

Testimony of
Peter Gerstenberger
Senior Advisor for Safety, Standards & Compliance
for the Tree Care Industry Association
before the
House Education and the Workforce Committee
Subcommittee on Workforce Protections
February 27, 2018

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.

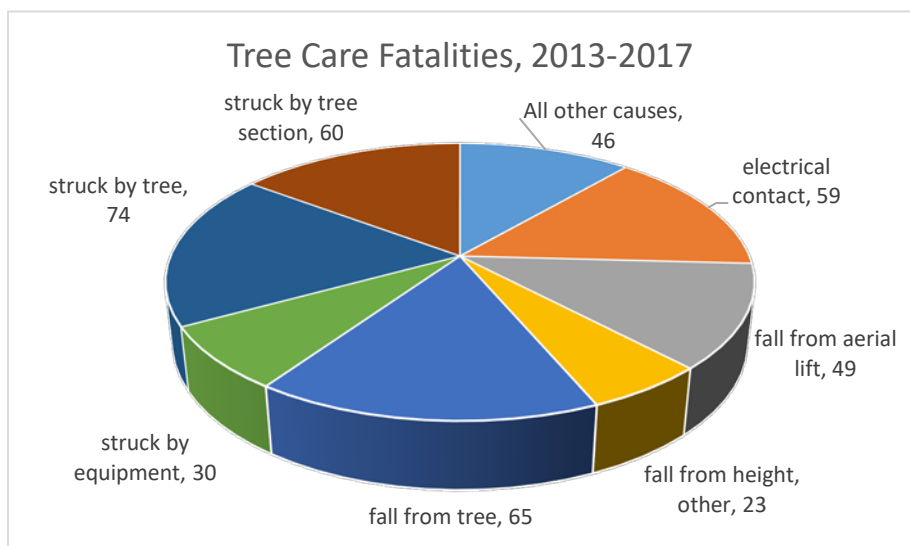
- Group 1 consisted of 20 inspections and 35 citations. OSHA went for low-hanging fruit and cited general OSHA safety standards. Fifty percent of the citations were Personal Protective Equipment (PPE) violations, and another 30 percent were for failure to wear fall protection in an aerial lift. There 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.

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COMMITTEE ON EDUCATION AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
2181 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

August 31, 1998

Mr. Charles N. Jeffress
Assistant Secretary for Occupational Safety and Health
U.S. Department of Labor
Occupational Safety and Health Administration
200 Constitution Avenue, N.W.
Washington, DC 20210

Dear Assistant Secretary Jeffress:

I am writing concerning the Occupational Safety and Health Administration's actions in recent months with regard to the tree care industry and, on its behalf, the National Arborist Association.

I was first contacted on this matter several months ago. At the time OSHA had decided that the logging industry standard, 29 C.F.R. 1910.266, applied to the tree care industry even though (1) the rulemaking record on the logging standard has no reference or indication that the standard would apply outside of logging, (2) the logging and tree care industries are historically and commercially separate, (3) the tree care industry did not participate in the rulemaking proceeding on the logging standard, and (4) OSHA had previously assured the tree care industry that it was not covered by the logging standard.

In response to OSHA's decision in March 1998 to apply the logging standard to the tree care industry, the National Arborist Association threatened legal action against OSHA. OSHA's actions were also one of the concerns and reasons that the Workforce Protections Subcommittee and the Committee on Education and the Workforce passed H.R. 2873, which would specifically require OSHA to identify, at the time a standard is promulgated, which industries will be covered.

On June 22, 1998, OSHA "withdrew" its March 1998 position that the logging standard applied to tree care operations. OSHA also promised to work with the National Arborist Association on applicable standards to tree care operations. I understand that the National

Mr. Charles N. Jeffress
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Arborist Association has encouraged those discussions and has proposed that the current ANSI standard for tree care operations be adopted by OSHA as the safety standard for this industry.

However, in recent weeks OSHA has apparently gone back on both its June 22 decision and undercut the "good faith" of discussions with the industry by citing at least two tree care operations for violations of the logging standard.

I urge you to review this matter personally to clarify OSHA's position that the logging standard does not apply to tree care operations, and to work with the industry to adopt a standard, such as the ANSI standard, which is specific to tree care operations. Obviously, both logging and tree care can be hazardous work, and safety precautions and practices are necessary in both. But those precautions and practices are not necessarily the same in the two operations. The tree care industry should be allowed input on a standard that makes sense and improves safety in that industry, rather than being subjected to the logging standard on which it had little if any practical input and which was not designed or written for tree care operations.

Sincerely,



CASS BALLENGER
Chairman

CB:GLV:kaw

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October 16, 2007

VIA FACSIMILE: 202-693-6111

The Honorable Elaine L. Chao
 Secretary of Labor
 U.S. Department of Labor
 200 Constitution Avenue, NW
 Room S-2018
 Washington, DC 20210

Dear Secretary Chao:

We write to express our strong support for the May 10, 2006 petition submitted by the Tree Care Industry Association (TCIA) to the Occupational Safety and Health Administration (OSHA) requesting that the Agency promulgate a safety standard specific to tree care operations (arboriculture). We urge the Department to immediately initiate the rulemaking process and take an important step towards increasing safety for more than 300,000 dedicated workers in this important, but hazardous, industry.

