to have a burn permit that was based on a reasonable misunderstanding about permit renewal warrants no more than the minimum \$100 penalty.

I am concerned, however, by the amount of time and effort local and state officials, as well as personnel of Northeast Concepts and Huguenot Farms, have expended over burning conducted at the site. While some matters are worth extensive litigation, this is one that should have been resolved more readily and with far less rancor. I would urge the parties to be guided by this decision and Justice Fein's ruling, which thoroughly explains the relevant regulatory