



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 09 2012

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

Mr. Jeff Miller
Center for Biological Diversity
351 California Street, Suite 600
San Francisco, CA 94104

Dear Mr. Miller:

This letter is to inform you that EPA has concluded its review of your recent submission ("Petition to the Environmental Protection Agency to Regulate Lead Bullets and Shot under the Toxic Substances Control Act," dated March 13, 2012). As an initial matter, EPA notes that the Center for Biological Diversity (CBD) and Project Gutpile (together with several other organizations) previously submitted an almost identical petition request under section 21 of TSCA, dated August 3, 2010, seeking among other things that EPA regulate lead in ammunition pursuant to section 6(a) of TSCA by prohibiting the manufacture, processing and distribution in commerce of lead bullets and shot. EPA denied that petition request on August 27, 2010, for lack of jurisdiction. Specifically, EPA determined that the statutory exclusion found in TSCA § 3(2)(B)(v) precludes EPA from regulating lead in ammunition under TSCA. CBD and Project Gutpile sought judicial review of EPA's denial. CBD's judicial challenge to EPA's denial of its petition on lead bullets and shot was dismissed as untimely.

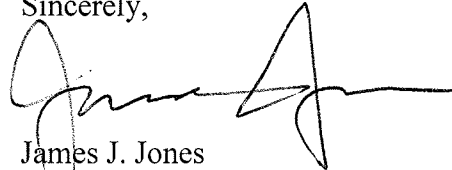
The 2012 submission is substantially the same as the petition to regulate lead bullets and shot submitted in 2010. To the extent that there are differences, they are not substantive. Therefore, EPA does not consider the 2012 submission to be a new petition cognizable under section 21. As with the original 2010 petition, the 2012 submission recognizes the exclusion in TSCA § 3(2)(B)(v) but argues that TSCA nonetheless provides EPA with the authority to regulate bullets and shot. While the 2012 submission does argue the issue of EPA's statutory authority slightly differently (including references to the legislative history from 1976), on this issue, the 2012 submission contains no new information that was not previously available to CBD and Project Gutpile. Moreover, EPA was aware of, and considered, the cited legislative history in reaching its decision on the 2010 petition.

The relief requested in the 2012 submission differs somewhat from that requested in the 2010 petition. Both request EPA to initiate a rulemaking under TSCA section 6(a), but where the 2010 petition specifically requested a nationwide ban, the 2012 submission presents a more open-ended request for a section 6(a) rule, while at the same time advocating for a nationwide ban. In light of EPA's previous denial explaining that EPA does not have the authority to pursue any regulatory alternative, this change is a distinction without a substantive difference. As further evidence that the 2012 submission is in essence the same as the 2010 petition, the 2012 submission presents almost verbatim the same information regarding toxicity and exposure with respect to lead bullets and shot as the 2010 petition.

Overall, with respect to the more than 400 separate citations, only 20 citations were not included in the 2010 petition, and, of those, only six citations appear to post-date the 2010 petition. For these reasons, EPA does not consider the 2012 submission to be a new petition cognizable under TSCA section 21.¹ Even if the 2012 submission could be understood to be a request that EPA reconsider its earlier decision, as explained above, it does not present any new (i.e., previously unavailable, non-cumulative) information or data that would cause EPA to reconsider its earlier denial. Accordingly, even if the 2012 submission could be considered to be a request for reconsideration, EPA would deny it because the 2012 submission does not present significant newly discovered, non-cumulative material.

Finally, even if the 2012 submission were considered to be a new or different petition cognizable under section 21 of TSCA, EPA would deny it for the same reasons it denied the 2010 petition. *See Lead in Ammunition and Fishing Sinkers; Disposition of TSCA Section 21 Petition*, 75 Fed. Reg. 58,377 at 58,378 (Sept. 24, 2010); Defendants' Partial Motion to Dismiss for Lack of Jurisdiction under Rule 12(B)(1) and Failure to State a Claim under Rule 12(B)(6), *Center for Biological Diversity et al., v. Jackson*, No. 10-2007 (D. DC 2010). Nonetheless, because EPA does not consider this to be a cognizable section 21 petition and because EPA has already published its reasons for denying the request to regulate bullets and shot under TSCA, EPA does not intend to publish its response to the 2012 submission in the Federal Register.

Sincerely,

A handwritten signature in black ink, appearing to read 'James J. Jones', with a long horizontal flourish extending to the right.

James J. Jones
Acting Assistant Administrator

¹ EPA also does not believe that the statutory time bar in section 21 on judicial review of a denial can be avoided by re-submitting virtually the same petition, with the addition of parties, less than two years after the submission of the first petition.