

May-June 2017



# NEWS

ALABAMA PROPANE GAS ASSOCIATION

*APGA / LPGGA Joint Convention  
Hotel Monteleone  
New Orleans, LA  
June 4-6, 2017*



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**ALABAMA PROPANE GAS ASSOCIATION**



Inside this Issue

**2016-2017 OFFICERS**

President . . . . . Michael Toomey  
Vice President . . . . . Chad Chavers  
Treasurer . . . . . Rick Foster  
Secretary . . . . . Richard Mayberry  
Imm. Past President . . . . . Jason Gamble

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Southeast . . . . . Ed Balkcom  
Northwest . . . . . Andy Wise  
Northeast. . . . . Tim Moore

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**SUPPLIER MEMBER REPRESENTATIVE**

Terry Gadberry

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Executive Director. . . . . Lisa Hill  
Receptionist/Secretary . . . . Mary Lou Trammell  
Lobbyist . . . . . Mike Weeks

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# word from the president

Spring is here! Winter has come and gone. The warm winter weather was not good for our business, but it's time to press on. Although we can't control the weather, we can have a productive Spring.

Collecting overdue accounts is a given. Painted tanks make happy customers. Opportunities for propane education are available.

The APGA will be offering training several times this summer at the Prattville office. District meetings will be held in Cullman and Greenville in May. Great information on CSST codes will be made available at the district meetings.

If you haven't already made plans to attend the Alabama/Louisiana Propane Gas Convention in New Orleans, let me

encourage you to join us. We will meet at the Hotel Monteleone in downtown on June 4-6. The Louisiana Association has promised great family fun!

Many thanks to the members of APGA for allowing me the privilege of serving as your president. It has been my honor and a highlight of my propane career. Wishing you all much success in your business!

Looking forward to seeing you at our summer events!■



◆Michael Toomey◆

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# National Propane Gas Association

## The Great Propane Story

### Clean American Energy

#### CLEAN

- The average propane-powered home reduces CO<sub>2</sub> by nearly 30 percent compared to all-electric homes. Direct use of propane for space heating, water heating, cooking, and clothes drying reduces greenhouse gas emissions up to 50 percent. Additionally, propane is not a greenhouse gas.

#### ABUNDANT

- The propane consumed in the United States is produced in North America. In fact, every year we export 10 billion gallons – that's enough to fuel 4 million fleet vehicles or 12 million homes. Propane is the world's third most popular auto fuel following gasoline and diesel.

#### SECURE

- Propane is a major contributor to the energy security of the United States. Using propane protects consumers from uncertain energy supplies that originate from hostile nations abroad.

#### EFFICIENT

- Propane is more efficient than electricity when evaluating the total energy consumed during the full fuel cycle (the energy consumed in the extraction, production, processing and transportation of the fuel to its point of use) - 87 percent efficient for propane vs 32 percent efficient for electricity.

### Promotes Local Businesses

#### SERVICE

- Propane industry employees live and work in their local communities and volunteer alongside the people that they serve.

#### AMERICAN

- Of the 3,000 propane companies throughout the United States, more than 70 percent are independent or family-owned businesses, employing 80,000 Americans.

#### LOCAL

- Local businesses are the primary driver of growth and jobs in America. Support for these local propane businesses is essential to the future economic health and stability of the United States.

#### EVERYWHERE

- Propane businesses serve every congressional district in the United States, and the industry contributes more than \$40 billion to the America's GDP each year.

### Gets the Job Done

#### BUSES

- 12,000 propane-powered school buses transport 700,000 school children every day.

#### URBAN & RURAL

- From urban warehouses and industrial facilities to rural homes and America's largest farms, propane gets the job done. Emergency personnel rely on propane for critical back-up power generation following widespread outages caused by natural disasters.

#### RELIABLE

- 750,000 businesses and farms and more than 5.5 million homes rely on propane. Propane is a portable and versatile fuel. It can be delivered to customers in a variety of ways, including: rail, pipeline, and truck.

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## LP gas board | comments & reviews

The Alabama LP Gas Board held its regular quarterly meeting on April 13, 2017. The board discussed the implementation of the Employee Competency Requirements that began April 3, 2017. New industry employees have already begun testing at the board office and group exam sites are being scheduled for the end of May in both Hanceville and Evergreen, Alabama. Check our website for testing locations. Also, permit holders are encouraged to visit the board's website at [www.lpgb.alabama.gov](http://www.lpgb.alabama.gov) and begin completing online applications for their existing employees to obtain Employee Competency Cards.

