

DELAWARE AUTHORITY ON RADIATION PROTECTION
SUMMARY OF MEETING
February 28, 2011
Delaware State University
Martin Luther King Student Center
Dover, Delaware

Members Present: (those with checks only)

R. Arm	√	F. Fisher-Tyler	√	K. Musto	√
F. Esposito	√	W. Holden	√	N. Melikechi	√
L. Fox	√	C. Krikelis		D. Tilton	
E. De Whitt	√	T. May	√		

Others Present:

R. Brinsfield	√	L. Terry-Graham	√	W. Fendt	√
N. Henry	√	A. Greenly	√	E. Tross	√

Authority Chairman Dr. Melikechi called the meeting to order at 6:15 pm and welcomed the members and guests in attendance.

I. AGENDA ADOPTED

Dr. Arm moved to approve the agenda but asked that item six (New Business) be discussed before item five (Old Business), L. Fox seconded, and all members voted in favor of accepting the agenda with the modification to the order requested by Dr. Arm. The motion was approved.

II. MINUTES

Dr. Arm moved to approve minutes of the November 18, 2010 Authority meeting, Dr. DeWhitt seconded, and all members voted in favor of accepting. The motion was approved.

III. CHAIRMAN'S COMMENTS

Dr. Melikechi thanked the Authority members and ORC staff for their continued contributions to radiation protection for all Delawareans. He acknowledged that the Authority now has several task forces in place for By-laws, nominating committee and for the webpage. He stated that we are all working for the safety of Delawareans. Dr. Melikechi moved that we move forward to the Office of Radiation Control's reports due to the busy agenda. He opened the floor for general comments and there were none at this time.

IV. OFFICE OF RADIATION CONTROL (ORC)

F. Fisher-Tyler stated that the Office of Radiation Control developed the quarterly reports, and that licensing volume, committee tasks, and budget related tasks have kept the office very busy since the last meeting. She asked if anyone had specific questions, no one did and she stated that R. Brinsfield would briefly discuss the reports provided by the Office of Radiation Control.

R. Brinsfield explained that there are two reports for this meeting. One report contains information for calendar year 2010 and the second report contains information for the January thru February 2011 time period. R. Brinsfield stated that there were 28 new x-ray facilities register in 2010. F. Fisher-Tyler stated that the 2009 numbers for new facilities were reduced but they rebounded in 2010. Dr. Arm asked if the facilities that had violations had resolved the violations. F. Fisher-Tyler stated that all violations were resolved within 30 days of issue. Dr. Arm requested that the resolved date be shown on the reports so the Authority can see that the issues were resolved. R. Brinsfield reviewed the X-Ray Facilities Inspection Report, and noted that the number of inspections completed should increase with the inspection staff on board now. R. Brinsfield asked if there were any questions, no more questions were asked. Dr. Arm moved to accept the reports and Dr. Esposito seconded the motion. The motion passed. Informational reports handed out included:

- Certificate of Approval Report (January 01- December 31, 2010),
- X-Ray Facility Summary Report (January 01- December 31, 2010),
- Inspection Violation Report (January 01- December 31, 2010),
- Radiation Technician/Technologist Report Summary (January 01- December 31, 2010),
- Certificate of Approval Report (January 01- February 28, 2011),
- X-Ray Facility Summary Report (January 01-February 28, 2011),
- Inspection Violation Report (January 01- February 28, 2011),
- Radiation Technician/Technologist Report Summary (January 01- February 28, 2011),

V. OLD BUSINESS

Dr. Melikechi moved that the original agenda be reinstated due to some members not being present. Dr. Arm accepted the amendment. Item five will now again be Old Business and item six will be discussion of New Business.

1. Authority By-Laws Task Force

Dr. Arm talked about the By-laws Task Force. He state that the task force reviewed a lot of other states by-laws and they tried to combine the best of all the states into this first draft. Dr. Arm said W. Holden had a couple of

items to discuss about the draft by-laws. W. Holden asked about the provision referring to appointee resignation from the Authority if the Governor's Office should be involved. F. Fisher-Tyler made a note that the words in italics in the draft by-laws were directly from the Delaware Code and that the task force tried to use the Delaware Code as much as possible. The group discussed the provision that the Authority could ask for removal of a member if the member had two or more unexcused absences, or they are not conducting themselves in a manner expected by the Authority. E. Tross asked if the proposed removal was based on ethics. W. Holden answered yes. E. Tross stated that an opinion from the Public Integrity Commission and a vote from the Authority should be acceptable but that it should be specified that the vote must be a majority Authority vote. E. Tross said there should also be a mention of a voluntary resignation.

