



July 2020 *Issue*

VA Loggers Association

News & Updates

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See Page 7



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TO OUR MEMBERS

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IMPORTANT 2020 DATES

JULY 4 Independence Day
JULY 25 ALC Summer Board meeting via Zoom
AUG 20-23 VLA Annual Conference **POSTPONED DUE TO COVID-19**
AUG 22 VLA Board of Directors Meeting
SEP 7 Labor Day
SEP 24-26 ALC 26th Annual Membership Meeting

OCT 9-10 Richmond Logging Expo
OCT 14-16 FRA Annual Meeting (Logger of the Year Award) **POSTPONED UNTIL 2021**

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VLA SEEKS TAX RELIEF ON FOREST HARVESTING EQUIPMENT

Localities can now exempt all personal property and tools & machinery taxes on forest harvesting and silvicultural equipment on July 1, 2020.

The General Assembly gave their unanimous approval in the House of Delegates and Virginia Senate. Governor Northam signed HB 1021 into law on March 10, 2020 to become effective July 1.

VLA had full support of many associations and friends including Virginia Agribusiness Council, Virginia Association of Counties, Virginia Farm Bureau, Virginia Forestry Association and Virginia Forest Products Association.

Once Governor Northam signed our bill into law, VLA went to work on the next phase to educate localities and ask them to adopt the new law into their ordinance and budget.

Letters have been sent to every county administrator and chair of the respective board of supervisors. See letter below!

VLA is now following up with each locality!

VLA Vice President Chad Shelton reported that his Pittsylvania County Board of Supervisors unanimously approved the adoption of this new state law into their ordinance and budget effective July 1, 2020. Loggers with harvesting equipment in Pittsylvania county will no longer have to pay personal property or tools & machinery taxes on their chipper cutters, loaders, skidders or other off-road equipment from the second half of 2020 and beyond.

Chad recently told us that he “started this process in 2008 by talking with his county officials on the board, his Commissioner of Revenue and local Virginia Farm Bureau members.”

Chad is beaming now but readily admits it took a lot of time to educate others. He spent time talking about forest harvesting and the fact that his equipment was used only to harvest trees.

He built good relationships with everyone and admits that “the former Pittsylvania County Commissioner of Revenue was very helpful.”

Chad just reminded me too that our legislation patron “Delegate Leslie Adams was from Pittsylvania County and a great asset.”

Chad advises everyone to contact their elected members of their Board of Supervisors and begin sharing our stories. “Eliminating these taxes on our forest harvesting equipment is just the right thing to do. We just have to be patient and work with counties who are dealing with some strained budgets too.”

We are already hearing good things from other counties. Please contact your elected Board of Supervisors and ask for their support.

Letter to all County Administrators and Board of Supervisor Chairs

Virginia Loggers Association (VLA) received the unanimous support from the Virginia Farm Bureau and VACO and the unanimous approval from the 2020 General Assembly in both the House of Delegates and Senate, and Governor Northam’s approval to give local jurisdictions the option to exempt all personal property and tools & machinery tax on forest harvesting and silvicultural equipment. This recent legislative authority now places equipment used for forest harvesting and silvicultural activities in the same statute which exempts agricultural equipment. See state statutes (58.1-3505 -58.1-3506) attached for your easy reference. VLA is happy to answer questions and help you execute forestry and silvicultural equipment exemptions into your local ordinance.

Like agricultural equipment, silvicultural (forest harvesting) equipment is designed for the sole purpose of harvesting trees. The equipment was listed under the commercial heavy construction equipment category but is completely unrelated to the construction industry. The Code of Virginia §3.2-6400 already defines agricultural products to include silviculture along with livestock, aquaculture, poultry, horticultural, floricultural, viticulture and other crops.

These businesses provide all forest raw materials to mills which create paper and wood products used in every household. Forest harvesting is like farming in every way whose equipment is exempted across the Commonwealth of Virginia.

The truth is that loggers, like farmers, are hard working families working in one of the world’s most dangerous occupations. Logging businesses are owned and operated by families who often pass their business down to the next generation. Like farming, forest harvesting is subject to the weather which can shut down production. The tree crop is like any other except it takes longer to grow. Daily market volatility causes unpredictable production and threatens our sustainability.

Thanks in advance for updating your local ordinance and exempting all forest harvesting and silvicultural equipment from either personal property and tools and machinery tax. The new law becomes effective on July 1, 2020. Business owners in your community will soon be in contact with you about their accounts.



VANCE WRIGHT — PRESIDENT OF THE VIRGINIA LOGGERS ASSOCIATION

Vance Wright has served as President of the Virginia Loggers Association since January 1, 2015. He has unselfishly led the association to meet its mission of serving as the Voice for Virginia loggers. Vance will hand over the President's Gavel at the end of 2020 to a new President.

Vance has been a strong advocate for our industry at the local, state and federal levels. In 2018, Vance was selected as the National Logger Activist of the Year from the entire United States.

The Virginia Loggers Association proudly submitted Vance Wright as its choice for the 2018 American Loggers Association National Logger Activist of the Year. Vance is an outstanding representative for the logging, forest products industry, family values and civic responsibility. Vance is a business and community leader who really understands all of the elements necessary for success in business and life and what it takes to be a leader in the forest products industry. Vance was born and raised in Blackridge, VA where he continues to raise the 6th generation on his family farm. Vance has been married for 22 years to his wonderful wife, Laurie, and they have two children.

Early mornings and late evenings are typical for Vance...but it is not all work. Although Vance is a dedicated and serious - minded logger, he is equally dedicated to living an exemplary personal and private life - style! Vance is a man who knows the true values in life. You see, he would

rather be known as a man who loves his family, community, and God, rather than be known as a Logger.

Vance is the sixth generation to live on the family farm in Blackridge, VA, a small farming community in eastern Mecklenburg County. While growing up on his family's working cattle, soybean and tree farm, Vance grew up understanding the important relationship between people and the land. These early experiences taught him well about working forests and farms and responsible stewardship and ownership.

Vance graduated from Virginia Tech in Industrial Forest Operations and returned to work for the family business, overseeing and managing two timber harvesting operations.

