

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

In the Matter of)	
)	
J. Oliver Products, LLC)	Docket No. FIFRA-07-2017-0455
)	
Respondent)	

STOP SALE, USE, OR REMOVAL ORDER

Authorities

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.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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).

8. 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.

Background and Basis for the Order

9. 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 was being held for distribution at a facility located at: 1301 South 11th Street, Saint Joseph, Missouri, 64503 (the product). Subsequently, and in compliance with the Stop, Sale and Removal Order issued February 21, 2017 (the SSURO), the product was moved to the J. Oliver Products, LLC Headquarters facility, located at: 65 Napenee Road, Leland, Mississippi 38756 (J. Oliver Headquarters). Pursuant to the SSURO, five hundred fifty (550) gallons of the product was applied to farmland under the control of J. Oliver Products, LLC. Six hundred seventy-five (675) gallons of the product remain at J. Oliver Headquarters.

Order

10. Except as authorized herein, the EPA hereby **ORDERS** J. Oliver Products, LLC, NOT to distribute, sell, offer for sale, deliver for shipment, receive, or having so received, deliver, offer for delivery, use or move or remove the product from any present location.

11. This Order shall pertain to all quantities and sizes of the product, which are within the ownership, control or custody of J. Oliver Products, LLC, and any agent, contractor, consultant, firm, successor, and/or assign or other persons or entities acting on behalf of J. Oliver Products, LLC.

12. 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 J. Oliver Headquarters to the storage facility located at: 4006 Old Leland Road, Leland, Missouri 38756 (the storage facility), within thirty (30) calendar days of issuance of this Order.

13. Upon receipt of the product at the storage facility, the product shall be held and stored at the storage facility and not removed from the storage facility, except as in accordance with paragraph 15.

14. Within forty-eight (48) hours of transferring the product to the storage facility, J. Oliver Products, LLC. shall send written confirmation of the transfer of the product to the following:

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

15. Beginning on November 15, 2017 and ending on April 30, 2018, the product may be transferred and land applied for burn down only in accordance with the Mississippi Department of Environmental Quality's approval letter dated August 30, 2017, attached to this order as Exhibit A and incorporated by reference herein. The product shall only be land applied for burndown 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

16. J. Oliver Products, LLC shall submit a post-application report to the EPA contact identified in paragraph 14 on or before June 1, 2018, 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.

17. 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. § 136*l*.

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

19. 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.

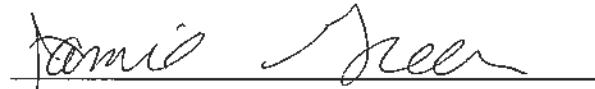
20. This Order shall be **EFFECTIVE IMMEDIATELY** upon receipt by **RESPONDENT**.

Other Matters

21. For any additional information about this Order please contact Mark Lesher, 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.

9, 28/ 2017

Date



Jamie Green, Chief
Toxics and Pesticides Branch

EXHIBIT A



STATE OF MISSISSIPPI
PAUL BENTON
GOVERNOR
MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY
GARY C. BROWN, EXECUTIVE DIRECTOR

August 30, 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 information submitted on August 22, 2017, regarding the status report on the land application activity to date as well as the request to extend the approval originally issued on February 8, 2017. The original approval recognized approximately 1,180 gallons of an adulterated pesticide waste material containing amounts of Clethodim and Dicamba pesticide products. This waste material was to be land applied 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). This land application activity was to be completed by June 30, 2017.

The report submitted on August 22, 2017, indicated that 505 gallons of the original 1,180 were sprayed on the approved area with 675 gallons of adulterated product still remaining. Based on the information provided by J. Oliver Products, the MDEQ does concur with the extension of the approval of the 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 compositated waste material should such actions be warranted.

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

Sincerely,

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 remaining composited waste materials containing approximately 675 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 April 30, 2018, 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.

