



# PROPANE EXCHANGE

August 2011 \* West Virginia Propane Gas Association \* Follow Us On Facebook & Twitter

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## DATES TO REMEMBER

Sept 14-16, 2011 Annual Meeting & Legal Symposium  
Inn at Charles Town  
Charles Town, WV

April 14-16, 2012 NPGA Southeastern  
Convention  
Atlanta, GA

June 4-6, 2012 Propane Days  
Washington, DC



[NPGA CHAIRMAN TO SPEAK ALSO](#)

## Protecting Yourself & Your Company Using the Law

### THE FALL ANNUAL MEETING HAS SO MUCH TO DO THAT IT TAKES 3 DAYS!

This year's Annual Meeting features a Legal Symposium, a presentation from NPGA's new Chairman, discussion of WVPGA's Consumer Safety Legislation along with an Evening at the Races, a Golf Outing and our first ever Propane Gas Grand Prix race.

It all take place on September 14-16, 2011 at the Inn at Charles Town, Charles Town, WV. Here is what is planned:

- **Legal Symposium** with propane defense attorney John McCoy (*see his latest article starting on page 4*).
- **Propane Updates** by NPGA Chairman Carl Hughes who took office at Propane Days.
- **Legislative Outlook** with observations by Delegate Tiffany Lawrence (D-Jefferson) and discussion of WVPGA's sponsored bill, HB 3071, the Fire Prevention & Consumer Act.
- **Dinner at the Charles Town Racetrack** with a race named after WVPGA.
- Early arrivals may enjoy **golf at Cress Creek Golf Course** or **go carting at the Propane Gas Grand Prix**.

Managers, owners and operations personnel are encouraged to attend along with spouses.

**Advance registration closes on September 2, 2011.**

Visit [wvpropanegas.org](http://wvpropanegas.org) for registration forms or to register online.



## New Calculator Shows How Much Farmers Can Save by Switching to Propane

*The Propane Education & Research Council has developed a calculator that shows farmers how much they can save when they choose irrigation engines that run on propane instead of diesel.*

*Farmers who switch to propane also curb their carbon emissions and help reduce America's dependence on foreign oil.*

*The calculator is part of the PERC Propane FEED program. Visit <http://www.agpropane.com/FEED/>*

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## Updated Fire Safety Analysis Manual Available for Downloading

### Updated Fire Safety Analysis Manual Available for Downloading

The Fire Safety Analysis Manual, written to reflect the 2011 edition of NFPA 58, is a self-conducted audit of the safety features of a propane installation. It can help you assess ways to minimize the potential for inadvertent propane releases during storage or transfer, evaluate local emergency responder capabilities, and analyze the hazards of a propane installation.

Download the manual at <http://propanesafety.com/compliance/fire-safety-analysis-manual-forms/>, and visit [www.propanesafety.com](http://www.propanesafety.com) to download updated PowerPoint presentations for use by trainers.

### West Virginia Funds Petrochemical Firm and Its NGL-Processing

Aither Chemicals received \$250,000 from the West Virginia Jobs Investment Trust to produce petrochemicals from natural gas liquids, including ethane and propane, in the Marcellus Shale.



The company says it has technology that can process NGL without building cracking plants, which can cost as much as \$2 billion to build. "Aither's approach to convert ethane into petrochemicals will enhance our capability to develop this resource, retaining and creating jobs in the state," said WVJIT Chairman Keith Burdette (source WOWK-TV Charleston)



### Leak Tests: The Dos and Don'ts

Everyone in the propane industry recognizes the importance of performing a leak test correctly. But does everyone do it properly? Is it done when code and circumstance require it?

Wonder no more as the Summer issue of **Think Safety** will delve into that subject in greater depth.

**Think Safety** is your quarterly safety newsletter provided so you can make sure that everyone in your company is knowledgeable when it comes to understanding the importance of safety in the workplace.

Archived copies of **Think Safety** may be found at [wvpropanegas.org](http://wvpropanegas.org) for downloading. Each includes a Quiz to check understanding.

# DOE Proposes to Redefine “Vented Hearth Heaters”



## *Win a ROUSH CleanTech Liquid Propane Autogas F-250 Truck*

*The Propane Centennial Celebration (PCC) Task Force will be raffling off a ROUSH CleanTech Liquid Propane Autogas F-250 truck and other prizes at the 2012 Expo in celebration of the industry's 100th anniversary.*

*Your participation in this raffle will do more than just support the commemorative projects of the PCC Task Force. The raffle is a way for all members, big and small, to become part of the celebration.*

*Additionally, this is an opportunity to educate NPGA members on how the industry is addressing the energy demands of consumers with an exceptional fuel and innovative products.*

*Visit [www.Propane100.org](http://www.Propane100.org) for more details.*

**The Department of Energy (DOE)** recently published a Notice of Proposed Rulemaking to amend its definition of “vented hearth heaters.” The proposed change would require decorative hearth products, such as gas log sets, to be included as direct heating equipment.