Vance has achieved successes in his community, as well as, the state and national level. Vance is active in all phases of the business and political arenas to promote a positive professional image of the forest harvesting industry and advance pro-business policies and practices to sustain forestry.

Although Vance will turn over the President's Gavel at the end of 2020, we wanted our members and guest readers to know more about this remarkable young man. VLA is grateful to Vance for his guidance and leadership over the last six years. We are very happy to know you will remain active in the whole industry and help guide us into an unknown future.

**Postponed to keep everyone safe
and well until August 5-8, 2021.**



August 20 - 23, 2020



Virginia Loggers Association Annual Conference
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EXECUTIVE DIRECTOR'S CORNER

Ron Jenkins

Creating our Own 2020 Vision

When I first began thinking about 2020 in mid - 2019, it seemed so perfect to think about the upcoming year around the concept of an eye exam and perfect vision. We talked a lot and built discussion around this concept for the year ahead. We tried to capture a clever cliché' of words for our 2020 annual conference around the idea. Finally, I even believed we would uncover some great vision to pass on to members. Oh yeah and everybody would be happy and prosperous! How quickly ideas lose their shine!

The year 2020 has turned out to be anything but clear vision. Instead of knowing exactly where we are headed the future got murkier than ever.

We thought the COVID 19 virus and pandemic was big enough to keep us on our toes and uncertain about the future. Afterall, we could find a way to manage ourselves and avoid the virus. We would be on guard about the signs like headaches, upper respiratory issues, and so forth. We could keep our distance from others, wear our face masks and wash our hands a lot more.

The year 2020 did begin with a lot of uncertainty that could wreck all our plans. No one alive today had lived through a pandemic like this. The last flu pandemic occurred in 1918. The seriousness of COVID-19 eventually grabbed a good hold and we started looking ahead with a lot of uncertainty.

We didn't stop planning ahead for our conference and other events. The SHARP Logger trainings took on a different format. Zoom webinars were now the best way to view these trainings and earn some continuing educational credits.

There was a brief time in the beginning when the discussion about essential and non-essential services was the big topic. We're thankful that Virginia leaders made the call early to include forest products on the essential services list. The President declared a national emergency and states followed this order with guidelines for businesses including waivers and relief from permits and registrations in the transportation area. We could also haul 90,000 pounds of forest products on interstate highways with our Virginia overweight permit. Business owners and drivers also had waivers in several other areas too. This was clarity in a dismal time!

The waiver worked out pretty well. We've only heard of one issue with enforcement not recognizing the waiver on the interstate. The most challenging item for business owners was the registration of new trucks. Getting new trucks registered, titled and license plates issued was frustrating for several members.

VLA is fortunate to have contacts in State Government always willing to help, answer questions and rectify bad enforcement. Keep this mind and don't hesitate to contact VLA. We also have good contacts with FMCSA which really helps because the two agencies dove-tail their regulations and changes.

At 11:59 PM, June 14, 2020 forest products was removed from the essential services list. Waivers went away and it was back to normal or was it?

The new normal around most of us isn't normal like before. We now find ourselves searching for that new normal. I have to admit that living in a rural area helped to keep a sense of normalcy. Trees, grass, plants and animals didn't change at all. Logging is much the same in the forests, but not so outside of them.

Shopping for essentials is still a challenge. Many of us still find the bath tissue aisle shelves completely empty. Well I guess people finally realized that bath tissue really is essential and that forest products were essential after all!

I thought COVID-19 was looking like the biggest challenge to us but that was wrong too. We're witnessing an uprising across the US and the globe over the death of black men by white policeman. This isn't happening just once but often and it's got everyone wondering about how to fix our society. The pandemic will bring some changes in our health care and behavior too, but we're expecting changes to our justice system.

I think a lot about our industry and how it might fair in the future. It's hard not to think about it because I regularly receive calls from loggers who tell me their production is down like they have never seen in their long careers. They are looking for help such as more markets, tax relief or any available help through this rough time.

There are many positives! Healthier people will be positive. Intense efforts to bring jobs back to people in America would be good for many reasons. We will need dependable products and services and people will be employed to deliver them. These are all positives.

Our industry is an essential service. Our forest landowners, loggers and mills are essential to provide this essential service. So, we should feel good about our industry. A new commitment to make more American made wood products and others too would be great so I am not giving up!

What about that idea of the perfect vision I started this article off with in the beginning? There are so many things that could go wrong which cloud the future.

We think that each of us will have to look inside ourselves and make decisions about the future. I think each of us have to define our own vision. I originally thought that bringing in speakers with lots of expertise in areas would remove the confusion and noise and help us see with a clear vision. Now I think we need more than just great speakers.

We must each take steps of action and commitment based on

Continued on page 9

our internal vision of the world and our futures. We need the faith and belief in ourselves that we can make it through these times and do even more.

Entering the new unknown requires a strong belief in ourselves. We have all faced new things, each being an unknown the first time we faced them. This new normal might look scary but we must believe that we will get through it and be better. So here are few ideas that we have learned through our life experiences and others.

Ideas:

- Believe in yourself and the power who made you
- Be good to your parents, spouse and children
- Treat others as you would want to be treated
- Keep learning
- Don't let yourself hold you back
- Take some risks
- Dream big and bold
- Lose you fear
- Trust in God

Use your VLA association as a true VOICE of your industry and make us stronger, better and sustainable!

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NEWS AND UPDATES FROM VIRGINIA TECH FOREST OPERATIONS EXTENSION

Scott Barrett, PhD,
Extension Specialist,
Forest Operations

Coordinator for the VA
SHARP Logger Program

VA Tech Department of
Forest Resources &
Environmental
Conservation

MORE TRAININGS MOVE ONLINE

For several years the SHARP Logger Program has offered online continuing education (CE) trainings so loggers have the option of earning some of their CE credits online. However, we still require attendance “in person” at the required SHARP Logger Update class. I still believe that the best option for trainings is to be face to face with the instructors that are presenting the material. However, COVID-19 kind of disrupted a whole lot of plans. Just like everyone else, we had to make changes and cancel our planned trainings, and are still not certain when we will be able to offer face to face trainings again. Rather than sit back and say we can’t do anything, we moved on to “Plan B”.

