

Boiler and Pressure Vessel Safety Board Appeal Process and Instructions

April 2022

Building and Technical Standards Branch 1430 - 1855 Victoria Avenue Regina, Saskatchewan S4P 3T2 306-787-4113 Phone 306-798-4172 Fax btstandards@gov.sk.ca www.saskatchewan.ca/btstandards	Boiler and Pressure Vessel Safety Board Appeal Process and Instructions April 2022
This guide is published by the Saskatchewan Ministry of Government Relations for purposes of providing information to users on the topic contained herein. In case of conflict between <i>The Boiler and Pressure Vessel Safety Act</i> (the BPVSB Act) and <i>the Boiler and Pressure Vessel Regulations</i> (the BPVSB Regulations) and this guide, provisions of the BPVSB Act and the BPVSB Regulations shall apply.	

Table of Contents

1. Introduction	4
2. Powers of the Board	4
3. Decisions that may be Appealed to the Board	5
4. Procedure for Launching and Processing an Appeal.....	5
5. The Hearing	8
6. Decisions of the Panel.....	9

1. Introduction

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

Definitions used:

- a) “board” means the Boiler and Pressure Vessel Safety Board established pursuant to section 44 of the Act.
- b) “Act” means *The Boiler and Pressure Vessel Act, 1999*.
- c) “chief boiler inspector” means the chief boiler inspector appointed pursuant to section 4 of the Act, and includes any acting chief boiler inspector.
- d) “regulations” means *The Boiler and Pressure Vessel Regulations, 2017*.
- e) “minister” means the member of the Executive Council for whom the time being the administration of the Act is assigned.
- f) “chairperson” means the member of the board that the Lieutenant Governor in Council designates as chairperson in accordance with section 46 of the Act.
- g) “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.
- h) “quorum” means three members of a panel at a sitting pursuant to section 48(3) of the Act.
- i) “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 and in accordance with:

- a) Section 44: The Boiler and Pressure Vessel Safety Board is established.
- b) Section 47: The board shall:
 - (a) hear appeals commenced pursuant to Part IX;
 - (b) advise the minister on matters concerning this Act and the regulations; and
 - (c) perform any other duties that the minister may direct.
- c) Section 48: The chairperson may appoint three or more members of the board to constitute a panel and may direct the panel to conduct the hearing of an appeal.

- d) Section 50: The board shall determine appeals *de novo*. The board may determine the procedures by which an appeal is to be conducted. The chief boiler inspector is entitled to participate in an appeal hearing and make representations to the board. The board is not bound by the rules of law concerning evidence and may accept any evidence that the board considers appropriate. For the purposes of conducting an appeal, the board has the powers conferred on a commission by sections 11, 15 and 25 of *The Public Inquiries Act*.
- e) Section 51: After hearing an appeal, the board may confirm, revoke or vary the decision of the chief boiler inspector.
- f) Section 52: The board's decision 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 boiler inspector pursuant to several sections of the Act. These are:

- a) Section 9: Cancellation or suspension of licenses.
- b) Section 13: Registration.
- c) Section 27: Right of appeal for a person aggrieved by a decision of the chief boiler inspector.
- d) Section 30: Cancellation or suspension of a certificate of authorization.
- e) Section 43: Right of appeal for a person who is refused a certificate of qualification or a holder of a certificate of qualification that is suspended or cancelled.

4. Procedure for Launching and Processing an Appeal

A person who intends to appeal a decision of the chief boiler inspector to the board shall:

- a) Within 30 calendar days after the date of the decision by the chief boiler inspector, serve notice of appeal on the board which must be:
 - i. in writing;
 - ii. signed by the person launching the appeal and dated;
 - iii. concise and contain a statement of the matter being appealed, setting out the grounds for appeal;
 - iv. accompanied with a copy of the order or written decision of the chief boiler inspector being appealed;
 - v. detailed and include what section of the Act the appeal is being made in accordance with; and
 - vi. complete and contain the current return mailing address and contact numbers (home, work and cell) for the person launching the appeal.

b) Deliver the notice of appeal to both as listed below:

i. The chairperson of the board, to the address below:

Chairperson
Boiler and Pressure Vessel Safety Board
c/o Building and Technical Standards Branch
Ministry of Government Relations
1430-1855 Victoria Avenue
REGINA SK S4P 3T2

ii. The chief boiler inspector, to the address below:

Chief Boiler Inspector
Technical Safety Authority of Saskatchewan
2202 2nd Avenue
REGINA SK S4R 1K3

c) The chairperson shall ensure:

- i. the appeal being requested is within the 30 calendar days after the date of the decision by the chief boiler inspector in accordance with section 49 of the Act.
- ii. the appeal being requested is one against a decision of the chief boiler inspector.
- iii. the appeal being requested is within the board's ability to hear in accordance with the Act.
- iv. the appeal contains the information as listed in section 4(a) of this document.

Appeal requests that do not satisfy the above criteria 4(c)(i), (ii) and (iii) are considered rejected and returned to the person launching the appeal.

A rejected appeal may be discussed at a regular Board meeting and the board may provide non-binding recommendations to the chief boiler inspector with respect to the matter. The chairperson shall determine if the matter will be referred for discussion at the next scheduled board meeting.

Where deficiencies in the appeal exist from 4(a) above, the chairperson shall inform the applicant of all substantiating information considered necessary to be submitted to continue the applicant's appeal and the date by which that information must be submitted.

If an applicant does not provide the information required by the board by the date indicated by the chairperson, or does not provide a reason acceptable to the chairperson why the information was not provided by that date, the applicant's appeal is considered abandoned and any order made pursuant to the Act remains in force.

If the chairperson is satisfied with the applicant's reason for not providing the information by the date indicated, the chairperson may set a new date by which the information is to be provided.

d) Within 21 calendar days of receiving all substantiating information, the chairperson shall:

- i. provide in writing confirmation to the person launching an appeal that their application was received, and of the time, date and place of the appeal hearing, as well as the members of the appeal panel, providing such notice no less than five working days in advance;
- ii. appoint a panel pursuant to section 48 of the Act to hear the appeal;
- iii. request any person with an interest in the appeal to provide written information or particulars concerning the matter being appealed;
- iv. request the person launching an appeal to furnish additional information or particulars of an appeal;
- v. set a date, place and time for hearing the appeal; and
- vi. lead the appeal panel, or designate a board member to chair the appeal hearing.

(e) Panel processes:

- i. 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 the appeal hearing unless the chairperson, panel members, and the person launching the appeal agree to allow the member to participate.
- ii. The chairperson of the board may postpone an appeal hearing at their sole discretion, upon request of the panel, chief boiler inspector or the person launching the appeal.
- iii. An appeal hearing is conducted in accordance with section 5 of this document.
- iv. The panel may make its decision at the hearing or reserve its decision.
- v. The panel chairperson shall provide the panel's decision to the:
 - A. chief boiler inspector; and
 - B. chairperson of the board.
- vi. The chairperson of the board (or designate) shall provide a copy of the written decision of the panel to the person who launched the appeal.
- vii. The chief boiler inspector may also issue instructions to the person who launched the appeal on how to comply with the panel's decision.
- viii. The decision of the panel from the board is final and there shall be no further appeal.
- ix. The decision of the panel from the board may confirm, revoke or vary the decision of the chief boiler inspector.
- x. 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

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.

At the appeal hearing, the panel shall appoint a recorder from amongst its members or from the ministry personnel. The recorder shall:

- a) record the names, addresses, telephone numbers and interests of all persons present; and
- b) 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 prior to the hearing. If an objection is raised, the panel shall determine if the member(s) objected to shall recuse themselves or shall continue to hear the appeal. If a member is excluded, the remaining panel must consist of at least three (3) members as that constitutes a quorum of the board. 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 at least five (5) working days notice to the person launching an appeal that the hearing will commence again. The notice will provide the date, place and time the hearing shall begin.

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

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

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 when the panel determines it is in the interest of justice to do so. 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.

Where the panel fails to reach a unanimous decision, a decision of the majority of the panel will govern.

The decision of the panel may confirm, revoke or vary the decision of the chief boiler inspector.

The panel shall issue a written 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 panel's decision is deemed to be the decision of the board. The panel's decision is final and there shall be no further appeal.