W. Holden brought up a section of the Delaware Code that states "Members of the Authority shall be eligible to be reimbursed for travel to and from each meeting. However a member may not receive more than \$50.00 for each meeting attended, and not more than a total of \$500.00 for meetings attended in any calendar year." Dr. Arm stated that he is not aware of anyone at this point requesting reimbursement but would like to leave this as an option in case it is needed by someone in the future. E. Tross stated that since this information was in the Delaware Code it did not have to be specifically added to the draft by-laws for the Authority.

W. Holden mentioned that in the draft by-laws it states that "The ORC Administrator shall keep minutes as a history of the proceedings of the Authority." W. Holden asked that the term "or a designated representative" be added, since the Administrator is not the person who always takes the minutes.

Kevin Musto gave a quick overview on the By-Laws Taskforce. He stated that the committee took some things from Pharmacy Board related by-laws that he had worked on in the past and that they came together into a first draft pretty quickly.

2. Nominating Committee

W. Holden spoke on behalf of the Nominating Committee as he is the chair of the committee. He stated they held a conference call on February 1, 2011. W. Holden stated that he was surprised to learn that the Authority was down five members. The committee agreed that subject matter experts, dental assistants, medical physicists and radiation therapists are appropriate target skill sets for recruitment. W. Holden also asked if there was a change in the process by which members were recruited/appointed since the last member was recommended and approved by the Governor's office, without notice to the Authority. Dr. Melikechi stated that he had asked if there was a new process in place and he was told no there is no new process in new

Authority members. Dr. Melikechi also stated that having an orientation for new members would be advisable.

3. Webpage Taskforce

Dr. DeWhitt spoke on behalf on the Webpage Taskforce as he is the chair of the taskforce. Dr. DeWhitt said that the taskforce came up with some links for review which were handed out to Authority members. Examples of recommended links included:

- <http://www.imagewisely.org/>
- The NCRP (Report No. 160 Ionizing Radiation Exposure of the Population of the United States) <http://www.ncrponline.org/Publications/160press.html>
- <http://radiologyinfo.org/>

Dr. Melikechi thanked the taskforce and stated that he thought the recommended links were very useful.

VI. NEW BUSINESS

1. Joint Sunset Committee

Dr. Melikechi started off by asking if all the Authority members received the email that he had sent out on February 27, 2011. Dr. Melikechi stated that he received a phone call on February 3rd from T. May and F. Fisher-Tyler about the possibility of the Authority on Radiation Protection being sunset. He stated that he asked questions about what is driving this action and why this action came about. Dr. Melikechi stated that his understanding was it came about due to cost control and efficiency. He stated that he received an email on February 17th saying the Sunset Committee was meeting that evening to discuss the Authority being sunset. Dr. Melikechi said he was unable to attend that meeting on such short notice. Dr. Melikechi stated that he learned the Sunset Committee voted to recommend that the Authority be sunset. He stated he believes for this to take effect that a bill has to be written and passed. Dr. Melikechi asked T. May and F. Fisher-Tyler if the email he sent out was factual. T. May stated that he would have to review his email as to its accuracy. T. May stated as soon as we learned the Authority was recommended for sunset that we reached out to the Authority chair right away and that Dr. Melikechi did request information at that time. T. May stated that DHSS is working on gathering the information requested by Dr. Melikechi. T. May stated that similar to Dr. Melikechi, he also received notice about 5:00 pm of the day of the meeting (February 17th) to see if T. May would be able to attend the Sunset Committee. T. May noted that he could not attend, and that no one from DHSS was at the Sunset Committee meeting either and that, yes, the Sunset Committee recommended the Authority for sun setting. F. Fisher-Tyler stated that the email Dr. Melikechi sent described accurately the phone conversation that

took place on February 3rd. Dr. Melikechi said that the process was not inclusive and that he was shocked and surprised that the Authority was not brought the proposal prior to this Sunset Committee vote. Dr. Melikechi thought that proposal would be brought to the Authority first for discussion. He did not find the process for sun setting the Authority logical. Dr. Melikechi said above and beyond the process what the Authority would like to do is respond.

