

Independent Process Observer



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

Quarterly Report

Report #7 Winter 2004

The Sudbury Soils Study (SSS) continues to break new ground. Accessibility to both the Technical Committee (TC) and the Public Advisory Committee (PAC) by the public has improved. As well, clarification on decision making within the Technical Committee and the role of the Scientific Advisors are better understood. This report deals largely with these items.

Issues and Recommendations

1) Union Representation on the TC and the PAC

ISSUE: In October of 2003, representatives of the United Steelworkers of America, Local 6500, Local 2020, Local 6855 and the Mine Mill/Canadian Auto Workers' Union submitted a request to the TC of the Sudbury Soils Study to allow union representatives to sit on the TC and on the PAC. In December 2003, in response to this request, the TC had several discussions with union representatives.

At the February 12, 2004 TC meeting, Brian McMahon (representing the TC) made a formal announcement of the TC's decision, with union representatives John Fera and Rick Grylls in attendance.

The TC decided that union representatives may participate at the TC meetings, not as members but as 'observers'. Furthermore, union observers are invited to attend the entire TC meeting and receive all documentation that TC members receive. To respect confidentiality, these documents will be handed back at the end of each meeting. Union attendance will be recorded at each meeting and physical space will be created for the observers at the table.

COMMENT: The presence of union observers at all TC meetings is a very positive outcome as it addresses key concerns of the unions. They can now judge for themselves whether the SSS process is fair and open and whether any one TC member's influence is stronger than another's. Issues being discussed will now be fully understood because union observers will be present when the TC makes decisions.

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.

With regard to the union's initial request that they become full members of the TC, it is my opinion that although the unions represent a large group in the Sudbury community, they do not represent everyone. For over half a century, however, they have gained valuable knowledge on workplace health issues, such as the impact of metals on the human body. Although the SSS mandate does not cover workplace health issues, the knowledge gained by the unions over the years relating to metals and human health is an asset to this Study. I believe the three agencies on the TC (the Sudbury & District Health Unit, the Ministry of the Environment and the City of Greater Sudbury) represent all Sudburians. As such, these three agencies also broadly represent the concerns of union members.

Finally, I support the decision of the TC with respect to observer status by the unions. I especially compliment the union representatives for accepting this position. Their presence at all TC meetings adds further credibility to the SSS in achieving a fair and open process.

2) The Falconbridge Citizens' Committee and the PAC

ISSUE: In my last report (#6, Fall 2003), I recommended that the TC invite the Falconbridge Citizens' Committee to have representation on the PAC.

COMMENT: Members of the Falconbridge Citizens' Committee were made aware of vacant PAC positions through face-to-face contact with the Falconbridge Ltd. representative, Marc Butler, and newspaper advertisements soliciting PAC memberships.

The PAC made a decision affecting the possibility of this Committee's representation at their meeting on January 20th, 2004. At that time, the PAC reviewed its Terms of Reference and decided that all future membership on the PAC would be by individuals representing the community as a whole and not by a specific group. In other words, no sitting member of the PAC will act as a representative of any one group, but will simply represent him or herself. However, Ivan Filion, the PAC chair, stated that PAC members have the opportunity at their meetings to bring forth views and issues pertaining to certain group's concerns.

CLARIFICATION: I stated in my last report that groups such as the Falconbridge Citizens' Committee should have representation on the PAC since a precedent had already been set by two participating organizations of the PAC. These representatives are the Wahnapiatae First Nation and the Whitefish Lake First Nation.

In clarifying the TC's position regarding my concern of precedence setting, Brian McMahon from the Ministry of the Environment and member of the TC, responded:

"I wanted to give you the MOE's perspective on the issue of the First Nations being on the PAC. All provincial government ministries work under policies that support the principle of special status of the First Nations people (FN).

When the MOE works with the FN on any issue, we are to approach the relationship from the perspective of working with another government of equal standing and authority.

At the beginning of the Soils Study, our instructions were quite clear that if First Nations lands were within the 'impacted area' or the 'Study area', they needed to be invited to the table as full members. The FN has responsibility for the health and welfare of their people; as such they also met our criteria of being active members of the Committee.

