



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

11201 Renner Boulevard
Lenexa, Kansas 66219

Inspection No. 072010-2522-01

APR 18 2017

VIA ELECTRONIC MAIL

james@oliveragri.com

James A. Oliver
J. Oliver Products, LLC
3187 Robertson Gin Road
Hernando, Mississippi 38632

Dear Mr. Oliver:

This letter is to notify you that docket number FIFRA-07-2017-0150 has been assigned to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) matter concerning J. Oliver Products, LLC and the Stop Sale, Use, or Removal Order issued on February 21, 2017. Should you have any questions, please do not hesitate to contact me at (913) 551-7743 or mills.clarissa@epa.gov.

Sincerely,

A handwritten signature in cursive script that reads "CH Mills".

Clarissa Howley Mills
Assistant Regional Counsel



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11201 Renner Boulevard
Lenexa, Kansas 66219

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ELECTRONIC MAIL

james@oliveragri.com

FEB 21 2017

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Article No.: 7014 1200 0000 6128 0172

James A. Oliver
J. Oliver Products, LLC
3187 Robertson Gin Road
Hernando, Mississippi 38632

Dear Mr. Oliver:

STOP SALE, USE, OR REMOVAL ORDER

Enclosed is a **STOP SALE, USE, OR REMOVAL ORDER** which directs you to immediately stop any distribution, sale and/or use of the pesticidal product Warthog 2 EC, EPA Registration Number 83222-30, produced at EPA Establishment Number 044616-MO-02, other than in accordance with the provisions of the enclosed Stop Sale, Use or Removal Order.

Paragraph 8 of the Order informs you of why this action is being taken. Please contact Mark Leshner with the Toxics and Pesticides Branch, at (913) 551-7054, or Clarissa Howley Mills with the Office of Regional Counsel, at (913) 551-7743, if you have any questions regarding this matter. Please submit a written proposal for proper transfer of the product subject to this Order within seven (7) calendar days of receipt of the Order.

Sincerely,

A handwritten signature in black ink, appearing to read "Jamie Green".

Jamie Green

Chief, Toxics and Pesticides Branch

Enclosure

cc: Mr. Darryl Slade, Missouri Department of Agriculture (e-copy)
Mr. Paul Bailey, Missouri Department of Agriculture (e-copy)
Mr. Mark Williams, Mississippi Department of Environmental Quality (e-copy)
Mr. John Campbell, Mississippi Department of Agriculture and Commerce (e-copy)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219-9601**

IN THE MATTER OF:)	
)	
J. Oliver Products, LLC)	STOP SALE, USE, OR
3187 Robertson Gin Road)	REMOVAL ORDER
Hernando, Mississippi 38632,)	
)	
<u>RESPONDENT</u>)	

**I. AUTHORITIES, BACKGROUND
AND BASIS FOR THE ORDER**

1. Section 13(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136k(a), authorizes the Administrator of the U.S. Environmental Protection Agency (EPA) to issue an order prohibiting the sale, use, or removal of any pesticide or device by any person who owns, controls, or has custody of such pesticide or device whenever there is reason to believe that the pesticide or device is in violation of any provision of FIFRA, or the pesticide or device has been or is intended to be distributed or sold in violation of any provision of FIFRA.

This authority has been delegated from the Administrator of the EPA to the Regional Administrator, Region 7, and then to the Director of the Water, Wetlands, and Pesticides Division, Region 7. Further delegation has been made to the Chief of the Toxics and Pesticides Branch.

2. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), provides that it is unlawful for any person in any State to distribute or sell to any person any pesticide which is adulterated or misbranded.

3. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term "person" as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

4. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term "to distribute or sell" to mean 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.

5. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” as, *inter alia*, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

6. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” to mean (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1).

7. Section 2(c)(2) of FIFRA, 7 U.S.C. § 136(c)(2), provides that a pesticide is “adulterated” if any substance has been substituted wholly or in part for the pesticide.

8. Based on an inspection conducted by a representative of the Missouri Department of Agriculture on or about July 20, 2010 and subsequent investigation by EPA, EPA has reason to believe that 1,180 gallons of J. Oliver Products, LLC.’s pesticide product, Warthog 2EC, EPA Registration Number 83222-30, produced at EPA Establishment Number 044616-MO-002, is adulterated as defined by Section 2(c)(2) of FIFRA, 7 U.S.C. § 136(c)(2), and being held for distribution at a facility located at: 1301 South 11th Street, Saint Joseph, Missouri, 64503 (the product).