Professional arborists maintain our urban forests by preserving valuable trees in cities and towns throughout the United States and protecting mature landscapes and green spaces. Their quick response in the aftermath of a storm to clear trees, help restore power and open our roads is critically important to the people and businesses in the affected areas. Tree care workers also maintain vegetation around power lines to minimize future power disruptions and work with property owners and municipalities to create defensible spaces around structures to mitigate the spread of wildfires in vulnerable areas.

Unfortunately, tree care work is by its very nature one of the most hazardous occupations. Independent research ranks the industry fifth most dangerous in the United States in recent years, based on the frequency of fatal accidents.¹ By one source's estimate, in 2005 the industry suffered 174 fatalities; more than three per week.

OSHA's Strategic Management Plan for fiscal 2003-08 lists tree care among seven industries targeted for significant reductions in illnesses and injuries. Yet, currently, OSHA guidance and enforcement for the industry are based on a patchwork of outdated, extraneous, inapplicable and conflicting regulations and standards. While administratively inefficient and ineffective for OSHA, the status quo is also dangerous for arborists, who are often confused as to which standard applies on any given day or situation. This is particularly difficult for the small businesses that make up a majority of the industry.²

¹ Ball, John and Shane Vosberg. "Tree Worker Safety: Which Accidents Occur in our Industry? Arborist News, April 2004. International Society of Arboriculture.

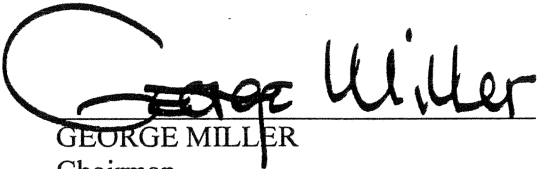
² TCIA indicates 98% of its members meet the Small Business Administration's definition of small business.

To: The Honorable Elaine Chao, Page 2

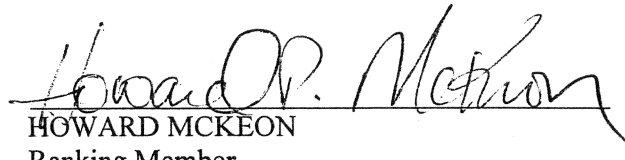
The May 10, 2006 petition requests OSHA promulgate a clear, industry-specific regulation based on the existing consensus tree care safety standard, the ANSI Z133.1. We understand that TCIA representatives have met with OSHA several times and urged the Agency to initiate a negotiated rulemaking, which brings the various stakeholders together to assist with the rulemaking process.

We urge the Department to seize this opportunity. It is clear that the justification as well as the means are there for OSHA to work cooperatively with the affected parties to bring greater safety to these dedicated workers.

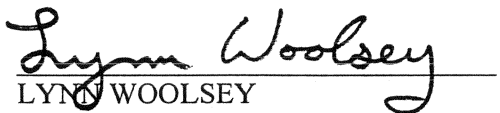
Sincerely,


GEORGE MILLER

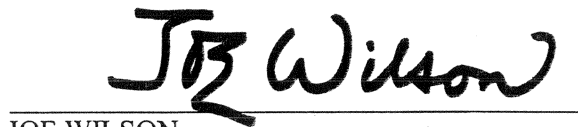
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Ranking Member
Subcommittee on Workforce Protections


CAROL SHEA-PORTER

Member
Committee on Education and Labor

Cc:

The Honorable Edwin G. Foulke
Assistant Secretary of Labor
Occupational Safety and Health Administration
200 Constitution Ave., NW
Washington, DC 20210

United States Senate

WASHINGTON, DC 20510

September 27, 2007

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U.S. Department of Labor
200 Constitution Avenue, NW
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Washington, DC 20210

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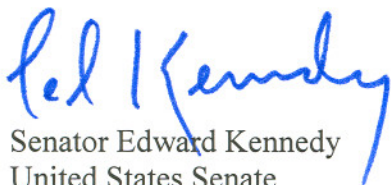
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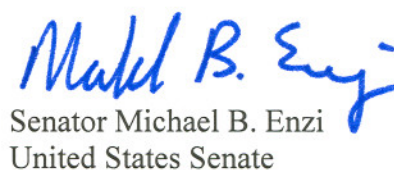
The May 10, 2006 petition references the existing consensus tree care safety standard, the ANSI Z133.1. This standard was developed with the substantial participation and agreement of stakeholders. As such, it presents a good starting point from which to begin a negotiated rulemaking process. We understand that TCIA representatives have met with OSHA several times and urged the Agency to initiate just such a rulemaking process.

We urge the Department to seize this opportunity. It is clear that the justification as well as the means are there for OSHA to work cooperatively with the affected parties to bring greater safety to these dedicated workers.

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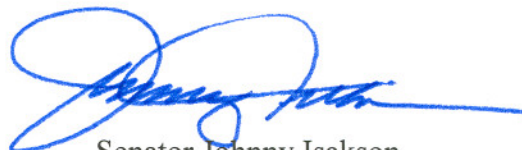
Senator Edward Kennedy
United States Senate



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United States Senate



Senator Patty Murray
United States Senate



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United States Senate

Cc:

The Honorable Edwin G. Foulke
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