

November-December 2016



NEWS

ALABAMA PROPANE GAS ASSOCIATION

***Fall Is In
the Air...Are
You Ready?***

National Propane Gas Foundation Scholarship Fund

Education. Success. Scholarship.



Planning for your child's college fund?

**Apply Now for a
NPGF Scholarship**

Visit www.npga.org/scholarship to learn more
about available scholarships.

Applications open on August 15. Completed applications must be submitted
by February 15 of the following year.

Successful applicants will be notified by May.

NPGA
NATIONAL PROPANE GAS ASSOCIATION

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

2016-2017 DISTRICT DIRECTORS

Southwest Egan Ritch
Southeast Ed Balkcom
Northwest Andy Wise
Northeast. Tim Moore

NPGA STATE DIRECTOR

Jeff Gresham

SUPPLIER MEMBER REPRESENTATIVE

Terry Gadberry

STAFF

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

Alabama Propane Gas Association
173 Medical Center Drive
Prattville, Alabama 36066

334.358.9590
Fax: 334.358.9520

email: info@alabamapropane.com
web: alabamapropane.com



10 | FEATURE:
\$7M in Rebates to Reduce School Bus Diesel Emission

5 | National & State Propane Gas Association Wins

14 | Summary Judgment Granted in Lawsuit

17 | SAVE THE DATES...
(1) Southeastern Convention & Expo
(2) APGA Convention

departments

- 4 | From the President**
- 7 | LP Gas Board Comments & Reviews**
- 8 | From the Executive Director's Desk**
- 9 | Safety & Education**
- 18 | Dates to Remember**
- 18 | Advertisers**



word from the president

It's Fall "Fill" season! Hope you've all had a good one! By the time you read this, we will be having a few cool mornings. It's time for equipment checks and repairs so that we are ready to roll when the temperatures drop to freezing. We can start moving that propane!

Thanks to all of you who attended the district meeting. We had great attendance....27 in Greenville, 25 in Owens Crossroads. It was a pleasure to meet dealers from north Alabama. Thanks again for your interest and participation. We hope to continue to build relationships between all of our dealers in Alabama.

In recent news, the LP Board passed the Employee Competency Requirements which will be effective on April 3, 2017. Now

is the time to prepare your documentation to prove that all of your service technicians and truck drivers have completed this testing. If in question, the LP board will provide a copy of the letter of proof. Please contact the APGA staff or board if we can be of assistance.

Our business is propane and cold weather fuels our business. Here's hoping for a cold winter! But more importantly, we hope for a safe winter for our employees and customers! ■



◆Michael Toomey◆



MTankCo Supply, LLC
7074 302 Industrial Dr. | Southaven, MS 38671
ph 800.235.3528 | fax 662.349.1346
MTankCo.com | sales@mtankco.com





MEGR-1222



MEGR-1232



MEGR-1622H

- ZERO failures with over 500,000 cycles or 30 years of use throughout all seasons
- Field tested across all regions of the USA
- Extensive UL testing to UL144/UL144C
- KEY FEATURES: Stainless steel internal components, molded lip fabric reinforced diaphragms, powder coat finish, GLT Viton seats, *Peel-N-Stick* leak check label, exclusive *Tri-Tap* two-stage pressure port system, plus much more!

Your **FULL LINE** equipment distributor is now offering
MEC Excela-Flo Regulators.

National Propane Gas Association

National Advocacy Wins

B obtail Requalification Extension – Saving the Industry \$500 Million

On June 2, 2016, the U.S.

Department of Transportation issued a final rule extending the requalification period from five years to ten years. PHMSA has modified its regulations to permit a ten year requalification period for MC 331 cargo tanks, i.e. bobtails, with less than 3,500 gallons water capacity in dedicated propane service constructed of non-quenched and tempered (NQT) SA-612 steel. PHMSA's approval of this change is the culmination of well over a decade of work by NPGA and its members along with detailed research funded by PERC that supported NPGA's initial petition to the agency.

FERC Index Revision – Saving the Industry \$190-250 Million During the Next Five Years

Beginning July 2015, NPGA represented the propane industry before the Federal Energy Regulatory Commission (FERC) in connection with its five-year review of the methodology used to escalate shipping rates on products pipelines for the period 2016-2021. NPGA, joined by Airlines for America and Valero, submitted extensive legal briefs and economic analysis to FERC, requesting a lower escalator than that proposed by FERC and a lower escalator than that proposed by the pipelines. NPGA met with the four FERC commissioners and explained its proposal. In its order, FERC adopted, for the first time in twenty years, the cost methodology advocated by NPGA and its allies, and it concluded that an escalator very similar to that proposed by the NPGA coalition should be used over the next five years.

