

BOILER EXAMINERS BOARD

C/o 16a Atlantic Avenue, Shorelands
Pt. Cumana

Telephone Phone No: 620-7295



18th January 2016

Senator The Honourable Jennifer Baptiste-Primus
Minister of Labour and Small and Micro Enterprises Development
Ministry of Labour and Small and Micro Enterprises Development
Tower C, Level 6, International Waterfront Centre
1A Wrightson Road
Port of Spain



Honourable Minister:

Re: Submission of Annual Administrative Reports Under Section 66D of the Constitution for the period October 1, 2014 to September 30, 2015

Please find enclosed the Annual Administrative Report of the Boiler Examiners Board for the period October 1st, 2014 to September 30th, 2015.

The term of office of this Board expired in December 2015. On behalf of the Board, I will like to thank the Government for the opportunity to serve our country. There is much work still to be done with respect to updating the existing legislation to reflect modern technology used in Boilers and Pressure Vessels. In this regard, all members have expressed interest in offering themselves to continue the process of working with your Ministry and OSHA with this goal in mind.

Please feel free to contact me at 620-7295 should you need further information or clarification.

Yours truly,

Rogér A. Camacho

Chairman for the period October 1, 2014 to September 30, 2015

Encl: Annual Administrative Report for the period October 1, 2014 to September 30, 2015.

**BOILER EXAMINERS
BOARD**

**ANNUAL ADMINISTRATIVE
REPORT**

FOR THE PERIOD

1ST October 2014 TO 30TH September 2015

**Roger A. Camacho
Chairman**

ANNUAL ADMINISTRATIVE REPORT
FOR THE PERIOD
1st October 2014 TO 30th September 2015

TABLE OF CONTENTS

	Page
1. MISSION STATEMENT	2
2. ORGANIZATIONAL STRUCTURE	2
a. Organizational Profile	2
b. Services Provided	2
c. Legislative and Regulatory Framework	3
d. Reporting Functions	3
3. POLICIES AND DEVELOPMENT INITIATIVES	3
a. Policies of the Board for the Recommendations of Licences	3
b. Development Proposals	4
c. Accomplishments	5
4. FINICAL OPERATIONS	6
5. HUMAN RESOURCES	6
6. PROCUREMENT PROCEDURES	6
7. PUBLIC AND COMMUNITY RELATIONS	6
APPENDIX 1 Boiler Regulations	7
APPENDIX 2 Special Provisions for Safety in the Case of Air Pressure Containers	14
APPENDIX 3 Cover Letter and Legal Opinion from the MOLSMED	18

BOILER EXAMINERS BOARD

**C/o 16a Atlantic Avenue, Shorelands
Pt. Cumana**

Telephone No. 620-7295

ANNUAL ADMINISTRATIVE REPORT **FOR THE PERIOD** **1st October 2014 TO 30th September 2015**

1. MISSION STATEMENT

The members of the Boiler Examiners Board shall conduct themselves, and carry out the Board's statutory mandate with integrity, honesty, morality and professionalism.

The Board shall act expeditiously and fairly in making its recommendations to the Ministry of Labour and its associated institutions.

The Board in its recommendations to the Ministry of Labour will always place the safety of workers and the general public first.

2. ORGANIZATIONAL STRUCTURE

- a. Organisational Profile. The members of the Boiler Examiners Board are appointed by the Minister of Labour Small and Micro Enterprises Development, under Section 3 (1) and (2) of the Boiler Regulations. The Board comprises a Chairman and four other members. The members of the Board for this administrative period are as follows:

(i)	Mr. Roger A. Camacho -	Chairman
(ii)	Prof. Winston Mellows -	Member
(iii)	Mr. Jinda Maharaj -	Member
(iv)	Mr. Ramdeo Maraj -	Member
(v)	Mr. Sarran Ramoutar -	Member

- b. Services Provided. The main function of the Board is to consider applications for Licences to Examine Boilers and Air Pressure Containers

and make recommendations to the Minister of Labour and Small and Micro Enterprises Development.

- c. Legislative and Regulatory Framework. The Boilers Examiners Board was originally established under the Factories Ordinance No. 44 of 1946. This Ordinance was repealed and effectively replaced by Act No. 1 of 2004 and its Amendments, otherwise known as OSHA 2004. However the Boiler Examiners Board retains its validity under the “Boilers Regulations” (Appendix 1) and “Special Provisions for Safety in the Case of Air Pressure Containers” (Appendix 2) from the Factory Ordinance which have been retained under Section 98 (2) of OSHA 2004.

The Boiler Regulations paragraph 4 (a) states, “The Minister shall, on the recommendations of the Board, appoint a person on a panel of boiler examiners for a period of three years and shall issue to every person so appointed a licence authorising him to examine and test steam boilers under the provisions of the Ordinance.” After three years, another application must be submitted for renewal. The Board may be requested to consider applications for the renewal of a Licence.

It is to be noted that paragraph 4 (c) in the Boiler Regulations states, “*No member of the Board shall be appointed on the panel of boiler examiners*”.

