

**BEFORE THE HEARING BOARD
OF THE
SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT
SOUTHERN REGION
STATE OF CALIFORNIA**

In the matter of:

Berry Petroleum Company
11117 River Run Boulevard
Bakersfield, CA 93311

) **DOCKET No. S-26-17E**

) **ORDER GRANTING AN
EMERGENCY VARIANCE**

For a variance from:

2010 – *Permits Required*
2020 – *Exemptions*
2070 – *Standards for Granting Applications*
2080 – *Conditional Approval*
2201 – *New and Modified Stationary
Source Review*
2520 – *Federally Mandated Operating
Permits*
4301 – *Fuel Burning Equipment*
4623 – *Storage of Organic Liquids*
4801 – *Sulfur Compounds*

District Permit Number:

See Conclusions and Order

) **Granted on:** September 29, 2026

) **Effective from:** September 28, 2026

EPA AIRS Numbers:

06-029-S1246

) **Effective to:** October 27, 2026

On September 29, 2026, Berry Petroleum Company (BERRY) filed with the Southern Region Hearing Board a petition for an emergency variance. BERRY requested that the Hearing Board grant an emergency variance from San Joaquin Valley Air Pollution Control District (District) Rules 2010, 2020, 2070, 2080, 2201, 2520, 4301, 4623 & 4801.

On September 29, 2026, BERRY came before John Stovall, Chair, acting for and on behalf of the Southern Region Hearing Board, to obtain an emergency variance. The hearing was held pursuant to California Health & Safety Code (CH&SC) §42359 and District Rule 5200 – *Emergency Variance*. Brent Winn represented BERRY, while Will Coon represented the District.

The Hearing Board declared the hearing closed after receiving testimony and took the matter under submission for the decision. The Hearing Board made the following findings of fact.

LOCATION AND EQUIPMENT

1. BERRY operates equipment associated with the production and storage of crude oil within the Midway Sunset Oil Field.
2. The subject equipment includes two vessels (V-210A & V-210B) used to remove sulfur from gas prior to incineration in four generators.
3. Operation of the subject equipment is authorized by duly issued District permits.

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BACKGROUND

Berry operates heavy oil wells in the Midway-Sunset field. The “waste gas” from the wells is incinerated in steam generators. At the Ethel D property, two vessels (V-210A & V-210B) are used to remove sulfur from the gas prior to incineration in four generators.

Normally, the spent sulfur treatment media is replaced in one vessel while the other vessel is in operation. Recent inspections revealed that one vessel (V-210B) has experienced damage to the internal coating and cannot be operated. The vessel has been taken out of service to be re-coated.

The active treatment vessel (V-210A) needs to have treatment media re-charged as soon as possible and V-210B is not available as the alternate vessel. Recharging of the media in V-210A is expected to require up to 20 days.

In order to conduct the proposed work, it will be necessary to bypass the sulfur treatment system (both vessels) while the active vessel is being recharged.

RULE REQUIREMENTS AND VIOLATIONS

1. The equipment subject to this variance is regulated by the following District Rules:
 - A. 2010 – *Permits Required*
 - B. 2020 – *Exemptions*
 - C. 2070 – *Standards for Granting Applications*
 - D. 2080 – *Conditional Approval*
 - E. 2201 – *New and Modified Stationary Source Review Rule*
 - F. 2520 – *Federally Mandated Operating Permits*
 - G. 4301 – *Fuel Burning Equipment*
 - H. 4623 – *Storage of Organic Liquids*
 - I. 4801 – *Sulfur Compounds*
2. District Rules 2010, 2070, and 2520 require that the subject equipment be operated in accordance with conditions specified in the applicable permits. District Rules 2201 and 4623 require that the subject equipment be equipped with an operating and functional sulfur treatment vessel.

FINDINGS OF FACT

Pursuant to California Health & Safety Code § 42352, the following findings have been made:

1. ***That the petitioner for a variance is, or will be, in violation of Section 41701 or of any rule, regulation, or order of the District.***

The Hearing Board finds that the continued processing of liquids in the subject equipment without an operational sulfur treatment system will result in a violation of applicable requirements of District Rules 2010, 2020, 2070, 2080, 2201, 2520, 4301, 4623 & 4801, in addition to applicable conditions of the subject permits.