Avoiding Quantitative Odorant Testing at Every Exchange From Pipeline to End-User – Saving the Industry \$400 million Annually

PHMSA agreed with NPGA and did not specify any odorant testing requirements for

cylinders. For cargo tanks, PHMSA agreed with NPGA's position that quantitative odorant testing downstream would be costly and inefficient. To that end, they are requiring that "...only cargo tanks or portable containers transported from a refinery, gas plant or pipeline terminal must use quantitative testing to ensure adequate odorization." PHMSA acknowledged NPGA's contribution to the process and in the preamble of the rule wrote, "PHMSA recognizes NPGA's concerns and does not intend to place an undue burden on retail distributors of LPG...It is not our intent to require retail distributors offering for transport or transporting propane from their bulk storage facilities to end users in cylinders or bobtail cargo tanks to [quantitatively] test odorant levels in the LPG."

Alternative Fuel and Refueling Infrastructure Tax Credit Extensions

NPGA advocated for a two year extension of both the Alternative Fuels Tax Credit and the Alternative Fuel Vehicle Refueling Property Credit. The Alternative Fuel Credit stayed at the full \$0.50 per gallon level for 2015, and adjusted for energy content for fuel sales after January 1, 2016. This adjustment set the credit at approximately \$0.36 per gallon. Maintaining the full credit for 2015 is a major victory for NPGA. The Refueling Property Credit remains at 30% of the costs of the system up to \$30,000.

Section 179 Small Business Expensing

NPGA successfully lobbied for a permanent extension of the increased section 179 small business expensing limits. The limitation and phase-out amounts increased to \$500,000 and \$2 million, respectively, and these figures will be indexed for inflation in the future.

Bonus Depreciation

Bonus depreciation was also extended at the end of 2015 for five years. For 2015 - 2017, bonus depreciation will remain at 50 percent. In 2018, it will phase down to 40 percent, and reduce again to 30 percent in 2019. This is

(continued on page 6...)

(...continued from page 5)

another provision that NPGA has also been vocal in supporting.

34-Hour Restart

NPGA succeeded in getting relief from the DOT regulation changing the 34-hour restart provision to require two 1am-5am periods. Under the agreement, the original 34-hour restart provision remains in effect, unless DOT can prove that drivers operating under the revised restart provision demonstrated “statistically significant improvement in all outcomes related to safety, operator fatigue, driver health and longevity, and work schedules,” which is unlikely.

DOE Grant Funding

NPGA worked to have two funding earmarks at DOE included for important propane growth technologies. The language provides \$5 million for DOE research on propane/LPG direct injection engines, and \$6 million for DOE research on micro-CHP. These provisions move us closer to our goal of parity with other alternative fuels and technologies being studied by DOE.

Excise Tax Change

NPGA was successful in lobbying congress to include a permanent reduction of the excise tax on propane autogas vehicles in the extension of the highway bill. Excise tax equalization alters the calculation for the excise tax levied against propane used as an auto fuel to be based on an energy content rather than the current volumetric calculation. Due to the lower energy content of propane compared to gasoline, this will result in lower excise taxes being levied on propane used in auto fuel applications. The reduction takes effect January 1, 2016.

Community Gas Systems Regulatory Review

NPGA worked with allies in Congress to include the jurisdictional propane system study in the pipeline bill passed in the spring 2016. This law requires the Department of Transportation to contract the study with the Transportation Research Board (TRB) at the National Academy of Sciences, an independent third-party. The TRB will assemble a panel of experts and stakeholders to examine the current regulatory requirements on these systems and make recommendations on how to improve them, after which this study will be subjected to peer review. The TRB estimates that the study and its

recommendations will be finalized in approximately 18 months. Having an independent review of the DOT regulations is an important first step in easing the regulatory burden that is currently placed on jurisdictional propane systems.



Southeast LP
Tank Inspection, Inc.

Bobtails to Bulkplants

New Bobtails
Refurbished Bobtails
Hydrostatic Testing
Annual VK Inspections
Annual DOT Inspections
Base Engineering Shutdown

Betts Vapor Proof Lights:
complete stock of lights, lens & accessories
Chelsea PTO & Equipment:
power take offs, drive shafts & accessories

New Installations
Maintenance & Repairs
All Work Performed to NFPA 58
Code Upgrades
Storage Plant Acquisition & Removal

FREE ESTIMATES

40 Industry Drive
Boaz, AL 35956
Email: lp trucks256@aol.com

Jason Gamble, Owner
(205) 616-9084

(256) 593-2420
(800) 757-6639
Fax: (256) 593-2460

State Natural Gas Wins

New Mexico

The New Mexico Propane Gas Association, working with assistance from NPGA’s State Engagement Initiative, defeated HB 140 and SB 213, bills that would

(continued on page 12...)