We realized that there were a lot of SHARP Loggers that needed the required SHARP Logger Update but we could not offer classes in person. So, the SHARP Logger program offered our first required update in an online webinar format on May 15th. We used Zoom as our online platform and I have to admit I think it went pretty well. We had 107 attendees and in general most of the feedback we got from the attendees was positive. A webinar format is obviously not the same as offering a training in person, but given the situation we had, it was the best we could do. There were some benefits to this format. We were able to bring in more participants than we have had for an in-person update class and they were from all over Virginia and even a few from neighboring states.

The SHARP Logger Program also partnered with VLA to offer a “Legal Issues: COVID-19 Edition” on May 19th. This one featured staff from the Setliff Law firm and had 56 attendees including participants from North and South Carolina. We also partnered with the VLA to offer a Logging Safety webinar on June 24th. This was originally scheduled as an in-person class but we converted it to an online format. Using Zoom as an online training platform has allowed us to continue offering some SHARP logger trainings even during this time when we can’t gather together for in-person classes. We are all looking forward to the time when we can gather together again for trainings, meetings, and many other events. However, until that time, we plan to continue using the online training options to allow SHARP loggers the opportunity to get the training that they need. We have decided that for the remainder of 2020 we will allow SHARP Loggers to complete their required SHARP Logger Update class online using a recorded version of the training from May 15th. This will be posted soon along with instructions for completing the class on the SHARP Logger website. This will help out some SHARP Loggers, but we realize that not everyone has access to good internet service which is required for the online trainings. We plan to schedule in-person classes as soon as possible to allow everyone the opportunity to attend trainings. For better or worse, we are adapting to the new technology of providing trainings online and hosting classes as webinars. While this format will be helpful for some we realize not everyone will be able to take advantage of it so we look forward to planning in-person classes as soon as it is possible.



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ACTION ALERT: TIME TO GET INVOLVED

Daniel J. Dructor – Executive Vice President

As more financial impacts are being felt around the country as both a direct and indirect result of the COVID-19 pandemic, the members of the American Loggers Council have coalesced around a proposal to present to members of Congress that would provide financial assistance directly to both professional timber harvesting businesses and log trucking businesses.

While the US House of Representatives have already passed their version of the next round of stimulus funding, the US Senate has put a hold on future funding until they have the opportunity to see some of the results of those appropriations that have already gone out.



Many logging and trucking businesses have been able to apply and receive Payroll Protection Program funding as well as bridge loans that are being made available through the Small Business Administration. Another program being offered is the Business and Industry Cares Act program being administered through USDA Rural Development which allows rural businesses to receive working capital loans from lenders at negotiated rates with financial institutions.

What the leadership of the American Loggers Council is proposing is a low interest loan to both logging and log hauling businesses for operating expenses that is based on lost production or revenue due to lost markets, curtailed production and other events related to the COVID-19 pandemic that would not duplicate those benefits received through the Payroll Protection Program.

We have a very short time timeframe in which to try and push this program into the next stimulus package, and with your help, we believe that we can make this happen. If we are successful, this will be the first time that both logging businesses and log hauling businesses have become available for low interest and perhaps forgivable loans that would ensure that contractors can have the opportunity to remain in business over the next 12 months and to adjust their operations as markets begin to stabilize.

This effort is a great example of what we can accomplish when we are all working together towards a common goal, but we still need your help. **We need to contact as many members of Congress as possible and we have simplified that process for you by providing a link that will only require that you enter your name and mailing address and hitting the “send” button to get our request to your U.S Congressman or Congresswoman as well as the two U.S. Senators who are representing your State in Washington, DC. Here is the link: <https://www.amloggers.com/news/support-the-logger-relief-package>**

Please take the 5 minutes required to have your voice heard in Washington. This is truly a joint effort between the 34 States that the American Loggers Council represents and the individual logger members of each of those States taking the opportunity to keep our industry strong. We are, “Loggers Working for Loggers.”

The American Loggers Council is a 501(c)(6) not for profit trade association representing professional timber harvesters and log haulers across the United States. For more information visit www.amloggers.com.

VLA Needs Your Help!

Please respond with the following information.

The information will be used only as aggregate numbers when VLA discusses issues and opportunities with elected representatives.

Type of Business (logging, mill, equipment, banking, insurance, list others) _____

Number of Employees _____

Thank you!

FEDERAL COVID-19 RELIEF PACKAGE FOR LOGGING AND TRUCKING COMPANIES DESERVES OUR SUPPORT!

Virginia logging and forest trucking contractors have joined a national effort seeking federal relief for their industry at a time when COVID-19 and its economic impacts are threatening the survival of the companies depending on the entire U.S. forest economy

Here in Virginia, many loggers reported seeing problems with markets in early to mid - 2019. Weekly and daily quotas were placed on loggers' production and some finished up their deliveries to plants by Wednesday morning. Virginia's economy was introduced to COVID-19 in January and February. Mills began backing up on raw material and finished products even more as export markets started to slow down and loggers were impacted even further. A short and warm winter added insult to injury for most loggers as they hoped for the best but prepared for the worst. Yet, with typical tenacity, our state's family logging and forest trucking businesses persevered as they were deemed essential and felt that a growing demand for wood fiber during the pandemic could lift them back to health.

This optimism quickly turned to despair as the twin shocks of the full impact of the COVID-19 pandemic spread in Virginia and across the United States. The loss of markets at Verso and the imposition of production quotas elsewhere left big market vacuum. Everything just got worse as COVID-19 uncertainties loomed and caused more havoc and uncertainty in the market - place.

How bad is it? A recent survey of the membership of the Virginia Loggers Association, the state's trade association for loggers and forest truckers, found that an estimated 90% percent of respondents have been negatively impacted by the pandemic.

