



Boiler and Pressure Vessel Safety Board

The Appeal Process and Instruction

1. Introduction

This document details the appeal process for *The Saskatchewan Boiler and Pressure Vessel Act, 1999*.

Definitions Used:

1. “Board” means the Boiler and Pressure Vessel Safety Board established pursuant to Section 44 of the Act.
2. “Act” means *The Saskatchewan Boiler and Pressure Vessel Act, 1999*.
3. “Chief Inspector” means the Chief Inspector appointed pursuant to Section 4 of The Act, and includes acting Chief Inspector.
4. “Regulations” means the Saskatchewan Boiler and Pressure Vessel Regulations.
5. “Minister” means the member of the Executive Council for whom the time being the administration of The Act is assigned.
6. “Chairperson” means the member of the Board that the Lieutenant Governor in Council designates as chairperson in accordance with Section 46 of The Act.
7. “Panel” means three or more members of the Board appointed by the Chairperson pursuant to Section 48 of The Act, to conduct a hearing of an appeal.
8. “Quorum” means three members of a panel at a sitting pursuant to Section 48 (3) of The Act.
9. “Technical Safety Authority of Saskatchewan” (TSASK) is a not for profit organization that is established through Provincial statute for the delivery of public safety programs. TSASK operates at arms length from the provincial government.

2. Powers of the Board

The powers of the Board are established in The Act as follows in accordance with:

- (i) Section 44: The Boiler and Pressure Vessel Safety Board is established.
- (ii) Section 47: The Board shall:
 - (a) hear appeals commenced pursuant to Part IX of the Act
 - (b) advise the Minister on matters concerning The Act and Regulations
 - (c) perform any other duties that the Minister may direct
- (iii) Section 48: The Chairperson may appoint three or more Board members to constitute a panel to conduct the hearing of an appeal.
- (iv) Section 50: The Board shall determine appeals de novo. The Board determines procedures by which an appeal is to be conducted. The Chief Inspector is entitled to participate in an appeal hearing. The Board is not bound by the rules of law concerning evidence. For the purposes of conducting an appeal, the Board has the powers of a commissioner pursuant to *The Public Inquiries Act*.
- (v) Section 51: The Board may confirm, revoke or vary the decision of the Chief Inspector.
- (vi) Section 52: The decision of the Board is final and there shall be no further appeal.

3. Decisions that may be Appealed to the Board

An applicant may appeal the decision of the Chief Inspector pursuant to several sections of The Act. These are:

- (1) Section 9: Cancellation or suspension of licenses
- (2) Section 13: Registration, refusal to register or deregister a design
- (3) Section 30: Cancellation or suspension of a certificate of authorization
- (4) Section 27: Decisions pursuant to Part IV of The Act, which relate to inspections required; issuance of certificates; orders to correct; order related to welding defects; sealing boilers, pressure vessels and/or plant; and cancellation/suspensions of inspection certificates
- (5) Section 43: Refusals, suspensions or cancellations of a certificate of qualifications

4. Procedure for Launching & Processing an Appeal

A person who intends to appeal a decision of the Chief Inspector to the Board shall:

- (1) Within 30 days after the date of the decision by the Chief Inspector, serve notice of appeal on the Board which must be:
- (a) in writing
 - (b) signed by the person launching the appeal and dated
 - (c) concise and contain a statement of the matter being appealed setting out the grounds for appeal
 - (d) accompanied with a copy of the order or written decision of the Chief Inspector being appealed
 - (e) detailed and include what section of the Act the appeal is being made in accordance with
 - (f) complete and contain the current return address and contact numbers (home, work and cell) for the person launching the appeal

The notice of appeal shall be delivered to both as listed below:

1. The Chairperson of the Board, to the address below:

Chairperson
Boiler and Pressure Vessel Safety Board
c/o Ministry of Corrections, Public Safety and Policing
1200 – 1874 Scarth Street
REGINA SK S4P 4B3

2. The Chief Inspector, to the address below:

Chief Inspector
Technical Safety Authority of Saskatchewan
Room 330, 1855 Victoria Avenue
REGINA SK S4P 3T2

- (2) Within 21 days after the service of notice of an appeal, the Chairperson shall appoint a panel pursuant to Section 48 of The Act to hear the appeal and set a date, place and time for hearing the appeal.

The Chairperson of the Board will lead the appeal panel, or may designate a Board member to chair the appeal hearing.

The Chairperson may also request the person launching an appeal to furnish additional information or particulars of an appeal.

The Chairperson may request any person with an interest in the appeal to provide written information or particulars concerning the matter being appealed.

The Chairperson shall provide confirmation to the person launching an appeal, that their application was received, and whether information received is sufficient to constitute an appeal.

