

# Independent Process Observer



**Sudbury  
Soils  
Study** | **Étude  
des sols  
sudburois**  
metals • health • environment  
métaux • santé • environnement

## Quarterly Report

### REPORT #9

FALL 2004 (July, August, September)

It has been two years and nine months since the Sudbury Soils Study (SSS) began and in my role as the Independent Process Observer, I have published nine reports. Each report is comprised of comments and suggestions based on observations I have made while attending Technical Committee (TC) and Public Advisory Committee (PAC) meetings during the previous three months. This report differs from past reports in that it is comprised of two parts. In Part A I will take a step back and provide an overall impression of the SSS thus far. As with my previous reports, in Part B I will comment specifically on the events of the past three months.

### PART A:

#### OVERALL IMPRESSIONS OF THE STUDY

My perception of the study thus far can be expressed by answering the following key questions as they relate to the Sudbury Soils Study:

1) Is the Sudbury Soils Study working?

YES. The SSS, in my opinion, is working. It is a meticulous scientific study that is, in some respects, breaking new ground to seek answers to key human health and environmental questions, such as:

- What metals are found in Sudbury soils?
- Where are these metals found?
- In what amounts do they occur?
- Are they impacting OUR health?

At the heart of the SSS process is the TC, which is the decision making body. The TC has six key partners, the Sudbury & District Health Unit, the City of Greater Sudbury, INCO Ltd., the Ministry of the Environment, First Nations and Inuit Health Branch of Health Canada, and Falconbridge Ltd. There are three observer positions at the TC table, including representatives from each of the local Steelworkers and CAW/Mine Mill Unions, the PAC chair and myself as the Independent Process Observer. At times some PAC members have attended these meetings as well.

At the beginning of the SSS, the question of how it was going to work effectively as an open and transparent process had yet to be defined. For example, the issues of consensus, voting or not

**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.**

voting and veto power had not been clearly articulated to the public. At that time, the TC was still working on the development of a plan for how the SSS would work.

Terms of Reference were established and rules by which TC decisions would be reached were ascertained and administered. The TC decided that all decisions would be attained through consensus.

Has it worked? Having witnessed lengthy discussions on specific issues of the study, I have never observed a situation where any one member has remained steadfast or unwilling to move to attain consensus. I have witnessed disagreements, but in the end consensus has always been reached. Voting and veto power do not exist in this process.

While aspects of this study are breaking new ground, the SSS remains, to some extent, a work in progress. An example of this is the creation of Independent Scientific Advisors that monitor the progress of the scientific studies, one for the human health risk assessment (HHRA) and another for the ecological risk assessment (ERA). Especially unique is the creation of an Independent Expert Review Panel, composed of an international team of independent scientists to validate the results of the study. This selection process is currently ongoing with the final team being chosen by an intermediate and nationally respected body not connected to the SSS.

There are few studies of this nature and scope in Canada or the United States that can be emulated. The Port Colborne Community Health Risk Assessment is similar, but in many ways its make-up and process are different.

**2) INCO Ltd. and Falconbridge Ltd. are funding the entire SSS. Are these mining companies swaying the decisions being made?**

INCO and Falconbridge are providing millions of dollars to the SSS. A few individuals have suggested that the mining companies cannot be trusted and that in their role as members of the TC, they might sway or influence decisions to benefit themselves. I have attended almost all TC and PAC meetings (95%) and have never witnessed a situation where the mining companies have stood steadfast against other members of the TC on a decision.

Certainly disagreements have occurred between members of the TC. In the end, however, after some lengthy discussions, all decisions have been made by consensus. This is due to excellent facilitation on the part of the independent Facilitator/Chair, Dick DeStefano, and willingness on the part of all TC members to make this study effective. Furthermore at the beginning of this study, every member of the TC made a commitment that the SSS would be done properly from its onset. I continue to witness the sincerity of that commitment.

**3) Is the SSS a fair, open and transparent process?**

Yes, I believe it is. Why? The TC is the decision making body for the SSS and there are processes in place to prevent decisions being made independently of the TC by any one member.