- d. Reporting Functions. The Board reports to the Minister of Labour and Small and Micro Enterprises Development (MOLSMED) through the Permanent Secretary and Director of Planning. However, the majority correspondence is with the Chief Inspector, Occupational Safety and Health Authority and Agency. The MOLSMED is copied in all correspondence from the Board.

3. POLICIES AND DEVELOPMENT INITIATIVES

- a. Policies of the Board for the Recommendation of Licences. Persons wishing to examine boilers and air pressure containers apply to the Minister of Labour and Small and Micro Enterprises Development for a licence. The Minister may pass on the application to the Chief Inspector, now of the OSH Authority and Agency, who may request the Board to make recommendations with respect to the applicant.

All new applicants for licences are required to be interviewed by the Board. The Board will meet to consider the applications and interview the applicants generally within fourteen days of receiving the applications from the Chief Inspector. The decision of the Board with a written

recommendation is sent to the Chief Inspector within seven days after the Board meeting.

The candidates that are interviewed by the Board must demonstrate the following:

- (i) Knowledge of the laws of thermodynamics.
- (ii) Knowledge of boiler water chemistry and treatment.
- (iii) Knowledge of material and corrosion science.
- (iv) Knowledge of the structure and function of different types of boilers and air pressure vessels.
- (v) Knowledge and experience in the operation of the different types of boilers and air pressure containers.
- (vi) Complete knowledge and understanding of all the safety features of boilers and air pressure containers.
- (vii) Knowledge of welding technology.
- (viii) Knowledge of non-destructive testing technology.
- (ix) An understanding of the legal requirements for the operation of boilers and air pressure containers in Trinidad and Tobago.
- (x) A general maturity of character that is inherent with the responsibility of a licence holder.

The Board also considers applications for renewal of licences but these cases do not normally require an interview. The Board may request the Chief Inspector to provide more information on an applicant before a determination is made. The Board does not correspond directly with any applicant. All members of the Board must unanimously agree on the application for the issue of a new license or a renewal. All members of the Board must sign the approval form for the issue of a new license. No such form is produced by the OSH Agency for a renewal, but all members must agree on the renewal of a license which is reflected in the minutes of the Board Meeting held to consider the applications for renewal. Applications for renewals may be considered via “e-meetings”. The decision of the Board with a written recommendation is sent to the Chief Inspector within seven days after the Board meeting.

- b. Development Proposals. The Board has no executive authority other than what was stated in section **2. b.** above. However, the Board has made several recommendations to the OSH Agency in an effort to improve the safety and administrative capability in the management of the boilers and pressure vessels that are in operation in the country. This was in an effort to bring the Regulation from when it was first written in 1946 to modern times. It should be noted that there are numerous advancements in engineering technology and plant operations that make the Regulations obsolete.

Some of these recommendations are listed below as follows:

- (i) Appoint an officer in the OSH Agency to be responsible for the administration of the Boiler Regulations.
- (ii) Consider changes to the Boiler Regulations as follows:
 1. Registration and Classification of Boilers.
 2. Classification of Boiler Examiners.
 3. Training of Boiler Examiners.
 4. Fee Structure for Boiler Examiners.
 5. Penalties.
 6. Format for the Report produced after an Examination of Boilers and Air Pressure Containers.
 7. Registration of vessels containing gases other than air.
 8. Establish a liaison with International Societies for Inspection of Boilers and Pressure Vessels.

After numerous meetings with the OSH Agency and the MOLSMED in an effort to implement some changes to the Boiler Regulations, it was agreed that legal advice would be sought. In May 2014 a request for legal advice was made to the MOLSMED to determine if the OSH Agency had the authority to make changes to the Boiler Regulations; specifically to the classification of boilers and pressure vessels so that separate licenses could be issued to examiners for different classes of boilers and a separate licence could be issued to examiners for pressure vessels.

A legal opinion was finally received by the Board in October 2014 and is attached in Appendix 3 with the cover letter from the MOLSMED. A summary of the conclusions from the legal opinion and the response from the Chief Inspector of the OSH Agency is as follows:

- The legal advice suggests that the Chief Inspector has the authority to make changes to the Regulations.
- The Chief Inspector is not in agreement with this legal advice and proposes a more permanent and efficient solution to the changes to the Regulations via amendments to the legislation.

c. Accomplishments.

Renewal of Licenses: The Board approved the applications for the renewal of nine licenses – Mr. Hafeez Baksh, Mr. Zaid Khan, Mr. Riza Khan, Mr. Kent Lee, Mr. Clarence Mitchell, Mr. Curtis Phillip, Mr. Ravi Maharaj, Mr. Videsh Moonilal, and Mr. Ashley Menzies.

New Applications: The Board received two applications for the issue of new licenses – Mr. Sennen Metabadal and Mr. George Mohammed. After reviewing the applications and carrying out the interview process, the Board recommended the issue of licenses to both applicants.

The application of Mr. Clyde Jagroop was reviewed again, and although he was very qualified and experienced in the inspection of pressure vessels and pipelines, he expressed only a cursory knowledge of boilers. The Board did not recommend that he be issued with a license.