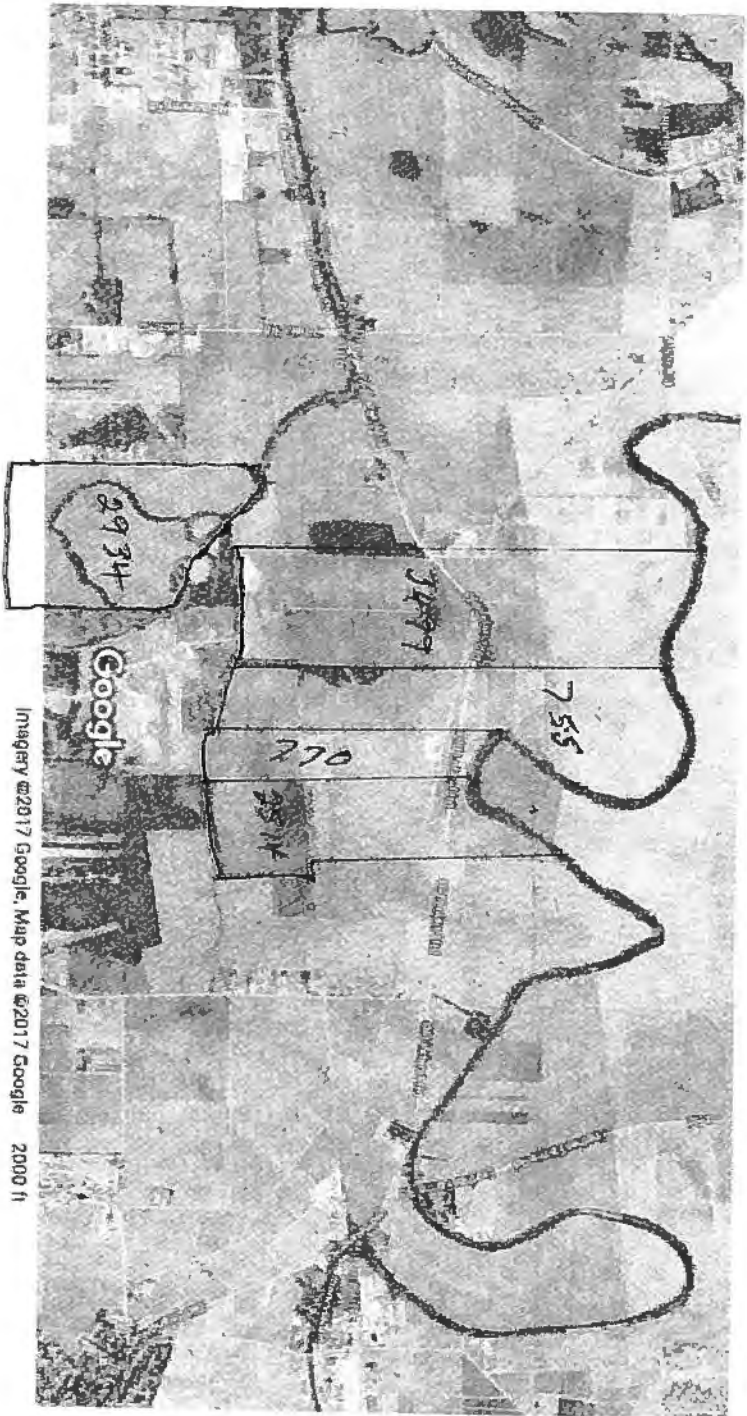
9. **J. Oliver Products shall monitor the application activities and shall ensure that the use of the composite waste material is conducted in a manner that prevents off-site public nuisance conditions from occurring.**
10. **J. Oliver Products shall ensure the application of the composite waste material 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

