

EXHIBIT A

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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CENTER FOR BIOLOGICAL DIVERSITY  
1333 North Oracle Road  
Tucson, AZ 85705;

PUBLIC EMPLOYEES FOR  
ENVIRONMENTAL RESPONSIBILITY  
2000 P Street NW, Suite 240  
Washington, DC 20036;

PROJECT GUTPILE, an unincorporated  
association in Santa Barbara, California;

Plaintiffs,

vs.

Case No. 1:10-cv-02007-EGS

LISA P. JACKSON, Administrator,  
Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460;

ENVIRONMENTAL PROTECTION AGENCY,  
Ariel Rios Building  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460;

Defendants.

ASSOCIATION OF BATTERY  
RECYCLERS, INC.,  
2020 K Street, NW  
Washington, DC 20006

Defendant-Intervenor .

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**ANSWER OF THE ASSOCIATION OF BATTERY RECYCLERS, INC.**

Defendant-Intervenor the Association of Battery Recyclers, Inc. (“ABR”) for its Answer in response to the Complaint (the “Complaint”) filed by the Center for Biological Diversity, Public Employees for Environmental Responsibility, and Project Gutpile (the “Plaintiffs”) in this matter states as follows:

### **INTRODUCTION**

1. The allegations in Paragraph 1 of the Complaint consist of Plaintiffs’ characterization of the nature of the case and require no response.
2. The allegations in the first two sentences of Paragraph 2 of the Complaint consist of conclusions of law to which no response is required. To the extent a response is required, ABR refers to the source cited for its words, substance, meaning, content or context thereof and they are denied. In response to the allegations in the last sentence of Paragraph 2, ABR admits that EPA, among other government entities, has undertaken regulatory actions that have reduced exposures to lead. ABR denies the remainder of the allegations in Paragraph 2 of the Complaint.
3. ABR admits that Plaintiffs submitted a petition to EPA to initiate rulemaking pursuant to Section 21 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §2620, to ban lead in bullets, shot and fishing sinkers/tackle on or about August 3, 2010. ABR denies the remainder of the allegations in Paragraph 3 of the Complaint.
4. ABR admits that EPA denied the request to ban lead bullets and shot based on its lack of authority under TSCA Section 3(2)(B)(v), and published notice of that denial in the Federal Register on September 24, 2010. ABR denies the remainder of the allegations in Paragraph 4 of the Complaint.
5. In response to the allegations in Paragraph 5 of the Complaint, ABR specifically refers to the source in its entirety for its words, substance, meaning, content or context thereof

and, to the extent that these allegations require a response, they are denied except that ABR admits that EPA denied Plaintiffs' request to ban fishing sinkers on November 4, 2010.

6. ABR admits the allegations in Paragraph 6 of the Complaint.

7. ABR denies the allegations in the first and second sentences of Paragraph 7 of the Complaint. The allegations in the last sentence of Paragraph 7 of the Complaint consist of Plaintiffs' characterization of the nature of the case and require no response. To the extent a response is required, they are denied.

### **JURISDICTION AND VENUE**

8. ABR admits that, if EPA denies a petition filed pursuant to Section 21 of TSCA, 15 U.S.C. § 2620(b)(4)(A), Section 21 authorizes a petitioner whose petition is denied to commence a civil action in a district court of the United States to compel the Administrator to initiate a rulemaking proceeding, and that such suit must be filed within 60 days after the Administrator's denial of the petition. ABR denies the remainder of the allegations in Paragraph 8 of the Complaint.

9. Barring any jurisdictional defect, ABR admits that venue is proper in this district pursuant to 28 U.S.C. §1391(e).

### **PARTIES**

10. ABR does not have sufficient information or knowledge to form a belief as to the truth of the averments in Paragraph 10 of the Complaint and therefore denies same.

11. ABR does not have sufficient information or knowledge to form a belief as to the truth of the averments in Paragraph 11 of the Complaint and therefore denies same.

12. ABR does not have sufficient information or knowledge to form a belief as to the truth of the averments in Paragraph 12 of the Complaint and therefore denies same.

13. ABR does not have sufficient information or knowledge to form a belief as to the truth of the averments in Paragraph 13 of the Complaint and therefore denies same.

14. ABR denies the allegations in the first sentence of Paragraph 14 of the Complaint. ABR does not have sufficient information or knowledge to form a belief as to the truth of the averments in the remainder of the allegations in Paragraph 14 and therefore denies same.

15. ABR does not have sufficient information or knowledge to form a belief as to the truth of the averments in Paragraph 15 of the Complaint and therefore denies same.