The OSHA presented its plan of action for effecting changes in the issue of separate licenses for boilers and pressure vessels. The process has started and contact was made with the Office of the Chief Parliamentary Counsel, Ministry of the Attorney General. The AG's office submitted a document outlining the procedure to carry this matter forward for parliamentary approval.

4. **FINANCIAL OPERATIONS**

The Board neither receives nor dispenses any funds whatsoever. However, members are paid modest fees and allowances classified under **Group D**.

5. **HUMAN RESOURCES**

There are no employees or workers employed by the Board. The Board receives administrative assistance from the Ministry of Labour and Small and Micro Enterprises Development.

6. **PROCUREMENT PROCEDURES**

The Board neither purchase any materials whatsoever nor enter into any contractual arrangements.

7. **PUBLIC AND COMMUNITY RELATIONS**

The Board has made recommendations to the OSH Agency to engage the Licensed Examiners in a strategic relationship to listen to their concerns and suggestions to improve the management of the inspection process in the country.

The Board is involved with the National Bureau of Standards and the OSH Agency in updating legislation and improving standards in the Safety of Pressure Systems.



Roger A. Camacho, Chairman

December 2015

APPENDIX 1

LAWS OF TRINIDAD AND TOBAGO
Ch. 30, No. 2 *Factories*

[Subsidiary]

BOILERS REGULATIONS ARRANGEMENT OF REGULATIONS

REGULATION

1. Short title and application.
2. Interpretation.
3. Appointment of Boiler Examiners Board.
4. Appointment of boiler examiners.
5. Rules for guidance of boiler examiners.
6. Fee for examination of boiler.
7. Board may suspend or cancel licence.
8. Board may recommend cancellation of licence.
9. Publication in *Gazette*.
10. Examination of boiler.
11. Period between examinations.
12. Power of competent person to extend period.
13. Boiler examiner to report to Inspector on essential repairs or reduction in working pressure.
14. Examination of boiler previously used.
15. Safety valve to be operated every week.
16. Safety valve adjustment to be sealed.
Penalty for breaking seal.
17. Boiler blow down attachments.
18. Notice to Inspector of explosion and power of Minister to direct formal investigation.

BOILERS REGULATIONS
Regulations made under section 33

1. These Regulations may be cited as the Boilers Regulations, and shall apply, subject to the provisions of the Ordinance, to every steam boiler to which section 23 of the Ordinance applies and to every factory premises or other place where any such steam boiler is situated:

Provided that if the Senior Inspector is satisfied as respects any steam boiler, that any of the requirements of these Regulations can be suspended or relaxed without risk of danger to persons employed on the premises on which such steam boiler is situate, or that the application of these Regulations or any provision thereof is for any reason impracticable, he may by certificate in writing authorise such suspension or relaxation for such period and subject to such conditions as he may think fit: Provided further that any such certificate may at any time be varied or revoked by the Senior Inspector in his discretion.

2. In these Regulations the expression "Ordinance" means the Factories Ordinance, and any other expression used which is defined in section 3 or 23 of the Ordinance has the same meaning as that assigned to it in the Ordinance.

3. (1) There shall be established a Boiler Examiners Board (hereinafter called "the Board") consisting of a Chairman and four other members all of whom shall have special qualifications in and have had experience of matters relating to, mechanical engineering.

(2) The Minister shall appoint members of the Board and may in making any such appointment consult with any appropriate professional organisations or institutions.

4. (a) The Minister shall, on the recommendations of the Board, appoint persons on a panel of boiler examiners for a period of three years and shall issue to every person so appointed a licence authorising him to examine and test steam boilers under the provisions of the Ordinance.

LAWS OF TRINIDAD AND TOBAGO
Ch. 30. No. 2 *Factories*

[Subsidiary]

Boilers Regulations

(b) For the purposes of section 23 of the Ordinance and of these Regulations no person shall be deemed a competent person who does not hold an uncanceled or unsuspended licence as aforesaid.

(c) No member of the Board shall be appointed on the panel of boiler examiners.

5. Every boiler examiner shall, when making an examination of a boiler in accordance with the requirements of the Ordinance or these Regulations, take note of and observe any rules or notes for the guidance of the boiler examiners made by the Board.

6. (a) The Minister shall, with the advice of the Board, determine the fees which shall be paid for examinations carried out under the Ordinance or these Regulations and the amount and nature of the allowance to be paid in respect of the expenses necessarily incurred by boiler examiners in the performance of their duties.

(b) A list of all such fees and allowances together with a list of the competent persons on the panel of boiler examiners shall be published in the *Gazette* on the 1st January or as soon as possible thereafter in each year.

(c) No person shall be paid or receive any amount other than any such fee or allowance and any actual expenses incurred in excess of any such fee or allowance for any such examination.

7. (a) In the event of a dereliction of duty by a competent person for which no proceedings are taken under subsection (11) of section 23 of the Ordinance or under these Regulations the Board may suspend the licence of such person for such period not exceeding three years and not less than six months as it thinks fit.