L. Fox asked about what process that Dr. Melikechi was referring to. She stated that on the Sunset Committee website that there is a two year time line that the Sunset Committee is supposed to be following. Dr. Melikechi asked if they started the process two years ago. L. Fox said no because it was not in their minutes they had posted on the Sunset Committee website. Dr. Arm said the Authority was up two years ago for sun setting so the Authority should be okay for another 5 years. Dr. Melikechi asked if anyone else was aware that the Authority should not be up for review. T. May stated that he did not know, because he doesn't have a part in the Sunset Committee. Dr. Melikechi stated that he brought this up because he feels there should be a discussion. W. Holden asked if it legally holds weight at this point if proper procedures were not followed. Dr. Arm asked if the Authority was not up for review this year who brought it up and submitted it for review. Dr. Melikechi said he assumes DHSS brought it up for review. T. May stated that DHSS did recommend that the Authority be sunset. T. May also stated that what the Authority had in the attachment to Dr. Melikechi February 27th email was the DHSS position statement for that. Dr. Arm said so the Authority was not up for review but DHSS did bring it up for review without due process or telling the Authority. T. May said he would again like to state that when he was notified as to what was going on with the Sunset Committee, he called the chair and set up a meeting. So the chair had as much information to react to, along the same time line as the agency had, as well. Dr. Melikechi said he asked for information on that day so he could have some facts and that he was not told that this was actually going to the Sunset Committee he said he was told there was an intent. He thought it was going to be discussed here and that the phone call was just to let him know what they wanted to do. He was hoping they would come to the Authority to discuss it before taking action. He stated that each of us is a member here and he can't just by one phone call say whether the Authority agrees or disagrees. He was hoping by today he would have the date and the reasons from DHSS and everyone could look at it and discuss it. T. May stated that Dr. Melikechi did receive the same information at the same time that we did and that he responded to request from DHSS in respect to this matter not on behalf of the Authority but on behalf of the agency. T. May stated that the agency did not control the timeline. T. May again stated that when the agency found out that the Authority was being placed on the Sunset Committee, that Dr. Melikechi was advised and it was very important that Dr. Melikechi be advised before someone from the Joint Sunset Committee contacted Dr. Melikechi to discuss this. He stated that

he provided Dr. Melikechi with as much professional courtesy that was feasible with the circumstances that he, T. May, had to work under and he just wanted that known. T. May said he did not want it to appear to be something it is not. Dr. Melikechi said he understands that. Dr. Melikechi asked on February 3rd was T. May aware of this document. T. May stated no. Dr. Melikechi said that the Authority should have had the DHSS document to discuss and that the information that Dr. Melikechi had on the 3rd was minimal. Dr. Arm asked who prepared the document. Dr. Melikechi stated he had no idea. Dr. Melikechi stated that he got the document from his elected representative. T. May stated that the agency (DHSS) presented and prepared the position statement. Dr. Arm asked when this was done. T. May stated it was done in advance of the Joint Sunset Committee meeting, maybe two days ahead of the meeting. Dr. Arm asked whether the position paper was circulated to the committee. T. May stated no it was prepared under DHSS and not the Authority and the actions taken were in respect to the agency not the Authority. Dr. Melikechi said it doesn't matter how it happened because the train is moving and he would like to go through and discuss what the Authority wants to do. Dr. Melikechi said if you look at the position paper there are quite a few arguments in there that need discussion. W. Holden asked what would be the plan from here to draft a rebuttal and if so who will draft it because F. Fisher-Tyler would probably not be able to draft it. T. May stated that F. Fisher-Tyler is an employee of the department and he would have to seek council above him to see if they could assist in something that the agency supports. Dr. Melikechi said he agrees 100 percent and does not think they should ask F. Fisher-Tyler to do it and that the Authority will draft the rebuttal themselves and then present it. He stated his suggestion is to go to DHSS with it first and find out who drafted the position paper so they have a discussion with that person. W. Holden asked the odds of DHSS changing their mind. Dr. Melikechi asked T. May if he could comment on that. T. May said he can't speak on behalf of the department at that time. W. Holden asked E. Tross if she could comment. She stated that she could not comment on it on behalf of the Attorney General's office but that the Authority would have to decide as a group what its position is. E. Tross said it appeared that the position paper has already been taken into consideration and that the vote has already gone through. W. Holden asked if you can go back to the Sunset Committee and E. Tross stated she did not know. Dr. Melikechi said his understanding is yes you can but not to quote him on that. Dr. Melikechi said he thinks it is possible but he is not sure. Dr. Arm said his first issue is with the statement about cost, that initially the Authority used to meet without food at the Hospital for the Chronically Ill and there was little to no cost. Dr. Arm said the second issue seems to be about the name and he doesn't care about what they call the Authority as long as they get to continue to provide help. He stated the Authority had done a lot to get rules and regulations changed, reviewing applications with the expertise they have, reviewing/changing the Delaware code and amending regulations trying to make sure the site visits are kept up to speed and requesting more