16. ABR admits the allegations in Paragraph 16 of the Complaint.

17. ABR admits the allegations in Paragraph 17 of the Complaint.

#### **STATUTORY BACKGROUND**

18. In response to the allegations in Paragraph 18 of the Complaint, ABR specifically refers to the source in its entirety for its words, substance, meaning, content or context thereof and, to the extent that these allegations require a response, they are denied.

19. The allegations in Paragraph 19 of the Complaint consist of conclusions of law to which no response is required. To the extent a response is required, ABR refers to the source cited for its words, substance, meaning, content or context thereof and, therefore, denies same.

20. The allegations in Paragraph 20 of the Complaint consist of conclusions of law to which no response is required. To the extent a response is required, ABR refers to the source cited for its words, substance, meaning, content or context thereof and, therefore, denies same.

21. The allegations in Paragraph 21 of the Complaint consist of conclusions of law to which no response is required. To the extent a response is required, ABR refers to the source cited for its words, substance, meaning, content or context thereof and, therefore, denies same.

22. The allegations in Paragraph 22 of the Complaint consist of conclusions of law to which no response is required. To the extent a response is required, ABR refers to the source cited for its words, substance, meaning, content or context thereof and, therefore, denies same.

23. The allegations in Paragraph 23 of the Complaint consistent of conclusions of law to which no response is required. To the extent a response is required, ABR denies the allegations in the first sentence of Paragraph 23, and with respect to the remainder of the allegations in Paragraph 23, ABR refers to the source cited for its words, substance, meaning, content or context thereof and, therefore, denies same.

24. In response to the allegations in Paragraph 24 of the Complaint, ABR states that lead is a naturally occurring metal in the environment, and that lead is a “chemical substance” as the term is defined in Section 3 of TSCA to the extent it is not otherwise excluded under Section 3(2)(B). 15 U.S.C. §2602(2)(A). ABR admits that uses of lead are already subject to strict regulation, and that EPA has required manufacturers (including importers) of consumer products intended for use by children who also manufacture (including import) lead or lead compounds to report certain unpublished health and safety data to EPA, 73 Fed. Reg. 5109 (Jan. 29, 2008). ABR denies the remainder of the allegations in Paragraph 24.

25. The allegations in Paragraph 25 of the Complaint consist of conclusions of law to which no response is required. To the extent a response is required, ABR admits that TSCA contains exclusions to the definition of “chemical substance” under 15 U.S.C. §2602(2)(B), and, with respect to the remainder of the allegations in Paragraph 25, refers to the source cited for its words, substance, meaning, content or context thereof and, therefore, denies same.

26. ABR admits that TSCA does not include a definition of shells or of cartridges. ABR does not have sufficient information or knowledge to form a belief as to the truth of the remainder of the allegations in Paragraph 26 of the Complaint and therefore denies same

27. In response to the allegations in Paragraph 27 of the Complaint, ABR refers to the source cited for its words, substance, meaning, content or context thereof, and, to the extent that these allegations require a response, they are denied

28. ABR denies the allegations in Paragraph 28 of the Complaint.

29. In response to the allegations in Paragraph 29, ABR refers to the source cited for its words, substance, meaning, content or context thereof, and, to the extent that these allegations require a response, they are denied.

30. In response to the allegations in Paragraph 30, ABR refers to the source cited for its words, substance, meaning, content or context thereof, and, to the extent that these allegations require a response, they are denied.

31. The allegations in Paragraph 31 of the Complaint consist of conclusions of law to which no response is required. To the extent a response is required, ABR refers to the source cited for its words, substance, meaning, content or context thereof. ABR denies the allegations in Paragraph 31 to the extent they imply that Plaintiffs are entitled to such relief in this matter.

### **FACTUAL BACKGROUND**

32. Upon information and belief, ABR admits that lead is used in manufactured products. ABR does not have sufficient information or knowledge to form a belief as to the truth of the remainder of the allegations in Paragraph 32 of the Complaint and therefore denies same.

33. ABR does not have sufficient information or knowledge to form a belief as to the truth of the averments in Paragraph 33 of the Complaint and therefore denies same.

34. ABR does not have sufficient information or knowledge to form a belief as to the truth of the averments in Paragraph 34 of the Complaint and therefore denies same.

35. ABR does not have sufficient information or knowledge to form a belief as to the truth of the averments in Paragraph 35 of the Complaint and therefore denies same.

36. ABR does not have sufficient information or knowledge to form a belief as to the truth of the averments in Paragraph 36 of the Complaint and therefore denies same.

37. ABR does not have sufficient information or knowledge to form a belief as to the truth of the averments in Paragraph 37 of the Complaint and therefore denies same.

38. ABR does not have sufficient information or knowledge to form a belief as to the truth of the averments in Paragraph 38 of the Complaint and therefore denies same.

