



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

March 12, 2015

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL: No.7011 1150 0000 2643 8333

RETURN RECEIPT REQUESTED

Ms. Mary Beth Tighe
R.R. Donnelley & Sons Co.
111 South Wacker Dr.
Chicago, Illinois 60606

Consent Agreement and Final Order In the Matter of
R.R. Donnelley & Sons Co. Docket No.

FIFRA-05-2015-0029

Ms. Tighe:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed on March 12, 2015, with the Regional Hearing Clerk.

The civil penalty in the amount of \$318,000 is to be paid in the manner described in paragraph 36. Please be certain that the docket number is written on both the transmittal letter and on the check.

Thank you for your cooperation in resolving this matter.

Sincerely,

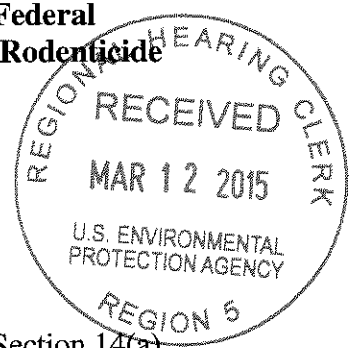
A handwritten signature in black ink, appearing to read "Estrella Calvo".

for Estrella Calvo
Pesticides and Toxics Compliance Section

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2015-0029
)	
TOPS Products, a Division of)	
R.R. Donnelley & Sons Company)	
Warrenville, Illinois,)	Proceeding to Assess a Civil Penalty
)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)



Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.
3. The Respondent is TOPS Products, a Division of R.R. Donnelley & Sons Company, (R.R. Donnelley), a corporation doing business in the State of Illinois.
4. Where the parties agree to settle one or more causes of action before the filing of an Administrative Complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of an Administrative

Complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. §22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

10. Section 3(c)(1)(C), 7 U.S.C. § 136a(c)(1)(C), states that each applicant for registration of a pesticide shall file with the Administrator a statement which includes a complete copy of the labeling of the pesticides, a statement of all claims to be made for it, and any directions for its use.

11. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA.

12. The term “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

13. The term “distribute or sell” as defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), means to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for

shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.

14. The term “pesticide” as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), means, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

15. A “pest” as defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), means any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism which the Administrator of U.S. EPA declares to be a pest under Section 25(c)(1) of FIFRA.

16. 40 C.F.R. § 152.15(a) states that no person may distribute or sell any pesticide product that is not registered under FIFRA. It further states that a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance (1) claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide; or (2) that the substance consists of or contains an active ingredient and that it can be used to manufacture a pesticide.

17. The Administrator of U.S. EPA may assess a civil penalty against any retailer or other distributor who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009 pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations

18. Respondent is a “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
19. At all times relevant to this CAFO, Respondent owned or operated a place of business at 4101 Winfield Road, Warrenville, Illinois 60555.
20. On or about February 13, 2013, R.R. Donnelley was distributing or selling binders on its website, www.tops-products.com.
21. On or about February 13, 2013, R.R. Donnelley was making the following claims about its binders on its website at www.tops-products.com:
 - a. “Antimicrobial Clearvue™ Locking Round Ring Binder” and
 - b. “Features: Antimicrobial material prevents the growth of bacteria – perfect for shared materials.”
22. On or about November 12, 2013, authorized representatives of the U.S. EPA inspected R.R. Donnelley’s place of business located at 4101 Winfield Road, Warrenville, Illinois, by appearing at that location and requesting information for certain products.
23. On or about November 22, 2013, R.R. Donnelley informed U.S. EPA that up until on or about September 26, 2013, the **Antimicrobial ClearVue™ Locking Round Ring** binders, SKU number 32200, used a plastic film that contains a pesticide, Folpan Folpet Technical, U.S. EPA Registration Number (EPA Reg. No.) 11678-18.
24. Folpan Folpet Technical, EPA Reg. No. 11678-18, is registered with U.S. EPA for manufacturing use only in the formulation of fungicides for agricultural and industrial use.

Antimicrobial ClearVue™ Locking Round Ring Binders
SKU number 32200

25. On or about December 9, 2013, U.S. EPA received a sample of a 1 inch binder with “O” rings (**Antimicrobial ClearVue™ Locking Round Ring** binder, SKU number 32200) from the Respondent.

26. The **Antimicrobial ClearVue™ Locking Round Ring** binder, SKU number 32200, included the following claims:

- a. “Antimicrobial;”
- b. “Antimicrobial Material;”
- c. “ANTIMICROBIAL MATERIAL Prevents Growth of Bacteria & Fungus”
and
- d. “Perfect for shared ITEMS!”

27. The **Antimicrobial ClearVue™ Locking Round Ring** binder, SKU number 32200, is a pesticide defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. §152.15 because the label and labeling claim, state or imply that the **Antimicrobial ClearVue™ Locking Round Ring** binder, SKU number 32200 prevents, destroys, repels or mitigates a pest.