A representative for Viega LLC addressed the board to provide product information on press-connect fittings for use with metallic piping. Press-connect fittings for metallic piping are currently being considered by the NFPA 54 national committee with a vote and final decision coming June 2017. Pending the decision of the national committee, the Alabama LP Gas Board will consider approval for use in Alabama at the July 6, 2017 quarterly meeting.

The board approved the following permits:

- Class B Permit – Robert Roark dba Robert Roark Trucking, Carmi, IL
- Class B Permit – Shell Trading (US) Company, Houston, TX
- Class B Permit – Willingham Welding Solutions, Inc. dba Gas Innovations, La Porte, TX
- Class C Permit – Malloy Auto Supply, Inc. dba Runaway RV, Dothan, AL
- Class C Permit – R & R Plumbing Services LLC, Tallassee, AL
- Class C Permit – Strickler Imports LLC dba RV's Unlimited, Robertsdale, AL
- Class D Permit – Willingham Welding Solutions, Inc. dba Gas Innovations, La Porte, TX

- Class F Permit – Adair Filling Service LLC, Gardendale, AL
- Class F Permit – Capital City Ace Hardware LLC, Montgomery, AL
- Class F Permit – Country Feed & Seed LLC, Scottsboro, AL
- Class F Permit – Creola Hardware & Lumber LLC, Creola, AL
- Class F Permit – Fiddlesticks LLC, Birmingham, AL
- Class F Permit – Love's Travel Stop 381, Falkville, AL
- Class F Permit – Loxley Auto Parts, Inc., Loxley, AL
- Class F Permit – Russell Super Market, Inc. dba Curry Ace Hardware, Jasper, AL
- Class F Permit – Taleecon Farmers Co-Op / Elmore Co. Farmers Co-Op, Wetumpka, AL
- Class F-1 Permit – Southern Gas & Supply of Birmingham LLC, Anniston, AL

Other board action included the acceptance of settlement agreements incorporating fines for various code violations over the previous quarter. Fines totaled \$9,625 and offenses included common cylinder filling violations, extracting gas from another company's container, and failure to report a fire / explosion involving propane.

The next regular quarterly meeting of the Alabama LP Gas Board will be July 6, 2017 at 10:00 a.m. The meeting location will be the AUM Center for Lifelong Learning, 75 TechnaCenter Drive, Montgomery, AL. Check our website at [www.lpgb.alabama.gov](http://www.lpgb.alabama.gov) for driving directions. You are invited and encouraged to attend.■



## from the executive director's desk

It's hard to believe it is almost May. There were several things that took place in the month of April:

- The Alabama LP Gas Board implemented new employee competency testing requirements. Any new employee will have to go through the process of taking proctored exams before receiving a certification card indicating they can work unsupervised. Existing employees need to start the process of getting their certification card. Go to [www.lpgb.state.al.us](http://www.lpgb.state.al.us) and click on Competency Form at the bottom of the website. You will complete the Employee Competency Endorsement Credentials Application.

- The state of Alabama swore in a new Governor, Kay Ivey. Governor Ivey wasted no time before making necessary staff cuts. I hope this change will allow the Legislature to start focusing on the business of Alabama.

- A piece of legislation was quietly

introduced that would have increased the excise tax on gasoline and diesel a total of \$.09 over the next seven years in addition to adding a \$100 alternative fuel registration fee for passenger vehicles and a \$150 alternative fuel registration fee for commercial vehicles. We literally had one day's notice before the bill came up in committee then one more day before it was placed #1 on the special order calendar. We had prepared an amendment but fortunately, the legislators could not get the needed votes to bring the bill to the floor for debate. For this year, this legislation is dead, but we will have to watch for it in the coming years.

- Paula Cowart taught her first Basic



◆Lisa Hill◆

Principles & Practices

course for APGA April 18-19 which was attended by 12 employees. I am pleased to report that the employees liked her style of teaching. This is very encouraging. Her next course will be Propane Delivery on May 2-4 which we have 14 attendees so far.