(b) In the event of a conviction of a competent person of an offence under subsection (11) of section 23 of the Ordinance or under these Regulations, or of any offence which involves infamous conduct in a professional respect, in addition to any penalty which the Court may inflict such person shall be removed from the panel of boiler examiners and his licence shall be cancelled by the Board.

LAWS OF TRINIDAD AND TOBAGO
Factories Ch. 30. No. 2

Boilers Regulations [Subsidiary]

8. The Board may, if it thinks fit, for adequate reasons stated in writing, recommend to the Minister the removal of any person from the panel of boiler examiners and the cancellation of his licence.
9. Every such nomination, appointment, issue of licence, suspension, removal and cancellation as aforesaid shall be published *in* the *Gazette*.
10. Any examination of a steam boiler in accordance with the requirements of section 23 of the Ordinance shall consist, *in* the first place, of an examination of the boiler when it is cold and the interior and exterior have been prepared to the satisfaction of the competent person, and secondly, except in the case of an economiser or superheater, of an examination when it is under normal steam pressure; the examination under steam pressure shall be made on the first occasion when steam is raised after the examination of the boiler when it is cold or as soon as possible thereafter, and the person making the examination shall see that the safety valve is so adjusted as to prevent the boiler being worked at a pressure greater than the maximum permissible working pressure.
11. For the purpose of subsection (7) of section 23 of the Ordinance the period of twelve months from one examination to the next shall start from the date of completion of the examination of the boiler under normal steam pressure.
12. A competent person may extend the period between any two examinations of a steam boiler by not more than one month in the event of an emergency when serious loss or damage would be caused if the boiler was shut down for examination at the prescribed time. After any such extension the boiler shall be next examined within the succeeding eleven months.
13. The person making the report of any examination under section 23 of the Ordinance or these Regulations shall, within twenty-eight days of the completion of the examination, send to the Inspector for the district a copy of the report in every case where the maximum permissible working pressure is reduced or the examination shows that the boiler cannot continue to be

LAWS OF TRINIDAD AND TOBAGO
Factories Ch. 30. No. 2

Boilers Regulations [Subsidiary]

used with safety unless certain repairs are carried out immediately or within a specified time.

14. For the purpose of subsection (9) of section 23 of the Ordinance the examination of a boiler which has previously been used, on being taken into use again, shall include an hydraulic test on the site where *it* is going to be used to at least one and a half times the maximum permissible working pressure.

15. Every boiler safety valve shall be provided with means by which it can be safely operated by hand while it *is* under steam pressure and every such valve shall be so operated at least once in every week in which the boiler is used. A record of every such hand operation of a safety valve shall be entered in a book to be provided and kept for the purpose and every such entry shall be signed by the person who operated the valve.

16. (a) On every safety valve means shall be provided where practicable for securing the adjustment with a seal in such a manner that the adjustment cannot be altered unless the seal is broken.

(b) Every boiler examiner shall, on each occasion that he adjusts a safety valve provided with such means, secure the adjustment with a seal and if any person other than a boiler examiner, or a person working under his direct control and supervision, breaks the seal or causes it to be broken he shall be guilty of an offence and liable to a fine of forty-eight dollars.

17. The outlet of the blow down cock, valve or pipe on every boiler shall be in such a position or so arranged as to prevent as far as possible danger to any person.

18. (a) In the event of an explosion of a boiler written notice thereof shall forthwith be sent to the Senior Inspector, and if such notice is not so sent the occupier of the factory in which the boiler is situated or the owner or hirer of the boiler, as the case may be, shall be guilty of an offence and liable to a fine of forty-eight dollars.

LAWS OF TRINIDAD AND TOBAGO
Factories Ch. 30. No. 2

Boilers Regulations [Subsidiary]

(b) The Senior Inspector on receipt of any such notice shall make an enquiry into the causes and results of the explosion and shall forward a report of his findings to the Minister and if, upon consideration of the Senior Inspector's report, the Minister thinks fit he may direct that a formal investigation into the explosion be held in the same manner as provided under section 40 of the Ordinance for the formal investigation of accidents and cases of disease, and for the purpose of the investigation the provisions of the said section shall apply as if the explosion were an accident or case of disease.

FEES AND ALLOWANCES PAYABLE
TO BOILER EXAMINERS

The following list of fees and allowances payable to Boiler Examiners is published for general information in accordance with Regulation No. 6 (b) of the Boilers Regulations:

FEES	
Examination of steam boiler when cold: Up to and including 5 N.H.P.	\$ c 7. 50
Between 5 and 120 N.H.P.	10. 00
120 N.H.P. and over	20.00
Examination of steam boiler under normal steam pressure:	
Up to and including 5 N.H.P.	5. 00
Between 5 and 120 N.H.P.	7. 50
120 N.H.P. and over	10.00
Examination of superheater when cold	5. 00
Examination of Economiser when cold	10. 00
Examination of Air Pressure Container	7. 50
Adjustment of safety valve if carried out on an occasion separate from the above ...	5. 00

ALLOWANCES

In Trinidad-Mileage allowance at the rate of 15 cents per mile for each journey made to the premises in which the steam boiler or other plant is situated, the mileage to be reckoned for the return journey from the boiler examiner's residence or business address whichever is nearer the premises visited.