Impacts include revenue losses, layoffs, loss of clients, reduced productivity, and inability to plan for the future. All respondents reported a loss of markets, production quotas and pricing pressures. Some respondents reported experiencing most of these ill effects. Companies responding to the survey represented a cross section of Virginia loggers. Additional data provided by public sources on forest harvesting showed that harvest notifications were down by 26% from March 10 through May 10, 2020 when compared to the same time for the previous four years.

Based on the latest economic IMPLAN (2018) for commercial logging from the Weldon Cooper Center for Public Service,

the most recent gauge of the size of the sector (an imputed number) is \$357,173,980 per annum. A 26% reduction in timber harvesting means a nearly \$93 million direct economic loss for Virginia's economy and hundreds of jobs eliminated. Clearly, a lot is on the line.

Virginia's story is very consistent with other timber producing states across the country where mills have reduced their consumption of wood during the COVID-19 pandemic as a result of reduced or lost markets. Combined with high operating costs and low returns on investments, this collapse in wood demand threatens the survival of logging and log hauling businesses and means that capacity throughout the United States could be deeply reduced by this crisis.

In order to sustain the supply chain, the 34 member associations of the national American Loggers Council (ALC), which includes the VLA, have coalesced around a proposal that would provide direct federal assistance to both professional timber harvesting businesses and log trucking businesses.

Under this proposal, funding would be made available for contractors that harvested/delivered wood to various mills across the country in 2019 in the form of low interest loans and possibly forgivable loans to assist them with their ability to continue business operations for the next twelve months while their markets attempt to recover, much like the assistance already given to producers of agricultural and seafood commodities.

The VLA led early efforts to seek this proposed relief package and has urged Virginia's Congressional delegation for their support. If successful, it would be the first direct aid to the logging and forest trucking industry of the pandemic and perhaps one of the only times in U.S. history that Congress has helped loggers and truckers directly.

Virginia loggers and forest truckers have seen what has been done to help their sisters and brothers in the farming and fishing industries, even before the impact on those industries had been realized, and now they hope that their representatives in Washington D.C. will do the same for them. Loggers and truckers are only essential to our economy if they are in business to do the job.

By Ron Jenkins, Executive Director, Virginia Loggers Association

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY



– Logging Sector- Hazard of Chain Shot in Logging–



The use of high speed chain cutting systems on mechanized harvesting and processing machines can expose the operators and others to a potentially lethal hazard of chain shot.

What is Chain Shot?

Chain shot is the high velocity separation and ejection of a piece or pieces of saw chain from the end of a broken loop of saw chain in mechanized timber harvesting. Chain shot typically originates near the drive end of the cutting system, but can also originate from the guide bar tip area. In either case, it poses the same risk of serious injury or death to the machine operator, ground personnel and bystanders.

Saw chain pieces usually travel in the cutting plane of the guide bar, but can deviate to either side. Although the shot cone (an Oregon® term) reflects the most likely chain shot path, deflection can occur; substantially expanding where saw chain pieces may travel.

The likelihood of a chain shot accident can be minimized through site planning, machine safeguarding, proper saw chain and guide bar maintenance, and safe machine operation.



Site Planning:

- During the pre-work safety meeting, include a discussion on chain shot.
- Review the methods workers are to use to minimize chain shot and establish chain shot zones.
- Arrange the location and activities of workers so no one is in a chain shot zone.

Continued on page 15

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Machine Safeguarding:

- Make sure the chain catcher, chain guard, and shields are securely fastened.
- If you have a processor or cutter that doesn't have a chain catcher or chain guard, ask the equipment manufacturer if upgrades are available and install them if they are.
- Close all snow holes on harvester and processor heads to reduce the openings the chain shot can escape through.
- When replacing machinery windows, check with the manufacturer to determine the appropriate thickness of polycarbonate glass that provides the most protection for your machine operator.

NOTE: Always check with the machine manufacturer to ensure that modifications are to their specifications and won't create other hazards or invalidate operator protection certification.

Saw Chain and Guide Bar Maintenance:

- Instruct operators on how to properly inspect the cutting systems they use and report unsafe conditions.
- Inspect saw chains prior to use and frequently for broken and cracked parts, excessive wear and stretch, and poor or loose riveting.
- Remove damaged and dull saw chains from service for proper maintenance or disposal.
- Follow a proper change out schedule to remove worn-out saw chains from service before they break.
- Always repair and sharpen saw chains to the manufacturer's specifications.
- Store or soak new and newly sharpened saw chains in lubricant prior to use.
- Adjust and maintain saw chain tension and speed to the manufacturer's specifications.
- Inspect drive sprockets and guide bar grooves for damage and excessive wear that can adversely affect the safe performance and service life of saw chains.
- Turn the guide bar over regularly to equalize wear.
- Replace drive sprockets and guide bars when needed.
- Clean guide bar grooves and oil port holes regularly.
- **Follow the manufacturer's specifications** for type and amount of lubricant on saw chains and guide bars.



For more information on a Chain Shot Fatality Case File Investigation and the lessons learned, you can visit NIOSH website at:

<https://www.cdc.gov/niosh/face/stateface/wa/10WA048.html>

Sources: [Osha.oregon.gov/SA](https://www.osha-slc.org) Forestry online/[cdc.gov/niosh](https://www.cdc.gov/niosh)

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VIRGINIA DEPARTMENT OF FORESTRY

THE VIRGINIA DEPARTMENT OF FORESTRY REMAINS HARD AT WORK DURING THE COVID-19 CRISIS

It has long been a trite bit of conventional wisdom that most foresters chose the field because they had visions of spending a lot of time in the woods, alone and communing with nature. If that is a common goal, it has worked out better for some than others; but, the ability to work in solitude and semi-isolation makes the current pandemic and the contact restrictions associated with it easier to weather for many of the folks at the Virginia Department of Forestry (VDOF).

Most of the staff at VDOF has been able to continue to serve our stakeholders in a manner similar to pre-pandemic days. We continue to fight the fires (thankfully less now that fire season is over), ensure that water quality is protected on all silvicultural operations, finalize cost-share projects, manage state forests, plant and tend next year's seedling crop, pay bills, crunch data, and the many other things it takes to run an agency and serve the citizens of the Commonwealth.