- I'm getting ready to leave this week for our second Southeastern Convention and Expo in the great city of Nashville. It's been a non-existent winter for the dealers in Alabama so I'm not sure how many of you I will see in Nashville.

- Finally, we have a good turnout so far for the APGA/LPGA Convention in New Orleans. If you are interested in attending, the room block deadline is May 5th. If you cannot get a room, give me a call and let me see if I can help.

I hope everyone has a good start to your summer months. Remember to check out the safety courses we have scheduled on page 18.■

# CONNECTIONS FOR AMERICA'S ENERGY



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## *“Fire Extinguishers at Work”* DVD Available to Rent through APGA for Members Only

**T**he Occupational Safety Health Act (OSHA) requirements state that employees must have fire extinguisher training yearly.

To assist its members with this training, the Alabama Propane Gas Association purchased from the National Fire Protection Association “Fire Extinguishers at Work.” This DVD covers the following main points:

- Learn how to operate fire extinguishers.
- Size up the fire.
- The fire extinguisher nameplate offers valuable information.
- Fire classifications.
- Remember PASS for proper fire extinguisher operations.
- There are basic fire-fighting procedures that apply to all types of extinguishers.

- Different fire-fighting techniques are used with different types of devices.
- Fire-fighting techniques vary according to the situation.
- Smoke is toxic.
- Always sound an alarm first.
- Don't take risks.
- Know your workplace evacuation procedures.

APGA rents the DVD for a two week time for \$10 plus shipping. If you would like to rent this DVD, please call the APGA office at 334-358-9590.■

### 2017-2018 Slate of Officers and District Directors

The APGA Nominating Committee has submitted the following 2017-2018 Slate of Officers that will be voted on at the Annual Membership Meeting on June 5, 2017 during the Annual Convention in New Orleans, LA:

President - Chad Chavers, Blossman Gas

Vice President - Rick Foster, Accurate Meter Service

Treasurer - Richard Mayberry, Ferrellgas

Secretary - Tim Moore, Mor-Gas

The dealers in each district elected the following 2017-2018 APGA District Directors that will take office after being installed on June 6, 2017.

Southwest - Egan Ritch, South Alabama Gas (Butler)

Southeast - Ed Balkcom, Gala Gas (Eufaula)

Northwest - Andy Wise, Thompson Gas (Trussville)

Northeast - Terry Brown, Thompson Gas (Gadsden)



## *Joint APGA / LPGA Convention...New Orleans, LA*

**T**he Louisiana Propane Gas Association is pleased to host a joint convention with the Alabama Propane Gas Association at the Hotel Monteleone in New Orleans, Louisiana **June 4-6, 2017**. We are excited about having industry members from these two states come together, learn from each other and build lasting relationships. We hope you will take advantage of this opportunity and join us for a spectacular event.

The convention will start Sunday evening with the Welcome Reception sponsored by Supplier Members from both states. After the reception, you will have plenty of time

to enjoy dinner and gather together for some evening fun.

On Monday, you have a few different options to enjoy. First, the Chris Connally Memorial Golf Tournament will be held at TPC Louisiana, a course that hosts the PGA Tour's finest professionals.

Everyone is encouraged to join us Monday afternoon as we tour through World War II at the National D Day Museum. Monday evening is a great time to have dinner with industry friends then make your way to the Dessert Extravaganza and Reverse Raffle. All registrations include one raffle ticket per person, but you are encouraged to buy additional raffle tickets

on the registration form. The last ticket out will win \$1,000 in cash, and additional prizes will be distributed throughout the drawing.

Tuesday will begin with the Alabama Suppliers meeting followed by a joint breakfast for all of the industry members. Next, we are having a joint seminar presented by Stuart Flatow with PERC. Louisiana dealers will earn required continuing education credits. The rest of Tuesday's meetings will be split between the two states. Tuesday afternoon, you will have the chance to tour "Mardi Gras World" and make your own Mardi Gras mask! We hope everyone will find some down time on Tuesday

afternoon to explore New Orleans, or take advantage of the Hotel Monteleone's luxurious amenities.

Our final event will be a dinner buffet Tuesday night with a twist of fun. The "Laissez Les Bon Temps Rouler" President's Dinner and Silent Auction is sure to have us rolling in good times! The funds raised will support the

David Reaves and Don Haden Scholarships in Alabama and the Marie Daniel Scholarship in Louisiana. You are encouraged to wear your favorite Mardi Gras mask to participate in this year's theme while we masquerade through the Big Easy! Tuesday night's festivities will also include the induction of both Association's Board of Directors and presentation of

awards.

