



VOSH PROGRAM DIRECTIVE: 14-234

ISSUED: April 26, 2011

Subject **Local Emphasis Program - Tree Trimming Operations**

Purpose This local emphasis program (LEP) replaces VOSH Directive 14-398B, Local Emphasis Program - Tree Trimming Operations Felling and Tree Delimiting, for all tree trimming operations statewide and transmits it to field personnel.

This Program Directive is an internal guideline, not a statutory or regulatory rule, and is intended to provide instructions to VOSH personnel regarding internal operation of the Virginia Occupational Safety and Health Program and is solely for the benefit of the program. This document is not subject to the Virginia Register Act or the Administrative Process Act; it does not have general application and is not being enforced as having the force of law.

Scope This Directive applies to VOSH statewide.

Reference Not applicable.

Cancellation VOSH Program Directive 14-398B (May 1, 2009).

Effective Date 26 April 2011.

Action The Director of VOSH Safety and all Regional Directors and Compliance Managers shall ensure that procedures established in this Directive are adhered to for conducting inspections in tree felling and tree delimiting operations.

Courtney M. Malveaux
Commissioner

Distribution: Commissioner of Labor and Industry
Assistant Commissioner - Programs
VOSH Directors and Managers
Legal Support & IMIS Staffs

Cooperative Programs Director & Manager
VOSH Compliance & Cooperative Programs Staffs
OSHA Regional III & Norfolk Area Offices

I. Background.

The Department of Labor and Industry's Virginia Occupational Safety and Health (VOSH) Program and the Virginia Safety and Health Codes Board have adopted a final regulation for Tree Trimming Operations, 16VAC25-73. The final regulation will take effect on **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 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

II. 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:

- A. 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.

- B. 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.
- C. 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.
- D. 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
- E. 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.
- F. All sections of the regulation will be fully enforced **starting June 27, 2011**.

III. Scope of Tree Trimming Operations Regulation, 16VAC25-73.

16VAC25-73-10.C. This regulation is intended to apply to all employers engaged in the business, trade, or performance of arboriculture, including employers engaged in tree pruning, repairing, maintaining; removing trees; cutting brush; or performing pest or soil management during tree care operations who hire one or more persons to perform such work. This regulation may require situational modifications in response to personnel emergencies and is not intended to limit the options available to emergency responders.

This regulation does not apply to nonarboricultural landscaping operations.

This regulation does not apply to line-clearance tree trimming activities as defined in 16VAC25-73-20. Such activities are covered by 16VAC25-90-1910.269.

This regulation does not apply to logging operations covered by 16VAC25-90-1910.266.

This regulation does not apply to tree removal activities where the primary objective is land clearing in preparation for construction, real estate development, rights-of-way for new utility installations or other related activities, unless directly supervised by a qualified arborist or qualified line-clearance arborist. Such activities are covered by 16VAC25-90-1910.266.

IV. Procedures.

- A. VOSH personnel statewide shall be instructed to be on the lookout for tree trimming operations on general industry and construction worksites. Every observation of these activities shall be handled as follows:
 - 1. Regardless of whether a violation is observed, whenever a CSHO sights or receives any other notice of a general industry or construction operation involving tree trimming operations (including nonformal complaints, other government referrals and reports from members of the public), the CSHO shall:
 - a. Make note of the state and condition of the work operation insofar as it is known, including any apparent serious hazards.
 - b. Note the name and address or location of the worksite and the contractor (where applicable) performing the operation, if known.
 - 2. All general industry and construction work activities in which tree trimming operations are observed shall be inspected. The CSHO shall immediately notify his supervisor that an inspection has been opened pursuant to this LEP.
 - 3. Complaints and other referrals involving general industry and construction operations where tree trimming operations are occurring shall be scheduled as unprogrammed inspections under the LEP, conducted in accordance with procedures found in the VOSH FOM. Such notices, therefore, need not be responded to with the usual letter to the employer.
- B. Although sightings will normally be those which occur during the course of routine travel during duty or nonduty hours, the discovery of these work activities may be the result of a specific search to find activities involving tree trimming operations at the discretion of the Commissioner. Verification of information received from sources other than CSHO observation, as indicated in IV.A.1. of this Directive, is also permitted under this LEP.
- C. Documentation of the events leading up to the observation or the reporting of general industry and construction operations with tree trimming operations shall be maintained by the Regional Office in case of denial of entry.
- D. When an inspection is not conducted because consent has not been obtained, a warrant shall be sought in accordance with the current procedures for handling such cases. A warrant may not be necessary, however, if the violations are in plain view. In such situations, the Regional Compliance Manager shall contact the Division of Legal Support for guidance.
- E. The scope of inspections conducted under this LEP shall normally be limited to activities involving tree trimming operations. If the inspection is to be expanded, the principles given in the VOSH FOM shall be followed.

V. Recording in IMIS.

The following guidelines shall be applied when recording inspections conducted under this LEP or other inspections where general industry and construction operations involve tree trimming operations:

Use the VOSH-1 Form in filling out an inspection report.

1. For **Inspection Type**, find item 24, and enter an “H” after the colon. (The words “**Programmed Planned**” will appear on the screen.)
2. For **Inspection Classification**, find item 25c and type a “Y” after the colon. (The words “**Local Emphasis Program**” will appear on the pop-up screen.) Then enter “**TREETRIM**” in capital letters in the left column of the pop-up screen.)