II. ORDER

9. Except as authorized herein the EPA hereby **ORDERS** J. Oliver Products, LLC, NOT to distribute, sell, use or remove the product as identified in paragraph 8.

10. This Order shall pertain to all quantities and sizes of the product identified in paragraph 8, which are within the ownership, control or custody of J. Oliver Products, LLC. The product shall not be sold; offered for sale; held for sale; shipped; delivered for shipment; received; or, having been so received, delivered, offered for delivery, moved, or removed from any present location, for any reason other than in accordance with the provisions of this Order or further Stop Sale, Use, or Removal Orders as may be issued in connection with the product identified above.

11. All quantities and sizes of the product shall be removed and transferred by J. Oliver Products, LLC., or J. Oliver Products, LLC.’s designee, from the facility identified in paragraph 8 directly

to J. Oliver Products, LLC storage facility located at: 65 Napanee Road, Leland, Mississippi 38756 (the storage facility), within seven (7) calendar days of receipt of this Order.

12. Upon receipt of the product at the storage facility, the product shall be held and stored at the storage facility and not removed, other than in accordance with paragraph 14, from the storage facility.

13. Within forty-eight (48) hours of receipt of the product at the storage facility, J. Oliver Products, LLC. shall send written notification of receipt of the product to the following:

Mark Lesher
Toxic and Pesticides Branch
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
lesher.mark@epa.gov

14. Once the product is transferred in accordance with paragraph 11 and notification of the transfer is provided to EPA in accordance with paragraph 13, the product may be subsequently transferred and land applied in accordance with the Mississippi Department of Environmental Quality approval letter dated February 8, 2017, attached to this order as Exhibit A and incorporated by reference herein. The product shall only be land applied to farm land under the control and operation of Oliver Agri Enterprises as identified in Exhibit B, attached to this Order and incorporated by reference herein, and by the following county location and farm number:

Washington County, Mississippi

3499
2934
755
770
2514
3955

Sunflower County, Mississippi

3993

Humphreys County, Mississippi

3146
3431
3321

2761
3155
3387
2056
1998

15. J. Oliver Products, LLC shall submit a post-application report to the EPA contact identified in paragraph 13 by August 1, 2017, which shall include the following information:

- a. Date(s) and time(s) of application;
- b. Location(s) of application;
- c. Total acres treated;
- d. Total amount of product applied;
- e. Weather conditions for the date and location of the application, including any data collected showing temperature, relative humidity, wind direction and velocity;
- f. Type of application equipment used; and
- g. Rate(s) of application.

16. Violation of the terms or provisions of this Order may subject the violator to **CIVIL OR CRIMINAL PENALTIES** as prescribed in Section 14 of FIFRA, 7 U.S.C. § 136l.

17. Respondent may seek federal judicial review of the Order pursuant to section 16 of FIFRA, 7 U.S.C. § 136n.

18. The issuance of this Order shall not act as a waiver by the EPA of any enforcement or other authority available to the EPA under FIFRA.

19. This Order shall be **EFFECTIVE IMMEDIATELY** upon receipt by RESPONDENT.

III. OTHER MATTERS

20. For any additional information about this Stop Sale, Use or Removal Order please contact Mark Leshner, EPA Region 7 Toxics and Pesticides Enforcement Branch, at (913) 551-7054 or lesher.mark@epa.gov. For any legal matters concerning this Order, you are encouraged to contact Clarissa Howley Mills, Attorney, at (913) 551-7743 or mills.clarissa@epa.gov.

02/21/2017

Date



Jamie Green, Chief

Toxics and Pesticides Branch

EXHIBIT A



STATE OF MISSISSIPPI
PHIL BRYANT
GOVERNOR
MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY
GARY C. RIKARD, EXECUTIVE DIRECTOR

February 8, 2017

Mr. James Allen Oliver
J. Oliver Products
3187 Robertson Gin Road
Hernando, MS 38632

**RE: Application of Compositated Waste
Clethodim/Dicamba pesticide materials**

Dear Mr. Oliver:

The Mississippi Department of Environmental Quality (MDEQ) has reviewed the request and site information submitted by J. Oliver Products dated February 2, 2016 to land apply an adulterated pesticide waste material containing amounts of Clethodim and Dicamba pesticide products. This composite waste material, consisting of approximately 1180 gallons, was generated in the operations of J. Oliver Products when the two products were mistakenly composited and is currently being held by the U.S. EPA. J. Oliver Products has requested approval from MDEQ to land apply this adulterated pesticide waste on Oliver Agri Enterprises farmland in Washington, Sunflower, and Humphreys Counties in the State of Mississippi as per the Mississippi Regulations for the Beneficial Use of a Nonhazardous Solid Waste (11 Miss. Admin. Code Pt. 4, Ch. 9). Based on the information provided by J. Oliver Products and the information and advice of the Pesticide Program at the Mississippi Department of Agriculture and Commerce (MDAC), the MDEQ does concur with the proposed land application project, contingent upon compliance with the attached conditions.