These are:

- Three out of the five TC members represent the interests of the public. They are the Sudbury and District Health Unit, the Ministry of the Environment and the City of Greater Sudbury.
- The TC requests PAC input and comment on any major decision made by the TC. The PAC provides suggestions and opinions, although the TC is not obliged to follow them. I have witnessed key public decisions made by the TC being passed on to the PAC before the TC's final approval.
- The PAC chair sits on the TC as an observer and has an opportunity for full input throughout the meeting. As well, all members of the PAC are invited to attend any and all TC meetings as observers.
- CAW/Mine Mill Union and the Steelworkers Union representatives sit as observers at all TC meetings and the TC welcomes their opinions and comments.
- An independent facilitator ensures the meetings run effectively.
- In my role as Independent Process Observer, I attend all TC meetings. In that role, I am able to comment freely and provide suggestions on any part of the process. If at any time I feel that the process is being railroaded or unduly influenced to alter decisions in any way other than consensus, I WILL go public with that concern.
- All PAC meetings are open to the public.
- The SSS website provides comprehensive information on the study. It also provides an opportunity for citizens to ask questions and request further information. The website is updated as new information arises although it is perhaps a little slow at times. See [www.sudburysoilsstudy.com](http://www.sudburysoilsstudy.com).

4) Is the public being heard?

Let me preface my answer by saying that the public has the right to be heard and opportunities are there for them to be heard. Having said that, the answer to this question is twofold.

On a positive note, there are several ways in which the public can express their opinions and questions. They are welcome to attend the open sessions at TC and PAC meetings; they may send an e-mail via the SSS website ([www.sudburysoilsstudy.com](http://www.sudburysoilsstudy.com)) and/or phone the toll free number (1-866-315-0228) and they will receive a response within 24 hours. Open sessions have been set aside at all PAC and TC meetings so members of the public may ask questions or make comments. The open sessions at PAC meetings have been utilized at virtually every meeting by at least a few individuals.

Unfortunately, the public has not been heard at the open sessions of the TC meetings. These sessions have been underutilized with no representatives from the public in attendance at several meetings. The reason for this may be that TC meetings are held on weekdays during the day, which may make it difficult for members of the public to attend. It is my feeling that more members of the public would attend the open session of TC meetings if they were held at a more convenient time, for example, after 5:00 p.m.

**RECOMMENDATION:**

Since TC meetings are held monthly, perhaps a portion of every second TC meeting could be held in the evening so that members of the public could attend and address the TC at the end of their workday. Normal TC meetings are held at Tom Davies Square from 9:30 a.m. to 4:30 p.m. In alternative months, the TC meetings could start at noon and continue into the evening.

In 2004 only one ‘Open Forum’ for the public was held. This, in my opinion, is not adequate.

**RECOMMENDATION:**

There should be at least two Public Forums per year. The value of face to face contact between members of the public and the scientists and with members of the TC and PAC cannot be underestimated.

The SSS website continues to provide a venue for disseminating information and also a mechanism for asking questions about the study.

Overall, the opportunities are there for the public to learn more about the study and to obtain answers to questions and requests. Sudburians as a whole have not, in my opinion, embraced this study. Perhaps it is because people are not interested in process and to date, much of the time at the Public Forums and PAC meetings has been spent on this aspect of the study. It has been suggested that the public is simply interested in the results. The Sudbury Soils Study deserves the attention of all Sudburians. Its results will be profound, now and in the future.

5) Is the study being kept on track? Is it timely?

My answer to this question is “somewhat”. The SSS is true to its initial mission to carry out two crucial studies - a Human Health Risk Assessment and an Ecological Risk Assessment. The details of these two studies were, in the beginning, not clearly detailed because it was the task of the scientific consultants, who were hired almost one year later, to identify how these two assessments would be carried out.

