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**BERKEY WATER FILTERS SUES THE EPA**

August 9, 2023 – New Millennium Concepts, Ltd. (“NMCL”) and the James B. Shepherd Trust, the brand owner of Berkey Water Systems, filed a lawsuit against the EPA (United States Environmental Protection Agency) this week seeking to stop its unjustified treatment and perceived persecution of Berkey Water Filters based on the EPA’s decision this year to treat Berkey Water Filters as though they are pesticides, rather than water filters.

For more than a quarter of a century, Berkey has provided water filters to the public, providing an effective, economical means of removing harmful contaminants from freshwater sources for consumers to have clean water at home or on the go.<sup>1</sup> In fact, an entire generation has grown up with a Berkey filter in their kitchen. If the EPA wants to regulate gravity-fed mechanical water filters, it has a process to follow, at the very least. Berkey’s filters have never caused any harm to anyone, and the removal of Berkey filters from the market inexorably means that Berkey owners will not be able to replace the filters in their systems and therefore, the demand will be met with untested knockoff and counterfeit filters that claim to be replacements that provide the same benefits—when in fact they do not.<sup>2</sup>

The EPA’s decision to persecute the market leader may well cause actual damage to the American people who the EPA is supposed to be protecting. For example, on July 11, 2023, CBS recommended the Travel Berkey system, both in print and in their broadcast news, based upon the Environmental Working Group’s testing that found Travel Berkey systems removed toxic PFAS to below detectable limits<sup>3</sup>. And on June 7, 2023, popular consumer health advocate Mike Adams recommended Big Berkey systems reporting that they removed an impressive 99.99% of radioactive cesium-137.<sup>4</sup> However, EPA Region 8 is actively working to make these systems unavailable to the American people.

Berkey’s filters have never caused any harm to anyone, and the EPA’s arbitrary—and arguably irrational—new interpretation of its regulations would have a huge impact, directly threatening not only the jobs of 500+ employees globally, lost sales for Berkey distributors and retailers around the world (some of which sell only Berkey products—effectively putting them out of business) and also the well-being of the American people, the very consumers who the EPA is supposed to protect. Moreover, it would have the same impact on other outdoor water filter manufacturers, potentially putting them out of business as well.

The EPA has been regulating pesticides since 1947, mostly through the Federal Insecticide, Fungicide, and Rodenticide Act.<sup>5</sup> FIFRA is exactly what it looks like – a law that seeks to regulate chemical pesticides, primarily for agricultural purposes. 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.

The EPA has never sought to force registration of mechanical-type water filters as pesticides until last year, when the EPA decided to start regulating Berkey’s water filters *without warning* after more than two decades of indisputably safe manufacture and sale.

Though there was no notice or opportunity to discuss that issue, Berkey and its manufacturing arms agreed to a request from the EPA for Berkey filtration products to be identified as “treated devices” (which is a different classification than a pesticide or a pesticide device), because they incorporate silver (a registered pesticide) in their filter media (a common additive in water filters which does not leach into the water) that protects the filter from biological grow through, a common problem with water filters.

Berkey has not hidden from the EPA, and has tried to comply with applicable laws and regulations regarding the manufacture and distribution of Berkey products. First, Berkey products were designated by the EPA as treated devices; the EPA then reinterpreted their rules and arbitrarily reclassified Berkey filters as a pesticide, issuing orders (without due process) preventing Berkey filters from being sold in some parts of the country by select Berkey dealers and vendors that received Stop-Sale Orders. This change in the rules is without notice or a shred of legal support. Berkey’s filters are not “substances or mixtures of substances intended for preventing, destroying, repelling, or mitigating any pest”, as FIFRA defines pesticides. Rather, they mechanically remove contaminants through a tortuous maze of micropores, absorption and ionic adsorption.<sup>6</sup>

A problem arises when a water filter system is classified as a registered pesticide because a whole host of time consuming regulations and requirements go into play, including onerous labeling requirements that must be placed upon all packaging. Basically, the regulations that require labels to go on the packaging assert that the product is a hazardous material. Other required labels include hazard precautionary statements, environmental hazards statements, directions for use and storage, disposal statements and mandatory statements that ensure the proper use of the pesticide and to prevent the occurrence of unreasonable adverse effects on the environment, which is defined in FIFRA etc. Therefore, Berkey would be required to label its water filters with pesticide language that could be very disconcerting and frightening to its customers—especially when similar and competing products are not being held to the same standard or requirements. Moreover, pesticide registration is an expensive process that can take years to get EPA approval and in the meantime, Berkey products would not be available to the American public.

As an administrative body, the EPA does not make actual law; its authority is limited to creating rules, which enforce laws that are passed by the United States Congress. As it is making rules, it is obligated to give notice of new rules and take input from those who will be impacted, which in our case did not occur.

In part, the EPA is excusing its new regulations that now classify Berkey filters as a pesticide on a notice issued in 2007 regarding electrode-equipped ion-generating devices, asserting that the use of silver in Berkey filters makes the filters into ion-generating devices, even though the 2007 notice specifically excepts that interpretation.

NMCL, and the family-owned trust that owns Berkey's intellectual property and manufacturing authority, has employed Norred Law to sue in federal court, and seeks an injunction to force the EPA to follow its rule-making process before enforcing new regulations.

The case has been filed in the Northern District of Texas, in cause 4:23-cv-00826, and is before Judge Pittman, who has ordered briefing on the requested injunction before the end of August. Read Mr. Shepherd's Declaration and the Original Complaint here: <https://www.norredlaw.com/documents/01-Original-Complaint.pdf>

**For more, contact Warren Norred at 817-704-3984 or [warren@norredlaw.com](mailto:warren@norredlaw.com)**

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[1] During their history, Black Berkey Elements have undergone what we believe to be the most rigorous testing of any other gravity-fed water filter elements. Berkey systems are simple and easy to use and require no electricity, costly installation, or tools, providing economical, long-lasting water filtration for just pennies a gallon.

[2] Black Berkey Elements are composed of a proprietary blend of multiple media types designed to work synergistically and target specific contaminants that far exceed the reduction capabilities of carbon block filters that are solely composed of activated carbon. See <https://support.berkeywater.com/buyer-beware/>

[3] <https://www.cbsnews.com/colorado/video/which-water-filters-can-block-pfas/>  
<https://www.cbsnews.com/amp/philadelphia/news/best-water-filters-for-pfas-chemicals-environmental-working-group-test/>  
<https://support.berkeywater.com/travel-berkey-pfas-forever-chemical-news/>  
<https://support.berkeywater.com/travel-berkey-forever-chemical-pfas-removal/>

[4] <https://www.naturalnews.com/2023-06-15-nuclear-fallout-lab-tested-water-filters-remove-caesium.html>  
<https://support.berkeywater.com/big-berkey-caesium-radiological-reduction/>

[5] FIFRA, 7 U.S.C. ch. 6 § 136.

[6] Mechanical filtering refers to a water filter construction where contaminants are caught and removed by a tortuous maze of micropores in the filter, absorption and ionic adsorption. See <https://support.berkeywater.com/how-do-black-berkey-elements-work/>