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Berkey Water Filter Maker Sues EPA Over Claims That Its Products Are 'Pesticides'

Texas-based New Millennium Concepts says the EPA has issued stop-sales orders for its silver water filter product to vendors without warning or due process.



Illustrative editorial of EPA.GOV website homepage.(Il.studio/Shutterstock)



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The maker of Berkey water filters, New Millennium Concepts, is suing the U.S. Environmental Protection Agency (EPA) over what it says are false claims by the federal agency that its products are “pesticides.”

Using COVID-19-era regulatory powers, the EPA issued a stop-sales order to several Berkey vendors and distributors in May, resulting in mounting financial losses for the Texas-based company, which was founded in 1998.

On Aug. 3, New Millennium Concepts filed a lawsuit in a Fort Worth federal court that challenges the EPA’s stop-sales order as “unjustified persecution.”

“They’re going after the vendors. It’s really a way of starving Berkey in the market so we have nothing available—that’s the problem,” the company’s attorney, Warren Norred, told The Epoch Times.

“The sad reality is [government] control is its own reward. That’s where we are.”

The 49-page complaint argues that Berkey has done business in the United States without incident or regulation by the EPA for 25 years.

In 2022, the agency demanded the company register its mechanical filter as a “pesticide device,” and then recently as a “pesticide,” without compliance with Administrative Procedures Act (APA) guidelines, the lawsuit argues.

'EPA Fail'

“The EPA’s failure to operate using plain language and follow APA guidelines has caused plaintiffs devastating damage,” the suit claims.

“What the EPA is doing is attacking the vendors to Berkey products,” Mr. Norred said. “They’re interfering in the supply chain.”

The EPA has been regulating pesticides since 1947 under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). However, the lawsuit argues that Berkey filters don’t use chemical pesticides to treat water—its purification process is entirely mechanical.

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“FIFRA is exactly what it looks like—a law that seeks to regulate chemical pesticides,” according to the Norred Law website. “But the law distinguishes between actual pesticides, ‘substances or mixtures of substances intended for preventing, destroying, repelling, or mitigating any pest,’ and ‘treated devices,’ which use registered pesticides in their construction, e.g. seeds that are sold after being treated with a registered pesticide.”

In February, the EPA issued a compliance advisory announcing changes in regulations governing the production, distribution, and sale of “pesticide devices.”



Charles Chatmon carries a free water filter and case of water away from a fire station where members of the Michigan National Guard helped distribute supplies to aid in the city's water crisis in Flint, Mich., on Jan. 13, 2016. (Jake May/The Flint Journal-MLive.com via AP)

“There has been a significant increase in the number of devices being distributed or sold in the United States,” the advisory stated.

“EPA has found substantial non-compliance with FIFRA in the device and pesticide marketplace. Examples of non-compliance include

unregistered pesticides claiming to be devices, devices bearing false and misleading statements, and devices being sold and distributed that were not produced in an EPA registered establishment.”

The EPA said examples of pesticide devices include water or air filters, ultraviolet light systems, ozone generators, and sound generators.

“If a device incorporates a substance or mixture of substances to perform its intended pesticidal purpose, then it is considered a pesticide, not a device, and would require registration under FIFRA Section 3.”

Silver-Protected Filters

New Millennium Concepts agreed to an EPA condition designating Berkey water filters as treated devices, because they use silver to protect the filters that remove pathogens by means of a “tortuous maze of micropores.”

The use of the antiviral silver in Berkey filters has been found to trap more than 99 percent of COVID-19 strains, Mr. Norred said.

“Silver is often used in pesticides for pesticidal purposes. The EPA has latched on to the use of silver to protect the filter, and said you’re using silver and you are making pesticidal claims—poof, you’re a pesticide.”

“We do use a registered pesticide that has silver in it. So the filters are technically a treated article because there is a pesticide Berkey uses to

protect its filters. But that pesticide does not have any pesticidal purpose for the water. It just protects and lengthens the lifetime of the filter,” Mr. Norred added.

Not Enough

But the company agreeing to brand its Berkey water filters as treated devices “wasn’t enough,” the legal website added.

“The EPA recently decided that the filters are actual pesticides, again without notice or warning, issued orders preventing Berkey filters from sale in some parts of the country, and preventing their export.”

“If the EPA wants to regulate gravity-fed mechanical water filters, it has a process to follow, at the very least. Berkey’s water filters have never caused any harm to anyone, and the removal of Berkey filters from the market inexorably means that the demand will be met with untested knockoff and counterfeit filters.”

The lawsuit regards the EPA’s actions as “arbitrary, capricious, and an abuse of discretion,” and asks the court for an injunction to block the stop-sales order.



Superintendent Dr. Arturo Almendarez from Calallen Independent School District stands next to the bottles of water for students in Corpus Christi, Texas, on Dec. 15, 2016. (Gabe Hernandez/Corpus Christi Caller-Times via AP)

New Millennium Concepts partner James Shepherd told The Epoch Times that the EPA crackdown on Berkey water filters is costing the company \$2,500 in daily storage costs—\$1 million yearly, by his estimates.

The EPA sent stop-sale orders to at least half a dozen vendors, which means New Millennium Concepts can't move its products to many of

its customers, he said.

“It appears to me what they want me to do is go bankrupt. Basically, when they shut down our dealers, we started working with the EPA,” Mr. Shepherd said.

“No company can sit there and continue with their expenses with no income. You can’t walk into a company, give it a bad name, and then two or three years later say now, it’s a pesticide.”

EPA spokeswoman Shayla R. Powell told The Epoch Times, “Because this is pending litigation, EPA has no further information to add.”

‘Biggest Loser’

Mr. Shepherd said the biggest loser in his company’s legal battle with the EPA is the consumers of Berkey products who desire a nonchemical method of purifying drinking water.

New Millennium Concepts recently issued a statement to its customers assuring it was working to resolve product availability issues.

“Due to an EPA stop-sale order, Black Berkey Filter Elements are currently unavailable. As a result, all systems which include Black Berkey Filter Elements (Travel Berkey, Big Berkey, etc.) are unavailable as well. Products without Black Berkey Filter Elements (such as Fluoride Filters, shower filters and accessories) remain available on our website.



A National Guard soldier looks at a bottle containing contaminated water headed for testing in Flint, Mich., on Jan. 21, 2016. (Sarah Rice/Getty Images)

“We understand the importance of access to reliable, filtered water and the peace of mind that your Berkey products provide. Rest assured the entire Berkey Filters Team is dedicating all resources and investing heavily in resolving this product availability issue as soon as possible.”

Mr. Shepherd said the EPA gave the company three choices: register Berkey devices as pesticides, a lengthy process that could mean “death” to the company; remove all previous marketing language around the world—a challenging, if not impossible task; or create a new water filter that doesn’t use the Berkey name or patented technology.

Option three would mean introducing a new product with no brand recognition in a highly competitive market, he said.

“We think something rogue is going on. I don’t know if I’m dealing with a rogue organization,” Mr. Shepherd said.

“We still do not know to this day what is the specific issue that makes [Berkey filters] a pesticide. They will not tell us.”

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