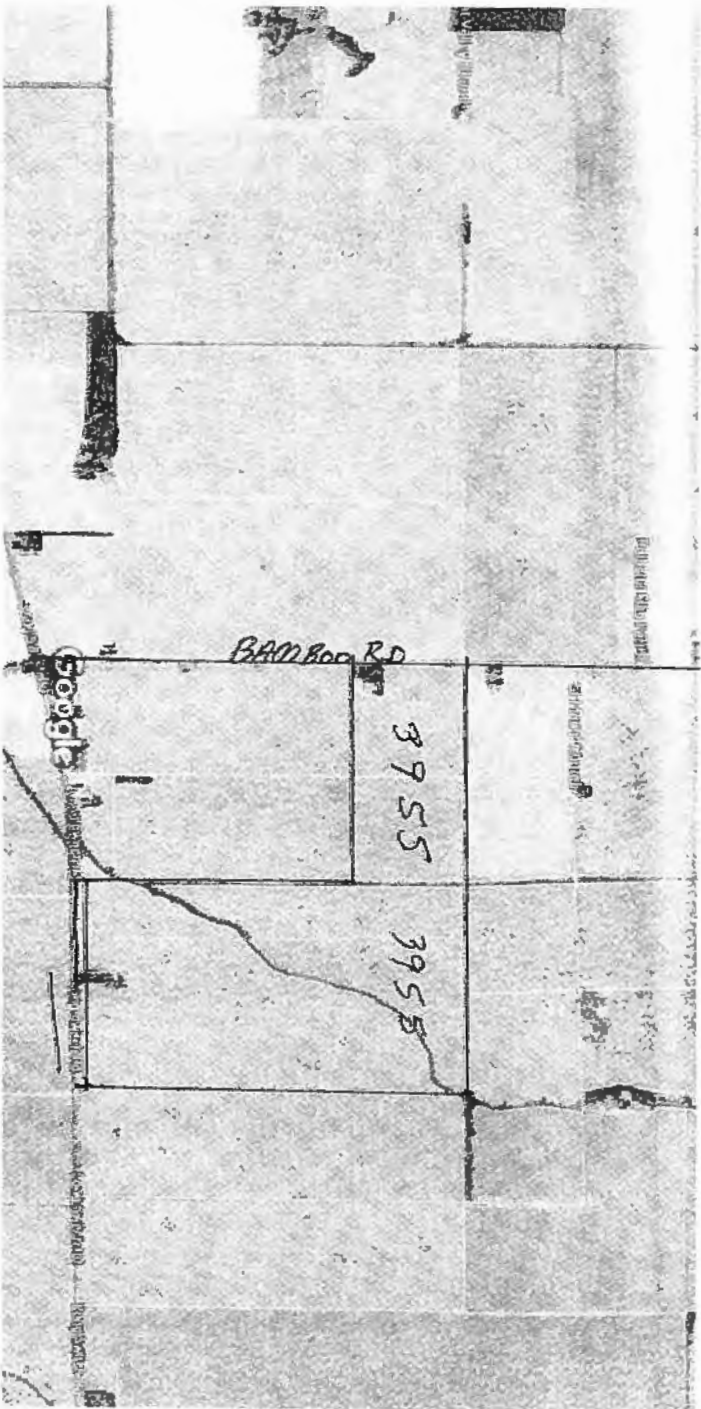
14. **J. Oliver Products shall record the date, location and quantity and rate of the composite waste material applied for each application event.**
15. **J. Oliver Products shall submit a post-activity summary report to MDEQ and MDAC on this application project no later than June 1, 2018. The report 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.



<https://www.google.com/maps/@33.4534053,-90.7925885,2501m/data=!3m1!1e3>
WASHINGTON COUNTY MS.
LONGSWITCH - BAMBOO RD.
LELAND MS

