

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

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CENTER FOR BIOLOGICAL DIVERSITY et al.,

Plaintiffs

v.

Civ. Action No. 10-2007 (EGS)

LISA P. JACKSON, in her official capacity  
as Administrator, United States  
Environmental Protection Agency,

and

ENVIRONMENTAL PROTECTION AGENCY,

Defendants,

and

NATIONAL RIFLE ASSOCIATION OF  
AMERICA and SAFARI CLUB  
INTERNATIONAL,

Intervenor-Defendants,

and

NATIONAL SPORTS SHOOTING  
FOUNDATION, INC.,

Intervenor-Defendant,

and

ASSOCIATION OF BATTERY RECYCLERS,

Intervenor-Defendant.

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**DEFENDANTS' RESPONSE TO THE COURT'S ORDER OF DECEMBER 12, 2011**

This suit challenges Defendant the Environmental Protection Agency's ("EPA's") denials of Plaintiffs' requests under section 21 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2620, for EPA to initiate proceedings for the issuance of rules under section 6(a) of TSCA, 15 U.S.C. § 2605, to prohibit the manufacturing, processing, and distribution in commerce in the United States of both lead ammunition (including bullets and shotgun pellets) and lead fishing tackle (including sinkers, jig heads, weights, and all other fishing tackle). Plaintiffs submitted its requests to EPA on August 3, 2010. EPA denied Plaintiffs' request for a ban on lead shot and bullets on August 27, 2010, and on November 4, 2010, the Agency denied Plaintiffs' request to ban lead in fishing gear.

On November 23, 2010, Plaintiffs filed a complaint in this Court challenging EPA's denials of the Plaintiffs' petitions. On February 8, 2011, EPA filed a partial answer responding to Plaintiffs' allegations about lead in fishing gear, and a partial motion to dismiss regarding Plaintiffs' challenge to the denial of the petition for a ban on lead shot and bullets. The Court granted EPA's partial motion to dismiss on September 29, 2011.

On November 17, 2011, Plaintiffs CBD and Project Gutpile, along with a third entity, Loon Lake Loon Association, filed a petition ("New Fishing Tackle Petition" or "New Petition") under TSCA section 21, 15 U.S.C. § 2620, requesting EPA to "evaluate the unreasonable risk of injury to the environment from fishing tackle containing lead . . . of various sizes and uses that are ingested by wildlife, resulting in lead exposure" and to initiate proceedings for the issuance of a rulemaking under section 6(a) of TSCA, 15 U.S.C. § 2605, "to adequately protect against such risks." EPA denied the New Petition on February 14, 2012, and published a notice containing its rationale in the Federal Register on February 22, 2012. 77 Fed. Reg. 10,451 (Feb. 22, 2012).

Plaintiffs have indicated to EPA that they now wish to dismiss this action, and EPA is prepared to consent to voluntary dismissal of their complaint. It is EPA's understanding as of the time of this filing that Defendant-Intervenor Association of Battery Recyclers ("ABR") does not agree to voluntary dismissal, and instead plans to file a motion on February 29, 2012, seeking a stay of the case until April 16, 2012. Plaintiffs have indicated that they plan to file a motion on February 29, 2012, seeking a fourteen-day extension of time to prepare a motion seeking voluntary dismissal of this action. Because EPA intends to consent to such a voluntary dismissal motion, EPA supports Plaintiffs' extension motion and believes it is neither necessary nor appropriate to stay this matter as requested by ABR.

Respectfully submitted,

Dated: February 29, 2012

IGNACIA S. MORENO  
Assistant Attorney General

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing Response was filed using the Court's electronic case filing system this 29th day of February, which results in service on all counsel of record registered on the case management/electronic case filing ("CM/ECF") system.

/s/ Madeline Fleisher  
MADELINE FLEISHER