LP gas board | comments & reviews

The Alabama LP-Gas Board held its regular quarterly board meeting on October 13, 2016. As part of the meeting, the board conducted a public hearing related to a petition to amend Alabama Administrative Code 530-X-2-.11 Employee Competency Requirements. Following the public hearing, the board reconvened the board meeting and voted to adopt the changes to the administrative code with three changes. The changes to the petition adopted by the board lowered the passing score for written exams to 70%, included NFPA 1192 as a resource document permitted for use during exams, and changed the effective date for the new employee testing program to begin April 3, 2017. Go to the board's website at www.lpgb.alabama.gov under "News & Meetings" for more information on this regulation change.

The following permits were approved at the board meeting:

- NGL Propane LLC dba Sungas, Phenix City, AL, Class A Permit
- Hilcorp Energy Company, Houston, TX, Class B Permit
- Kenan Transport LLC, North Canton, OH, Class B Permit
- Legend LLC, Petal, MS, Class B Permit
- Red Hawk Midstream LLC, Waskom, TX, Class B Permit
- Regal Petroleum Company, Inc., Knoxville, TN, Class B Permit
- Casey Propane Gas Co., LLC, Georgiana, AL, Class B-1 Permit
- NGL Propane LLC dba Gas, Inc., LaGrange, GA, Class B-1 Permit
- LP-Gas Industrial Equipment Co., Inc., Macon, GA, Class C Permit
- Paul's Plumbing & Gas, Hanceville, AL, Class C Permit
- Phoenix Energy Corp., Pell City, AL, Class C-1 Permit
- Southern LP Gas Services LLC, Colquitt, GA, Class D Permit
- Southeast LP Tank Inspection, Inc.,

Boaz, AL, Class E Permit

- Thirteen Class F Permits (cylinder filling & motor fuel dispensers) were also approved during the meeting.

Other board action included the acceptance of settlement agreements incorporating fines totaling \$ 22,200 for code violations related to improper filling of forklift cylinders with a bobtail truck, failure to weigh cylinders when filling, and overfilling cylinders offered for delivery without appropriate corrective action.

The next regular quarterly meeting of the Alabama LP-Gas Board will be next year on January 12, 2017. You are invited and encouraged to attend. We remind you to visit our website at www.lpgb.alabama.gov as a valuable source of current information from the board. As this is probably the last issue before the Thanksgiving holiday, the board and staff would like to wish you and yours a wonderful holiday season and lots of cold weather! ■

WORLD CLASS PERFORMANCE FROM AMERICA'S INDUSTRY LEADER

PRODUCTS:

- New TRANSPORT TRAILERS
- New BOBTAILS
- New BULK STORAGE TANKS

Ask about availability of used or refurbished transport trailers and bobtails

SERVICES:

- Refurbishing & Repairs
- Blasting & Painting
- 5-Year Inspections
- Annual Inspections
- Stress Relieving
- Parts



PROUDLY MANUFACTURED & ASSEMBLED IN THE USA



MISSISSIPPI TANK COMPANY

HEADQUARTERS
P O Drawer 1391
Hattiesburg, MS 39403-1391
PH: 800-331-8265 ext. 224
FAX: 601-264-0769
EMAIL: sales@mstank.com

INDIANA DIVISION
1301 East Elkhorn Road
Vincennes, IN 47591-8004
PH: 812-886-8265
FAX: 812-886-8979
EMAIL: salesid@mstank.com



from the executive director's desk

The Association has set its 2017 Training Schedule as follows:

1/24/17	Hazardous Materials/Security Awareness-New Hires-Prattville	6/6-8/17	Designing & Installing Exterior VDS-Prattville
1/31/17	Hazardous Materials/Security Awareness-New Hires-Cullman	7/11-13/17	Placing VDS and Appliances into Operations-Prattville
4/4/17	Hazardous Materials/Security Awareness-New Hires-Prattville	7/18/17	Hazardous Materials/Security Awareness-New Hires-Prattville
4/5/17	Hazardous Materials/Security Awareness/Service Refresher-Prattville	7/20/17	Hazardous Materials/Security Awareness-New Hires-Cullman
4/11/17	Hazardous Materials/Security Awareness-New Hires-Cullman	8/22-24/17	Basic Principles & Practices-Prattville
4/12/17	Hazardous Materials/Security Awareness/Bobtail Refresher-Cullman	9/6/17	Hazardous Materials/Security Awareness-New Hires-Prattville
4/18-20/17	Basic Principles & Practices-Prattville	9/7/17	Hazardous Materials/Security Awareness/Bobtail Refresher-Prattville
5/2-5/17	Propane Delivery Operations - Bobtail-Prattville	9/12/17	Hazardous Materials/Security Awareness-New Hires-Cullman
		9/13/17	Hazardous Materials/Security Awareness/Service Refresher Cullman
		9/19-22/17	Propane Delivery Operations - Bobtail-Prattville