When the original liaison committee was reorganized into a TC and PAC in the fall of 2001, the First Nations were asked to consider if they wanted to be part of the TC or the PAC. They decided to participate on the PAC because they were comfortable with Health Canada representing them at the TC.

For these reasons, we do not support the notion that the First Nations being on the PAC or the TC is setting a precedent and is no different than having the unions, the Falconbridge Committee or any other public interest group on the committees. The FN do enjoy a special status that cannot be compared to other groups."

I support this approach of First Nations membership of the PAC and I retract my comment that a precedent had been set.

RECOMMENDATION: I respect the decision taken by members of the PAC. I encourage all people, whether they represent themselves or a group, to make comments directly to the PAC during the open session of the PAC's bimonthly meetings. Anyone interested in becoming a PAC member should visit our web site at www.sudburysoilsstudy.com for information about the process involved. It's important to note that as this report comes to print, PAC and TC members will have chosen individuals to fill existing vacancies.

3) Public Access to the TC and the PAC

ISSUE: Direct public access to the TC and the PAC should be permitted so that concerns may be heard.

COMMENT: Since my last report, both the PAC and the TC have created a half hour and a one hour time slot respectively at all their meetings to encourage direct dialogue with the public. It should be noted that the TC and PAC were considering the idea of open sessions for the public prior to my suggestion in my last report. I welcome this positive action; it further compliments the SSS process.

A draft protocol for those who wish to make presentations to either the PAC or the TC was discussed at the February 12th TC meeting. The TC suggested that the Working Group revise this protocol and bring it back for approval. Once it has been finalized and approved, it will be placed on the SSS website as well.

In the meantime, those wishing to make presentations at a TC or PAC meeting should contact Ivan Filion at Cambrian College at ifilion@CambrianC.on.ca or 566-8101, ext. 7909.

4) Scientific Advisors

ISSUE: Two Scientific Advisors were hired during the summer of 2003. They are Dr. Ron Brecher, a specialist in human health risk assessment (HHRA) and Dr. Stella Swanson, a specialist in ecological risk assessment (ERA). Their duties are to provide independent input and advice on the science of the HHRA and ERA on a regular basis during the course of the Study process to the Technical Committee, the Public Advisory Committee and the SARA Group

At the 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 my last report, I concluded that Dr. Brecher was in a position of perceived bias. However, I also stated that it is very difficult to find a consultant in the Human Health Risk Assessment business that has not worked for large mining companies. Thus, in this particular situation, I recommended that the TC seek new Scientific Advisors or establish measures that would eliminate a perception of bias.

The TC has implemented the following measures to diminish the perception of bias:

1. Scientific Advisors (SA) have been instructed not to discuss their Study comments with INCO or Falconbridge or any other TC member individually. If questions do arise that need resolution, the advisors' point of contact will be TC member Dr. Stephen Monet of the City of Greater Sudbury, who will bring the issue to the Working Group (WG) or TC for a response.
2. Any discussions that need to take place between the advisors and the companies are to be restricted to administrative issues (e.g., invoices for payment).
3. Written comments from Scientific Advisors are to be e-mailed to all WG members simultaneously (the WG includes members from the City, MOE, SDHU, INCO and Falconbridge). No agency will receive comments in advance.
4. Scientific Advisors are to advise the Technical Committee, in written form, of all work being conducted on other projects for any TC agency.

NOTE: At the PAC meeting of January 20th, a presentation made by Dr. Brecher, dealing with his role as Scientific Advisor, was well received. It was made clear that the PAC would have direct access to Dr. Brecher and Dr. Swanson when their expertise was required.

RECOMMENDATION: The measures suggested by the TC are helpful in diminishing bias that may arise between Dr. Brecher and the TC and will also be implemented with Dr. Swanson, the Sudbury Soils Study ERA Scientific Advisor. Dr. Swanson has not attended any TC or PAC meetings to date and I believe that a visit by her to meet PAC members would be appropriate.