LAWS OF TRINIDAD AND TOBAGO
Ch. 30. No. 2 *Factories*

[Subsidiary]

Boilers Regulations

Where the boiler examiner visits two or more premises on the same day the aggregate of mileage allowances charged by him shall not exceed an amount equal to the total distance necessarily travelled multiplied by fifteen cents and shall be apportioned as far as possible in the same proportion as the fees charged, so however that the allowance charged in respect of anyone visit shall not exceed the allowance chargeable if no other visit had been made on that day.

In Tobago-The actual expenses necessarily incurred by the boiler examiner in connection with subsistence and travelling for the return journey from his residence to the premises visited. Where the subsistence and travelling expenses relate to visits paid to more than one premises they shall be apportioned so far as possible in the same proportion as the fees charged.

BOILER EXAMINERS

The following list of competent persons on the panel of Boiler Examiners is published for general information in accordance with regulation No. 6 (b) of the Boilers Regulations.

LIST OF BOILER EXAMINERS

Messrs.

W. BOYD, M.I.Mech.E., A.M.L. Struc.E.
J. BUCHANAN.
F. B. CARMICHAEL, M.I.Mech.E., M.I.Loco.E.
W. J. CONOLLY, M.I.Mar.E.
J. C. CUBITI, M.I.Mar.E.
W. M. DICKSON, A.M.I.Mech.E.
ROBERT DICK.
T. DUNCANSON.
D. D. GILSON.
L. C. HENZELL, A.M.I.Mech.E.
W. I. HIRWELL, M.I.Mar.E.
Geo. McKAY.
J. Macauley, M.I.Mech.E.
T. A. Molyneaux, M.I.Mar.E.
J. L. C. ROGERS, M.I.MaLE.
R. M. TORRY.
I. TURNIULL.
C. T. WATTS, M.I.Mech.E.
F. K. WORSLEY, A.M.I.Mech.E.

APPENDIX 2

LAWS OF TRINIDAD AND TOBAGO
Factories Ch. 30. No. 2

[Subsidiary]

SPECIAL PROVISIONS FOR SAFETY IN THE CASE OF AIR PRESSURE CONTAINERS

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and application.
2. Interpretation.
3. Competent person.
4. Rules for guidance of competent persons.
5. Fee for examination of air pressure container.
6. Suspension or cancellation of licence.
7. Safety valve directly to container.
8. Safety valve adjustment to be sealed. Penalty for breaking seal.
9. Hydraulic test.
10. Daily test of safety valve and draining of container.
11. Examination and test after alteration or repair.

SPECIAL PROVISIONS FOR SAFETY IN THE CASE
OF AIR PRESSURE CONTAINERS

Regulations made under section 33

1. These Regulations may be cited as the Air Pressure Containers Regulations, and shall apply, subject to the provisions of the Ordinance, to every air pressure container to which section 24 of the Ordinance applies:
Provided that if the Senior Inspector is satisfied, as respects any air pressure container, that any of the requirements of these Regulations can be suspended or relaxed without risk of danger to the persons employed on the premises on which such air pressure container is situate, or that the application of these Regulations or any provision thereof is for any reason impracticable, he may by certificate in writing authorise such suspension or relaxation for such period and subject to such conditions as he may think fit: Provided further that any such certificate may at any time be varied or revoked by the Senior Inspector in his discretion.
2. In these Regulations the expression "Ordinance" means the Factories Ordinance, and the expressions "air pressure container" and "safe working pressure" have the same meanings respectively as those assigned to them in section 24 of the Ordinance, and any other expression used which is defined in section 3 of the Ordinance has the same meaning as that assigned to it in the Ordinance.
3. For the purposes of section 24 of the Ordinance and of these Regulations, the expression "competent person" means the holder of an uncancelled or unsuspended licence to examine and test steam boilers issued under the Boilers Regulations.
4. The Boiler Examiners Board may, in any rules or notes for the guidance of boiler examiners made under the Boilers Regulations, include rules or notes for the guidance of competent persons in the examination of air pressure containers and the provisions of regulation 5 of the said Regulations shall apply to

LAWS OF TRINIDAD AND TOBAGO
Factories Ch. 30, No. 2

Special Provisions/or Safety in the case of Air Pressure Containers [Subsidiary]

every competent person when making any examination of an air pressure container required by the Ordinance or these Regulations as if they were included in these Regulations.

5. The provisions of regulation 6 of the Boilers Regulations, shall apply with respect to examinations of air pressure containers carried out under the Ordinance or these Regulations as if they were included in these Regulations.

6. The provisions of regulation 7 of the Boiler Regulations, shall apply to competent persons with respect to their duties under section 24 of the Ordinance and these Regulations as if they were included in these Regulations.

7. The safety valve of every air pressure container shall be directly connected to the container with no stop valve or cut off between the safety valve and the container:

Provided that where the safety valve is fitted to the pipe connecting the compressor to the container, a stop valve may be fitted between the safety valve and the container if the container is fitted with a safety bursting disc which will burst at a pressure not exceeding ten per cent more than the safe working pressure of the container. Every such disc shall be so designed and constructed as to prevent the scattering of fragments when it bursts.