CONNECTIONS FOR AMERICA'S ENERGY



Max Johnson
Supply & Asset Manager
Southeast

max.johnson@crestwoodlp.com
D: (816) 329.5316
C: (913) 972.5721
Yahoo ID: maxjohnson1248
ICE ID: mjohnson31

Connect with Crestwood: crestwoodlp.com



Two Brush Creek Boulevard, Suite 200 • Kansas City, MO 64112

We will bring Paula Laney from Oklahoma in to instruct the CETP courses. Paula has more than 16 years of instructional experience in the propane industry. Mike McGough has agreed to instruct the Hazmat courses one more year as a contractor. We are very confident that our educational schedule will meet your needs. ■



◆Lisa Hill◆



Properties of Static Electricity

Static electricity is electricity at rest, but if a conductive path is present, it can result in a spark or static discharge. In propane operations, this spark can ignite and cause a fire or even an explosion. It is important to understand static electricity, where and how it can arise, and how to reduce risks of a static ignition.

FACTS ABOUT STATIC ELECTRICITY:

- Static electricity occurs when two materials touch and separate, thus creating an imbalance of electrons and a positive charge. Benign in many situations, static electricity can be extremely dangerous around propane.
- Static sparks give off energy in the form of heat or light.
- The level of static charge is affected by speed of movement, humidity, material size, and materials' electrical properties [conductive or non-conductive]. Metals, wet fabrics, wet concrete, and the human body are common conductive materials.
- Higher humidity reduces static generation significantly. However, polymeric materials such as HDPEs, PVCs, and plastic films do not retain moisture and thus can charge to extreme voltages even in high humidity.
- Even though they do not throw sparks, non-conductors can transfer their electrical energy to something or someone that can cause a spark. This is called *induction*.
- The smallest static spark we can see or feel (about 3,000 volts) has double the energy required to ignite propane.**

CAUSES OF STATIC ELECTRICITY:

In propane operations, static electricity can be caused by a number of factors, including:

- Walking through a facility or across a carpet.
- Fuel flowing at high velocity through a small opening.
- Friction from wind blowing over cellophane or stretch wrap near cylinders.
- Putting on or removing conductive clothing.
- Picking up a charged item, without static discharge control footwear, and/or not grounding yourself after putting the item down.

WAYS TO REDUCE STATIC ELECTRICITY:

- Identify where static electricity may be coming from, and use signage and floor markers to label all static discharge control areas. Limit access to authorized personnel only.
- Use a grounding path for static charges you may develop or carry. Make sure all process and handling equipment is grounded and bonded in accordance with electric codes.
- Follow your company's guidelines on static discharge footwear and PPE, and use static-safe floor mats and other plant-supplied safety tools.
- Make sure you understand how to control static generation and provide safe grounding paths. Talk with your supervisor if you need training.

Discussion Topics

1. Which common situations and activities at your workplace can generate static electricity?
2. How might humidity levels affect a specific job task? How do your precautions change in low-humidity versus high-humidity situations?

LEARNING ACTIVITY

Display various fabrics (including uniforms or other employee clothing) and plant materials (stretch wrap, metal, etc.). Demonstrate how static can occur and which items may pose greater hazards.

Source: *Static Electricity in the Propane Industry* (PERC)

For more information about static electricity, visit propanesafety.com.



\$7M in Rebates to Reduce School Bus Diesel Emission

Earlier this month, the U.S. Environmental Protection Agency (EPA) announced the allocation of approximately \$7 million in rebate funds available to public and private schools that replace or retrofit older diesel-powered school buses with clean-burning alternative fuel systems.

This news comes at a time when school districts around the country are beginning to take action against the harmful effects that older diesel model school buses can have on the health of students, drivers and faculty members. With this incentive, the EPA hopes

to give school districts that are considering a conversion to clean-burning alternative fuel systems, including propane autogas and compressed natural gas, the final push needed to begin replacing student transport vehicles.

Leander I.S.D. in Texas is just one example of a public school district that has already taken advantage of a government issued rebate for the 2016-2017 school year. The district, which recently launched 24 new buses powered by ROUSH CleanTech's propane autogas fuel systems, is now operating a total of 64 clean-burning, cost-effective

alternative fuel models.