As you can see, this convention is packed with excellent opportunities to network, gain industry knowledge and have a ton of fun. Bring your family and get ready for fun in the Big Easy, you will not be disappointed! We look forward to seeing y'all in New Orleans!■

# Agenda

## Sunday, June 4

Time	Event
4 p.m. - 6 p.m.	Registration- Riverview Room
6 p.m. - 7 p.m.	Supplier's Welcome Reception- Riverview Room

## Monday, June 5

Time	Event
7:30 a.m.	Chris Connally Memorial Golf Tournament
2 p.m.	World War II Museum Tour
8 p.m.	Dessert Extravaganza and Reverse Raffle- Iberville Room

## Tuesday, June 6

Time	Event
8 a.m. - 8:15 a.m.	Alabama Suppliers Meeting- Royal Salon
8 a.m.	Breakfast- Royal Salon
8:30 a.m.	NPGA Chair's Address- Royal Salon
8:45 a.m.	Safety Training with PERC- Royal Salon
11 a.m. - 1 p.m.	APGA Board Meeting- Royal Salon
11 a.m. - 1 p.m.	LPGA Board Meeting- Royal D
2 p.m.	Mardi Gras World Tour and Mask Making- Mardi Gras World
6:30 p.m.	Laissez Les Bon Temps Rouler President's Dinner and Silent Auction (Music Provided by?) - Queen Anne Ballroom and Parlor

All Convention Events are Resort Casual

# Advanced Registration Form

Name: \_\_\_\_\_ Email Address: \_\_\_\_\_  
 Spouse/Significant Other: \_\_\_\_\_ Telephone: \_\_\_\_\_  
 Company: \_\_\_\_\_

## Registration Fees:

**Single Registration:** \$380 \$\_\_\_\_ **Couple Registration:** \$580 \$\_\_\_\_  
 (includes a Reverse Raffle Ticket; Welcome Reception, (includes a Reverse Raffle Ticket; Welcome Reception,  
 Dessert Extravaganza and Dinner) Dessert Extravaganza and Dinner)  
**Extra Reverse Raffle Ticket:** \$50 \$\_\_\_\_

## Convention Activities:

Additional Tickets available for family members/guests not involved in the propane industry and therefore not paying convention registration fees.

### Sunday:

Welcome Reception (included in registration)  
 Extra Adult Ticket: \$25 \_\_\_\_\_ \$\_\_\_\_  
 Child Ticket (18 and under) Free \_\_\_\_\_

### Monday:

Golf Scramble: \$150 \_\_\_\_\_ \$\_\_\_\_  
 (fee includes green fee, cart, drinks and prizes)  
 Names: \_\_\_\_\_ Handicap: \_\_\_\_\_  
 \_\_\_\_\_

### Tuesday:

Dinner (included in registration)	Dessert Extravaganza (included in registration)
Extra Adult Ticket \$120 _____ \$____	Extra Adult Ticket \$30 _____ \$____
Child Buffet Ticket (15 & under) \$45 _____ \$____	Child Ticket (18 and under) Free _____ \$____
Mardi Gras World: \$65 _____ \$____	WWII Museum: \$35 _____ \$____

### NON-MEMBERS:

Individuals from non-member companies will be charged a \$150 additional convention registration fee. Please add this charge to your total registration amount.

**Total Registration Amount \$\_\_\_\_\_**

**Payment with a Check**

Please make check payable to:  
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 Baton Rouge, LA 70810

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*Hotel Monteleone  
 New Orleans, Louisiana*

To make your room reservation at The Hotel Monteleone for June 4-6 call:  
 (504) 523-3341 or 1-800-217-2033  
 Direct online reservation link: <http://bit.ly/2iCJtEq>  
 Be sure to indicate that you are with Louisiana Propane Gas Association to receive the group rate.  
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**Room Reservation Deadline: May 5th**

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# SUMMARY JUDGMENT DENIED



**A** United States District Judge for the Eastern District of Kentucky recently denied summary judgment for a propane service company in a negligence case arising out of a propane gas explosion. In the *Kelly v Arrick's Bottled Gas Service, Inc.* case discussed below, the federal judge analyzed the gas company's assertions that it owed no duty to plaintiffs with respect to an unused gas line running under a detached garage. The judge's decision turned on factual questions regarding whether the gas service company breached its duty to inspect. The basic factual issue was whether the propane service company conducted a sufficient inspection of the entire propane system at the time the company replaced the property owner's propane tank.