MDEQ's concurrence with the proposed project is not intended to conflict with or supersede any other local, state or federal restrictions governing the use of commercial pesticide products. Additionally, our concurrence with the project should not be considered to be an endorsement of the use of the material or an absolution of liability should problems arise from its use. The MDEQ retains the authority to modify, terminate or rescind any approval of the land application activity involving the composited waste material should such actions be warranted.

Should you have any questions or comments, please contact me at (601) 961-5537.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Williams".

Mark Williams, P.E., BCEE, Chief
Waste Division

Attachment

**APPLICATION PROJECT CONDITIONS
FOR USE OF COMPOSITE CLETHODIM/DICAMBA WASTE MATERIALS**

General

1. J. Oliver Products is authorized to apply the composited waste materials containing 1180 gallons Clethodim/Dicamba product materials previously identified and characterized for MDEQ and the MDAC in a manner that is consistent with the approved Federal guidelines for use of the original products. This concurrence does not authorize the application or use of other by-products, products, or wastes under this project.
2. J. Oliver Products is authorized to apply the composited waste materials only to those farm and field sites in Washington, Sunflower and Humphreys Counties owned and/or operated by Oliver Agri Enterprises as identified in the beneficial use proposal. J. Oliver Products must possess proper access rights to those fields/properties where the product is applied. This concurrence also does not authorize the sale or transfer of the composite waste materials to other parties or to other properties not owned or under the control of J. Oliver Products or Oliver Agri Enterprises.
3. J. Oliver Products is authorized to apply the composite waste material in a manner that is consistent with the published Federal guidelines and instructions for such use for the subject pesticide products. Application of the composited material in a manner that is not consistent with the product guidelines is not authorized by this letter.
4. J. Oliver Products shall complete the approved land application project on or before June 30, 2017, unless otherwise approved by MDEQ.

Operating Conditions

5. J. Oliver Products shall ensure that the application activity is conducted in a manner consistent with the proposed management plan and with the supporting information submitted to the MDEQ dated February 2, 2016.
6. J. Oliver Products shall ensure that the composite waste material is applied uniformly and consistent with the recommended application and usage rates for the pesticide products.
7. J. Oliver Products shall ensure that the application activity is not conducted during rain events or when saturated conditions exist at the proposed application fields. *(Note: Saturation may be determined by digging a hole one-foot deep at the lowest point of the application area and observing for 30 minutes. If water appears in the hole, the soil is considered to be saturated).*
8. J. Oliver Products shall ensure that the application activity is conducted in a manner that prevents off-site runoff of the composite waste material from the project field sites.