"We anticipate these new buses will lead LISD to a brighter future by helping to decrease our carbon footprint and reduce student exposure to harmful emissions," said Steve Stripling, director of transportation for the district. "Our older diesel buses didn't run as clean, and it was time to replace them with more environmentally friendly technology."

According to district officials, the school district received a Texas Commission on Environmental Quality financial grant that rebated 60 percent of the purchase price. In addition,



it is expected that these vehicles will reduce annual nitrogen oxide (NOx) emissions by over 31,000 pounds, and particulate matter (PM) by over 630 pounds, two pollutants that have been linked to serious health problems, such as aggravated asthma and lung damage.

"In LISD, we constantly seek new ways to give our taxpayers a return on their investment, as well as to provide the safest and cleanest burning technology possible," said Stripling. "With the help of our grant reimbursement funds, we firmly believe that the decision to purchase a new

propane-powered bus fleet ultimately helps us meet this goal."

Propane autogas is a nontoxic, non-carcinogenic and non-corrosive fuel. The Environmental Protection Agency classifies the fuel as a non-contaminant, and it's the leading alternative fuel in the United States and the third most commonly used vehicle fuel. About 25 million vehicles travel worldwide with propane in their fuel tank.

To learn more about the EPA's rebate program, visit www.epa.gov/cleandiesel/clean-diesel-rebates. Or, for more information on ROUSH CleanTech's deployments

of alternative fuel systems in U.S. school districts, please visit www.roushcleantech.com. ■

TRI-STATE DISTRIBUTORS, INC.

The Weather May Be Getting Colder But You Don't Have To!



Sassafras Gas Logs



Radiant Heaters
(also available in Blue Flame)



G19 Burner System and
Foothill Oak Log Set



We offer a Large Selection of Gas Products:

Fireplaces, Logs, Heaters, Stoves, Grills, Water Heaters, Parts And So Much More....

8 Locations Strong For All Your Propane Needs

Athens, GA 877-549-8009	Augusta, GA 866-736-4560	Collins, MS 866-391-5535	Gainesville, GA 800-886-1232	Greenville, SC 877-549-8009	Montgomery, AL 800-221-7902	Ocala, FL 800-476-0172	Royston, GA 800-476-6164
----------------------------	-----------------------------	-----------------------------	---------------------------------	--------------------------------	--------------------------------	---------------------------	-----------------------------

Kevin Green - Serving Alabama - 334-221-6608 Email: tsd.kgreen@gmail.com

DON'T PAY FREIGHT WHEN YOU CAN HAVE IT DELIVERED ON THE TRI-STATE DELIVERY TRUCK!

(...continued from page 6)

have allowed for subsidized expansion of natural gas lines. NPGA was able to rapidly deploy a collection of multi-media resources for the state association to fight the bill, including talking points and committee testimony; radio, online and print advertisements; editorials in the Albuquerque and Santa Fe newspapers; a customized brochure for legislators; and use the Engage grassroots management system to blast legislators with several hundred emails and phone calls opposing the bills.

Maryland

Maryland was a recipient of an NPGA State Engagement grant to help the state fight SB 778, a bill promoting subsidized natural gas expansion. Members of the Mid-Atlantic Propane Gas Association, joined by NPGA General Counsel Jeff Petrash, testified against subsidized expansion. The propane industry is part of a coalition including Maryland's fuel oil industry that fought the bill. Following the hearing, the bill essentially died for the year, being sent for further legislative study. We anticipate the issue will return in the 2017 legislative session.

North Dakota

Propane industry members testified multiple times this spring in legislative hearings targeting subsidized expansion of natural gas to "unserved and underserved areas" of the state in the name of economic development. In the end, the state's economic development officials determined due to the state's budget shortfall, they would not be seeking state incentives for the expansion. Further, Montana-Dakota Utilities, which was pushing for the subsidized, also announced they would be investing \$50 million into a 38-mile expansion of a natural gas line from western Minnesota into eastern North Dakota, validating the propane industry's argument that subsidies were unnecessary.

Virginia

The Economic Development Infrastructure Act of 2016 (SB 748) was amended significantly

by the Virginia Senate the day before a major legislative deadline to include subsidization of expansion. However, NPGA and the Virginia Propane Gas Association were able to persuade legislators in the Virginia Assembly to pass a substitute bill would eliminate the subsidization. Following a meeting with representatives from VAPGA, the Governor placed a reenactment clause on Senate bill 748 and direct Secretary of Commerce and Trade Maurice Jones to conduct a study of this issue, including all stakeholders reporting before the end of the year. The issue did not become law and must be presented again in 2017 and complete the entire legislative process all over again.