8. (a) On every safety valve means shall be provided where practicable for securing the adjustment with a seal in such a manner that the adjustment cannot be altered unless the seal is broken.

(b) Every competent person shall, on each occasion that he adjusts a safety valve provided with such means, secure the adjustment with a seal and if any person other than a competent person, or a person working under his direct control and supervision, breaks the seal or causes it to be broken he shall be guilty of an offence and liable to a fine of forty-eight dollars.

9. (a) The hydraulic test pressure applied to an all pressure container in accordance with subsection (4) of

LAWS OF TRINIDAD AND TOBAGO
Ch. 30. No.2 *Factories*

Special Provisions for Safety in [Subsidiary] tile case of Air Pressure Containers

section 24 of the Ordinance shall be at least one and a half times the safe working pressure.

(b) Where an air pressure container is provided with means whereby it can be examined internally and the competent person who makes the examination required by subsection (4) of section 24 of the Ordinance is satisfied by internal examination that an hydraulic test is not necessary, such hydraulic test need not be applied.

10. On every air pressure container during the forenoon of every day on which the container is subjected to air pressure the following operations shall be carried out:

(a) the safety valve shall be operated by hand to ensure that it is working freely; and

(b) accumulations of oil and water in the container shall be thoroughly drained off.

Provided that the operation of draining off oil and water shall not be required on an air pressure container of the type defined in paragraph (c) of subsection (6) of section 24 of the Ordinance.

A record of the performance of the operations aforesaid and the results obtained shall be entered daily in a book to be provided and kept for this purpose.

11. When any alteration or substantial repair of an air pressure container has been made the container shall, before it is again brought into use, be examined and tested in accordance with subsection (4) of section 24 of the Ordinance whether it has been so examined and tested within the previous twelve months or not.

APPENDIX 3

COVER LETTER AND LEGAL OPINION FROM THE MOLSMED



MINISTRY OF LABOUR AND SMALL AND MICRO
ENTERPRISE DEVELOPMENT
Tower C International Waterfront Centre

No.1 Wrightson Road

PORT OF SPAIN

No. 625-8478

website: <http://icwww.labour.gov.tt>

Fax: No 624 -4091

October 1, 2014

Mr. Roger A. Camacho
Chairman
Boiler Examiners Board
c/o 16a Atlantic Avenue
Shorelands

Dear Sir

Re: Request for Legal Advice to the Boiler Examiners Boards

Reference is made to the matter at caption and your correspondence dated May 22, 2014, receipt of which is hereby acknowledged.

Further to your request for legal advice made within your letter of May 22, 2014, kindly be advised that the Ministry's Legal Unit is of the considered legal opinion that the issuance of separate licences for the inspection of boilers and air pressure containers may only be undertaken if, in accordance with Regulation 1 of both the Boilers and Air Pressure Regulations of the Occupational Safety and Health Act, Chap. 88:08, "the Act", the Senior Inspector is satisfied that the current requirements may be relaxed and issues a certificate to this effect. However, a more permanent solution to instant matter may be to amend or repeal the current Regulations and reissue new Regulations in accordance with Section 99 of the Act. A copy of the legal opinion prepared by the Ministry's Legal Unit is enclosed for your information.

Mr. Roger A. Camacho
Chairman, Boiler Examiners Board

October 1, 2014

In addition, the Occupational Safety and Health Agency has indicated that the Occupational Safety and Health Agency, "the Agency" is not in agreement with the advice that the Chief Inspector can vary the provisions of the Regulations as it relates to Boilers and Air Pressure Containers, and issue separate inspection licenses. The position of the Agency is in alignment with the proposition that the "more permanent and efficient solution" is to amend the current Regulations and in this regard, the Agency has already identified this as a matter to be discussed during the upcoming consultative process for the amendment of the Act.

Yours respectfully


Permanent Secretary

Encl.

OPINION

TO: Legal Counsel II *Handwritten: 6/11/2014*
FROM: Legal Counsel I
DATE: June 11, 2014
SUBJECT: Boiler Examiners Board

Reference is made to the matter at caption, to a meeting held on May 22, 2014 and to a request from the Chairman of the Boilers Examiners Board, Mr. Roger Canacho, for advice.

The issue for consideration as posed by Mr. Canacho is whether or not current legislation allows for the Chief Inspector of the Occupational Safety and Health Agency to issue separate licences for the inspection of Boilers and Air Pressure Containers.

At this juncture it is worth mentioning that the advice sought herein ought rightly to be considered by the relevant technical and legal arms of the Occupational Safety and Health Agency as this matter falls squarely within the ambit of that Agency. Nevertheless, the advice sought is elucidated below.

BACKGROUND:

Guidance on the procedure for the inspection of boilers and air pressure containers can be found within the *Occupational Safety and Health Act*, Chap. 88:08 ("OSH Act.") Section 98(1) of the OSH Act, repealed the archaic Factories Ordinance; the predecessor to our current health and safety legislation. However, by virtue of Section 98(2) of the OSH Act any Regulations made under the outmoded Factories Ordinance were preserved and are deemed to continue in force.