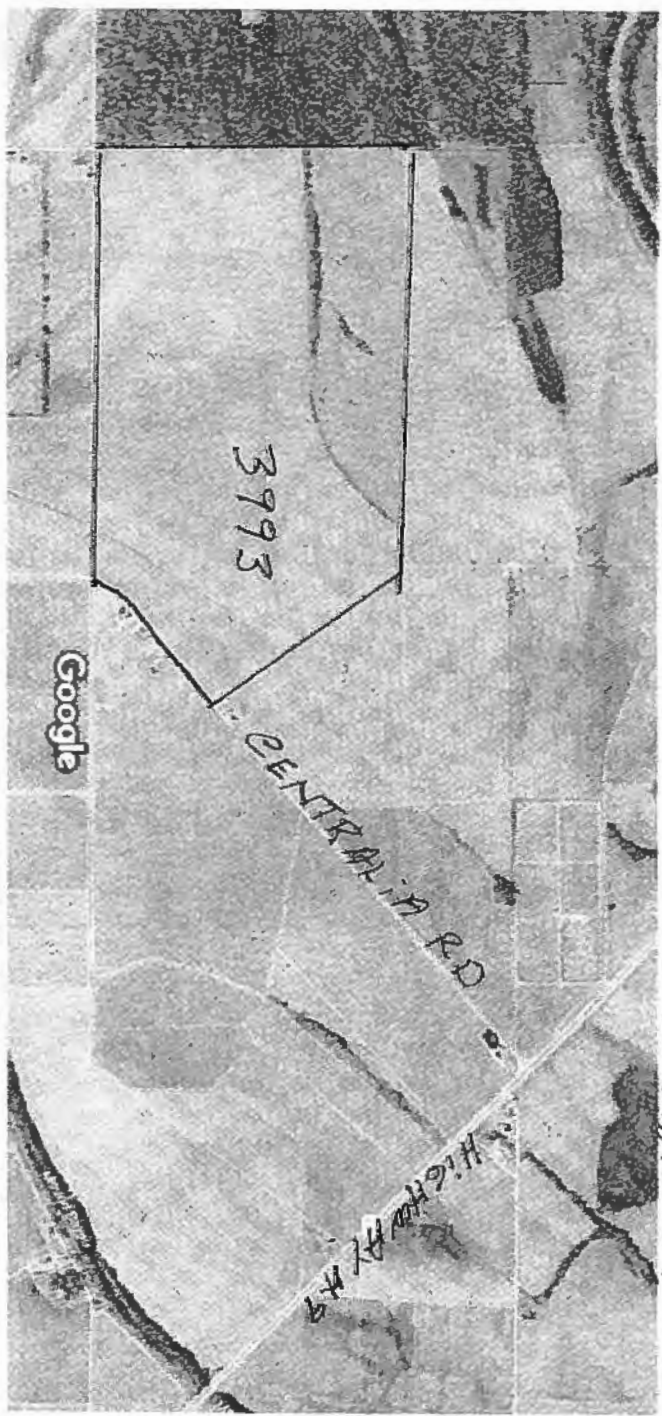


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Google Maps

SUNFLOWER COUNTY, MS
INDIANOLA, MS

INDIANOLA, MS



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INVERNESS
MS.