**DOE reasons** that any appliance that has a flame also warms the surrounding air space regardless of the method of heat transfer and, therefore, falls under the definition of direct heating equipment.



**DOE is also amending** the definition to shift the focus from their April 2010 Final Rule that limits the energy efficiency standard exclusion criteria of decorative hearth products from a maximum input capacity to 9,000 Btu/h to other factors such as including the absence of pilot lights or other continuously burning ignition sources.

**The rulemaking could have** significant impact to propane decorative hearth products that are not designed to provide direct heat but are equipped with a thermostat as they will be required to meet the same Annual Fuel Utilization Efficiency requirements found for gas hearth direct heating equipment designed specifically to warm the surrounding air.

**Further**, by including vented gas log sets in the definition change, which were not previously considered as direct heating equipment, it codifies gas log sets as vented hearth heaters, i.e., direct heating equipment, and would make them subject to future efficiency rulemakings should these proposed changes be approved by DOE.

**NPGA is evaluating** the rulemaking and also coordinating with the HPBA regarding its response to DOE. For further information, contact Bob Elliott at [relliott@npga.org](mailto:relliott@npga.org).

# Failure to Warn Defense Verdict



(Editor's Note: The author of this article, John McCoy, will be speaking at the Fall Annual Meeting in September—see page 1. Come see and hear him in person.)

**A recent California Court of Appeals decision** in a natural gas explosion lawsuit provides some persuasive analysis for defending propane warning cases.

**The case is Huitt v. Southern California Gas Co.** found at 2010 WL 3916341 (Cal. App. 5 Dist.). In this case, plaintiffs were injured while attempting to light a water heater at a construction site owned by the Porerville Unified School District. After several attempts to light the water heater, one of the plaintiffs decided to bleed out any air in the gas line in the hope of getting gas to the pilot light on the water heater. After bleeding the gas line, the plaintiffs reconnected the gas line to the heater control and again tried to light the pilot light and an explosion of gas followed.

**The plaintiffs were injured** in the explosion and subsequently filed the lawsuit that forms the basis for the appellate court decision discussed in this column. These plaintiffs filed suit against the Southern California Gas Company alleging that the natural gas that had accumulated lacked any odorant. Natural gas, like propane, has an odorant added to it so that a leak can be detected by smell.

**For purposes of the appeal**, the parties did not dispute that the natural gas supplied to the school site where the accident occurred was properly odorized at the meter, but the odorant was absorbed as it traveled through the new steel gas pipes owned and installed by the school district.

**Plaintiff Huitt testified** at trial that when he attempted to light the water heater's pilot light, he glanced at the lighting instructions on the water heater, but he did not pay attention to them since he had lit many water heaters over the years. Both plaintiffs admit that neither of them read the instructions provided by the manufacturer of the water heater when attempting to light the water heater. These instructions did not, however, provide any information about odor fade.

**Plaintiffs argued** that the gas company had a duty to warn them that new steel gas pipes absorb the odorant in the natural gas. Had they known of this fact, they claim they would not have bled the gas pipe into a confined space. The trial jury agreed with this argument and awarded each plaintiff in excess of one million dollars in compensatory damages. In addition, the jury found that the gas company acted with malice and awarded each plaintiff five million dollars in punitive damages.

(continued from preceding page)

**The gas company appealed** this trial decision claiming it did not owe the plaintiffs a duty to warn and, even if it did, plaintiffs failed to establish a causal connection between the failure to warn and their injuries.

**The court of appeals reversed** the trial court's verdict and determined that the gas company could not be found at fault for the injuries sustained by these plaintiffs. In its opinion it said, "The conduct of the Gas Company (i.e., its failure to warn) was not a substantial factor in bringing about the plaintiffs' harm unless plaintiffs would have learned of the warning and altered their conduct because of the warning."

**Here, the appellate court concluded** that there was no evidence that had the gas company issued a warning about odor fade the plaintiffs would have been aware of it. Since there was no evidence of this nature, the contention that the gas company's failure to issue a warning was a cause of the accident precluded recovery by these plaintiffs.

**The court of appeals was not convinced** that an effective method of communicating a warning in this case existed. One of the plaintiffs was a plumber. Plaintiffs maintained that as a plumber he was not at fault for failing to read the instructions on the water heater because he had worked with the same unit before and was familiar with it. However, the court responded that, "If it is acceptable for plumbers to ignore the warnings and installation manuals, what certainty is there that they will read or heed a warning about odor fade placed on the water heater?"

**The take away from this case** is that, even where a concession is made that odor fade occurred, a reasonable defense is available where warnings given to a plaintiff are ignored. Even if those warnings don't discuss odor fade.

Success to you!

*John V. McCoy is the president of McCoy Law Group, S.C. and specializes in the representation of propane companies. He can be reached at 800-599-8300 or [jmccoy@mccoylawgroup.us](mailto:jmccoy@mccoylawgroup.us).*

## A Humorous Look at Warnings