We, like everyone, have had to adapt our operations as a result of COVID-19. To ensure the safety of VDOF staff, our customers, stakeholders, and the general public, we have made some changes, including:

- Cancelling all in-person meetings of more than a few people and adopting conference calls and video conferencing as a tool for daily use.
- Limiting travel to one person per vehicle or wearing masks when this is not feasible.
- Postponing our participation in prescribed burning activities.
- Following all CDC guidelines for our offices and interactions with the public and each other.
- Creating a resource for landowners considering selling timber as a result of financial crisis, and reminding them to seek out reputable professionals, like yourselves.

But, even with these restrictions, we have been able to meet the important needs of our customers and the Commonwealth.

As in past state declared emergencies for incidents like hurricanes and floods, VDOF plays an important part in crisis management for the entire Commonwealth.

VDOF is one of several Virginia Emergency Support Team (VEST) agencies which are called into action to support local and statewide



VDOF Mechanic Paul Morse at the HQ Shop.

emergencies of all descriptions. The VDOF's unique mix of emergency response skills and equipment, its close ties with local counties, and a general can-do attitude under any circumstances have presented the agency with many unique opportunities over the years. The current response to the COVID-19 issue is no different.

The VDOF has provided up to 17 personnel at a time to coordinate the planning, command and control operations of the Virginia Department of Emergency Management (VDEM), working through the Commonwealth of Virginia's State Emergency Operations Center. This uniquely skilled group of individuals, known as an Incident Management Team (IMT), is experienced in performing this exact same task on a national level, with previous experience managing the response to wildfires and many other natural disasters.



Chris Thomsen backfiring on a wildfire in Lee and Scott County.

Continued on page 18

In addition to the state level IMT role, VDOF is also helping the National Guard to warehouse and distribute critical personal protective equipment (PPE) to health districts and medical care facilities throughout the Commonwealth, and remains available to provide support to VDEM's Regional Managers across the state, providing both personnel and equipment to cover the emergency needs of localities, when requested.

In the midst of the novel coronavirus response, the Commonwealth continues to face challenges that are made more complex by the COVID-19 crisis response. VDEM has asked VDOF staff member Steve Counts to assist VDEM in planning and preparing for the upcoming hurricane season, which is predicted to be busier than normal. Steve is uniquely positioned to help lead the planning process, as he is highly qualified at all levels of incident management and planning. He is a nationally qualified Type 1 Incident Safety Officer (the highest level of national qualification), a nationally qualified Type 2 Operations Section Chief, as well as being very strong in operational planning. Steve also has practical

hurricane recovery experience, most recently serving as the Incident Commander (IC) on VDOF's IMT deployment to Texas following Hurricane Harvey.

As we navigate through Phase One of the recovery process and prepare to move into Phase Two, we look forward to being able to safely provide our services in a more traditional manner. In order to ensure we can accomplish that, the agency has issued all our staff face-masks and continues to keep our folks supplied with hand sanitizer and guidance on how to work and interact safely.


Everyone at VDOF appreciates everything that loggers and their partners are doing to keep Virginia running during this current crisis. Please continue to work safely and protect yourselves, your families, your employees, and your fellow Virginians. Rest assured, VDOF will continue to do our part to get Virginia back to some normalcy after the crisis passes.




David Thompkins at his Home Office during COVID-19.



David Thompkins on a Timber Harvest Inspection in Bedford County.





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No Workers' Compensation Awarded to Truck Driver Injured in Motor Vehicle Accident After Failing to Wear Seat Belt

Everyone knows to wear a seat belt. Some cars even have sticker warnings, while other car systems flash warning signals when the car starts, but how many drivers adhere to these warnings? Who is at fault if someone doesn't wear a seat belt and gets hurt? Is it the employer? Is it the employee?

The Virginia Workers' Compensation Act (the "Act") is the governing statute that controls how and if a claimant can recover from a workplace related injury in Virginia. Generally, an employee is covered under the Act if the employer employs three or more employees in the workplace. In order to obtain benefits, an employee must prove that: (1) the injury was caused by an accident; (2) that the injury was sustained in the course of the employment; and (3) that the injury arose out of the employment. To recover in Virginia, the injured employee must file a claim with the Virginia Workers' Compensation Commission ("VWCC") within two (2) years of the injury. The injured employee must also provide written notice to its employer within thirty (30) days of the accident.

The Act is twofold in that it benefits both employers and employees. For example, the Act protects employers from lawsuits by employees who suffer work related injuries during the course of their employment; likewise, a negligent employee who is injured on the job can recover even if he or she was at fault (subject to certain exceptions discussed below).

In past years, workers' compensation claims have tended to be "claimant friendly" with there only being a limited number of defenses available to employers. An employer who intends to defend against a workers' compensation claim must present certain defenses to bar his employee from recovery. For instance, an employee will not recover where the employer proves that the employee's injury or death was due to willful misconduct, intoxication, willful failure to use a safety appliance, willful violation of an employer's reasonable rule that the employee was aware of, or the use of a non-prescribed controlled drug.

The willful misconduct defense is the most heavily relied upon defense by employers. To successfully raise a willful misconduct defense, the employer must establish that the: (1) safety rule or other duty was reasonable, (2) that the rule was known to the employee, (3) that the rule was for the employee's benefit, and (4) that the employee intentionally undertook the forbidden act. Additionally, the employer must prove that the misconduct caused the employee's injury. If an employer proves that his employee willfully violated a safety rule,

the employee is barred from compensation under the Act. For instance, if an employee is injured while driving an employer's vehicle, insurance companies inquire into whether the employee was wearing a seat belt at the time of the accident. If an employee is not wearing a seat belt, the employer could raise both a violation of a safety rule and violation of a statute defense. These defenses have been successful and unsuccessful within a set of similar facts and a recent opinion (below) signals a change in the thinking with respect to rule violation and statute violation workers' compensation cases.