HUMPHREYS COUNTY MS
BELZONI, MS



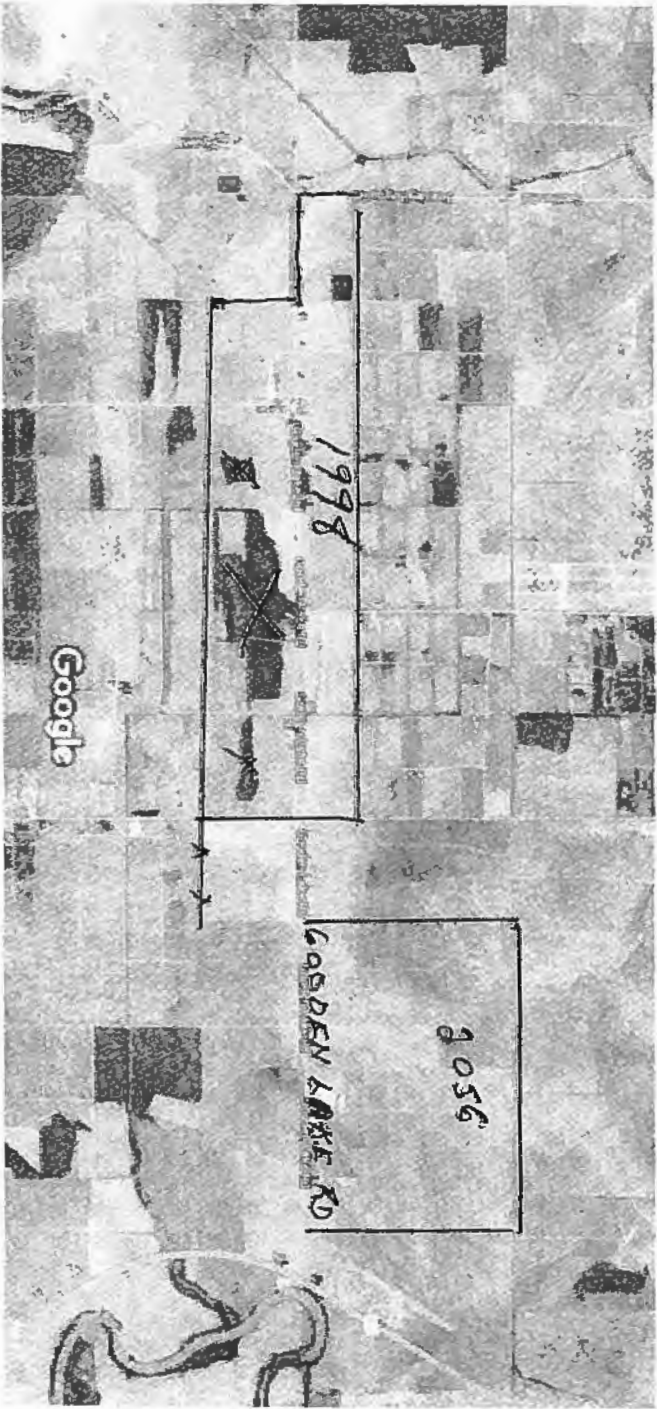
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Google Maps

HUMPHREYS COUNTY MS
BEHZONI, MS



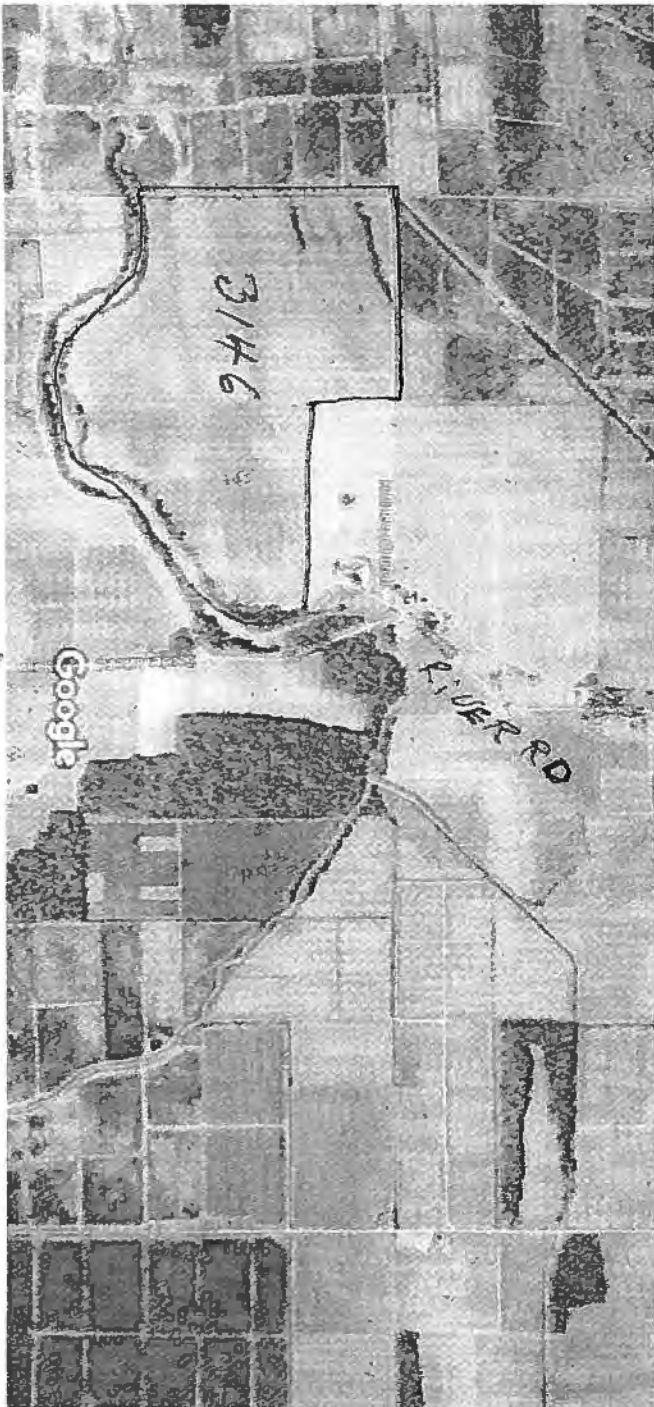
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Google Maps