Section 98(2) states as follows:

'Notwithstanding subsection (1), any Regulations, Orders or other statutory instruments made under the Factories Ordinance shall continue in force and are deemed to be made under sections 99 and 100.'

While Sections 99 and 100 of the OSH Act read as follows:

'99 (1) - The Minister may make Regulations for the purposes of promoting the safety, health and welfare of employees and generally for the purpose of carrying out the provisions of this Act.

...

99(3) - Regulations made under this section shall be subject to negative resolution of Parliament.'

100 - The Minister may, by Order -

- a) Amend Schedule 1, subject to negative resolution of Parliament; or*
- b) Vary any fine term of imprisonment or other penalty provided for under this Act, subject to affirmative resolution of Parliament.'*

Thus, by virtue of Sections 98, 99 and 100 of the OSH Act, the following Regulations and Statutory Instruments as originally contained within the Factories Ordinance, are maintained:

- ⚙ Disillery (Safety) Regulations;
- ⚙ Boilers Regulations;
- ⚙ Special Provisions for Safety in the case of Air Pressure Containers Regulations;
- ⚙ Occupational Safety and Health - Cleaning of Machinery in Motion Order;
- ⚙ Woodworking Machinery Regulations;
- ⚙ Occupational Safety and Health (Electricity) Regulations;
- ⚙ Occupational Safety and Health (Welfare) Regulations;
- ⚙ Electric Accumulator (Manufacture and Repair) Order; and
- ⚙ Occupational Safety and Health (Protective Measures) Order

The instant matter however concerns the Boilers Regulations and the Special Provisions for Safety in the case of Air Pressure Containers Regulations ("Air Pressure Regulations.")

Boilers Regulations:

The short title to the Boilers Regulations indicates its applicability to every steam boiler and to every factory or premises upon which a steam boiler is located.

Regulation 1 goes further to state:

'Provided that if the Senior Inspector (equivalent to the Chief Inspector under the current OSH Act) is satisfied as respects any steam boiler, that any of the requirements of these Regulations can be suspended or relaxed without risk of danger to persons employed on the premises on which such steam boiler is situate, or that the application of these Regulations or any provision thereof is for any reason impracticable, he may by certificate in writing authorise such suspension or relaxation for such period and subject to such conditions as he may think fit: Provided further that any such certificate may at any time be varied or revoked by the Senior Inspector in his discretion.'

On the appointment of persons to examine steam boilers and the issuance of relevant licences, the Boilers Regulations at Regulation 4 states:

'4(a) - The Minister shall, on the recommendations of the Board, appoint persons on a panel of boiler examiners for a period of three years and shall issue to every person so appointed a licence authorising him to examine and test steam boilers under the provisions of the Act.'

4(b) - For the purposes of the Act and of these Regulations no person shall be deemed a competent person who does not hold an uncancelled or unsuspended licence as aforesaid.'

Air Pressure Regulations:

The short title to the Air Pressure Regulations mimics that of the Boiler Regulations by indicating that the Senior Inspector may suspend or relax particular requirements of the Regulations he deems impracticable provided such action can be taken without risk of danger to persons.

The Air Pressure Regulations go further to state at Regulation 3 that:

"For the purposes of the Act and of these Regulations, the expression "competent person" means the holder of an uncancelled or unsuspended licence to examine and test steam boilers issued under the Boilers Regulations"

As a consequence of the above Regulation, it follows then that a person inspecting an air pressure container must also be capable of inspecting a boiler. There is no similar provision within the Boilers Regulations. This therefore means that while a competent person examining an air pressure container must necessarily be capable of examining a boiler, a person examining a boiler need not be capable of examining an air pressure container.

Additionally, the Air Pressure Regulations at Regulations 5 and 6 state that the provisions related to the applicability of fees for the examination of air pressure containers and the suspension and cancellation of licences respectively as are applicable under the Boilers Regulations are similarly applicable under the Air Pressure Regulations.

INTERPRETATION & ANALYSIS:

Primary vs Secondary Legislation:

It should be noted that while primary legislation refers to Acts of Parliament, subsidiary or delegated legislation can be defined as 'an instrument made by a person or body (the delegate) under legislative powers conferred by an Act (the enabling Act)¹.' In the instant matter, the Regulations were established by the Minister of Labour and Small and Micro Enterprise Development (the delegate) by virtue of Sections 98, 99 and 100 of the OSH Act (the enabling Act) and thus amount to subsidiary legislation.

The learning on the issue of the interpretation of subsidiary legislation is that it is interpreted similarly to Acts of Parliament. Bennion in his authoritative text, '*Statutory Interpretation*' states that subsidiary legislation is construed on lines similar to those applicable in the case of Acts and further states that the Courts generally show no disposition to distinguish between primary and subsidiary legislation².