In a recent March 2020 opinion, the Virginia Court of Appeals addressed the issue of whether an employee's failure to wear a seatbelt constituted a willful violation such that prevented recovery under the Act. *Mizelle v. Holiday Ice, Inc.*, No. 1115-19-1, 2020 Va. App. LEXIS 68 (Ct. App. Mar. 10, 2020). In *Mizelle*, claimant worked as a truck driver delivering ice for his employer. His employer instructed him to deliver a "party trailer" of ice to Smithfield "quickly." Claimant did not put on his seatbelt. While delivering ice, claimant collided with a dump truck and was thrown from the vehicle. The court held that claimant's failure to wear a seatbelt was willful because claimant knew and understood that he was supposed to wear a seatbelt when driving and knew the seat belt law applied to him. Additionally, by stating that he intended to put the seatbelt on at some point prior to driving the truck demonstrated that he was violating the seat belt law purposefully, not accidentally, and with deliberate intent. The court found that claimant willfully failed to wear his seat belt and therefore willfully failed to comply with the seat belt law. Claimant was barred from recovering under the Act.

In an earlier decision, the employee, a truck driver, was injured when he was involved in a motor vehicle accident. *Blackwell v. Puryear Trucking*, VWC No. 188-28-78 (Nov. 6, 1998). The employee was not wearing his seat belt. In this case, the Commission awarded benefits to the employee because the employee testified he "simply forgot" to put his seat belt back on after a brief stop. The Commission found that the claimant inadvertently failed to comply with the rule requiring use of a seat belt and that there was no willful intention not to wear the seat belt. Thus, the claim was not barred by willful misconduct.

In reconciling these cases we see the court focusing on the claimant's intent. In *Mizelle*, it's important to recognize that the employee did not testify that he "forgot" to put on his seat belt, but rather he testified that he "intended" to put on his seat belt at some point during the ride. The employee's intent was essential to the court's decision. If the employee would have forgotten to put on the seatbelt like in *Blackwell*, the case may have been decided differently.

Continued on page 20

In a 1995 opinion, claimant was injured in a motor vehicle accident while working as a tow truck driver for his employer. *Old v. Huckaby*, No. 2013-94-1, 1995 Va. App. LEXIS 563, at *1 (Ct. App. July 5, 1995). The employee was not wearing a seat belt at the time of the accident. The court held that the evidence failed to prove that the employee would not have suffered his injury had he been wearing a seat belt. The court held that employee's failure to have his seat belt fastened at the time of the accident was, at most, negligence and that no evidence proved that he intentionally failed to fasten his seat belt. Considering the broader impact, it seems like the *Mizelle* case may stand as a shining light for seat belt cases in the future. If an employer proves that his employee purposefully failed to put on a seat belt, the employer will most likely prevail on a willful misconduct defense and defeat the employee's workers' compensation claim.

There are certain steps employers can take to protect themselves against workers' compensation claims. These steps can help establish that the safety rule was known to the employee and the employee intentionally undertook the act.

1. Conduct safety trainings on a regular basis and keep track of employee attendance.
2. Ensure each employee has signed an employee handbook that covers safety rules and requirements to show that the rules were known to employees.
3. Always provide safety equipment where applicable.
4. Know your employees. Ensure signs, employee handbooks, and safety instructions are printed in the language that your employees read and speak.
5. If a safety rule is violated, do not condone the behavior because the employee could rebut the defense by showing that the rule was not kept alive by enforcement or that there was a valid reason for his inability to obey the rule.

If you have questions about this article or about the Virginia Workers' Compensation Act in general, please feel free to contact Cindy S. Foster (cfoster@setliffllaw.com) at 804-377-1275 or Steve Setliff (ssetliff@setliffllaw.com) at 804-377-1261.

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FMCSA Hours of Service: Times They Are A-Changing

In the past two months, we have seen three major modifications to the Federal Carrier Safety Administration ("FMCSA") Hours of Service Rules – two temporary and one permanent.

On May 14, 2020, the FMCSA published a final rule to update the hours of service rules.

The updates seek to improve safety and increase flexibility. Key changes include:

1. A modification such that a 30-minute break must be taken after 8 hours of consecutive driving, but it can be satisfied by a driver using on-duty, not driving status, rather than off-duty status
2. A modification to the sleeper-berth exception to allow drivers to split the required 10 hours off duty time into an 8/2 split or a 7/3 split, with neither period counting against the driver's 14-hour driving window.
3. A modification such that the adverse driving conditions exception maximum is extended by two hours.
4. A modification which changes the short-haul exception available to certain commercial drivers by lengthening maximum on-duty periods from 12 to 14 hours and extending the distance limit from 100 air miles to 150 air miles.

The FMCSA seeks to emphasize the final, modified rule does not increase overall driving time and will be implemented 120 days after publication in the Federal Register. That specific date is currently unknown. The final rule can be accessed here: <https://www.fmcsa.dot.gov/regulations/hours-service/hours-service-drivers-final-rule>.

The existing hours of service rules can be found at 49 C.F.R. §395 et seq, or here: <https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&ty=HTML&h=L&mc=true&=PART&n=pt49.5.395>. The existing rules were additionally modified by the FMCSA Hours of Service National Emergency Declaration, which was then expanded as recently as May 13, 2020 because of COVID-19. The extension, which is effective through June 14, 2020, provides emergency relief from certain provisions of Parts 390 through 399 of the FMCSRs (which includes the Part 395 hours of service) to motor carriers and drivers "providing direct assistance in support of relief efforts related to the COVID-19 national emergency."

