

Testimony of
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for the Tree Care Industry Association
before the
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Subcommittee on Workforce Protections
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Chairman Byrne, Ranking Member Takano and members of the subcommittee, on behalf of the 2,400 members of the Tree Care Industry Association, we thank you for the opportunity to testify today on a topic that couldn't possibly be any more important to our association and its members – worker safety.

My name is Peter Gerstenberger, and I am the Senior Advisor for Safety, Standards and Compliance for the Tree Care Industry Association – also known as TCIA. I am responsible for the development of TCIA's safety and compliance training programs, and I am the association's primary contact with company owners and their employees on safety/compliance matters. I also act as TCIA's liaison with OSHA and similar state entities and regularly work with these agencies in an effort to improve safety throughout our industry.

Worker safety has been one of the central tenets of TCIA since its inception more than 70 years ago. For good reason, tree care is a high-hazard industry. In fact, using estimates of our industry's size based on our members' self-reporting as well as our own market research, we calculate that 80 or so fatalities suffered annually in our industry gives us a fatality rate that places us among the top 10, and likely among the top five most hazardous occupations in the country.

TCIA's effort to promote safety is multipronged. We regularly engage our members on safety through education and training. As part of this effort, we direct the only credentialing program for safety professionals within our industry, produce a wealth of bilingual safety training programs, and offer employers a model illness and injury prevention program.

We also helped establish and actively participate in the ANSI Z133 Committee, which develops the only consensus safety standard for tree care operations.¹ The Z133 Committee was first formed in 1969, pre-dating OSHA. TCIA was the original Secretariat of the Z133 Committee in 1969, and remains very active in that standard-making process.

Our efforts have not been limited to our membership and the Z133 Committee, however. We also consistently engage regulators to push for policy changes that can improve safety for our members' employees as well as the multitude of small employers outside our membership. In this regard, we have been fortunate to collaborate with federal OSHA as well as several State Plan OSAs in the past, and the result has been a tangible safety benefit to the industry in each instance.

With respect to federal OSHA, we had an OSHA Alliance for six years and have engaged the agency on multiple occasions with respect to rules and guidance that impact our industry. This collaboration has resulted in appropriate regulations with respect to our members work around power lines and a variety of basic guidance documents, including fact sheets and quick cards, detailing the hazards of

¹ The American National Standard's Institute (ANSI) Z133.1-2006, Safety Requirements for Arboricultural Operations. ANSI Z133 was first published in 1972. It has been revised in 1979, 1982, 1988, 1994, 2000, 2006, 2013, and 2017.

tree work. The most recent example of our collaboration was on federal OSHA's Solutions for Tree Care Hazards Info Sheet, which was produced this year (see graphic).

While we appreciate these efforts by OSHA to work with us to promote safety in the industry, we are frustrated by the agency's failure to issue a safety standard specifically for arborists. This subcommittee requested OSHA consider doing so in August of 1998 - almost 20 years ago (see attached letter), and in 2006, TCIA formally petitioned OSHA to promulgate a standard. The petition received bipartisan and bicameral support, including support of prior chairs and ranking members of this subcommittee as well as chair and ranking members of the full committee (see attached letters).



OSHA took initial steps toward issuing a standard during the Bush administration and again during the Obama administration. Changes in personnel and priorities, however, have resulted in delays. The rule is slotted for long-term action on the administration's most recent regulatory agenda.

In the meantime, by OSHA's own admission, the agency continues to regulate our industry through a patchwork of standards intended for other industries that fail to address many of the core safety issues facing our workers. (see Unified Regulatory Agenda here <https://www.reginfo.gov/public/do/eAgendaViewRule?publd=201710&RIN=1218-AD04> stating, "There is no OSHA standard for tree care operations; the agency currently applies a patchwork of standards to address the serious hazards in this industry"). This approach to compliance and enforcement fails to provide any clear guidance to employers, workers, and OSHA officers as to what are the most effective safety measures for the industry.

OSHA's mission is to assure safe and healthful working conditions for working men and women. TCIA's mission is to improve workplace safety and reduce accidents in our profession. The question is how OSHA and TCIA can be most effective in what is essentially a shared mission. From our perspective, federal OSHA could be most effective if it would adopt a rule specific to our industry.

Here is why:

A regulation will inform and empower every OSHA Certified Safety and Health Official to identify hazards and control measures unique to tree work and to intervene to prevent accidents.

An arborist-specific regulation will increase OSHA's effectiveness by guiding field compliance personnel to proactively look for profound hazards unique to tree care during their inspections, thus preventing accidents and saving lives.

TCIA reviewed all OSHA inspections of tree service companies² over the past two years. We compared cases where inspections were conducted: 1) in the absence of any accident or complaint, 2) after a formal complaint had been lodged, and 3) in the aftermath of an accident.

² Search criteria were: establishment search for "% tree" between 10/1/15 and 9/30/17; closed cases in which citations were issued. Only cases citing federal rules were selected.