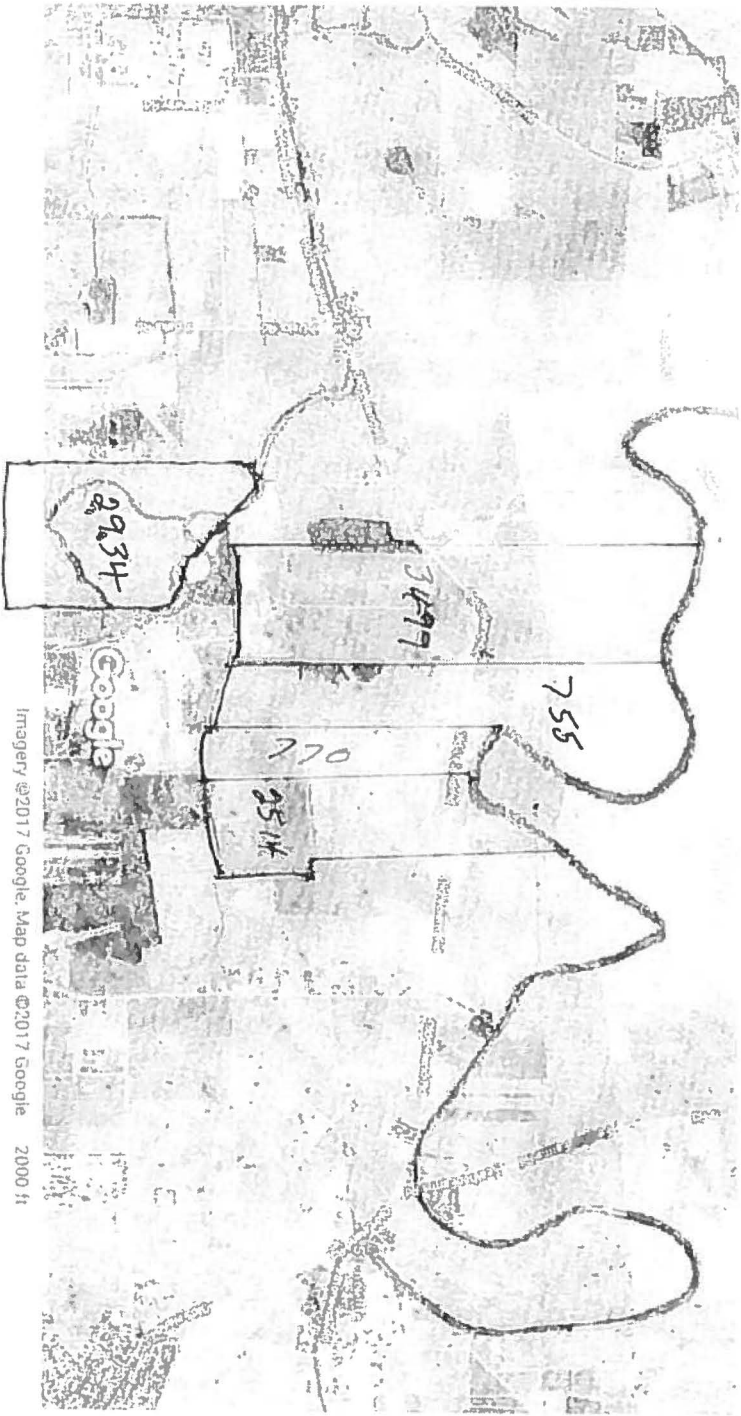
9. J. Oliver Products shall monitor the application activities and shall ensure that the use of the composite waste material is conducted in a manner that prevents off-site public nuisance conditions from occurring.
10. J. Oliver Products shall ensure the application of the composite waste material shall not occur within close proximity to inhabited dwellings, businesses, churches, and other publicly used structures.
11. J. Oliver Products shall ensure that grazing of animals on application sites is prohibited during application activities and for at least 30 days after the application of the composite waste materials.
12. J. Oliver Products shall ensure that the planting and land preparation activity on the fields receiving the composite waste material is conducted in a manner consistent with the conditions for use of the composite material.
13. J. Oliver Products shall ensure that any spills or releases of the composite waste material outside of the designated application area(s) or the authorized beneficial use activities shall be cleaned and collected and the resulting material disposed at a permitted disposal facility.