support for the agency. He stated that he doesn't think the finances are the real reason behind this. He also stated that yes the agency can do most of the things on their own but when appeals come up as has occurred in the past somebody not just with a rubberstamp should be there. Dr. Arm said most of them are up to date on the current equipment and standards. Dr. Arm said he doesn't see a real difference except they can vote to do without food and if they are an advisory council they can run more efficiently because they will not have to go through the Governor's Office for appointments. Dr. Arm stated that there are only two other Authority bodies in the state and he is okay with being called an advisory council as long as they can continue to protect the public and support the agency. Dr. Melikechi said that everyone would probably agree that the name is not the issue. Dr. Melikechi asked for everyone to think if the Authority adds value to protect the public, does not add value, or somewhere in between. Dr. Arm said that one of the things that may have led to this is that in reading the by-laws in other states the Authority is one of only three Authorities, nationally. He also said in a way he doesn't believe the Authority conflicted with the agency but is more of a watch dog for the agency. W. Holden said the position paper talks about the Authority being one of only three Authorities in the States and that we don't actually know that and would need some more facts on if there are other bodies like that in other states. K. Musto said most of them are advisory committees. Dr. Arm said the way it is written is that the Authority directly reports to the Governor's Office as opposed to an advisory council which works with the agency. He stated the idea is to work together for the benefit of the state. W. Holden stated that F. Fisher-Tyler is very efficient in her current position as Administrator of the Office of Radiation Control that she should not be used as a model, because when he thinks about the future when F. Fisher-Tyler might not be there that a replacement may not be as effective or efficient an Administrator as her. Dr. Arm stated that he has worked with F. Fisher-Tyler's two predecessors and they only created hostility and problems with health care facilities. Dr. Melikechi stated that in regards to Dr. Arm's statement about a name change he suggested that there has to be more to it than changing the name. Dr. Melikechi said if they just changed the name he doesn't think anyone would have a problem with that. Dr. Arm stated that with changing the name you change the position because they would not report directly to the Governor but would consult with the agency as opposed to the Governor. Dr. Melikechi said he doesn't know if that is what the DHSS proposal is stating. He said he doesn't want to guess. W. Holden said the DHSS proposal is clear it states that the Administrator and Office of Radiation Control can do without the Authority. W. Holden stated again that he thinks the danger there is that F. Fisher-Tyler can run the office effectively without the Authority, but a replacement may not be able to, and he is thinking – down the road. Dr. Melikechi said they should ask DHSS if they are providing value in their expertise that they bring to the table or not. T. May states that in the position paper it states and recognizes the importance of the Authority. T. May stated that the DHSS position