During most of the first year of the study in 2002, the TC was occupied with creating the study outline and searching for scientific consultants. A calendar of how the events of the study were to unfold was created. This would act as a basis to determine if the study was on track. According to that initial calendar, the study was supposed to be complete and a report released by the fall of 2004. However, this proved to be somewhat ambitious so by the summer of 2003

this calendar was no longer used. This happened because it had been created prior to the scientific consultants being hired and furthermore, it did not include key scientific elements that were later decided upon. Ten additional air monitors, backyard vegetable surveys and shallow well drinking water surveys, to name a few, were added to the study once details of the scientific methods for both the HHRA and ERA were created.

The current prediction is that a final report will be released to the public by the fall of 2005. Is this a deviation from the original calendar? The answer to this question is twofold.

First, the Sudbury environment is, in many ways, unique due to its geological, social and geographical background. As a result, the study needs to conform to its uniqueness. Hence the SSS is not identical to studies done elsewhere but has evolved as a result of some of the unique parameters the region offers. Time taken to decide how some of the science had to be conducted added to the delay. In my mind, and having been privy to these discussions, the delays have been understandable and justified.

Secondly, certain scientific aspects of the study had to be developed by the SARA Group and before it could incorporate them into the study, it had to obtain agreement from all TC members. This became, in some cases, a lengthy and delayed process since all TC members had to bring these recommendations back to their respective specialists and consultants. Deadlines set for returning comments were often missed, resulting in delayed reports. In the end, members of the TC, as a whole, contributed to the delays of some of the scientific studies, resulting in late fieldwork and late data.

6) Are there aspects of this study that can be improved?

Yes.

**Reaching out to the public:** To date, the SARA Group has done an admirable job of educating the public about the SSS and making themselves available to any group that has inquired about the study.

### **To date they have;**

- Hosted three Open Houses
- Distributed four publications of the newsletter '*Update*' to 40,000 homes
- Established an e-mail address via the website and a toll free number (1-866-315-0228)
- Hosted three "Have Your Say" workshops
- Participated in 21 meetings with interest groups
- Attended 15 Public Advisory Committee meetings
- Conducted 39 media interviews
- Prepared and issued 135 media pieces to radio, television and print media outlets

Although the SARA Group has done as much as can be done to reach out and educate the public, there are still many Sudburians who do not fully understand the scope of the study. More needs to be done.

The Communications Sub-Committee (CSC) of the SSS is currently conducting a telephone survey to assess the public's general understanding of the SSS. Results of this survey will be used to determine what needs to be done to further promote the SSS and will provide valuable information about what needs to be done to increase understanding.

Dr. Chris Wren, head of the SARA Group, is a very capable SSS spokesperson. He is an articulate presenter who describes the SSS in a way that all can understand. I would encourage any group to invite Dr. Wren to speak to their membership about the SSS.

### **RECOMMENDATION:**

There should be more frequent Public Forums held in various locations. Just as the location of the PAC meetings are rotated throughout the Greater City of Sudbury, so too should the location of the Public Forums.

**Public expectations of the SSS results should be more clearly articulated since the public's understanding of what the expectations are at the end of the study goes hand in hand with understanding the process and the science behind the study. I am concerned, however, that the public does not appreciate the key aim of the SSS. The newsletter 'Update' should devote space in its next issue to informing the public what they should expect from the SSS.**

### **FINAL COMMENT**

The Sudbury Soils Study has evolved since its inception nearly three years ago. I have witnessed positive steps being taken to assure a fair and transparent process. Further steps that have been initiated since the SSS began include:

- increasing PAC membership to 12
- making the PAC more independent of the TC
- creating opportunities for members of the public to speak to TC and PAC members at their meetings
- supporting union representatives as observers on the TC
- updating the SSS website on a frequent basis

The study is not perfect and one might argue that it is a slow process and that it is not investigating all aspects of the impacts on human health. I do believe that it is true to its initial mandate of carrying out a thorough Human Health Risk Assessment and an Ecological Risk Assessment. It would be beneficial to the study to have a greater number of Sudburians attend PAC and TC meetings and to have Public Forums flooded with questions from the public. This kind of participation would allow members of the public to better understand the process.

