

March 28, 2011

**TREE TRIMMING OPERATIONS REGULATION TO TAKE EFFECT
April 27, 2011**

The Department of Labor and Industry's Virginia Occupational Safety and Health (VOSH) Program and the Virginia Safety and Health Codes Board, guided by a coalition of members from Tree Care Industry Association, have adopted a final regulation for:

Tree Trimming Operations, 16 VAC 25-73

The final regulation took effect **April 27, 2011**, and the text of the final regulation, **along with free downloadable training and information materials** can be found on the Department's Web site (see: <http://www.doli.virginia.gov>). The final regulation is also being published in the Virginia Register of Regulations on March 28, 2011 (see: <http://legis.state.va.us/codecomm/register/vol27/Welcome.htm>).

Since 1993 Virginia has had 59 non-logging, tree trimming/cutting/felling fatalities (7% of all fatalities since 1993), with 47 of those occurring since 2000 (9% of all fatalities since 2000). On average over the last 10 years there are four (4) fatal tree trimming accidents that occur per year which could be prevented if the final regulation is fully complied with. For an industry of the relatively small size of the tree care industry, this is a very high number of fatal accidents.

The purpose of the new regulation is to provide comprehensive protection to private and public sector employees and employers exposed to tree trimming hazards. The final regulation is based on the American National Standard's Institute (ANSI) Z133.1-2006, Safety Requirements for Arboricultural Operations (With Modifications), for Application to Tree Trimming Operations. The regulation addresses non-logging, tree-trimming and cutting operations on residential and commercial work sites.

Background

The Tree Trimming Industry approached the Department about the possibility of adopting a comprehensive regulation addressing tree trimming in 2001. They requested a regulation based on the then ANSI Z133.1-2000. Discussions with the Department resulted in a commitment from the industry to make significant changes to the ANSI standard, which culminated in the adoption of the revised ANSI Z133.1-2006, referenced above. The Department initiated this rulemaking in 2007 with the assistance of a regulatory work group composed of private and public sector representatives. The following individuals participated in the Department's regulatory work group:

Peter Gerstenberger, Senior Advisor for Safety, Compliance & Standards
Tree Care Industry Association (TCIA)
Bryan Giere, CTSP, Northern Virginia Tree Experts, Inc.
Andrew T. Ross, CTSP, President, RTEC Treecare

Sten Compe, Big "O" Tree & Lawn Service Inc.
M. Scott Turner, CTSP, President, TrueTimber Tree Service, Inc.
David G. Marren, Vice President of Regulatory Affairs, F. A. Bartlett Tree Expert Co.
Peter Girardi, TrueTimber Tree Service, Inc.
Kristina Villaire, City of Virginia Beach
Thomas R. Scallorn, CSP, Virginia Department of Transportation

Virginia Department of Labor and Industry Commissioner Courtney Malveaux expressed the hope that the new regulation will help to eliminate deaths and serious injuries associated with tree trimming operations through the institution of safer work procedures than currently exist and raising awareness among employers and employees of the hazards associated with tree trimming activities.

Provisions in the regulation include: General safety requirements (traffic control around the jobsite, emergency procedures and readiness, personal protective equipment, fire protection); Electrical hazards (working in proximity to electrical hazards, storm work and emergency conditions, line-clearance); Safe use of vehicles and mobile equipment used in arboriculture (aerial devices, brush chippers, sprayers and related equipment, stump cutters, vehicles, log loaders, knucklebooms, cranes and related hoists, specialized units, equipment-mounted winches); Portable power hand tools (portable electric power tools, chain saws, powered pole tools and backpack power units); Hand tools and ladders (cant hooks, cant dogs, peaveys and tongs, wedges, chisels, gouges, chopping tools, ladders); Work procedures (ropes and arborist climbing equipment, pruning and trimming, cabling, rigging, tree removal, bush removal and chipping, limbing and bucking, pesticide application); and Training for employees.

Outreach and Phased Enforcement Approach

To provide employers and employees with sufficient time to familiarize themselves with the requirements of the comprehensive new Tree Trimming Operations regulation, the VOSH Program will use a phased enforcement approach:

1. VOSH Inspectors/Consultants will be provided with handouts on the new regulation that can be distributed to employers and employees in the weeks leading up to the effective date of **April 27, 2011**. A training program will be posted on the Department's Web site. Articles on the new regulation will be sent out for publication to organizations with newsletters. "Quick cards" will be available for download from the Department's Web site to briefly explain requirements of the regulation, and will be translated into Spanish as well. A VOSH Directive with enforcement procedures and interpretations will be posted on the Department's Web site.
2. For the first month after the effective date of the regulation, **April 27, 2011 to May 26, 2011**, VOSH will primarily operate in a non-enforcement mode with regard to the **new regulation**, performing outreach activities with employers and employees. However, current protections for employees will remain in place during the outreach period – see 3. below. If during an onsite inspection, violations of the **new regulation** are noted, VOSH inspectors will give one "warning" to the employer for any noted violations at the specific worksite, but not cite the violation. The VOSH inspector will verify that the violation is corrected, and note the violation

and corrective action taken in field notes. The warning and handout materials need to be provided to an on-site supervisor, foreman, or lead person. If the VOSH inspector returns the next day and finds the same violation recurring, or if the employer refuses to correct the violation, the employer can be cited under the new regulation.