West Virginia

In 2015, the passage of SB 390 allowed natural gas utilities to develop programs for "expansion, replacement, upgrade, extension, development, construction, improvement, job creation, and service to unserved or underserved areas," allowing gas utilities to collect a surcharge to recover return on investment, income taxes, depreciation, and property taxes associated with the construction program. In March, Mountaineer Gas Company petitioned the West Virginia Public Service Commission to amend the Infrastructure Replacement and Expansion Program approved in 2015 to permit them to pass through certain costs associated with its planned \$45 million expansion into the Eastern Panhandle. The propane industry intervened, with assistance from NPGA's State Engagement Initiative. Mountaineer settled the case, agreeing they will only move forward with a trunk line to connect its system to an interstate pipeline to improve the safety and reliability of its service. Its proposal to expand service will not go forward, and Mountaineer is prohibited from filing again to approve the expansion before 2018. Additionally, its policy of granting new customers 300 feet of "free" line would be eliminated in 2017■

Are you tired of
breaking into your
piggybank to
purchase fuel
meter tickets?

We can also get
you blank
fuel meter tickets
for electronic
registration

Give APGA a
chance to
quote your next
order!



Alabama Propane Gas Association
(334) 358-9590

SUMMARY JUDGMENT GRANTED



The Illinois Court of Appeals affirmed summary judgment for a forklift service company holding there was no evidence to support the forklift service company agreed through its service agreement or inspection checklist or verbally to undertake carbon monoxide testing as part of service work for plaintiff's employer. In the *Blair v. Pennell Forklift Service, Inc.* case discussed below, the Court analyzed plaintiff's allegations that the defendant voluntarily undertook a duty to test carbon monoxide levels emitted by a propane-fueled forklift as part of preventative maintenance services, and negligently inspected a forklift which led to injuries from carbon monoxide exposure. The case turned on the scope of the services contract in place and whether the actions of the forklift service company created a duty beyond the contract language. The legal issues presented by this case are clearly analogous to situations propane suppliers can face related to service work for their customers.

Background.

Plaintiff Jerrod Blair (Blair) was employed at an industrial supply company which used propane-fueled forklifts in its Springfield, Illinois warehouse. The employer, Fastenal Corporation (Fastenal) and Pennell Forklift Service, Inc. (Pennell) entered into a preventative maintenance service agreement which provided that Pennell would check Fastenal's forklifts every 180 days for a flat labor fee for each forklift serviced. At one point about four months after a specific forklift was checked under the agreement, Blair complained of headaches and "feeling run-down." His doctor diagnosed Blair with carbon monoxide exposure. Blair checked his house and vehicle and then the Fennell work place. Blair said a digital carbon monoxide detector "went berserk" when the forklift in question was running. The fire department was called and the Fastenal warehouse was shut down for part of a day. Blair and his wife brought a lawsuit against Pennell alleging negligent inspection of the

forklift.

The Lawsuit.

Blair asserted in his lawsuit that Pennell breached a duty to "inspect, maintain, repair and service the forklift, including monitoring the carbon monoxide it emitted." Blair specifically pointed to service work that Pennell did about four months before he was exposed to high levels of carbon monoxide in the warehouse. Blair claimed that Pennell had a duty to ensure that Fastenal employees were not exposed to harmful carbon monoxide emissions. Pennell asserted, among other things, that the preventative maintenance agreement did not cover carbon monoxide testing.

Deposition testimony and related evidence produced during the discovery phase of the lawsuit supported Pennell's position on the negligent inspection allegations which centered on whether Pennell had a duty to include carbon monoxide testing as part of the preventative services agreement. Jeff Pennell, the company owner, testified to the

effect that his company had been in business for 33 years and he and his employees were experienced in servicing and maintaining forklifts. He testified that the preventative maintenance check "allows the company to develop a relationship with the customer that might lead to further repair work" but the company "takes a loss each time one is conducted."

Significantly though, Pennell also pointed out in his testimony that it is important for the owner of a propane-powered forklift operated inside a facility to monitor carbon monoxide emissions and that OSHA

puts the responsibility for such monitoring directly on the forklift owner.