Continued on page 21

It is important to recognize that the extension only applies to those providing direct assistance in support of emergency relief efforts related to the transport of 1) medical supplies and equipment related to the testing, diagnosis and treatment of COVID-19; (2) supplies and equipment necessary for community safety, sanitation, and prevention of community transmission of COVID-19 such as masks, gloves, hand sanitizer, soap and disinfectants; (3) food, paper products and other groceries for emergency restocking of distribution centers or stores; (4) immediate precursor raw materials -- such as paper, plastic or alcohol -- that are required and to be used for the manufacture of items in categories (1), (2) or (3); (5) fuel; (6) liquefied gases to be used in refrigeration or cooling systems; (7) equipment, supplies and persons necessary to establish and manage temporary housing, quarantine, and isolation facilities related to COVID-19; (8) persons designated by Federal, State or local authorities for medical, isolation, or quarantine purposes; and (9) persons necessary to provide other medical or emergency services, the supply of which may be affected by the COVID-19 response. See <https://www.fmcsa.dot.gov/emergency/extension->

expanded-emergency-declaration- no-2020-002-under-49-cfr-ss-39025. The extension reads the same as the initial Emergency Declaration such that the hour of service rules do not apply to those engaged in the direct emergency relief efforts. This creates some practical, logistical questions regarding how logs should be kept, what breaks are required, how the ELD should be handled, etc. Essentially, when engaged in the very specific duties detailed above, any obligations by the FMCSRs typically required are suspended, except for some notable requirements specifically delineated in the extended Declaration. Upon return to normal operations, the Declaration states a commercial vehicle driver must take 10 hours off. If a carrier or driver is involved in the direct relief efforts, precautions should be taken to ensure proper compliance, particular in the event of any motor vehicle accident.



For questions or comments regarding FMCSA compliance, including the new hours of service modifications, please feel free to contact Amy Tracy (atracy@setliffllaw.com) at 804-377-1264 or Steve Setliff (ssetliff@setliffllaw.com) at 804-377-1261.

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A “nuclear verdict” is generally and most simplistically defined as a jury award in excess of \$10 million. These types of verdicts are most often associated with trucking cases and are typically a combination award of punitive and compensatory damages. It is no secret nuclear verdicts have been on the rise, coast to coast. This trend, particularly when combined with the recent soft market, has resulted in an average insurance premium renewal rate increase of approximately 20 percent or more. The increased premium is not the only change to insurance for motor carriers.

According to research, umbrella and excess options are shifting. For instance, the industry has historically seen multiple excess options with large levels of coverage. Now, there are fewer excess insurers or reinsurers (for captives) willing to accept excess risks. Where a carrier could once obtain, say, \$50 million in coverage, only \$25 million may be available. Likewise, it may be more difficult to find excess coverage to attach to lower levels of primary coverage – the next layer may not attach to anything less than \$5 million, where historically it may have attached at \$1-2 million. Excess and umbrella coverages are more expensive, meaning the cost in premiums to obtain \$10 million of coverage now may be what it once was to secure double that amount of coverage in years past. Additionally, where a motor carrier may have once had one or two layers of excess or umbrella coverage above their primary layer, the current trend is now multiple layers.

How much coverage is enough? There is no magic answer, other than to ask another question – how much risk can the company afford to take? The Federal Motor Carrier Safety Regulations only require \$750,000 minimum levels of financial responsibility for for-hire, interstate or foreign commerce carriers with a gross vehicle weight rating of 10,001 or more pounds. This amount increases depending on the commodity transported. States typically echo the federal rules. Virginia similarly requires a minimum of \$750,000. Va. Code Ann. §46.2-2143.1. A company must weigh how much it can afford to pay in premiums with how much risk it can manage by comparing the amount of coverage with the possibility of a big-time verdict. Factors to consider may include five years’ worth of loss experience and loss-run data, revenues, fleet size, and industry benchmarks. It is also important to consider a company’s safety and hiring practices. One way to mitigate risks is by controlling those factors that are controllable, such as maintaining a quality and consistent safety program and hiring quality drivers. How is this done? Primarily by abiding by federal regulations and being mindful that frequency in claims breeds severity. More specifically, develop a good process to screen quality hires, such as reviewing PSP data, obtaining employment verifications, utilizing the Clearinghouse, conducting a thorough road test, and having a strong training and orientation program. Many insurance companies have sample hiring guidelines carriers can request for insight to assist with this process. JJ Keller and the FMCSA website additionally have good resources to help.

Another impact of the shifting insurance structure is the multiple layers of excess or umbrella coverage. Currently, claims coming under this structure are not yet meeting their statutes of limitation and are not yet hitting their stride in the litigation forum. It will be interesting to see how this new structure affects the legal defense industry and impacts the decision to settle versus try cases. At the moment, generally, if a claim or lawsuit has the propensity to be valued at or above a certain level of insurance, the other levels of insurance must be notified and have the opportunity (subject to the terms of the particular policy) to get involved in the defense of the claim, as well as any settlement or trial. Often the upper levels of coverage hire defense counsel to at least monitor what is happening in the case development. In some states, the lower levels of insurance can settle and be indemnified by the upper levels, who can try the case if they decide not to be involved in the settlement. Sometimes, a global settlement is effected, requiring all layers to get on board. Most states have a version of the Unfair Claims Settlement Practices Act which requires a carrier to resolve a case within policy limits if a demand has been made within those limits and there is a possibility of an excess verdict. It will be interesting to see how these aspects of insurance law will shake out where many more insurance players will be present.

For questions or comments regarding motor carrier coverage or defense questions, please contact Amy Tracy (atracy@setliffllaw.com) at 804-377-1264 or Steve Setliff (ssetliff@setliffllaw.com) at 804-377-1261.