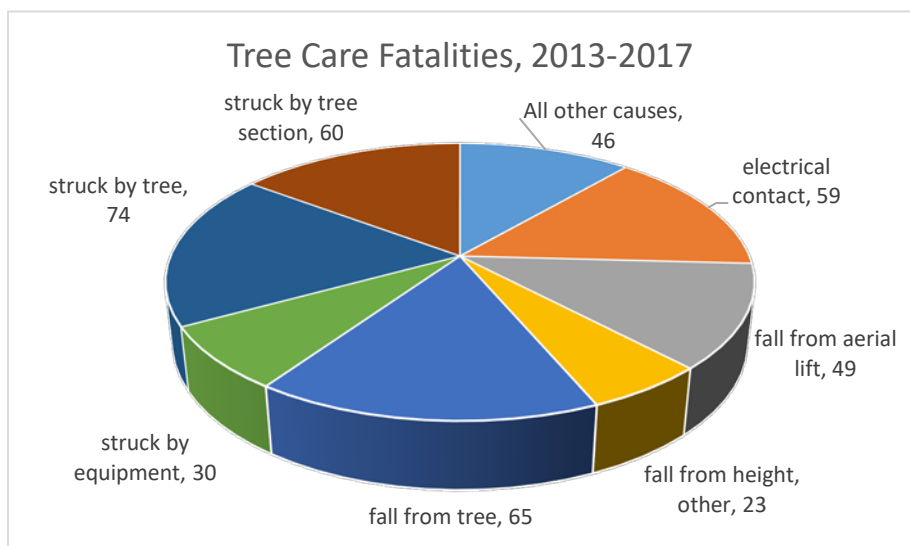
- Group 1 consisted of 20 inspections and 35 citations. OSHA went for low-hanging fruit and cited general OSHA safety standards. Fifty percent of the citations were Personal Protective Equipment (PPE) violations, and another 30 percent were for failure to wear fall protection in an aerial lift. There was one general duty citation.
- In the complaint cases (Group 2; 8 inspections, 21 cites), citations clearly focused on the substance of the complaint. They were: PPE – 25 percent; lockout/tag-out – 25 percent; and an assortment of unsafe conditions like failure to inspect crane, unsafe operation of crane, aerial lift fall protection, and electrical hazard violations. Again, there was one general duty citation.
- When there was a smoking gun (i.e., an accident resulting in either a referral or an employer-reported fatality or injury) (Group 3; 37 inspections, 67 cites), there was a dramatic shift. Among post-accident citations, two-thirds addressed the direct cause of the incident with some degree of specificity, and 30 percent were general duty citations, which means the compliance personnel likely had to research in the tree care industry’s consensus safety standards, ANSI Z133, how to identify the accident causation with greater specificity. The very generic OSHA standards used in 80 percent of the no-accident inspections in Groups 1 and 2 were used in less than one-third of the post-accident cases.

Using the same search criteria and time period, we also reviewed inspections of tree service companies by State Plan OSHA in Maryland and Virginia. Both of these states have industry-specific rules for arborist safety. In those two states, arborist-specific unsafe work practices were cited in 37 percent of the no-accident inspections and 50 percent of the post-accident cases.

To summarize, in random and planned inspections where

federal OSHA rules are cited, field compliance personnel tend to look at workplace conditions in our industry very superficially. When there has been an accident, field compliance officers are in many cases forced to research more extensively in order to characterize what the employer should have known or done differently to avoid the accident.

By contrast, with an industry-specific rule in place as is the case with Maryland and Virginia, field compliance officers are more empowered to readily spot unsafe conditions unique to arborists’ work and make corrections. Regardless of whose data we look at, the three greatest causes of serious and fatal accidents (see pie chart, above) remain the same.³ The data suggests that the focus for new regulatory language should be on falls from trees, struck by trees, and struck by tree limbs. Existing standards already address electrical contacts and falls from aerial lifts to some extent, but more



³ Source material and data is TCIA’s own information gathering on tree care fatalities, which includes all reports to OSHA as well as media accounts of accidents.

specificity could be provided in a new standard. Chipper accidents comprise another relatively narrow topic worth addressing. Finally, a new rule must address arborists' use of cranes. This is a subject unto itself that merits lengthy discussion, but we will summarize by saying that cranes used by arborists are saving lives virtually on a daily basis and that the standard OSHA currently uses to regulate crane use in general industry is now over 40 years old.

A regulation communicated through outreach activities and enforcement will promote ubiquity of safe practices in the industry

TCIA has about 2,400 member companies in the U.S., but there are likely between 12,000 and 15,000 tree care employers who would be affected by an OSHA rule. In terms of safety and accidents, TCIA has to look at the tree care profession in its totality. The employers most in need of OSHA's and TCIA's guidance are, ironically, the ones least likely to have any interaction with our respective organizations. The real challenge for TCIA and OSHA is not coming up with the training or guidance needed; the challenge is getting these employers to pick up this sort of information, take it to heart, and use it.

In our view, an OSHA arborist-specific standard would be a significant instrument for change on this. Ideally, it will bring forth a clear standard published by the federal government, accessible to all, that comes with the force of law.

Thank you again for this opportunity to comment on a very important subject for our profession.