In my opinion, the Sudbury Soils Study is working. I believe that in the end it will have an immeasurable impact on all our lives. This is a study worthy of everyone's attention

## **PART B**

### ***ISSUES and RECOMMENDATIONS***

#### **Issues Raised in my Last Report #8:**

In my last Independent Process Observer's Report, I raised certain issues and made recommendations to the TC. These were:

**1) Issue:** The TC needs to respond directly by mail or e-mail to those individuals attending a TC or PAC meeting who have asked questions about issues pertaining to the SSS where no answers were provided at the meeting.

**Result:** At the September TC meeting, members agreed that the PAC Chair would respond in writing to any inquiries or questions raised during an open session of the PAC. Similarly, any questions raised by the public during a public session of the TC would be answered in writing by Dr. Chris Wren.

**2) Issue:** The TC should notify the PAC when Dr. Stella Swanson (Scientific Advisor and Ecological Risk Assessor) would be available to meet with them.

**Result:** The TC has confirmed that Dr. Stella Swanson will attend the next PAC meeting and will make a presentation on Ecological Risk Assessment. The meeting is scheduled for 7:00 p.m. on Tuesday, November 9<sup>th</sup> at the Royal Canadian Legion in Minnow Lake. The public is invited to attend.

**3) Issue:** Health Canada needs to make a clear commitment regarding their role on the TC and their participation in the SSS. As well, the TC needs to make a clear statement regarding the role of Health Canada on the SSS. Health Canada at the very least should be responsible enough to notify the TC recorder as to whether or not their representative will be attending meetings.

**Result:** This will be addressed in the next Process Observers Report, early in the new year.

**4) Issue:** The PAC should be more autonomous from the TC, especially in determining the renewal of members' terms.

**Result:** In August and September members of the PAC revisited portions of the Terms of Reference for the PAC. Revised Terms of Reference for the PAC were drafted and approved. They are now posted on the website and can be found in Appendix A.

## NEW ISSUES:

### 5) Frequency of the SSS Newsletter

**ISSUE:** The newsletter '*Update*' is the publication written and distributed by the SARA Group. This newsletter is one of the mechanisms by which the public is informed about the progress of the Sudbury Soils Study. Initially '*Update*' was to have been published four times per year, but due to the SARA Group's hectic schedule, publication has been somewhat irregular (on average every six months).

**COMMENT:** The SSS newsletter known as '*Update*' is an important publication and the only one that keeps the public informed about the progress and milestones of the SSS. Publishing it quarterly may not be possible due to the SARA Group's heavy workload; however, having a newsletter that is published on a regular, predictable basis is important.

### RECOMMENDATION:

The SARA Group should publish '*Update*' twice yearly on a regular, predictable basis. For example, each newsletter should advertise the date of the next issue of the newsletter. A decision about which months the newsletter will be published should be made and adhered to in future.

### 6) PAC Attendance

**COMMENT:** I would like to compliment members of the PAC for their excellent attendance at PAC meetings. On average about 80% of the volunteer members attend each meeting.

### 7) Consistent Presence of Union Observers

**COMMENT:** Representatives of the United Steelworkers of America and the CAW/ Mine Mill Unions have attended every TC meeting since they were given observer status. I compliment the representatives for their due diligence and especially for contributing positive suggestions on issues they feel strongly about.

## SCHEDULE OF THE NEXT TC AND PAC MEETINGS

Normally, Technical Committee meetings are held at 9:30 a.m. on the second Thursday of each month. However, due to the attendance of a special guest, the next meeting will be held November 10 (the second Wednesday). All meetings are held at Tom Davies Square.

Public Advisory Committee meetings are held at 7:00 p.m. on the third Tuesday of every other month beginning in January. As with the next TC meeting, the date of the next PAC meeting is changed and will be held November 9 (the second Tuesday) due to the attendance of a special guest. Meetings are rotated throughout the community. The November meeting will be held at the Minnow Lake Legion.