Monitoring, Records and Reporting

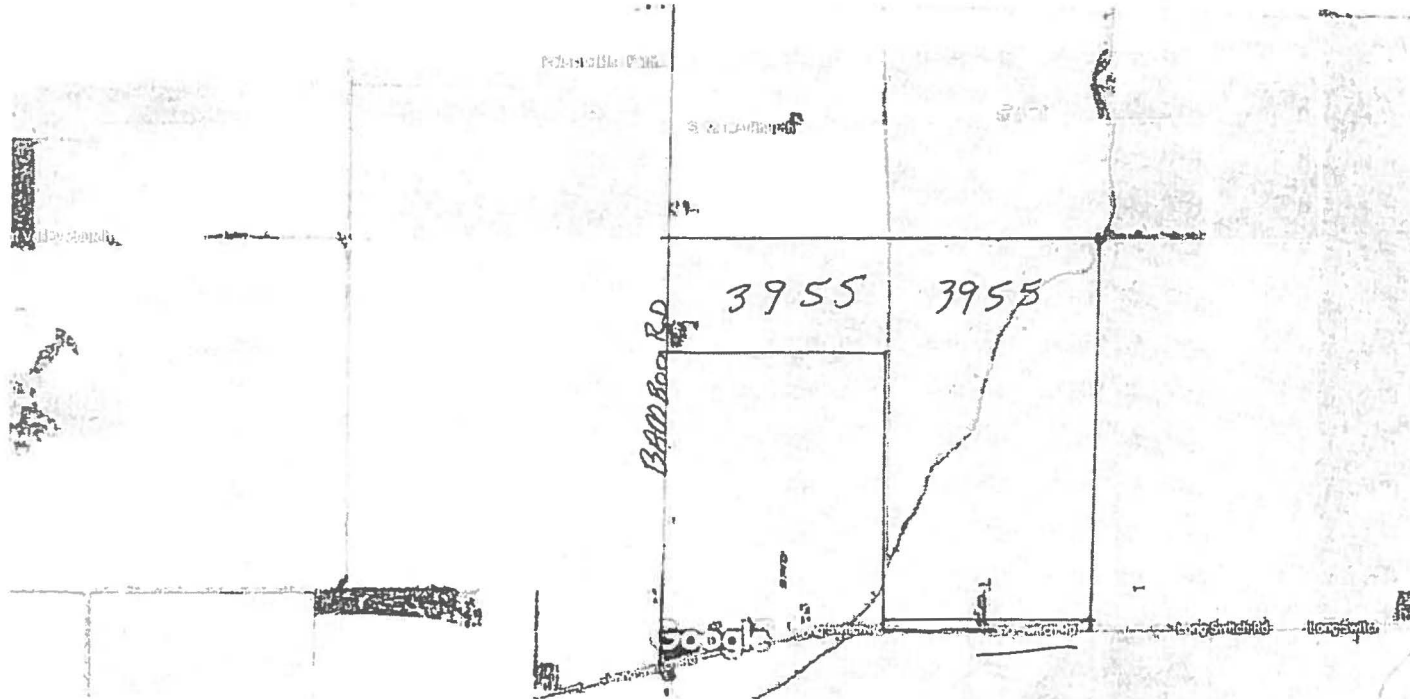
14. J. Oliver Products shall record the date, location and quantity and rate of the composite waste material applied for each application event.
15. J. Oliver Products shall submit a post-activity summary report to MDEQ and MDAC on this application project no later than August 1, 2017. The report shall, at a minimum include a narrative description of the application activity for the composite materials and the locations of use. The report should also describe any problems or conditions observed post application.

EXHIBIT B

WASHINGTON COUNTY MS
OLD BELAND ROAD FARMS
BELAND MS.



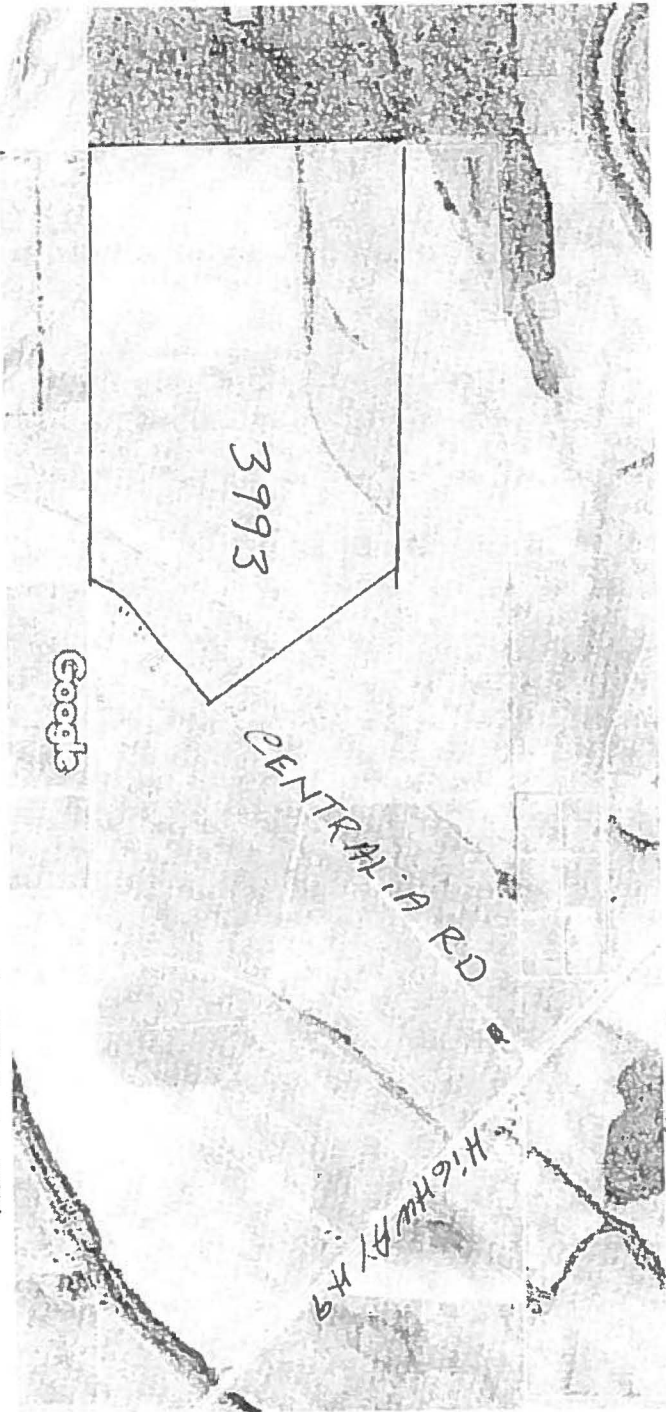
WASHINGTON COUNTY MS.
LONGSWITCH - BAMBO RD.
LELAND MS