## **Background**

This case arose out of a propane gas-related flash fire and explosion at residential property leased by plaintiff Jarrod Kelly (Kelly). Five years before the incident, at the request of the property owners,

Arrick's Bottled Gas Service, Inc. (Arrick's) replaced a propane tank set by another company with an Arrick's tank. After installing the replacement propane tank, Arrick's tested the propane system and found no leaks. At the time of the installation, Arrick's required Kelly to sign a new customer agreement. The agreement stated that while Arrick's retained ownership of the tank and regulators, Kelly was "responsible" for the gas line and fittings. Arrick's supplied propane to the residence from the time the replacement tank was installed to the incident date with apparently no issues.

On the day of the incident, Kelly was planning a barbeque. He and a friend, Micah Miller (Miller) were working on clearing out the detached garage on the property so they could reach the barbeque grill. While Kelly and Miller were working in the garage they became curious about whether any water had collected in the cellar of the garage from rains over the previous few days. They decided to head down to the cellar to check it out. The lights in the cellar were

flickering, which prompted both men to ignite their lighters so they could get a better view of the cellar. Unfortunately, "within a matter of seconds, the flames from their lighters" ignited propane gas that had accumulated in the cellar which caused a flash fire and explosion. Kelly and Miller were able to get out of the cellar, but both incurred serious injuries. After the incident, Kentucky State Police investigators determined the underlying cause of the flash fire and explosion was propane leaking from an unused gas line under the garage which had migrated into the cellar space.

## **The Lawsuit**

Kelly and Miller brought a lawsuit against Arrick's alleging numerous causes of action including negligence; negligence per se (violation of a statute); gross negligence; liability for an extra-hazardous activity; strict liability; products liability; violation of the Kentucky Consumer Protection Act; breach of implied warranty of fitness and punitive damages. Note that Kelly and Miller later conceded that a

number of their claims were not supported by the facts and those claims were dismissed leaving the negligence and punitive damages claims to be resolved.

Kelly and Miller asserted that Arrick's was negligent because it failed to exercise reasonable care in three ways: (1) failed to visually inspect the entire propane system when Arrick's installed the propane tank and regulators, (2) failed to warn Kelly about the dangers of metal corrosion and unused gas lines and (3) failed to warn about "dangerous defects in the aging propane system." In contrast, Arrick's argued that it had no actual knowledge of any danger from the lines and fittings and that the source of the propane leak was a gas line for which it had no responsibility. However, Kelly and Miller countered with the assertion that Arrick's should have known there was an unused gas line, despite being buried underground, because there was a branch line running to the garage that was visible from the propane tank; the garage had a chimney and the piping and regulators at the location of the garage were above ground. Kelly and Miller also asserted that both Arrick's own "training program and industry standards required a

visual inspection of the entire propane system."

**Arrick's Summary Judgment Motion**

Arrick's filed a Motion for Summary Judgment asking the judge to dismiss the case

***If you don't invest in risk management, it doesn't matter what business you're in, it's a risky business.***  
~ Gary Cohn

against it as a matter of law stating that there were no issues of fact for the jury to decide. Arrick's asserted it had no duty with respect to the unused gas line for the two reasons set out above: the new customer agreement assigned the responsibility for the gas lines and fittings to Kelly and Arrick's did not know about the unused gas line.