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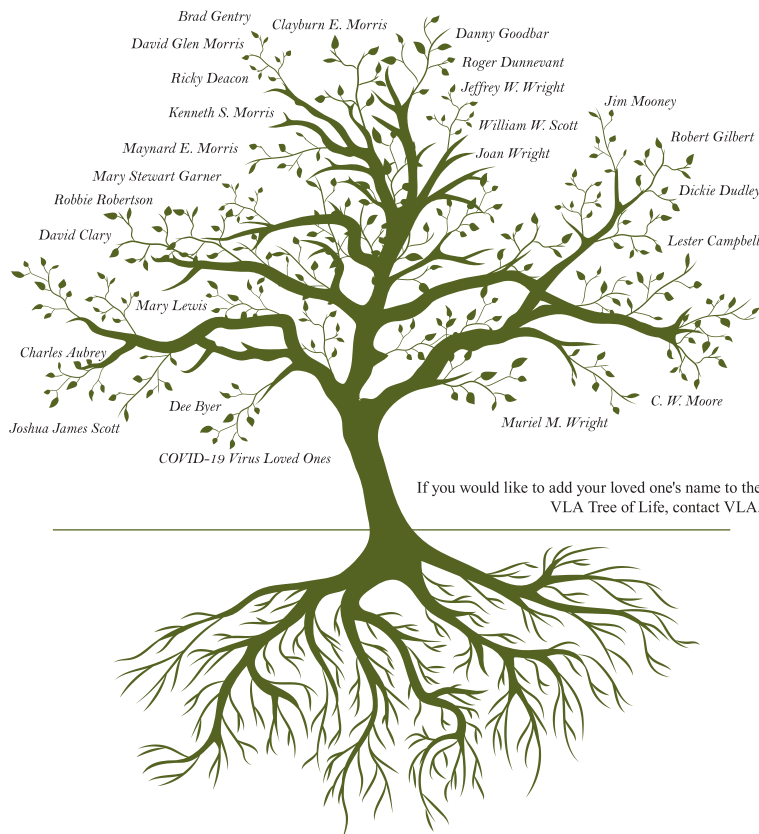
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Ten Steps All Workplaces Can Take to Reduce Risk of Exposure to Coronavirus

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- 1** Encourage workers to stay home if sick.
- 2** Encourage respiratory etiquette, including covering coughs and sneezes.
- 3** Provide a place to wash hands or alcohol-based hand rubs containing at least 60% alcohol.
- 4** Limit worksite access to only essential workers, if possible.
- 5** Establish flexible worksites (e.g., telecommuting) and flexible work hours (e.g., staggered shifts), if feasible.
- 6** Discourage workers from using other workers' phones, desks, or other work tools and equipment.
- 7** Regularly clean and disinfect surfaces, equipment, and other elements of the work environment.
- 8** Use Environmental Protection Agency (EPA)-approved cleaning chemicals with label claims against the coronavirus.
- 9** Follow the manufacturer's instructions for use of all cleaning and disinfection products.
- 10** Encourage workers to report any safety and health concerns.

For more information, visit www.osha.gov/coronavirus or call 1-800-321-OSHA (6742).



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TECHNICAL ASSESSMENT OF THERMALLY-MODIFIED WOOD: PART I



FOREST PRODUCTS AND MARKETS VIRGINIA WOOD PRODUCTS UPDATE

Henry Quesada

Associate Professor
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Department of
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If you have any
questions about this
topic, please contact
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Drs. Briand Bond and Henry Quesada from the Department of Sustainable Biomaterials at Virginia Tech are researching thermally modified (TM) lumber with the collaboration of three U.S producers of thermally modified hardwoods. One objective is to evaluate the mechanical properties of thermally modified wood. This research is part of a larger project funded by the U.S. Forest Service, Wood Innovations Grant program. The mechanical properties studied were; hardness, bending, the equilibrium of moisture content, and volumetric shrinkage. In this article, we covered results on the equilibrium moisture content and the changes in volumetric shrinkage.

TM wood is an innovative product that has brought attention to the U.S. lumber market because of its potential in a large variety of exterior and interior uses including; musical instruments, guns stocks, decking applications, outdoor and indoor furniture, siding, roofing, door and window frames, and flooring. Thermally modified wood treatment consists of heating wood at high temperatures and pressure, resulting in the degradation of the cell walls' chemical components. A limitation of TM wood is the lack of market acceptance and products due to insufficient information regarding the performance of commercially available products.

In this project, TM poplar, ash, and red maple were studied. It was found that TM wood is up to 85% more dimensionally stable than untreated wood as shown in Figure 1. This property is critical for applications such as flooring and architectural moulding that require a high degree of dimensional stability in the application. The second critical result shows that TM wood is very resistant

Fig 1 Shrinkage (%)

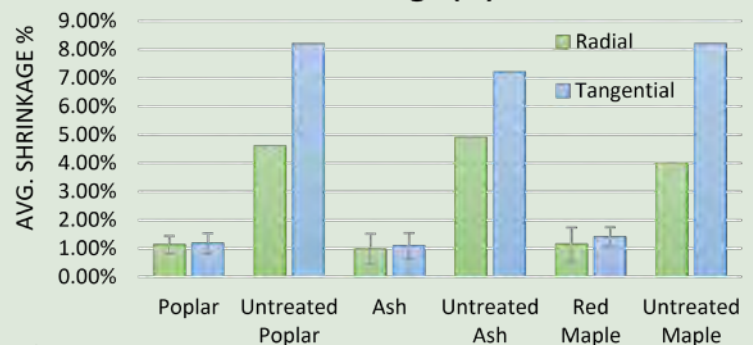
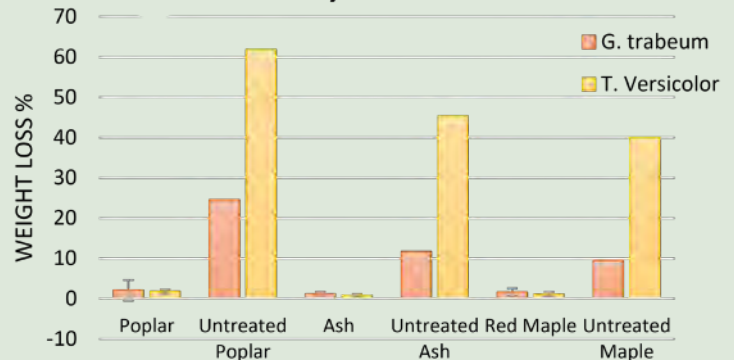


Fig 2 Decay Resistance



to decay as shown in Figure 2. TM treated poplar, ash, and red maple had minimum weight losses after being exposed to two different types of fungi when compared to untreated wood. This is due to the lower levels of moisture content and sugars left in the treated wood. This implies that TM wood could be used in applications that require increased resistance to decay.

These two results show that thermal modification can help to increase the performance of certain wood species in regards to stability and resistance to decay. In the second part, we will present results related to the current market perceptions of TM wood in the US.

If you have any questions about this topic, please contact Dr. Henry Quesada at quesada@vt.edu.

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