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SUNFLOWER COUNTY, MS
INDIANOLA, MS

INDIANOLA, MS



Imagery ©2017 Google, Map data ©2017 Google 1000 ft

INVERNESS
MS.

HUMPHREYS COUNTY MS
BELZONI, MS

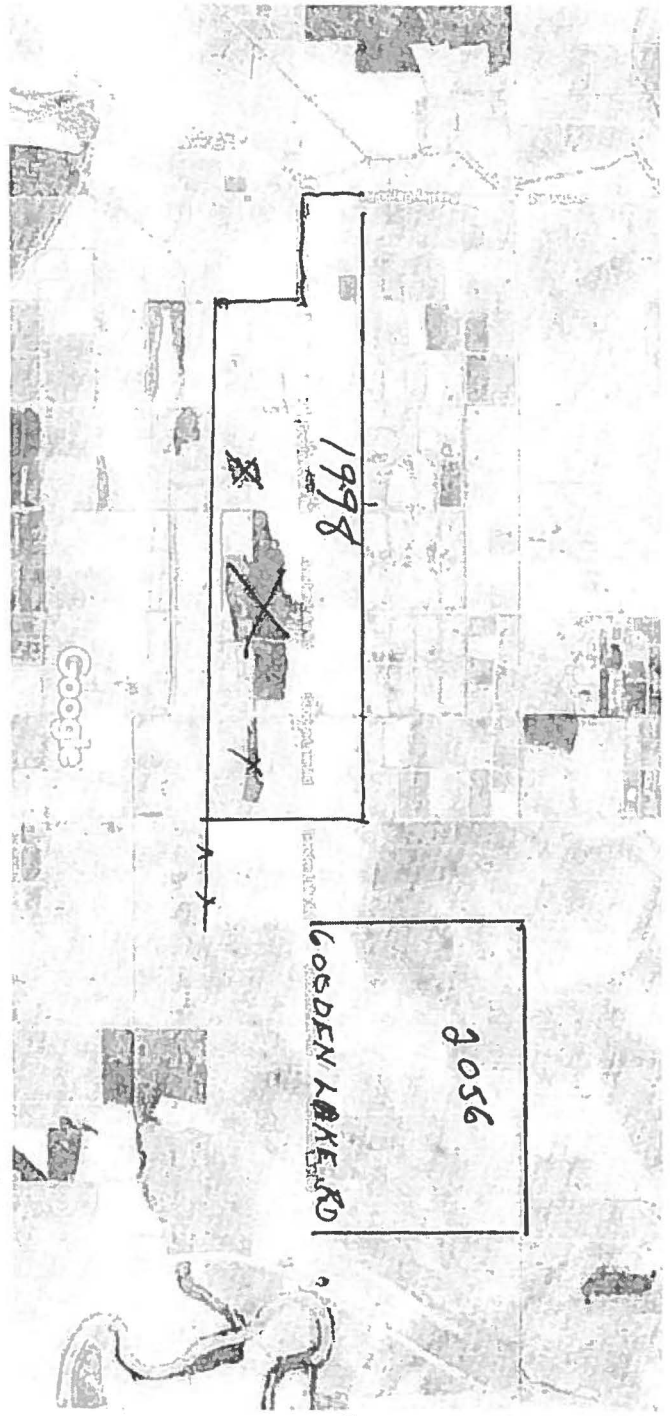


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HUMPHREYS COUNTY MS
BELZONI, MS