The federal judge disagreed with Arrick's argument that it did not owe a duty to maintain the propane lines and

fittings because the customer agreement stated Kelly was "responsible" for the lines and fittings. The judge determined that the customer agreement was not clear as far as the division of responsibilities and

noted an agreement that attempts to shift a duty to someone else "must be 'so clear and understandable, that an ordinarily prudent and knowledgeable party to (the agreement) will know

what he or she is contracting away; it must be unmistakable." The judge also noted that the customer agreement that Kelly signed "simply" stated: "It has been explained to me

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(Kelly) that Arrick's Bottled Gas, Inc. remains the owner of the tank and regulators and that the line and fittings are my responsibility." In his decision, the judge stated that the language of the agreement did not mention the word "negligence" nor did it expressly and clearly release or protect Arrick's from liability for its own conduct or omissions. Notably, the judge stated that the agreement could be reasonably interpreted to mean nothing more than Kelly was responsible for the cost of the maintenance or repairs for the lines and fittings but not for the cost of maintaining the tank and regulators. Therefore, the judge held that the customer agreement did not release Arrick's from liability for Kelly and Miller's alleged injuries or limit the scope of the duties owed by Arrick's to them.

The judge also disagreed with Arrick's second argument in its Motion for Summary Judgment that it had "no duty to maintain the propane lines and fittings because it had no actual knowledge of the hidden dangers posed by the lines and fittings." The judge pointed out that although Kentucky courts recognize a universal duty of care where each person owes a duty to others to exercise ordinary care to prevent foreseeable injury, a defendant with specialized or superior knowledge regarding the circumstances at issue is held to that higher standard of care. The judge also noted that foreseeable risks are analyzed on the basis of what the defendant knew or should have known at the time of the alleged negligent conduct and that under Kentucky law, Arrick's had a duty to

exercise the ordinary care of a propane gas supplier to prevent foreseeable injury during the installation of the propane tank. The judge determined that although Arrick's performed a leak check, a factual issue existed as to whether Arrick's breached its duty to the plaintiffs as far as the sufficiency of the visual inspection of the propane system at the time the propane tank was installed. Therefore, the judge denied Arrick's summary judgment motion because a reasonable jury could determine that Arrick's breached its duty to Kelly and Miller by "failing to conduct an adequate inspection at the time of tank installation."

Kelly and Miller asserted in their lawsuit that Arrick's conduct was so egregious that punitive damages were warranted. However, the judge granted Arrick's Motion for Summary Judgment as far as the punitive damages claim noting that after reviewing the record in detail, there was no evidence which would support anything more than the potential that Arrick's committed an oversight during the visual inspection of the propane system. In other words, the judge determined there were no facts to support a punitive damages claim for egregious or reckless conduct.



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\*\*\*

As set out above, the plaintiffs in the referenced case brought a number of claims related to the sufficiency of the initial visual inspection of the propane system and related conduct when the gas company was establishing service at the residence, including whether the propane company should have picked up on visual cues as far as an unused buried gas line. Significantly, neither the five-year time lapse between the initial installation of the propane tank and the incident, nor the unfamiliar existing propane system mattered as far as potential liability- the negligence claim will still turn on whether the propane supplier complied with its duty to conduct a sufficient initial inspection of the entire propane system when it was establishing service at the residence. The judge's decision to overrule the propane supplier's motion underscores key risk management issues not only with respect to a propane gas supplier's duty to inspect, but also

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with the scope of customer service agreements.

*If you don't invest in risk management, it doesn't matter what business you're in, it's a risky business. - Gary Cohn.■*

[Kathryn A. ("Katy") Regier is a shareholder in the law firm of Schlee, Huber, McMullen, McCarthy & Hansen, P.C., in Kansas City, Missouri. She can be contacted through her email address: kregier@schleehuber.com.]

# calendar

<b>May</b>	
2-4	Bobtail Delivery Operations - Prattville
29	APGA Office Closed
<b>June</b>	
4-7	Alabama/Louisiana Convention - New Orleans, AL
6-8	Designing and Installing Exterior VDS - Prattville
19-21	Propane Days - Washington, DC
20	Rinnai Level II Training - Prattville
21	Rinnai Level III Training - Prattville
<b>July</b>	
4	APGA Office Closed
13	Alabama LP Gas Board - Montgomery
18	Hazardous Materials/Security Awareness for New Hires/CSR - Prattville
20	Hazardous Materials/Security Awareness for New Hires/CSR - Cullman
25-27	Placing VDS & Appliances into Operations - Prattville
<b>August</b>	
8	APGA Committee Meetings - Prattville
22-23	Basic Principles & Practices - Prattville
<b>September</b>	
4	APGA Office Closed
6	Hazardous Materials/Security Awareness for New Hires/CSR - Prattville
7	Hazardous Materials/Security Awareness with Bobtail Refresher - Prattville

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