

Independent Process Observer



Quarterly Report

Report #6 Fall 2003

Preface

It has been one year and nine months since I became the Independent Process Observer for the Sudbury Soils Study (SSS).

Since my last report, particular emphasis has been made in the media by community members regarding the question of the openness of the SSS to the public-at-large. Furthermore, other statements in the press have questioned membership on the Technical Committee (TC) and which organizations should be represented on that committee.

Communication and dissemination of information on how the SSS works and its possible outcomes are critical issues as the Study reaches important findings in both the Human Health Risk Assessment (HHRA) and the Ecological Risk Assessment (ERA).

This report will address these concerns and others.

Issues and Recommendations

1) Union Representation on the TC and the PAC

ISSUE: A letter dated October 2nd, 2003 from the United Steelworkers of America (USWA), Local 6500, Local 2020, Local 6855 and the Mine Mill/Canadian Auto Workers Union (CAW) to the SARA Group (SSS consultants) requested that union representatives sit on the Technical Committee (known as the TC) and on the Public Advisory Committee (known as the PAC).

COMMENT: At their meeting on November 6th, the TC welcomed a delegation representing the USWA locals and the Mine Mill/CAW. The representatives from these unions articulated a request to become part of the SSS process by having representation on the TC and the PAC. A frank and open discussion followed between TC members and the union representatives. My observation was that this face-to-face conversation was beneficial to all sides and I congratulate the Chair and all who participated in creating a positive atmosphere that led to fruitful discussions.

The process observer for the Sudbury Soils Study is independent of any organization or group involved in the study. He is impartial and his role is to advise on matters related to the study's Human Health Risk Assessment and Ecological Risk Assessment processes, both of which are managed by the study's Technical Committee with input from the Public Advisory Committee. As the observer, Franco Mariotti is required to report to the public on the study process four times each year.

RECOMMENDATION:

I will reserve any specific recommendation on this issue until after the next TC meeting on December 11th, when a decision on the union's request will be made by the TC.

2) Falconbridge Citizens' Committee

ISSUE: Last summer the Ministry of the Environment (MOE) and the Sudbury & District Health Unit released results of a study indicating that certain areas of the Falconbridge community had elevated levels of arsenic in the soil. As a result, a citizens' community group was formed to solicit further answers from Falconbridge, MOE and the Health Unit.

COMMENT: The answers that the Falconbridge Citizens Committee seeks are not independent of the aims of the HHRA or the ERA of the SSS. Both the SSS and the Falconbridge Citizens' Committee are looking for answers to very similar questions such as; do metals of concern impact human health? There is much value in creating understanding amongst all parties if legitimate groups such as this one become part of the Soils Study process.

It has been suggested that having a member of PAC representing a community group would create precedence. This notion is unfounded. The precedence has already been set since two existing members of the PAC represent two of the First Nations groups.

RECOMMENDATION:

The TC should approach the Falconbridge Citizens' Committee and ask if they wish to have a representative on the PAC. It is my feeling that if the Citizens' Committee wish to do so, then they should have representation on the PAC.

Currently there are two vacant positions available on the PAC. In my view, if a representative of the Falconbridge Citizens' Committee sat on the PAC, he/she would no doubt reflect the views and concerns of other citizens from the City of Greater Sudbury.

3) Public Access to the TC and the PAC

ISSUE: The public has a growing concern that they do not have access to the TC which is the key decision making body, and that access to the PAC is limited. Indeed, input from the public to the PAC is limited to short presentations at their meetings.

COMMENT: Since the fall of 2002 when the PAC meetings were advertised as being open to the public, public attendance has steadily increased. At the last two PAC meetings in September and November, there were nearly 40 members of the public in the audience. Furthermore, the news media has carried letters and comments from members of the public to the editor indicating a desire for further involvement in the SSS. Clearly, the public needs to know what is happening in the SSS.

A positive response to this issue would be to offer access to the public to both the TC and PAC meetings. Access could be in the form of presentations or question periods. With this kind of access to each committee, the public would have direct input to both the decision making body (the TC) and the advisory body (the PAC). This kind of inclusiveness would provide opportunities for people to learn more about the SSS and would become part of the process.

RECOMMENDATION:

The TC should allow a maximum of one hour to hear presentations from the public at every monthly meeting. Following this, the TC agenda would proceed as usual. Furthermore, the PAC should continue to set aside a maximum of a half-hour at all future meetings to hear presentations from the public. These times dedicated to the public would be set aside irrespective of the length of the meeting agenda. I salute the Chair of the PAC for allowing this practice at the last two meetings.

4) Scientific Advisors

ISSUE: Two Scientific Advisors were hired during this past summer. They are Dr. Ron Brecher, a specialist in human health risk assessment, and Dr. Stella Swanson, a specialist in ecological risk assessment. Their duties are to provide independent input and advice on the science of the HHRA and ERA to the Technical Committee, the Public Advisory Committee and the SARA Group. This would happen on a regular basis during the course of the SSS.

At the last PAC meeting on September 16th, Mr. Eric Gillespie, a lawyer representing a Port Colborne citizens' group, advised the PAC that Dr. Ron Brecher had acted as an expert witness on behalf of INCO at a hearing in Port Colborne. Mr. Gillespie stated that Scientific Advisors should be independent and that Dr. Brecher was acting "in a perceived bias".