statement and what the agency is proposing is that it is time to do business in a different way, and that is exactly what this proposal is about. T. May said the position paper says it recognizes that it may need special expertise and that we are asking to be able to have an advisory council. He said we would seek the same advice from an advisory council as we would from this Authority. Dr. Melikechi asked how that would be more cost effective because clearly we are costing the state too much money. T. May stated you shouldn't look at it as costing the state money but as the functions of the operations as well. T. May stated that feeding and watering the Authority costs time and resources that are of limited value in the agency when it takes close to half a FTE to support this board and Authority when we really only have two full time inspectors. He stated that half an employee is in the 20 percent range. He stated the focus is on the fact that we are here to protect the public health and that is done through inspections and assessments so that is where resources need to be focused. T. May stated that the Office of Radiation Control has a variety of other stresses on it, with its involvement in the state's Radiological Emergency Preparedness Plan, distribution of Potassium Iodide (KI), and Appalachian Commission for Low-Level Radioactive Waste. He stated that F. Fisher-Tyler is now the State Liaison Officer to the NRC and we have to begin to reprioritize how staff time is expended. T. May stated there will be no more resources or funding so the agency has to figure out the most efficient way to proceed and the most efficient way to do that is to get more out of the existing resources that we do have. Dr. Melikechi asked how an advisory board would run if they are not going to get any help to run the Administrator and Office of Radiation Control. Are they planning on giving the council its own funds? T. May stated that his concept of an advisory council is when you need subject matter experts to be convened for certain areas or projects where input is needed, then we would go out and bring people together in a group that is selected for the tasks that need addressing and resolved. T. May said its similar to someone talking about an enforcement action, there is a mechanism by which the department enforces that already exists. T. May stated that if we need subject matter experts to come in and testify on the states behalf that would be a function we would go out and look for, staff the advisory council and that is how it would work. Dr. Arm said if you bring an expert in on a particular subject to testify what would be the honorarium in paying an expert to come in who is not already a volunteer on a committee. T. May said he is not aware of any honorariums or paying anyone to testify on our behalf. F. Fisher-Tyler thanked everyone for their kind words and stated one thing to not lose in this discussion is the value that the Office of Radiation Control has gotten from the subject matter expertise of the members of the Authority. F. Fisher-Tyler stated she cannot take a position as an employee of the department, but that the expertise at the table and being able to have the benefit of those opinions is really important when there are new technologies and emerging issues in the field of radiation protection. F. Fisher-Tyler stated that what is said in the DHSS position

paper about continuing to take advantage of the subject expertise in an advisory council is important.

W. Holden said that the problem with an advisory board is that the members would lose touch with the Office of Radiation Control guaranteed, and right now all the members have a long standing. W. Holden stated that the relationship with the office is what is important. T. May stated that this isn't about one person or what is going to happen in ten years but it is about addressing needs that we have today. T. May stated that if F. Fisher-Tyler leaves the agency will find an able replacement, meaning no disrespect to anyone. T. May said the agency will be able to continue that level of competence so he doesn't personally see the reason to keep the Authority should be based on one person. Dr. Melikechi stated he doesn't think anyone is saying that but that the Authority has been very satisfied with F. Fisher-Tyler, and without her the Authority cannot continue to do what it is doing. T. May stated that with an advisory council members who are subject matter experts would continue to work with F. Fisher-Tyler, the only difference is the relationship changes. He stated that the subject matter experts would be working for the department for what we do. W. Holden said he agrees it takes a lot of resources to help the Authority. Dr. Melikechi stated that the value the Authority adds should be taken into consideration along with the time and that he hopes that whatever the Authority asks is something that everyone would need because no one can operate without resources. Dr. Melikechi stated that his point is yes, we take two days a week from her and her staff but that would be needed any way. Dr. Melikechi stated the second thing he would like to ask is that he felt that some of the things in the position paper are stating things that are not exactly correct. He said the part that speaks about the by-laws being required as SB 108 but have not yet been established that it is implicit that it makes it sounds like the Authority doesn't want by-laws. T. May stated that you would have to say it is a true statement. Dr. Melikechi stated it is definitely untrue. T. May said those are the facts and are factually true. Dr. Melikechi said it is not needed. T. May stated that he would have to say that everything in the paper is factual and that there is nothing fabricated and it is all supported. Dr. Melikechi said it implies things that are not necessarily true. W. Holden stated it is not taking into account their effort. Dr. Melikechi stated it is irrelevant because on one hand you are saying we have not complied while on the other hand it is being worked on to comply. K. Musto said it is tough because he was called upon by the Governor's office to join this Authority but it looks like they are saying due to cuts they are going to use resources that they used to support the Authority in other ways, and he can understand that. Dr. Melikechi said he doesn't even know if the Governor is aware. T. May stated that the Governor's Office is aware. Dr. Melikechi said he is sure the Governor's Office is aware but he is not sure if the Governor himself is aware. T. May stated that he is not sure if the Governor himself is aware but he is sure his highest advisors are aware. L. Fox said she finds it ironic what the Authority has done over the years in being an advocate for the agency with getting the long vacant inspector

