



Susan Thixton <susan@truthaboutpetfood.com>

Pennsylvania Sunshine Act violation complaint

1 message

Susan Thixton <susan@truthaboutpetfood.com>
To: rredding@pa.gov

Mon, Jan 6, 2020 at 10:50 AM

Dear Mr. Redding,

This email is to serve as a complaint to violations of the Pennsylvania Sunshine Act and potential knowing and intentional violations of Pennsylvania Open Meeting laws should Pennsylvania Department of Agriculture participate in any manner in any future Association of American Feed Control Officials (AAFCO) meeting. This email also serves as notification of potential Freedom of Information Act/Sunshine Act violations of Pennsylvania Commercial Feed law.

AAFCO – the Association of American Feed Control Officials – is a not for profit 501 (c) (5) entity providing services to governmental agencies including, but not limited to, FDA and Pennsylvania Department of Agriculture. In public record, FDA stated in April 2019 (FDA's Final Response Letter Docket ID: FDA-2016-P-3578 Citizen Petition filed by Association for Truth in Pet Food): "AAFCO is an association of state and federal agencies". AAFCO provides evidence of their service to government within the "Purpose" statement of various AAFCO Committees. Some examples are:

- "committees for effective educational approaches in support of regulators"
- "development of uniform enforcement policies"
- "develop science- and risk-based regulations. Such regulations would support the implementation of effective inspection and compliance strategies..."

Evidence of Pennsylvania Department of Agriculture participation in AAFCO as official state business is found in Pennsylvania Commercial Feed law which states: "5107. Misbranding. (4) It purports to be or is represented as a feed ingredient or it purports to contain or is represented as containing a feed ingredient unless the feed ingredient conforms to the definition of identity, if any, prescribed by regulation of the department. In adopting such regulation, the department shall give due regard to commonly accepted definitions such as those issued by the Association of American Feed Control Officials."

Further, Pennsylvania Department of Agriculture representative Erin Bubb served as Director of AAFCO in 2019, serves as Board Liaison for AAFCO's Enforcement Issues Committee, serves as Board Liaison for AAFCO's Feed Labeling Committee, serves as Board Liaison for AAFCO's Ingredient Definitions Committee, serves on AAFCO's Strategic Affairs Committee, and serves as an AAFCO Investigator for Forage Products. Pennsylvania Department of Agriculture representative David Dressler serves on AAFCO's Education and Training Committee, serves as Chair of AAFCO's Feed Labeling Committee, serves on AAFCO's Ingredient Definitions Committee, and serves on AAFCO's Inspection and Sampling Committee.

Pennsylvania Commercial Feed law adopts and administers the definitions of feed ingredients and official feed terms written by the government agency members of AAFCO (further evidence of AAFCO's service to PDA), but your agency does not provide those definitions and terms as part of public record due to AAFCO's action to copyright protect shared work product of government agency members. However, there remains Attorney General's Office conclusions that "the fact that material received by a state agency may be copyrighted does not preclude the material from constituting a public record."

The Pennsylvania Sunshine Act states "[The Pennsylvania Sunshine Act, 65 Pa.C.S. §§ 701-716](#), requires agencies to deliberate and take official action on agency business in an open and public meeting. It requires that meetings have prior notice, and that the public can attend, participate, and comment before an agency takes that official action." And "The law defines a meeting as "any prearranged gathering of an agency which is attended or participated in by a quorum of the members of an agency held for the purpose of deliberating agency business or taking official action."

Further, Pennsylvania Sunshine Act defines "official action" (requiring open meetings) as: "The definition of "official action" includes four categories:

1. Recommendations made by an agency pursuant to statute, ordinance or executive order.
2. The establishment of policy by an agency.

3. *The decisions on agency business made by an agency.*

4. *The vote taken by any agency on any motion, proposal, resolution, rule, regulation, ordinance, report or order."*

In November 2019, the AAFCO Board of Directors – “as directed by the board of directors” (which includes Pennsylvania Department of Agriculture employee Erin Bubb) - closed meetings (“restricted access”) to Association for Truth in Pet Food, TruthaboutPetFood.com, myself (Susan Thixton), a veterinarian, and multiple pet owners. This action put the Pennsylvania Department of Agriculture in violation of Open Meetings laws and, as such, the Department can no longer participate in any future AAFCO meeting without being subject to punitive judgement.

Pennsylvania Department of Agriculture participation in any AAFCO meeting (either attending in person or participating via phone conference) could be considered an intentional/knowing violation of federal and state Open Meeting laws (in part) due to:

- Federal or state law does not provide opportunity to close a meeting to a select few individuals;
- No public written copy of a vote to close the meeting has been publicly provided;
- No General Counsel or chief legal officer of any agency participating in AAFCO meetings has provided certification that the meeting may be closed to the public;
- Fees are charged for admission to meetings that government agency officials participate as part of their official duties preventing public observation;
- Work product from government employee members of AAFCO are not published in public record and are denied in FOIA requests;
- Pet food/animal feed labeling regulations and legal definitions are not published in public record and are denied in FOIA requests prohibiting the public from access.

Pennsylvania law provides the following as penalties for violation of the Sunshine Act: *“In addition to being assessed attorneys' fees, any member of an agency who is found to have willfully violated the act can face criminal charges and subject to fines of \$100 to \$1,000 for the first offense, and \$500 to \$2,000 for the second offense. Any fine must be paid personally; an agency cannot pay the fine.”*

Because AAFCO “members” consist solely of state and federal government employees that participate as part of their official duties, any future government employee participating in AAFCO in any manner would be in violation of state and federal open meeting laws and Sunshine Act laws. Therefore, the only remedy is Pennsylvania Department of Agriculture must withdraw from participation in AAFCO until AAFCO meets all legal requirements of state and federal Open Meeting/Sunshine Act laws.

We ask you to promptly reply to this email stating if Pennsylvania Department of Agriculture intends to participate in upcoming AAFCO meetings.

Susan Thixton

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Susan Thixton
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