



Background on CBD v. Jackson/EPA Litigation

On August 3, 2010, the Center for Biological Diversity (CBD) et al. filed its [\[first Petition\]](#) for rulemaking under the Toxic Substances Control Act (TSCA). In the Petition, CBD sought to compel the Environmental Protection Agency (EPA) to revise its rules and implement a nationwide ban on the “manufacture, processing and distribution in commerce of lead shot, bullets, and fishing sinkers.”

The EPA denied CBD’s Petition in whole, but published the denials in parts. [\[EPA first denied\]](#) the request for a lead ammunition ban, and [\[then denied the request for a fishing tackle ban\]](#) on a later date. CBD improperly used the later fishing tackle denial date as the date to calculate its filing deadline to legally challenge EPA’s denial of the Petition in court.

On November 23, 2010 CBD, within the filing deadline per the fishing tackle request denial, but past the deadline on the lead ammunition request denial, filed a lawsuit; [\[CBD v. Jackson \(EPA\)\]](#) seeking a court order compelling EPA to revise its ban on both lead ammunition and fishing tackle under TSCA.

On April 28, 2011, the [\[Court granted NRA and SCI’s motions\]](#) to intervene in the CBD litigation.

On September 29, 2011, the Court [\[granted National Shooting Sports Foundation’s \(NSSF\) motion to dismiss\]](#) CBD’s lead ammunition claims due to CBD’s miscalculation of the filing deadline. The Court held that EPA’s denial was bifurcated, so CBD’s claims regarding lead ammunition were time barred because the deadline had passed, based on the earlier denial date of the lead ammunition portion of the Petition.

The lead fishing tackle ban portion of the case remained pending after the lead ammunition ban claims were dismissed.

On November 16, 2011, [\[CBD filed a second Petition\]](#) requesting that EPA ban the use of lead in specifically sized fishing tackle. CBD told the litigants in the pending *CBD v. Jackson (EPA)* matter that this second Petition would address the issues in the current litigation, and would likely alleviate the need to continue litigating the fishing tackle issue in the ongoing litigation.

On February 14, 2012, [\[EPA denied CBD’s second Petition\]](#) on the specifically sized fishing tackle. CBD then sought additional time from the Court to determine how it would proceed in court with lead fishing tackle claims from both the first and second Petitions.

Then, beginning on February 27, 2012, CBD informed the parties to the litigation that it wanted to dismiss the remainder of the litigation (regarding the lead fishing tackle claims). CBD proposed that the parties file a stipulated dismissal. But defendant-intervenors Association of

Battery Recyclers, Inc. (ABR) and NSSF did not want to dismiss the case, for strategic reasons.

On March 13, 2012, CBD filed yet another Petition with EPA, again demanding that EPA ban the use of lead in ammunition under TSCA.

Considering this, it is obvious why CBD wanted to dismiss its current lawsuit regarding the lead fishing tackle claims.

CBD filed a [\[second Petition\]](#) on the lead ammunition ban to take another bite at the apple on the lead ammunition ban and to get the issue back into court.

On March 15, 2012, ABR and NSSF filed a motion to hold the court case in abeyance until CBD decides what it is going to do about EPA's recent denial of its second Petition demanding that EPA ban the use of lead in specifically sized fishing tackle.

Additionally, on March 15th CBD filed a motion for voluntary dismissal, and EPA consented to the motion. Those two motions are now pending before the Court.

On April 9, 2012, the EPA responded to CBD's second Petition, rejecting it and effectively denying it because EPA does not have the authority to regulate ammunition based on the statutory exclusion found in section 3(2)(B)(v) of TSCA.