position filled and generating revenue fee funds and the department doesn't see that as valuable. She stated their intention was always on assuring radiation protection for the public. T. May stated that again it's not intended to be an attack on the Authority it is just a concept of doing business in a more effective way. He stated that he believes that the DHSS position paper contains praise to the Authority for the things they have done over the 30 some years. L. Fox said she would like to see the finances that they generated in their work that they pushed for in which all the different establishments have to pay yearly to what the committee costs. T. May stated that it is roughly \$180,000 dollars a year in fees that goes into the general fund, for which the Office of Radiation control does all that work without getting any money in return, which in fact that activity hurt us administratively rather than helping us. He stated they put \$180,000 into the general fund which I'm sure everyone compliments you on that which you have to understand that comes at a cost to us internally for us to issue those permits, review documents and track review and handle those funds. W. Holden says it sounds like grounds for adding additional resources to him. T. May stated that again there will be no additional FTE's or funding from what he is being told and has to go on. He stated this is a zero growth budget and with the issues that we face we have to come up with new ideas of what this proposal does. He stated it is a shift of governance that was put in place 36 years ago and the agency believes it is time to have that review. T. May stated again he respects the dialogue and opinions and this is a way to free up the Office of Radiation Control. L. Fox stated it is a way for the office to go about without anybody overseeing it. T. May stated that his response to that is that DHSS has a vast number of regulatory programs that don't have an advisory council with input on who gets a restaurant permit, who gets a drinking water system and that is what we are here for and that is what the statutory mandate is and that we are very good in what we do and how we do it. T. May stated that we have the mechanisms in place to accomplish this and that we might not have all the subject expertise that we need but we would be bringing in folks as needed. Dr. Melikechi asked if he thought doing that would be more cost effective. T. May stated yes. Dr. Melikechi asked if it would also be better for the public. T. May stated that he believes the same level of protection will be provided. Dr. Melikechi asked if T. May had any idea why the position paper was not presented to the Authority before going to the Sunset Committee. T. May again stated that he works for DHSS and the position statement was drafted at the request of the department. T. May stated that the timing could not have been worse, he wished the timing was better, and there weren't meetings to discuss this, or opportunities to discuss this. T. May stated that when the agency found out that we reached out to the chair and advised the chair as to what was going on and that we were communicated with as the chair was communicated with. T. May stated that as far as the process goes we are all playing by the same timeline and expectations. L. Fox asked E. Tross for council comments on the Sunset Committees regulations. E. Tross said she would have to look and see if the guidelines

for the Sunset Committee are set in stone or if there are exceptions. E. Tross stated that if there were procedural questions people can send those to her and she can look at them. Dr. Melikechi stated that he is sticking to his email and feels that it is accurate in summarizing what has happened. Dr. Melikechi asked if there were comments or thoughts for the next step. Dr. Melikechi stated that in due course, there would be an opportunity to have a discussion about this process. Dr. Melikechi asked if they would like to first meet with DHSS before going to the Sunset Committee. He stated that they can go to DHSS to meet with who drafted the position paper if it was not T. May. T. May stated that he did not say that he did not draft the paper. Dr. Melikechi stated that he is sorry he heard that T. May was not aware of it. T. May stated that there was no position paper when they spoke on February 3rd. Dr. Melikechi asked if they want to go straight to the Sunset Committee or to DHSS first. W. Holden suggested they can go to their elected officials in the legislature, since it will have to pass through them. E. Tross stated that she thinks the Authority should decide as a body what it wants to do. Dr. Melikechi agreed with that and if the Authority is okay with it there is no point in doing anything. L. Fox asked if there is any way to know if contesting it will change anything. E. Tross stated that you never know with contesting anything if it will have an effect or not. Dr. Melikechi said he thinks they need to understand a little bit more about what the advisory council is and how it will work. He stated he agrees that we need to decide what the next steps are whether they want to contest it or let it run its course. Dr. Arm said the concern he has is that they will get subject matter experts from one or two people versus a committee. Dr. Arm stated that he saw that other states have an advisory committee that works with the agency and that not having to go through the Governor's office will make the advisory council more efficient. He also stated that he doesn't know if it will be cost effective if the state has to hire an expert. Dr. Melikechi asked if the members wanted to vote on what they would like to do next or see if they can meet with the Joint Sunset Committee if the majority would like to do that. Dr. Arm asked about the possibility of meeting with the agency to do what is best in their interest and the public. Dr. Arm said why take up the time to appeal to the Sunset Committee if the advisory council will be similar to the Authority it would just be a transition. T. May said the agency may entertain the concept of the Authority becoming the advisory council to DHSS. Dr. Arm said he thinks that might be the way to go because that the Authority has provided advice to the agency over the years. Dr. Melikechi said he would prefer to go to DHSS first to see how we can work together for the benefit of the public. Dr. Melikechi stated the initial process was wrong but if we can communicate with DHSS and talk about the Authority perspective. Dr. Arm suggested making a motion to the agency that the Authority be renamed to an advisory council and see if the agency will get back to them in a short time. Dr. Melikechi asked what would change. L. Fox stated that is what we would have to hear from the agency. Dr. Arm stated some things would change immediately because appointments do not have to go to the Governor that the Authority would be an advisory council