3. During the first month after the effective date of the regulation, **April 27, 2011 to May 26, 2011**, employers shall **at a minimum** protect employees' safety and health by continuing to comply with existing federal identical VOSH regulations and 16VAC25-60-120 of the VOSH Administrative Regulations Manual.

4. For the second month after the effective date of the regulation, **May 27, 2011 to June 26, 2011**, VOSH will discontinue enforcement of existing federal identical regulations that are superseded by the new regulation and fully enforce the following sections of the Tree Trimming Operations regulation:

§10, Scope;
§20, Definitions;
§40, General Safety Requirements;
§50, Electrical Hazards;
§60, Safe Use of Equipment and Vehicles in Arboriculture;
§70, Portable Power Hand Tools;
§80, Hand Tools and Ladders; and
§90, Work Procedures

5. Section 30, which contains the training requirements, will not be cited during the second month after the effective date **May 27, 2011 to June 26, 2011**). This extra time period will give employers and employees time to access the training materials that are being provided.

6. All sections of the regulation will be fully enforced **starting June 27, 2011**.

Summary of the Regulation

The final regulation is based on the American National Standard's Institute (ANSI) Z133.1-2006, Safety Requirements for Arboricultural Operations (With Modifications), for Application to Tree Trimming Operations. The regulation addresses non-logging, tree-trimming and cutting operations on residential and commercial work sites.

The final regulation contains the following components:

- General safety requirements (traffic control around the jobsite, emergency procedures and readiness, personal protective equipment, fire protection);
- Electrical hazards (working in proximity to electrical hazards, storm work and emergency conditions, line-clearance);

- Safe use of vehicles and mobile equipment used in arboriculture (aerial devices, brush chippers, sprayers and related equipment, stump cutters, vehicles, log loaders, knucklebooms, cranes and related hoists, specialized units, equipment-mounted winches);
- Portable power hand tools (portable electric power tools, chain saws, powered pole tools and backpack power units);
- Hand tools and ladders (cant hooks, cant dogs, peaveys and tongs, wedges, chisels, gouges, chopping tools, ladders);
- Work procedures (ropes and arborist climbing equipment, pruning and trimming, cabling, rigging, tree removal, bush removal and chipping, limbing and bucking, pesticide application); and
- Training.

The following issues have been addressed in recommended changes to the original text for ANSI Z133.1-2006:

- Clarification is provided with regard to the following areas:
 - Line-clearance tree-trimming (see 1910.269), and the Overhead High Voltage Line Safety Act, Va. Code §§59.1-406 to -414
 - Logging operations (see 1910.266)
 - Lot clearing activities involving felling of trees (see 1910.266)
- The original ANSI text contained “should” or “may” language in some provisions, which are unenforceable from a compliance standpoint. Prescriptive language such as “shall” or “will” was added, as appropriate.
- Although the Manual of Uniform Traffic Control Devices (MUTCD) has been adopted by OSHA and VOSH, it has been found to contain a great deal of “should” or “may” language, which means those provisions are not enforceable. In its stead, the Virginia Department of Transportation (VDOT) Manual on Uniform Traffic Control Devices has been substituted as it contains fewer “shoulds” and “mays”.
- The original ANSI text addresses the issue of exposure to noise hazards. Reference is made in the final regulation to requirements contained in the VOSH Noise Standard.
- VOSH currently enforces §16VAC25-60-120 requiring that employers comply with manufacturer’s specifications and limitations applicable to the operation, training, use, installation, inspection, testing, repair and maintenance of machinery, vehicles, tools, materials and equipment. ANSI Z133.1-2006 contains provisions that address the use and operation of machinery, vehicles, tools, etc., so any conflicts with §16VAC25-60-120 have been corrected (e.g., ANSI Z133.1-2006 contains provisions allowing the use of a crane to

lift an individual in an arborist's saddle, but the ability to make such a lift would be contingent on the crane manufacturer's operating instructions).

- The original ANSI text addresses the use of personal protective equipment (PPE). Reference is made in the final regulation to requirements contained in the VOSH PPE Standards, §§1910.132 through 138.
- The original ANSI text contains provisions addressing reverse signal operation of vehicles. Reference is made in the final regulation to requirements in the VOSH Reverse Signal Operation Safety Requirements for Vehicles, Machinery and Equipment for General Industry and the Construction Industry, §16 VAC 25-97 and is incorporated by reference.
- The original ANSI text contains provisions addressing proper use of personal fall arrest systems while working from an aerial lift (permits use of either a full body harness and lanyard or a body belt and lanyard). In light of advances in PPE and current manufacturer's requirements for use of PPE in aerial lifts (full body harness and energy absorbing lanyard are normally required while working from aerial lifts), the option to allow an employee to use a body belt and lanyard in an aerial lift has been removed.
- The original ANSI text addresses the use of cranes. In light of certain requirements contained in VOSH regulations §1910.180, Crawler, Locomotive and Truck Cranes, and §1910.184, Slings, certain additions have been made (e.g. the prohibition against employees working under a suspended load of a crane).
- Certain arborist-related terms used in the original text were not defined in (e.g., "split-tail system" and "split tails"). Definitions have been added.