**Sudbury Soils Study  
Public Advisory Committee - Terms of Reference  
R: October 14, 2004**

**1.0 Background**

The Ministry of the Environment (MOE) summary report<sup>1</sup> on metals in soil and vegetation in the Sudbury area identified that further soil investigations and assessments were necessary. As a result, the MOE, INCO Ltd. and Falconbridge Ltd. have cooperatively undertaken a sampling program for the Sudbury area that will refine the existing database. In addition, this database will be used as part of the information necessary to conduct a Human Health Risk Assessment (HHRA), and an Ecological Risk Assessment (ERA). The MOE, INCO, Falconbridge, the Sudbury & District Board of Health and the City of Greater Sudbury established a Soils Public Liaison Committee (PLC) as a form of public consultation with the local community prior to and during these studies.

At the October 30, 2001 PLC meeting it was agreed that the two goals of the PLC were to discuss and advise on technical issues, and to provide a forum for public consultation. It was felt that this process would be best served by two separate committees. The PLC evolved into the Technical Committee (TC), established for INCO and Falconbridge and the government stakeholders to discuss and advise on technical matters. A separate Public Advisory Committee (PAC) was established to address the concerns of the community at large.

**2.0 Purpose**

2.1 The PAC has been established to address the concerns of the community at large, by providing comments and input to the Technical Committee on deliberations surrounding the activities assessing the health and environmental impacts of metals in the Sudbury environment. Study activities upon which the PAC might offer commentary would include:

- a) the sampling and reporting of community soil metal levels;
- b) the development and implementation of community HHRA/ERA studies;
- c) the initiation of any remedial works recommended by the conclusions of the HHRA/ERA studies;
- d) all associated public communication and consultation activities.

2.2 The PAC will be maintained as long as required by the activities of the TC or at a minimum until such time as the Human Health Risk Assessment and Ecological Risk Assessment are completed and distributed to the public.

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<sup>1</sup> Metals in Soil and Vegetation in the Sudbury Area (Survey 2000 and Additional Historic Data) September 2001, Ministry of the Environment

- 2.3 The PAC is not responsible for the scientific or technical review of the study. The PAC may, however, offer its comment and input to the TC on these matters. The PAC reserves the right to ask the TC to provide the PAC with access to advisors who have the necessary expertise to comment on scientific or technical issues.
- 2.4 In addition, the PAC will provide opportunities for members of the public to express their concerns or to ask questions about any aspect of the Sudbury Soils Study, such as questions related to scientific or technical matters or to process or procedural issues.

### **3.0 Membership**

- 3.1 a) Committee members from the study area (which includes the City of Greater Sudbury and those adjacent areas that lie within the study boundary) shall be selected by a joint committee of the PAC and the TC. Applications shall be solicited through newspaper advertisements. The joint committee shall consist of two (2) members of the TC's Working Group and two (2) members of the PAC (typically the PAC Chair and Vice-Chair or their designates). The joint committee shall review the applications and circulate the names of all applicants to the PAC for feedback. The list shall note those applicants who have been selected for interview and shall include their resumes. After the interviews, the joint committee shall circulate to the PAC a list of the individuals who have been nominated for PAC membership. The list of nominees will be circulated to the PAC at least one (1) week in advance of the next PAC meeting. A quorum of the PAC shall reach consensus as to whether or not to accept the nominations.
- b) Committee members from the Whitefish Lake and Wahnapiatae First Nations shall be determined by the Band Councils from those communities.
- 3.2 The composition of the committee shall be a maximum of twelve (12) members who live in the study area, including one member to represent each of the Whitefish Lake and Wahnapiatae First Nations communities. Members of the PAC are to be representative of the community at large. A recording secretary shall be provided by INCO and Falconbridge. The recording secretary is not a member of the PAC.
- 3.3 Membership shall be for two (2) years and members may be reappointed. Members shall be notified by the recording secretary that their current term has expired. Members seeking reappointment shall apply in writing to the PAC Chair within sixty (60) days of being notified by the recording secretary. Within thirty (30) days of receipt of the letter, the Chair shall call a meeting of the Committee of the Whole to discuss the application. The member seeking reappointment shall not be present during these discussions. A quorum of the PAC Committee of the Whole shall reach consensus (see section 5.4) as to whether or not to accept the re-application. Members who have reached the end of their term and have been duly notified and do not reapply within sixty (60) days will be deemed to have ended their participation in the PAC.
- 3.4 Any member who misses three consecutive meetings may be replaced. Absentee members must first be notified in writing by the Chair. Based on communications with the absentee member, the Chair may choose to call a meeting of the Committee of the

