

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

THE TRUMPETER SWAN SOCIETY, <i>et al.</i> ,)	Case No. 1:12-cv-929 (EGS)
)	
Plaintiffs,)	
)	
v.)	
)	
)	
ENVIRONMENTAL PROTECTION)	
AGENCY, <i>et al.</i> ,)	
)	
Defendants.)	
)	
)	
)	

**DEFENDANT-INTERVENOR ASSOCIATION OF BATTERY RECYCLERS, INC.’S
MOTION TO DISMISS PLAINTIFFS’ COMPLAINT**

The Association of Battery Recyclers, Inc. (“ABR”) hereby moves for dismissal of Plaintiffs’ Amended Complaint (Docket Entry No. # 12) in its entirety and with prejudice pursuant to Federal Rule of Civil Procedure 12(b)(1) or, in the alternative, pursuant to Federal Rule of Civil Procedure 12(b)(6).

The basis for dismissal pursuant to Rule 12(b)(1) is that the Court lacks subject matter jurisdiction over this action. Plaintiffs failed to timely challenge EPA’s denial of the 2010 Petition to regulate lead ammunition, and cannot re-set the statute of limitations clock merely by resubmitting a substantially similar filing in 2012 that is not a new or different petition cognizable under Section 21 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2601 *et seq.*

The basis for dismissal pursuant to Rule 12(b)(6) is that the Amended Complaint fails to state a claim upon which relief can be granted because, as the United States Environmental

Protection Agency correctly concluded, Congress excluded ammunition from the Agency's regulatory authority under TSCA. *See* 15 U.S.C. § 2602(2)(B)(v).

In support of this motion, ABR relies upon and incorporates here by reference the facts, points of law and authority contained in Defendant Intervenor National Shooting Sports Foundation, Inc.'s ("NSSF") Memorandum in Support of Motion to Dismiss Plaintiffs' Complaint (Docket Entry No. 25-1).

ABR respectfully requests that this Court dismiss the Amended Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and/or 12(b)(6) for the reasons set forth in that memorandum and prays for judgment as follows:

1. To the extent the Complaint seeks an order requiring EPA to initiate a rulemaking regarding lead bullets and shot, it is denied;
2. To the extent the Complaint seeks an order requiring EPA to reconsider the request to initiate a rulemaking regarding lead bullets and shot, it is denied;
3. To the extent the Complaint seeks litigation expenses of the Plaintiffs, it is denied;
4. Judgment on the merits in favor of Defendants and against the Plaintiffs;
5. For the costs of this lawsuit, including reasonable attorneys' fees; and
6. For such other relief that this Court may deem just and proper.

Respectfully submitted,

/s/ Robert N. Steinwurtzel

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Counsel for Association of Battery Recyclers, Inc.

Dated: August 30, 2012

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was on this 30th day of August 2012, served electronically to the Clerk of the Court to be served through the Court's CM/ECF system on all registered counsel.

/s/ Robert N. Steinwurtzel

Robert N. Steinwurtzel