5) Determination of PAC Membership

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

COMMENT: In my last report I recommended that members of the PAC determine their own membership.

RESULT: At the January 20th PAC meeting, members discussed this issue and approved a resolution that representatives of both the PAC and the TC would view applications for PAC membership. The PAC will determine final membership.

6) Timing of Public Sessions at PAC and TC Meetings

ISSUE: At the January 20th PAC meeting, Chair, Ivan Filion, moved the open forum period from the end of the meeting to the beginning. This appeared to work well since at past meetings some members of the public left before the meeting adjourned. Five people from the public spoke during this open forum, more than at any other meeting. This rise in public participation at PAC meetings is an optimistic indication that more Sudburians are getting involved.

Two people presented at the first public session of the TC meeting held on February 12, 2004. Eric Gillespie (lawyer from Port Colborne) made a presentation urging the TC to consider the inclusion of Indoor Air Quality data as part of the SSS. The TC is taking his request under advisement and will respond at the next TC meeting.

At the same open session, Bernard Andrews (concerned citizen) asked questions pertaining to certain aspects of the air quality monitoring for the SSS. As a result, the TC accepted the suggestion that the SSS website list all 20 metals that were measured in the soil samples taken for this Study.

COMMENT: Having now witnessed public sessions at both TC and PAC meetings, I welcome this positive action. These open sessions improve the public's access to comment on the SSS directly to TC and PAC members.

RECOMMENDATION: As suggested by Mr. Andrews, the SSS website should state all 20 metals that were investigated in the soil sampling.

7) Decision Making by the Technical Committee

ISSUE: How are decisions determined by members of the Technical Committee?

COMMENT: To date, varying answers regarding decision making in the TC have been provided to the public. I myself have not been immune from providing obscure answers on this topic. I have stated in past public sessions that TC members do not vote and yet refer to them as 'voting' members. TC members have offered their own similar and yet slightly different explanations. The one consistent and **correct** response has been that there is no veto power in this decision process.

At the last TC meeting, Chair, Dick DeStefano reiterated that the TC works by consensus. He supplied the following definition to the group:

"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."

The Chair further stated that, *"If a significant portion of the Committee disagreed on an issue, that item is then sent back to the Working Group or a task force is developed to investigate further. As well, there is a conflict resolution policy that could come to the table if necessary."*

RECOMMENDATION: This definition is clear and articulate for most people to understand. I urge the TC to accept this definition and to use it publicly.

8) Follow-Up for Recommendations Made by the Independent Process Observer (IPO)

Previously, recommendations made in my quarterly reports were discussed at TC meetings as they arose or as necessary. The TC has now established a tracking system for IPO recommendations. When each IPO Report is published, it is tabled for the next TC meeting.

NOTE: Recommendations made by myself, as Process Observer are exactly that, recommendations. The TC has the right to accept, alter or totally ignore them.

Dates for upcoming PAC meetings in 2004:

May 18
July 20
September 21
November 16

Locations of these meetings may change so please visit our website.

Proposed Project Timetable April to September, 2004	
Monthly Technical Committee Meetings	April, May, June, July, August, September
Monthly Progress Reports	April, May, June, July, August, September
Bi-monthly Public Advisory Committee (PAC) Meetings	May, July, September
Monthly Communications Sub-Committee Meetings	April, May, June, July, August, September
Telephone Poll	May
Participation in the City of Greater Sudbury Land Reclamation Tree Giveaway	May 29
Publication and Distribution of <i>Update</i> newsletter	May
Greenhouse Studies for the Ecological Risk Assessment	May-December
Air Monitoring Survey	October 2003-October 2004
Release of Soils Data from Ministry of the Environment and Laurentian University studies conducted in 2001	June
Food Consumption Survey	July
Drinking Water Survey	June-August
Meetings with Interested Individuals and Groups	As required
Communication of Findings to the Public through Newspapers, Website and Mailings	As required

Contact Information

For any comments or questions regarding this report, the Sudbury Soils Study, the Technical Committee or the Public Advisory Committee, please contact us at: 1 (866) 315-0228 or through our web site at www.sudburysoilsstudy.com.