HUMPHREYS COUNTY MS
BEKZONI MS



GOODEN LAKE
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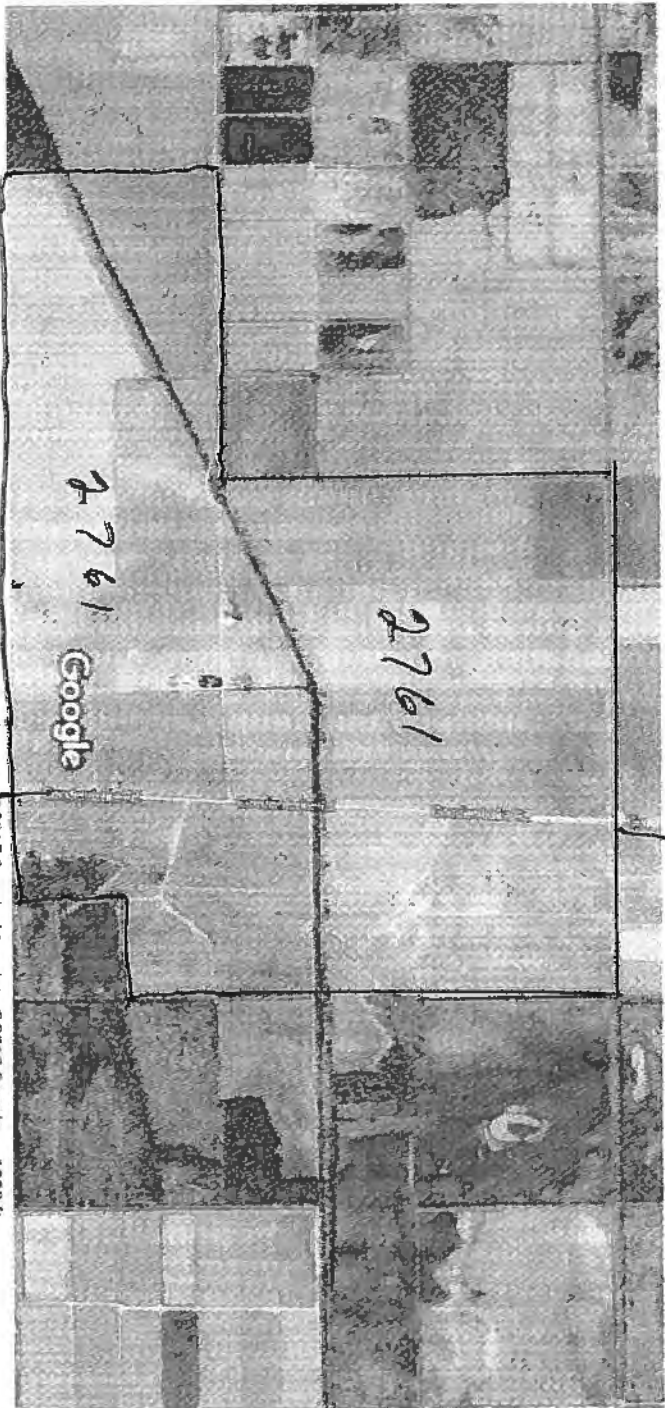
HUMPHREYS COUNTY MS
BEKZONI, MS



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BELZONI MS



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CODDEN LANE
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