The Pennell service technician, who performed the preventative maintenance check in question, testified that he used a checklist for service work and as far as checking for carbon monoxide issues, he started first with asking the customer if there had been any problems with the forklift. Then he would start the "fork truck," drive it and if the engine was "running great, not missing, running fine" and he couldn't smell that it was "running rich" or see it putting

out smoke, he would mark on the inspection form that it was "okay." If the customer said there were problems or the engine was "running poorly" then he would recommend a tune up and emissions check. As far as the particular forklift inspection in question, the service technician said he ran the forklift, the exhaust was coming out of the tailpipe, he

"Risk management should be an enterprise-wide exercise and engrained in the business culture of the organization. ~ Julie Dickson"

didn't see any smoke, his eyes were not burning from too rich a fuel and it was running fine. So he marked "OK" on the exhaust/emissions category on the inspection form. The service technician also testified that carbon monoxide testing was not part of a preventative maintenance agreement but was instead an additional service conducted on a "repair record." Notably, the service agreement did not reference using a carbon monoxide tester.

The district manager for Fastenal, who had signed the service agreement, testified

he had not requested carbon monoxide testing each time maintenance was provided under the agreement and in fact, had never requested such testing prior to the time Blair informed Fastenal of his carbon monoxide exposure. The district manager also testified that if carbon monoxide was suspected, a test was authorized and a separate

fee was charged for the test and stated he had not had any complaints about the forklift in question prior to Blair's diagnosis.

Pennell filed a summary judgment motion asserting it had no duty under the preventative

maintenance agreement or OSHA to test for carbon monoxide emissions and Blair had "no evidence the forklift was emitting unsafe levels of carbon monoxide at the time Pennell serviced it." The trial court granted Pennell's summary judgment motion finding Pennell did not have a duty to conduct carbon monoxide testing under the maintenance agreement. Blair appealed the decision.

Appeal.

The Illinois Court of Appeals (Court) reviewed Blair's assertions that Pennell

voluntarily undertook the duty to perform the carbon monoxide testing and this was established by the service agreement and scope of the inspection report categories. The Court disagreed and pointed out that the agreement indicated the work would include visual inspection, where possible, and operational checks, but nothing was mentioned in either the agreement or the inspection report about carbon monoxide. The Court also stated "[n]othing suggests Pennell would include a test of carbon monoxide levels, which could not be done with accuracy through a

visual or operational test." Nor did the Court find the written agreement had been expanded through a verbal agreement, or otherwise. Instead, the Court stated the focus of the voluntary undertaking duty is what Pennell actually promised to perform and that Blair could not go beyond the "actual promise and include matters never discussed." The Court affirmed summary judgment for Pennell, noting that as no duty existed, Blair could not recover under a negligence cause of action.

The opinion discussed above outlines key issues with respect to service agreements and conduct related to agreements. As part of risk

management efforts, propane suppliers should be aware of the scope of any written agreements in place and potential issues that can arise through course of conduct or verbal assertions related to the substance of an agreement; and also make their employees aware of these issues.

Risk management should be an enterprise-wide exercise and engrained in the business culture of the organization. ~ Julie Dickson ■

[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.]



Rutherford
EQUIPMENT • QUALITY GAS PRODUCTS
14230 Lochridge Blvd M-P, Covington, GA 30014

Committed To... SAFETY In our industry, safety is paramount. That's why we only carry products that meet or exceed industry safety standards.

<p>LEAK CHECK AND REGULATOR TEST KITS</p>  <p>Many kit configurations available to suit your needs. Call for details.</p>	<p>TPI LEAK DETECTION EQUIPMENT</p>  <p>The T775 CO & Gas and T725L Gas Leak Detectors offer Pinpoint Detection of Leaks.</p>
---	---

LIFT INDUSTRIAL SAFETY GEAR

Eye Protection 

Cut Resistant Gloves 

Knee Protection 

DEPEND ON RUTHERFORD FOR YOUR SAFETY EQUIPMENT NEEDS

<p>Smart-Hose TECHNOLOGIES</p> <p>Call Rutherford for Smart-Hose LPG Transfer Hose Assemblies</p>	<p>QUALITY STEEL</p> <p><small>Best in the Quality Steel Means Quality Tanks</small></p>	<p>Rutherford Equipment Proudly Represents Quality Steel</p> <p>Contact Your Rutherford Salesman to Discuss Your Tank Needs</p>
--	---	---

800-241-5652

Email: sales@rutherfordequipment.com
Web: www.rutherfordequipment.com



SAVE THE DATES

APGA is once again joining with the Louisiana Propane Gas Association for our annual convention. The convention will be held at the Hotel Monteleone in New Orleans on June 4-6, 2017. We hope you will put this date on your calendar and plan to attend. Additional information will be available around March 2017.

We look forward to having a good showing from Alabama in New Orleans!



Excelsa-Flo 
Regulators with Tee Inlet

- Perfect for multi-tank installations
- Fewer Leak Points
- Industry First


bergquistinc.com | 800.448.9504

Your questions answered by the people who know propane equipment.