Bennion goes further in his analysis to state as follows:

"In effect, most delegated legislation constitutes legislation by the government or executive. This is taken to have the same general intention as Parliament, so that the like rules, principles, presumptions and linguistic canons apply as in the case of Acts³. The matter was thus summed up by the Law Commissions in their 1969 report on statutory interpretation: 'it seems clear that the courts when dealing with [delegated] legislation

¹ Francis Bennion, '*Statutory Interpretation*' Third Edition, Butterworths, London 1997 p. 173.

² *Ibid.* p. 190

³ *Ibid.*

apply the same general common law principles of interpretation which they apply to statutes⁴."

Thus, the general rules of statutory interpretation may be employed in the instant matter.

The Literal Rule:

The basic and general rule of interpretation states that Acts of Parliament ought to be construed according to the intention expressed in the Acts themselves⁵. As such, if the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense. The words themselves alone do in such a case best declare the intention of the lawgiver⁶.

Chief Justice Tindal, as he then was, in Warburton v Loveland⁷ stated:

'Where the language of an Act is clear and explicit, we must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the legislature.'

The above approach is referred to as the literal rule or plain meaning rule and ought to be the primary rule applied when conducting any exercise in statutory interpretation. The basic premise of the literal rule is that the words of statute are to be given their natural or ordinary meaning and applied without seeking to put a gloss on the said words.

Interpretation of the relevant Regulations in the instant matter ought therefore to be carried out in much the same way as an Act of Parliament and as such the literal rule ought to be employed as the first rule of thumb.

An analysis of both Regulations shows continuous references within the Air Pressure Regulations to provisions within the Boilers Regulations. It is submitted that the intent of the Air Pressure Regulations was that the same standard as was applicable to Boilers were to be similarly applicable to air pressure containers. It is further submitted that this shows a clear intent by the drafters to link the two Regulations and to have a higher standard of knowledge and skill

⁴ Law Commissions, *The Interpretation of Statutes* (1969) Law Com No 21; Scots Law Com No 11, para 77

⁵ *Capper v Baldwin* [1965] 2 QJ 53, 61

⁶ *Crafts in Statute Law* S.G.G. Edgar, Seventh Edition, Sweet and Maxwell, London, 1985 at page 65

⁷ (1832) 2 D. & Cl. (H.L.) 490

applicable to the examination of air pressure containers than to examination of boilers (a person inspecting an air pressure container being required to be capable of examining a boiler without the same requisite requirement being applicable to a person inspecting a boiler.)

The technical reasons as to why the aforementioned was deemed paramount when the Regulations were drafted and whether or not such requirements need to be retained particularly in furtherance of life and limb cannot be answered from a legal stand point. Such a question ought best to be considered by the technical experts at the OSH Agency in conjunction with its Chief Inspector.

Should it be deemed appropriate and harmless to do away with provisions requiring an individual inspecting an air pressure container to have equivalent expertise in the examination of boilers, the only mechanism under which the requested course of action (the issuance of separate licences for the inspection of boilers and air pressure containers) may be undertaken would be in accordance with Regulation 1 of both the Boiler and Air Pressure Regulations.

As considered earlier Regulation 1 allows the Senior Inspector to suspend or relax particular requirements of the Regulations he deems impracticable provided such action can be taken without risk of danger to persons. Thus, provided the Senior Inspector is satisfied that there are no adverse effects to life or limb he may choose to suspend the requirement that persons inspecting air pressure containers need also have the technical expertise of inspecting boilers by certificate in writing to the said effect.

The legislation however is silent on the form in which the said certificate is to take and as such it can be deduced that it ought necessarily to be a formal written document signed by the Chief Inspector and bearing the official seal/logo of the OSH Agency. Additionally, by virtue of Sections 98, 99 and 100 of the OSH Act which deems the aforementioned Regulations to be preserved and effected under the hand of the Honourable Minister of Labour, the agreement and approval of the Honourable Minister for such action ought to be obtained prior to such action being taken.

It should be noted that due to the silence in the Regulations as to the form the 'certificate' is to take taking such action may be to open the Chief Inspector, the Boilers Examiners Board and this Ministry up to scrutiny as there is no set standard to measure the effectiveness of the certificate to be issued by the Senior Inspector.

Additionally, since the authority given to the Senior Inspector under the Regulations is only to suspend or relax particular provisions of the Regulations it may prove a more permanent and efficient solution to the instant matter to redo the said Boilers and Air Pressure Container Regulations to give effect to the intention of the Boilers Examiners Board and to bring the subsidiary legislation in line with technological advances and modern innovation.

The said Regulations may be repealed and new Regulations brought into force by virtue of Section 99 of the OSH Act and would be required to be laid in Parliament subject to negative resolution before becoming effective.

Conclusion:

In light of the above, the issuance of separate licences for the inspection of boilers and air pressure containers may only be undertaken if, in accordance with Regulation 1 of both the Boilers and Air Pressure Regulations, the Senior Inspector is satisfied that the current requirements may be relaxed and issues a certificate to this effect.

A more permanent solution to the instant matter however may be to amend or repeal the current Regulations and reissue new Regulations in accordance with Section 99 of the OSH Act.


.....
Legal Counsel I