COMMENT: In a letter addressed to the PAC, INCO representative, Dr. Bruce Conard, stated, "Dr. Brecher was retained by INCO for expert advice on human health risk assessments, but he was not an expert witness at the hearing". My opinion is that INCO's use of the most qualified experts for obtaining advice creates no conflict of interest if such experts are providing advice in another forum. In fact, Stantec (previously known as Beak Consultants, the environmental consultants representing the Public Liaison Committee in Port Colborne) have previously been used as expert witnesses by INCO and this does not seem to have dampened their ability to provide technical guidance to the City of Port Colborne (and it's PLC)."

The Scientific Advisors are supposed to be totally neutral advisors in this process. This does not, however, address the issue of the public's view of how fair the advisors may be in the SSS process. I have heard from TC members at several of their meetings that it is essential that public perception of the SSS process be perceived as open and fair as possible.

The fact still remains that Dr. Brecher was hired by INCO for his advice on previous occasions and that alone places him in a position of perceived bias. Furthermore, one might ask if there is any scientist or scientific expert in this field who has not worked at some time for a mining company. My understanding, after speaking with various individuals, is that it is very difficult to find a scientist or a scientific expert who has not worked at some time for a mining company.

Dr. Brecher will be attending the next PAC meeting on January 20th, 2004.

RECOMMENDATION:

The unions and Mr. Gillespie should come forward and recommend specific scientists and scientific experts to the TC and the PAC for consideration. In the situation where there are no names for consideration, then certain rules should be established to define the relationship

between the two scientific advisors with the mining companies. This relationship needs to be well understood by the TC, the PAC and the public.

5) Public Perception of the Role of Process Observer

ISSUE: Letters to the press and to the Premier of Ontario from representatives of the United Steelworkers of America have expressed concern that my position as Process Observer is perceived as being biased because I am paid by the TC.

COMMENT: First, the cost of my annual per diem is shared equally by all five members of the TC. In this way no one TC member has a financial sway or influence on any recommendations that I may make.

Secondly, my role has been criticized because I make recommendations to the very committee that pays me, and therefore this implies that I may be less critical than if I were paid by a totally separate body. My position as Independent Process Observer in the SSS has similarities to Provincial Tribunals. Members of Tribunals are considered neutral because they are not civil servants and yet they receive per diems from the very ministry that they often adjudicate upon. These Tribunals have been deemed a fair process in courts of law.

Thirdly, the only group to question my credibility as Independent Process Observer is the Steelworkers Union. I have not, and do not, take these criticisms personally. I respect the view of these individuals and appreciate their concern for the existence of a perceived bias. However, I am very conscious of the role I play in this process. I make recommendations to the TC and the PAC that I believe will improve the process of the Sudbury Soils Study. I do this from the perspective of how the Study will benefit the people of Sudbury and the natural environment.

To date, there have been no negative comments made in newspaper editorials or media articles or by members of the public regarding my performance in the role of Process Observer. I would ask that people judge me by my actions and by what I say as related directly to the Sudbury Soils Study.

RECOMMENDATION:

I believe that I have wide public support in the Sudbury community in my role as Independent Process Observer for the Sudbury Soils Study.

6) Determination of PAC Membership

ISSUE: Currently, members of the TC determine membership on the PAC through an interview process.

COMMENT: It is my belief that members of the PAC should be empowered to have a more active role in determining membership on that committee. Members of the community may perceive the PAC's determination of their membership as a further example of community input into the SSS.

RECOMMENDATION:

Members of the PAC should determine the membership on the PAC. The PAC has agreed to address this issue at the next review of their Terms of Reference at the January 20th PAC meeting.

7) Disseminating Information to the Public

ISSUE: Public understanding of the SSS process is as important as the results of the Study itself. In the last SSS newsletter, "*UPDATE*", Dr. Chris Wren and other members of the SARA Group expressed interest in reaching out to the community. They welcome invitations to speak to organizations or clubs so that the community may hear directly from the scientists involved in the soils study.

COMMENT: The value of the scientists from the SARA Group talking directly to community groups cannot be underestimated. When scientists who are directly involved in the SSS (like Dr. Wren) are out in the community, they can articulate and clarify many aspects of the Study that may have been misinterpreted by the media.

This approach of disseminating information about the SSS to Sudburians is just one of several mechanisms that are available. Other avenues include:

- The SSS website - www.sudburysoilsstudy.com
- Open Houses (held at least twice per year)
- Bimonthly PAC meetings
- The SSS newsletter, '*UPDATE*' (quarterly)
- The *Independent Process Observer* Report (Quarterly)

RECOMMENDATION: I applaud this very important proactive approach by the SARA Group to share information on the SSS with the Sudbury community.

If you or your organization would like a presentation by Dr. Wren or his colleagues, please call this toll free number - 1-866-315-0228.

Dates for upcoming PAC meetings for 2004:

January 20, 2004
March 16, 2004
May 18, 2004
July 20, 2004
September 21, 2004
November 6, 2004