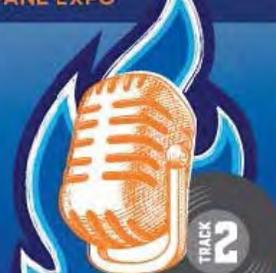


2017 NPGA SOUTHEASTERN CONVENTION & INTERNATIONAL PROPANE EXPO

NASHVILLE
LIVE!

TUNING IN
TO PROPANE'S FUTURE

APRIL 21-23, 2017

Have you heard the buzz? NPGA Southeastern Convention & International Propane Expo moved to Nashville in 2016 -- attracting more than 240 exhibiting organizations, along with over 4,100 individuals from across the U.S. and 37 foreign countries -- breaking the attendance record set 10 years earlier.

For 2017 show information, visit www.npgaexpo.com

November

24-25 APGA Office Closed

December

23 & 26 APGA Office Closed

January

2 APGA Office Closed
 12 Alabama LP Gas Board Meeting -
 Montgomery
 24 Hazardous Materials/Security
 Awareness for New Hires/CSRs -
 Prattville
 31 Hazardous Materials/Security
 Awareness for New Hires/CSRs -
 Cullman

April

4 Hazardous Materials/Security
 Awareness for New Hires/CSRs -
 Prattville
 5 Hazardous Materials/Security
 Awareness with Service Refresher -
 Prattville
 11 Hazardous Materials/Security
 Awareness for New Hires/CSRs -
 Cullman
 12 Hazardous Materials/Security
 Awareness with Bobtail Refresher -
 Cullman

advertisers

Alabama Propane Gas Association 13

Bergquist 17

Crestwood 8

CUI 19

Dealers LP Equipment 20

Gas Equipment Co. 18

Mississippi Tank Co 7

MTankCo Supply 4

National Propane Gas Foundation 2

Rutherford 16

Southeast LP Tank Inspectors 6

Tri-State Distributors 11

Heaters & Hearth



EMPIRE
Heating Systems
Empire SR Radiant &
BF Blue-Flame Heaters
AMERICAN MADE



HearthRite
A Division of Empire Comfort Systems Inc.
**HearthRite Radiant &
Blue-Flame Heaters**
IMPORTED








The White Mountain Hearth line has a full line of quality & comfort products from vent-free to vented fireplaces, cast iron stoves, and realistic log sets.



GEC
GAS EQUIPMENT CO., INC.
www.gasequipment.com

Atlanta GA
(800) 241-4155

Houston TX
(800) 334-7816

Little Rock AR
(800) 643-8222

Dallas TX
(800) 821-1829

Indianapolis IN
(800) 241-1971

Orlando FL
(800) 821-0631

Fayetteville NC
(800) 447-1625

Kansas City MO
(800) 821-5062

Richmond VA
(800) 368-4013

St. Louis MO
(800) 423-4685



Debbie Cannon

Gas Equipment Co. TV - www.youtube.com/GasEquipmentTV



CUI

One Call One Source

Your time and needs are our FIRST PRIORITY, so whether you need an updated pricing sheet, need literature after hours for a customer, or need to check dimensions in an owners manual, our goal is to provide you the resources you need at ANY TIME.

- Pricing • Literature • Owners Manuals • Check Inventory
- Place Orders On Line • Get Tracking Information
- Lose an invoice, simply print another one from our Account Management Program

Appliances

**CUI NOW CARRIES
THE COMPLETE LINE OF**

Rinnai

PRODUCTS



Quality & Reliability,
CUI brings you only the best.

- Tankless Water Heaters
- Hybrid Tank-Tankless Water Heater
- Condensing Boilers
- Direct Vent Wall Furnaces
- Vent-Free Fan Convectors

Equipment



We are a Master Distributor of Rego® Products Valves, Regulators, and Accessories.

Made In America.



See our CUI Equipment Catalog A for our Rego® products.
See all our equipment lines in Catalog A,B,C,D

Give Us A Call Today for all Your Appliances and Equipment Needs!

These are just a few of the many product lines we carry . . .



Bill Richardson
Appliances
601 955-7924



Bubba Quick
Equipment
601-741-1752



ALABAMA PROPANE GAS ASSOCIATION



173 Medical Center Drive
Prattville, AL 36066

Presorted Standard

U.S. Postage

PAID

Permit No. 456

Montgomery, AL



DEALERS LP EQUIPMENT

An Affiliate of R.E. Michel Company, LLC

WHOLESALE DISTRIBUTORS

Your **SINGLE SOURCE** for



and many, many more!
Stop in and see us!

1405 Sinnett Avenue • Dothan, Alabama 36303

800-433-8925

www.dealerslp.com | www.remichel.com