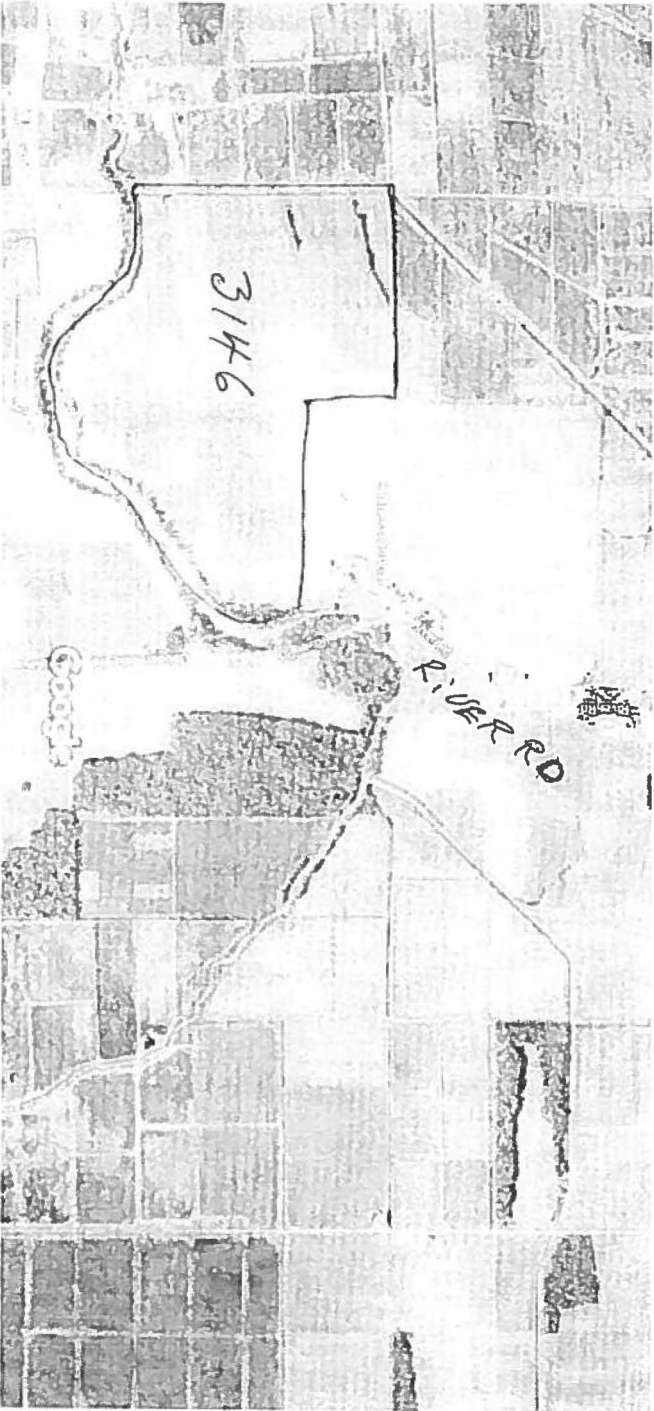
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Google

HWY
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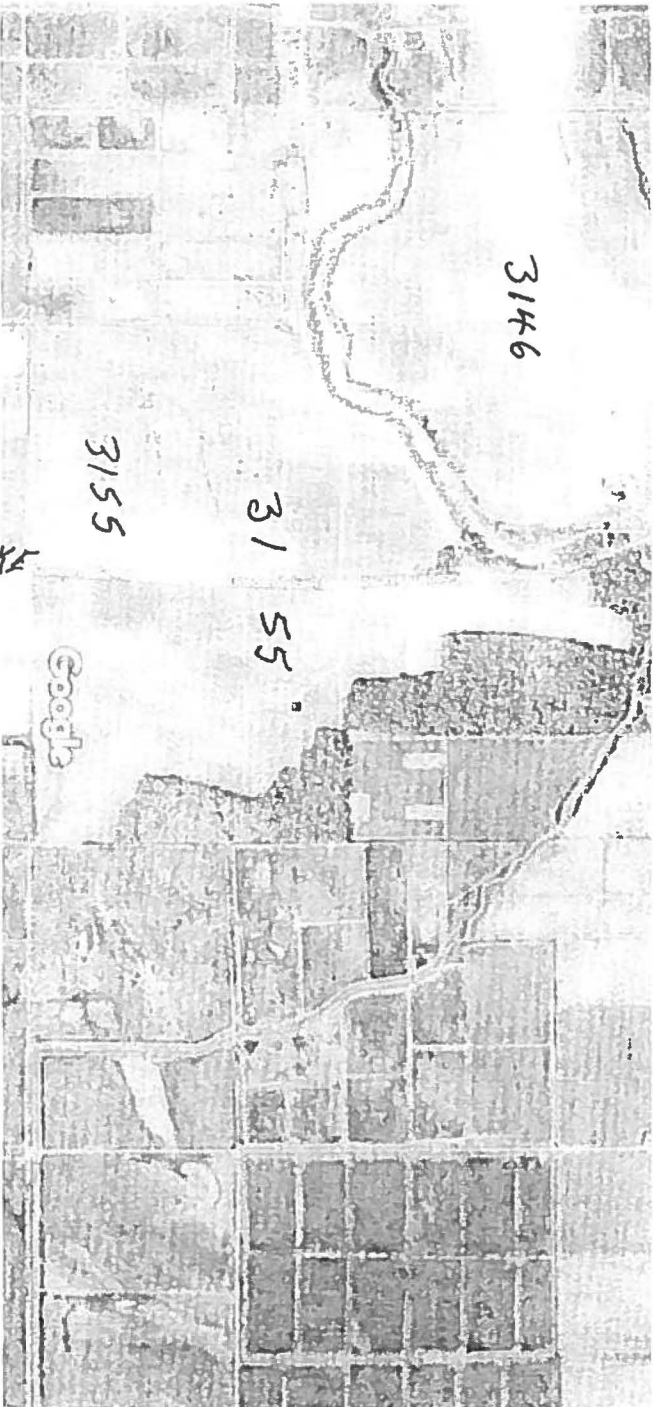
HUMPHREYS COUNTY MS
BEZZONI MS