28. The **Antimicrobial ClearVue™ Locking Round Ring** binder, SKU number 32200, is not registered as a pesticide, as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

29. From on or about July 27, 2013 through on or about September 26, 2013, Respondent distributed or sold **Antimicrobial ClearVue™ Locking Round Ring** binders, SKU number 32200, to persons in the United States on 123 separate occasions.

Counts 1-123

30. Complainant incorporates paragraphs 1 through 29 of this CAFO, as if set forth in

this paragraph.

31. From on or about July 27, 2013 through on or about September 26, 2013, Respondent distributed or sold an unregistered pesticide, **Antimicrobial ClearVue™ Locking Round Ring** binders, SKU number 32200, to persons in the United States on 123 separate occasions.

32. Respondent's distribution or sale of the unregistered pesticide, **Antimicrobial ClearVue™ Locking Round Ring** binders, SKU number 32200, on 123 separate occasions, constitutes 123 separate unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

33. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) on 123 separate occasions subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. § 136l(a) for each of the 123 separate violations of FIFRA.

Civil Penalty and Other Relief

34. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires the Administrator to consider the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation, when assessing an administrative civil penalty under FIFRA.

35. Based on an evaluation of the facts alleged in this CAFO, the factors in Section 14(a)(4) of FIFRA and EPA's *Enforcement Response Policy, Federal Insecticide, Fungicide, and Rodenticide Act*, dated December 2009, Complainant has determined the appropriate civil penalty to settle this action is \$318,000.

36. Within 30 days after the effective date of this CAFO, Respondent agrees to pay a

\$318,000 civil penalty in order to settle and resolve the alleged FIFRA violations. Respondent agrees to pay the civil penalty by sending a cashier's check, or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati
Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent agrees that the check will note "In the Matter of TOPS Products, a Division of R.R. Donnelley & Sons Company," and the docket number of this CAFO.

The Respondent may also electronically transfer funds, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

37. Respondent agrees that a transmittal letter, stating Respondent's name, the case title, Respondent's complete address and the case docket number will accompany the payment.

Respondent agrees that it will send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Terence Bonace (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Nidhi K. O'Meara (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

38. This civil penalty is not deductible for federal tax purposes.

39. If Respondent does not pay the civil penalty in a timely manner, U.S. EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States District Court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 1361(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

40. Pursuant to 31 C.F.R. § 901.9, Respondent agrees to pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to applicable law. Respondent agrees to pay a \$15 handling charge each month that any portion of the civil penalty is more than 30 days past due. In addition, Respondent agrees to pay a 6 percent per year civil penalty on any principal amount 90 days past due.

General Provisions

41. This CAFO resolves only Respondent's alleged liability for federal civil penalties for the violations and facts alleged in this CAFO.

42. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

43. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state, and local laws.

44. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for FIFRA.

45. The terms of this CAFO bind Respondent, its successors, and assigns.

46. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

47. Each party agrees to bear its own costs and attorney's fees in this action.


48. This CAFO constitutes the entire agreement between the parties.

**In the Matter of:
TOPS Products, a Division of R.R. Donnelley & Sons Company**

Docket No. FIFRA-05-2015-0029

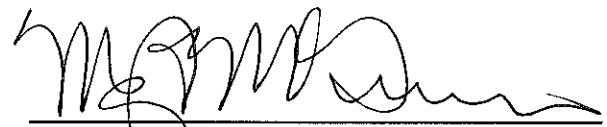
**TOPS Products, a Division of R.R. Donnelley & Sons Company,
Respondent**

January 26, 2015
Date


Mary Beth Tighe,
Vice President & Associate General Counsel

United States Environmental Protection Agency, Complainant

3/3/2015
Date


Margaret M. Guerriero, Director
Land and Chemicals Division

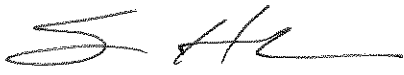
In the Matter of:
TOPS Products, a Division of R.R. Donnelley & Sons Company

Docket No. FIFRA-05-2015-0029

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

3-5-2015
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

In the matter of: R.R. Donnelley & Sons Company

Docket Number: _____

FIFRA-05-2015-0029

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing *Consent Agreement and Final Order*, which was filed on March 12, 2015, in the following manner to the addressees:

Copy by Certified Mail

Return-receipt:

Ms. Mary Beth Tighe
R.R. Donnelley & Sons Co.
111 South Wacker Dr.
Chicago, Illinois 60606

Copy by E-mail to

Attorney for Complainant:

Nidhi K. O'Meara
O'Meara.Nidhi@epa.gov

Copy by E-mail to

Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: _____

March 12, 2015

LaDawn Whitehead

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2643 8333