Whole to review the circumstances of the absentee member. The member in question shall not be present during these discussions. A quorum of the Committee of the Whole shall come to a consensus as to whether or not the member should be replaced. As asserted in section 3.1b, members from the Whitefish Lake and Wahnapiatae First Nations shall be determined by the Band Councils from those communities

- 3.5 Resignations are to be provided in writing to the PAC Chair.
- 3.6 Replacement of any member of the PAC shall be the responsibility of the joint committee of the PAC and the TC upon being advised by the PAC Chair of such a vacancy.
- 3.7 The PAC shall notify the TC of any changes in membership and shall announce any changes at the next full PAC meeting that is open to the public.

#### **4.0 Officers**

- 4.1 The Chair of the initial meetings of the PAC will be the original Chair of the PLC. The PAC shall have the option to elect a Chair from amongst its members at the first meeting of each new calendar year, or if the position becomes vacant.

The Chair will plan meeting agendas, preside over the meetings, and coordinate activities of the PAC. The Chair is full member of the PAC.

- 4.2 The Committee shall also elect a Vice-Chair from amongst its members at the first meeting of each new calendar year, or if the position becomes vacant. The Vice-Chair shall act as Chair in the absence of the Chair.
- 4.3 The Chair of the PAC (or designate) is a member of the TC. As noted in the TC Terms of Reference, the role of this individual would not be one of decision-making, but rather to provide a communication link between the TC and PAC.

#### **5.0 Meeting Procedures**

- 5.1 The Committee shall meet on the third Tuesday in the months of January, March, May, July, September and November, and cancelled at the discretion of the Chair. The Committee will ensure the date, time and place of all meetings are advertised for the information of the public. The Chair may call additional meetings as needed.
- 5.2 Full PAC meetings shall be open to the public. The policy for public participation at full PAC meetings is set out in a policy statement that was accepted by the PAC on June 22, 2004.
- 5.3 Quorum shall consist of fifty percent of the membership, plus one.
- 5.4 Decisions are to be made by consensus, using the definition of consensus adopted by the TC (February 12, 2004):

*Reaching Consensus: Consensus building is a process of seeking unanimous agreement. It involves a good-faith effort to meet the interests of all stakeholders. Consensus has been reached when everyone agrees they can live with whatever is proposed after every effort has been made to meet the interests of all stakeholder parties.*

- 5.5 In the absence of a quorum, meetings may be held and motions may be put forward and seconded for the record. However, all motions must be fully discussed by a quorum of the committee at a subsequent meeting in order to be accepted as official and acted on by the committee.
- 5.6 All agendas, minutes and letters from the committee, and all public communications on behalf of the committee, must be approved by the committee.
- 5.7 All documentation received or produced by the committee shall be made accessible to the public. Those individuals or organizations, who submit documentation to the PAC, assume all responsibility for the accuracy of the data and information and assume all responsibility for all privacy or confidentiality requirements.
- 5.8 An annual report shall be prepared for the TC to document PAC activities. The report will include activities, lessons learned, etc., from the calendar year.
- 5.9 The Terms of Reference of the PAC will be reviewed on an annual basis.

### **Minutes and Secretariat**

All administrative services associated with this committee will be the responsibility of INCO and Falconbridge. Minutes will be distributed electronically. All minutes will be forwarded to the Technical Committee and the Process Observer.