to them instead of being above them, and they would do the best thing for the citizens. Dr. Melikechi said we don't really know what DHSS wants to do and we made our point the process was wrong, but if we meet with DHSS, perhaps they will share their views. He stated that the change of name has to mean something and that he wants to know what that something is and not guess. W. Holden asked about the timing of the legislative schedule. T. May stated that it would be difficult to do. T. May said the agency has some concepts but they might not want to spend a lot of time working on how an advisory council would work if there is not going to be an advisory council. T. May stated that if what is being suggested is that the Authority would like to see what the advisory council might be and what the structure might be he would suggest that is probably doable. Dr. Melikechi asked how to go about requesting a meeting. L. Fox asked if an advisory council is like an ad hoc committee. T. May stated yes. L. Fox stated that is something they would need to understand from the agency. T. May stated that they should probably be able to understand that from his voice tonight. T. May stated that an advisory council would be on an as needed basis. Dr. Arm stated that every year they have met before the Joint Finance Committee to help the agency and he asked if there is anything that the agency would like the Authority to bring up this year. T. May said it is very appreciated the efforts the Authority has done. T. May stated that if they go and ask for more resources in his opinion it will be no. T. May stated there is not going to be additional state funding or new staff positions. Dr. Arm stated that they have worked with the agency in the past years and would like to be able to continue to do that. Dr. Melikechi said that he feels it is important that they continue to work with DHSS and to have a meeting with someone at DHSS, to see how the costs would be reduced and how the advisory council will work. Dr. Melikechi said that they can see if the Sunset Committee can table the matter until after a meeting with DHSS. Dr. Melikechi said he doesn't quite understand how an advisory council is different from how things are currently running. Dr. Melikechi said he is trying to find a way without trying to cause problems. W. Holden said he would like to keep the timing in mind of legislature. Dr. Melikechi said if this could have been proposed to us before that by now the Authority could have something it chose not to support or to support. L. Fox asked T. May how the public would be able to comment on issues. T. May stated that as with other programs anyone in the public can write a letter for the agency to review and take into consideration. T. May stated that he would see no difference in getting information out to the public, and that the mechanism already exists. Dr. Arm stated a concern about a situation like when a company requesting a variance like the recent handheld, dental x-ray device that the expert will be someone in favor of the technology and not put the patient first. T. May said this would be a matter where subject matter experts would be gathered similar to the way it was handled with the Authority and that process will not change. T. May stated that similar programs seek expertise when outside advice is needed. He stated again the role of the advisory council is a pivotal piece as to what the agency proposes. Dr. Melikechi stated at the

moment the Authority is somewhat separate from DHSS and can give its own advice. Dr. Melikechi stated that something like the advisory council that is somewhat dependent may not allow for public issues to be raised at the level of the Authority. Dr. Melikechi stated that with an advisory council, DHSS can pick individuals they want. T. May stated it would not be in the interest of DHSS to operate like that. They will weigh the information gathered from the subject matter experts and would take the advice of the advisory committee into consideration and to not operate in that way would make the advisory council inefficient. L. Fox stated that the powers that be if they find out that they can make more money with a device and certain individuals want it and that expert wants it that would generate more money for the department. T. May stated the agency's mission is to protect the public and that economic factors are not given weight and it would be highly inappropriate. He said it would almost be criminal. T. May said again, the main argument needs to focus on the operating budget. The agency is looking at resources and is trying to get the greatest value out of the resources available, and that is what matters in the economic times that we face. Dr. Melikechi asked if the Authority had their own budget would they still be going through this. T. May stated that he can't put that into context because the Authority does not have a budget and they are supported by DHSS funds and staff. He stated the amount of support the agency provides is in question. T. May stated that if the Governor gave the Authority a budget and a secretary he does not know if we would be sitting here today. Dr. Melikechi asked if there was anyone else that had comments. Dr. Arm asked how long it would take the agency to brainstorm what the advisory council would be. T. May said maybe three to four weeks. Dr. Melikechi said if there are no more comments he would like to summarize and make a decision on what the next step is for the Authority. Dr. Melikechi said his suggestion is to meet with DHSS and from there exchange emails amongst the Authority members to discuss. Dr. Melikechi said he does not know the timeline they have to do this. W. Holden asked E. Tross if they can communicate by email. E. Tross stated that she doesn't see anything wrong with that and she stated that the draft by-laws have provisions for a special meeting. Dr. Melikechi asked if they need a special meeting to make a decision. E. Tross said she doesn't see a problem with the chair getting information needed and then holding a special meeting to see how the Authority wants to respond. Dr. Melikechi asked if the Office of Radiation Control has to be there. E. Tross does not see the need for the agency staff to be there. Dr. Melikechi said they can see if it is possible to meet with the Sunset Committee. Dr. Melikechi said the train is moving and we are trying to catch it and we can tell the Sunset Committee that we are trying to come up with a reasonable response. W. Holden asked what the next steps are, the Sunset Committee has ruled and what is next. Dr. Melikechi said that his understanding is a bill has to be drafted next. T. May stated he believes the Sunset Committee will draft this bill. Dr. Arm said he thinks since time is of the essence we should work with the agency as much as we can. He also stated that the Authority might be able to take a legal