GOODEN LAKE
RD

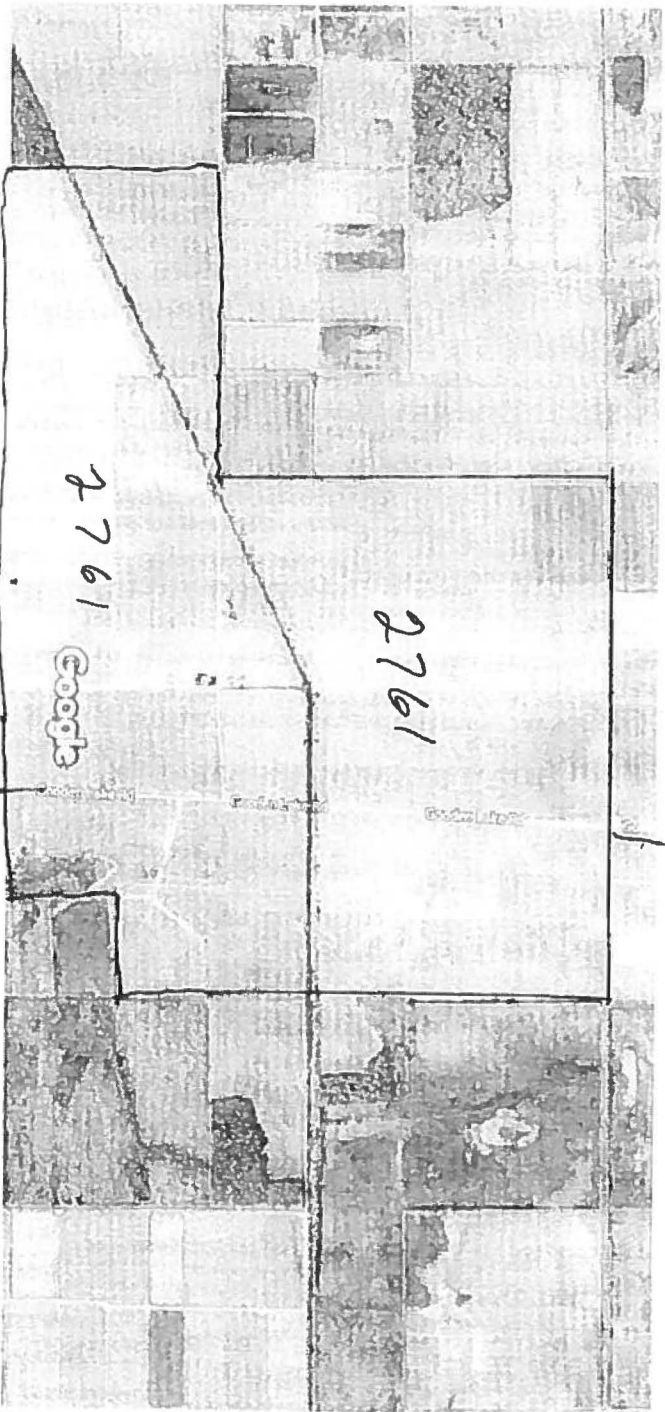
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HUMPHREYS COUNTY MS
BELZONI, MS



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HUMPHREY COUNTYS BELZONI MS



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GODDEN HAY
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