

# WHEN IS A CONSTRUCTION HEALTH & SAFETY AGENT REALLY REQUIRED?



## SOME DEFINITIONS (Construction Regulation 1):

“**agent**” means a competent person who acts as a representative for a client.

Guidelines (Gov. Gazette June 2017 – Guidelines to the CR’s 2014):

- a) A person or an organization that acts as a representative for a client in **managing overall construction work** with full authority and obligation to act on behalf of the client in terms of the Construction Regulations.
- b) An agent contemplated above must **ensure the management of health and safety** on a construction project for a client and where applicable through an appointment of a registered competent person with a statutory body approved by the Chief Inspector (stipulated to be the SACPCMP).

## SOME DEFINITIONS (Construction Regulation 1):

"**construction work**" means any work in connection with –

- (a) the construction, erection, alteration, renovation, repair, demolition or dismantling of or addition to a **building** or any similar structure; or
- (b) the construction, erection, maintenance, demolition or dismantling of any bridge, dam, canal, road, railway, runway, sewer or water reticulation system; or the moving of earth, clearing of land, the making of excavation, piling, or any similar **civil engineering structure** or type of work.

## Scope of Application of these Regulations (Construction Regulation 2):

- 2.(1) These Regulations are applicable to all persons involved in **construction work** ["construction work" means any work in connection with - (a) the construction, erection, alteration, renovation, repair, demolition or dismantling of or addition to a **building or any similar structure**; or (b) the construction, erection, maintenance, demolition or dismantling of any bridge, dam, canal, road, railway, runway, sewer or water reticulation system; or the moving of earth, clearing of land, the making of excavation, piling, **or any similar civil engineering structure or type of work**].
- (2) Regulation 3 [Construction Work Permit] and 5 [Duties of the Client] are not applicable where the construction work carried out is in relation to a **single story dwelling for a client who intends to reside in such dwelling upon completion thereof**.

When is a CHSA required to be appointed?

Duties of the Client (Construction Regulation 5):

5(5) Where a **construction work permit** is required as contemplated in regulation 3(1), **the client must**, without derogating from his or her health and safety responsibilities or liabilities, **appoint a competent person in writing as an agent** to act as his or her representative, and where such an appointment is made the duties that are imposed by these Regulations upon a client, apply as far as reasonably practicable to the agent so appointed.

## Duties of the Client (Construction Regulation 5):

5(6) Where **notification of construction work** is required as contemplated in regulation 4(1)\*, **the client may**, without derogating from his or her health and safety responsibilities or liabilities, appoint a competent person in writing as an agent to act as his or her representative, and where such an appointment is made the duties that are imposed by these Regulations upon a client, apply as far as reasonably practicable to the agent so appointed: Provided that, **where the question arises** as to whether an agent is necessary, the decision of an inspector is decisive.

\*4. (1) A contractor who intends to carry out any construction work other than work contemplated in regulation 3(1), must at least 7 days before that work is to be carried out notify the provincial director in writing in a form similar to Annexure 2 if the intended construction work will —

- (a) include excavation work;
- (b) include working at a height where there is risk of falling;
- (c) include the demolition of a structure; or
- (d) include the use of explosives to perform construction work.

## SOME QUESTIONS?

So if an agent may be appointed (notification jobs) and it is decided that one isn't required, then who carries out the duties of the client in terms of CR 5?

I would further argue that the '**question would always need to arise as to whether an agent is necessary**' for notification jobs other than for single story dwellings.

Who will need to ask this question and when?

Whenever the client's duties are triggered, then a competent person needs to undertake these duties.

When are the client's duties not triggered? Only when construction work carried out is in relation to a **single story dwelling for a client who intends to reside in such dwelling upon completion thereof (CR 2).**



## Duties of the Client (Construction Regulation 5):

- 5(7) An agent contemplated in sub-regulations (5) and (6) must –
- (a) **manage the health and safety** on a construction project for the client; and
  - (b) **be registered with a statutory body** approved by the Chief Inspector as qualified to perform the required functions;
- (8) When the chief inspector has **approved a statutory body** as contemplated in sub-regulation (7)(b), he or she must give notice of that approval in the Gazette. [A Gazette was issued by the Chief Inspector in August 2014 stating that the **SACPCMP** is the recognized statutory body.]

## Duties of the Client (Construction Regulation 5):

Extract from the CR's 2014 Guidelines Gov. Gazette –

‘A client may appoint a Construction Health and Safety Agent or **Construction Health and Safety Manager** based on the **scope and risk profile of construction work** to represent him/her on matters of health and safety. Provided that, where the question arises as to whether a Construction Health Safety Agent or a Construction Health and Safety Manager is necessary, the decision of an inspector is decisive.’

SACPCMP project stages:

Stage	CHSA	CHSM	CHSO
1. Project initiation	√		
2. Concept	√		
3. Design development	√		
4. Tender doc. & procurement	√	√	
5. Construction	√	√	√
6. Close out	√	√	√

## CATEGORIES OF REGISTRATION

(Extract from the Project & Construction Management Professions Act 48 of 2000)

- 18.** (1) The categories in which a person may register in the project and construction management professions are —
- (a) **professional**, which is divided into—
    - (i) Professional Construction Manager; or
    - (ii) Professional Construction Project Manager; or
  - (b) **candidate**, which is divided into—
    - (i) Candidate Construction Manager; or
    - (ii) Candidate Construction Project Manager; or
  - (c) **specified categories prescribed by the council.**
- (2) A person **may not practice** in any of the categories contemplated in subsection (1), unless he or she is registered in that category.
- (3) A person who is registered in the **category of candidate** must perform work in the project and construction management professions only under the supervision and control of a professional of a category as prescribed.

So where does this leave the infamous SACPCMP  
'verification letter'?

It was never intended to be a form of proof of registration  
or competence but is being used by individuals as proof  
of competence and registration.

## IDENTIFICATION OF WORK

(Extract from the Project & Construction Management Professions Act 48 of 2000)

**26.**

(3) A person who is not registered in terms of this Act, may not —

- (a) perform any kind of work identified for any category of registered persons;
- (b) pretend to be, or in any manner hold or allow himself or herself to be held out as a person registered in terms of this Act;
- (c) use the name of any registered person or any name or title referred to in section 18 or 21; or
- (d) perform any act indicating, or calculated to lead persons to believe, that he or she is registered in terms of this Act.

(4) Subsection (3)(a) may not be construed as prohibiting any person from performing work identified in terms of this section, if such work is performed in the service of or by order of and under the direction, control, supervision of or in association with a registered person entitled to perform the work identified and who must assume responsibility for any work so performed.

This should be interpreted as meaning that a Candidate H&S Agent may undertake an H&S Agent's work (in other words work outside the scope of a Candidate) but only under the control of an H&S Agent.

THE END

