

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.	)	
	)	
	)	
	)	

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

The parties agree that if this Court reaches the merits of Plaintiffs’ argument that EPA may regulate lead bullets and shot, then this case becomes fundamentally about the definition of cartridges and shells, the regulation of which Plaintiffs concede that TSCA prohibits. (Resp. at 29.) It is remarkable, therefore, that Plaintiffs fail to respond to the dictionary and regulatory definitions set forth in NSSF’s opening brief that make clear that bullets and shot are necessary components of cartridges and shells. Having no substantive response, Plaintiffs offer a hollow dodge, asserting that “[t]he words are not only different, they describe different things.” (Resp. at 24.) Plaintiffs cannot prevail when they have given such short shrift to this central issue; indeed, their lack of a substantive response is decisive because they have offered no alternative but for this Court to conclude that Congress intended the plainly understood, dictionary definitions when it excluded cartridges and shells from EPA’s regulatory authority. Those definitions make clear that bullets and shot are necessary components of shells and cartridges.

EPA, therefore, cannot regulate lead bullets and shot without directly regulating shells and cartridges in violation of TSCA's prohibition on such regulation. This is true whether the regulation sought is characterized as restricting the use of lead bullets and shot in cartridges and shells or as restricting the use of cartridges and shells containing lead bullets and shot. The words may be different, but the conclusion is the same. EPA lacks authority to promulgate the regulation that Plaintiffs seek. The motion to dismiss should, therefore, be granted.

In further support of its motion to dismiss Plaintiffs' Amended Complaint, the Association of Battery Recyclers, Inc. also relies upon and incorporates herein by reference the facts, points of law, and authorities contained the Defendant Intervenor National Shooting Sports Foundation, Inc.'s ("NSSF") Reply Memorandum in Support of Motion to Dismiss Plaintiffs' Complaint (Docket Entry No. 33).

Respectfully submitted,

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Dated: September 24, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was on this 24th day of September 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