stance if they are not following the laws. E. Tross said she is not sure if the committee has to be notified. Dr. Arm stated that the Authority is independent from the agency so notice to them should have been provided. Dr. Melikechi asked if everyone thinks that they should meet with DHSS and notify the Sunset Committee that they are going to meet with DHSS to understand DHSS's proposal before the Authority makes their proposal. Dr. Melikechi asked how they would go about setting up a meeting with DHSS. T. May suggested they write a letter to Secretary Landgraf and request a meeting and he asked that the Authority copy himself on the letter. T. May said he will let DHSS know that they should expect a letter for the request. Dr. Melikechi stated the second thing is to let the Sunset Committee know they are working on a response. L. Fox stated that the names of the members of the Sunset Committee are on their website. Dr. Melikechi said he would like to have some people from the Authority meet prior to the meeting with DHSS so they can decide what they are going to say. Dr. Arm said they need to take a timely step with the agency. Dr. Melikechi said they needed some motions and some actions items to move forward. Dr. Esposito moved that DHSS be contacted to set up a meeting. Dr. Arm seconded the motion. Dr. Melikechi asked all in favor. F. Fisher-Tyler and T. May recused themselves from all voting. All other members voted in favor of the motion. The motion passed. Dr. Melikechi stated the second step is to contact the Joint Sunset Committee to let them know the Authority is trying to meet with DHSS before the Authority submits their response, whatever the Authority's response might be. Dr. Esposito made a motion for the Authority to contact the Sunset Committee. W. Holden seconded this motion and all other members voted in favor of the motion. The motion passed. Dr. Melikechi said that sets two things in motion that will have to be done over the next few weeks. Dr. Melikechi asked for a couple of members to attend the DHSS meeting and would like some dates that work for the people that would like to be there. Dr. Arm stated without knowing the date it is hard to know if he can be there. Dr. Esposito said she will not be available during the day in March as her surgery schedule is already fixed. Dr. Arm stated he had some national meetings coming up. Dr. Melikechi said he will get some dates and then email them out to everybody to see who can be there. Dr. Melikechi said after he gets the information he will email the members the result of the meeting and if needed the Authority will call for a special meeting. Dr. Melikechi said they will stay in contact over email as much as possible. E. Tross asked if they decided who will write the letter to request the meeting with DHSS. Dr. Melikechi stated he will draft it and then send it out to the Authority. Dr. Arm stated the letter should be very positive. Dr. Melikechi said he absolutely agrees with that and wants to work with the agency. Dr. Melikechi closed by saying that he thinks the meeting was very productive and everyone around the table wants to work to protect the public. Dr. Melikechi said even if there is a disagreement on the manner the intent is the same and he thanked everyone for their efforts.

VIII. PUBLIC COMMENTS

There were no public comments.

IX. ADJOURNMENT

Dr. Melikechi thanked everyone again and adjourned the meeting.

The next Authority meeting is scheduled for Monday, April 4, 2011 at Delaware State University in Dover, Delaware.

Respectfully submitted,

Frieda Fisher-Tyler, Administrator
Office of Radiation Control
Executive Secretary
Authority on Radiation Protection