The Chairperson shall ensure:

- (1) The appeal being launched is within the 30 days after the date of the decision by the Chief Inspector in accordance with Section 49 of The Act.
- (2) The appeal being requested is one against the decision of the Chief Inspector.
- (3) The appeal being requested is within the Board's ability to hear in accordance with the Powers of the Board according to The Act.
- (4) The appeal contains the information as listed in Section 4 (1) of this document.

Appeal requests that do not satisfy the above criteria are returned to the person launching the appeal, and are considered rejected. The person launching an appeal may resubmit a request for an appeal within the 30 day time limit pursuant to The Act, to address the deficiencies in the first application.

A person who launches an appeal, for which the Chairperson rejects, shall have at least five (5) working days to resubmit and shall be considered within the 30 day time limit pursuant to Section 49 of The Act.

A rejected appeal may be discussed at a regular Board meeting and the Board may provide non-binding recommendations to the Chief Inspector with respect to the matter. The Chairperson shall determine if the matter is referred for discussion at the next scheduled Board meeting.

- (3) The panel of Board members appointed by the Chairperson shall:
 1. Provide to the person launching the appeal at least five(5) working days notice of the appeal hearing.
 2. The date, place, and time of the hearing, shall be provided at least five (5) working days prior to the appeal hearing, to the person launching the appeal.
 3. Panel members appointed by the Chairperson shall disclose any known or perceived conflict of interest which may affect the member's ability to participate on the panel. The panel member declaring a conflict of interest shall not participate in hearing the appeal unless the Chairperson, panel members, and the person launching the appeal agree to allow the member to participate.
- (4) The Chairperson of the Board may postpone a hearing of an appeal at his sole discretion, upon request of the panel, Chief Inspector or the person launching the appeal.

- (5) A hearing of an appeal is conducted in accordance with Section 5 of this document.
- (6) The panel may make its decision at the hearing or reserve its decision.
- (7) The panel chair shall provide the panel's decision to the: (1) Chief Inspector and (2) the Chairperson of the Board.
- (8) The Board Chairperson (or designate) shall provide a copy of the written decision of the panel to the person who launched the appeal.

The Chief Inspector may also issue instructions to the person who launched the appeal, on how to comply with the panel's decision.

- (9) The decision of the panel from the Board is final and there shall be no further appeal.
- (10) The decision of the panel from the Board may confirm, revoke or vary the decision of the Chief Inspector.
- (11) An appeal commenced pursuant to The Act does not operate as a stay of the decision unless otherwise ordered by the Board.

5. The Hearing

At the hearing of an appeal, the panel shall appoint a recorder. The recorder shall record:

- the names, addresses and interests of all persons present
- Ensure all persons are introduced by whatever method the panel decides

The panel shall ask the person who launched the appeal if there is any objection to any panel member participating in the hearing. The panel shall determine if any member objected to, shall continue to hear the appeal or be excluded. If a member is excluded, the remaining panel must consist of at least 3 members. Three members of a panel constitute a Quorum of the panel. If less than three members remain, the hearing shall be postponed until the Chairperson can provide a new panel member. If the panel decides to continue the hearing with the panel member(s) the individual launching the appeal has objected to, the panel shall provide its reasons for proceeding.

The new panel shall provide five (5) working days notice to the person launching an appeal that the hearing will commence again, and provide the date, place and time the hearing shall commence again.

The panel shall determine what material, documents, or evidence is used at the hearing, and/or permitted for consideration if presented at the hearing.

The panel may request additional information from the person launching the appeal or the Chief Inspector. The Chief Inspector may be present, or

delegate a representative, to be present at any hearing. The panel shall ensure the person launching the appeal and the Chief Inspector are offered reasonable opportunity to furnish evidence, and to submit oral or written arguments. The panel may offer the opportunity for reasonable cross-examination at the hearing.

The panel at their sole discretion, may proceed with a hearing in the absence of the person launching the appeal.

The panel shall determine if any other person(s) has the right to be heard, submit written arguments, or be present at the hearing.

The hearings shall be open to the public. The person launching the appeal may request the hearing not be open to the public but must provide reasonable grounds for the request. The panel at their sole discretion shall decide if the hearing is closed to the public.

The panel shall determine whether any evidence or written arguments submitted prior to a hearing are admissible.

The panel is not required to keep written or mechanical record of the oral evidence or arguments given at a hearing.

The panel may adjourn a hearing for any reason and for a period of time deemed appropriate by the panel. The panel may reconvene any adjourned hearing at a time and place the panel considers appropriate and upon reasonable notice to all parties.

6. Decisions of the Panel

Only panel members present and who have heard all evidence shall participate in the making of the decision.

The decision of the panel may confirm, revoke or vary the decision of the Chief Inspector.

The panel shall issue a decision within 30 days after completion of a hearing.

The panel shall provide the reasons for arriving at a decision.

A panel may exercise the powers of the Board, pursuant to Section 48 of the Act, in the hearing and the decision, such that the decision of the panel is deemed to be the decision of the Board. The decision of the panel is final and there shall be no further appeal.