39. ABR does not have sufficient information or knowledge to form a belief as to the truth of the averments in Paragraph 39 of the Complaint and therefore denies same.

40. ABR does not have sufficient information or knowledge to form a belief as to the truth of the averments in Paragraph 40 of the Complaint and therefore denies same.

41. ABR does not have sufficient information or knowledge to form a belief as to the truth of the averments in Paragraph 41 of the Complaint and therefore denies same.

42. ABR does not have sufficient information or knowledge to form a belief as to the truth of the averments in Paragraph 42 of the Complaint and therefore denies same.

43. ABR does not have sufficient information or knowledge to form a belief as to the truth of the averments in Paragraph 43 of the Complaint and therefore denies same.

44. ABR does not have sufficient information or knowledge to form a belief as to the truth of the averments in Paragraph 44 of the Complaint and therefore denies same.

45. ABR admits that, on or about August 3, 2010, Plaintiffs submitted a petition to EPA requesting rulemaking to prohibit the manufacture, processing, and distribution of lead shot, bullets, and fishing sinkers under TSCA.

46. ABR denies the allegations in Paragraph 46 of the Complaint.

47. In response to the allegations in Paragraph 47, ABR refers to the source cited for its words, substance, meaning, content or context thereof and, to the extent that these allegations require a response, they are denied.

48. In response to the allegations in the first sentence in Paragraph 48, ABR refers to the source cited for its words, substance, meaning, content or context thereof and, to the extent that these allegations require a response, they are denied. ABR does not have sufficient information or knowledge to form a belief as to the truth of the averments in the remainder of the allegations of Paragraph 48 of the Complaint and therefore denies same.

49. ABR does not have sufficient information or knowledge to form a belief as to the truth of the averments in Paragraph 49 of the Complaint and therefore denies same.

50. In response to the allegations in Paragraph 50, ABR refers to the source cited for its words, substance, meaning, content or context thereof and, to the extent that these allegations require a response, they are denied, except that ABR admits EPA denied the request to ban lead bullets and shot based on its lack of authority under TSCA Section 3(2)(B)(v).

51. ABR does not have sufficient information or knowledge to form a belief as to the truth of the averments in Paragraph 51 of the Complaint and therefore denies same.

52. In response to the allegations in Paragraph 52, ABR refers to the source cited for its words, substance, meaning, content or context thereof and, to the extent that these allegations require a response, they are denied, except ABR admits that EPA published notice of its denial of



Plaintiffs' request to ban lead bullets and shots and the reasons therefore in the Federal Register on September 24, 2010, at 75 Fed. Reg. 58,377.

53. In response to the allegations in Paragraph 53, ABR refers to the source cited for its words, substance, meaning, content or context thereof and, to the extent that these allegations require a response, they are denied, except ABR admits that EPA denied Plaintiffs' request to ban lead fishing sinkers on November 4, 2010.

54. In response to the allegations in Paragraph 54 ABR refers to the source cited for its words, substance, meaning, content or context thereof and, to the extent that these allegations require a response, they are denied, except ABR admits that EPA published notice of its denial of Plaintiffs' request to ban lead fishing sinkers and the reasons therefore in the Federal Register on November 17, 2010, at 75 Fed. Reg. 70,246.

#### **PRAYER FOR RELIEF**

55. ABR restates and incorporates by reference its responses in Paragraphs 1 through 54 above as if fully set forth herein.

56. ABR denies the allegations in Paragraph 56 of the Complaint.

57. The allegations in Paragraph 57 of the Complaint consist of conclusions of law to which no response is required. To the extent a response is required, ABR refers to the source cited for its words, substance, meaning, content or context thereof. ABR denies the allegations in Paragraph 57 to the extent they imply that Plaintiffs are entitled to such relief in this matter.

58. ABR denies the allegations in Paragraph 58 of the Complaint.

#### **GENERAL DENIAL**

59. ABR denies each and every allegation of the Complaint not previously admitted, explained, qualified, or denied.

**FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

This Court lacks jurisdiction over one or more of the claims in the Complaint.

**PRAYER FOR RELIEF**

WHEREFORE, Defendant-Intervenor the Association of Battery Recyclers, Inc. prays for judgment as follows:

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

Respectfully submitted,

/s/ Robert N. Steinwurtzel  
Robert N. Steinwurtzel (DC Bar 256743)  
Sandra P. Franco (DC Bar 467091)  
Bingham McCutchen LLP  
2020 K Street, NW  
Washington, DC 20006  
(202) 373-6000  
(202) 424-6001 (facsimile)

Counsel for Association of Battery  
Recyclers, Inc.

Dated: December 17, 2010