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2. ***That, due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either (1) an arbitrary or unreasonable taking of property, or (2) the practical closing and elimination of a lawful business.***

The Hearing Board finds that it is beyond the reasonable control of BERRY to comply with applicable District rules and permit conditions while the sulfur treatment system is down to conduct the proposed work. It would be a taking of property if BERRY were not allowed to manage their equipment in a way that they believe will lead to efficiencies, safety, the maximizing of production, and continued long term compliance.

3. ***That the closing or taking would be without a corresponding benefit in reducing air contaminants.***

The Hearing Board finds that a closing or taking would require shutting down equipment and reducing production, which are not economically viable. BERRY would need to shut in production during the recharging and re-coating process and then continuing through the variance period until they bring the sulfur treatment back online. This action would result in an economic loss of \$60,000.00 per day. The large economic loss and the emissions associated with the draining, degassing and cleaning of the tanks would negate any benefit a closing or taking would have in reducing air contaminants.

4. ***That the applicant for the variance has given consideration to curtailing operations of the source in lieu of obtaining a variance.***

The Hearing Board finds that BERRY considered curtailing operations by shutting in all production to the subject tanks and following the tank cleaning procedures required to remove the tanks from service prior to performing the proposed work. However, it was not deemed practical based on the duration of the proposed activities, the amount of expected emissions, the potential for additional excess emissions during tank cleaning, and the economic loss associated with the curtailment of production activities.

5. ***During the period the variance is in effect, that the applicant will reduce excess emissions to the maximum extent feasible.***

The Hearing Board finds that BERRY must repair vessels (V210-A & V210-B) and that shutting down equipment and reducing production are not economically viable in this scenario. Also, BERRY will conduct the proposed work as expeditiously as practicable.

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6. ***During the period the variance is in effect, that the applicant will monitor or otherwise quantify emission levels from the source, if requested to do so by the District, and report these emissions levels to the District pursuant to a schedule established by the District.***

The Hearing Board finds that BERRY will record the amount of time the vessels are bypassed, calculate emissions based on approved emission factors, and provide this information to the District upon conclusion of the variance.

GENERAL COMMENTS

The Hearing Board also finds that a nuisance as defined in District Rule 4102 is not expected to occur as a result of this variance. Nor would continued operations likely create an immediate threat or hazard to public health or safety.

It should be noted that the US Environmental Protection Agency (EPA), which monitors major sources, might not recognize this variance. BERRY should be aware that the EPA could take enforcement action on this matter if it deems such action is appropriate.

CONCLUSIONS AND ORDER

NOW, THEREFORE, the SOUTHERN REGION HEARING BOARD ORDERS that an emergency variance be granted to BERRY, subject to the following conditions:

1. The variance shall be effective for a non-consecutive 30-day period to occur between September 28, 2026, and October 27, 2026. Variance protection will end once the proposed work is completed and the Sulfur Treatment System is returned to compliant operation.
2. Variance relief shall be granted from the applicable requirements of District Rules 2010, 2020, 2070, 2080, 2201, 2520, 4301, 4623 & 4801, in addition to the listed conditions of the following permits:
 - A. Condition 5 of S-1246-0-5,
 - B. Conditions 3, 5, 6, 7 and 9 of S-1246-290-24
 - C. Conditions 25 and 27 of S-1246-0019-35
 - D. Conditions 4, 12, 15, 26 and 27 of S-1246-0269-20
 - E. Conditions 4 and 5 of S-1246-0354-2
 - F. Conditions 5 and 6 of S-1246-0406-3
3. The variance shall allow the bypass of the Sulfur Treatment System while vessel (V-210A) undergoes treatment media re-charging and (V-210B) is re-coated or until the required work is completed, or whichever occurs first.
4. Excess SOx emissions shall not exceed **14,440 pounds** over the duration of the variance period.

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5. Excess emissions fee will be assessed at the conclusion of the variance at \$3.25 per pound. Additionally, should the total excess emissions exceed one ton (2,000 pounds), BERRY shall pay \$3.75 for each pound of total excess emissions. Payment of the excess/mitigation emission fees shall occur within 30 days after the end of the variance. Payment shall be made to the District and shall be directed to the "Miscellaneous Incentive Grant – Hearing Board," account.
6. A Federal Title V deviation report shall be submitted to the District within 10 days each time a Federal Title V permit condition is violated; within 10 days of discovery. The deviation report must be sent to the facility inspector.
7. Should the facility experience operational conditions likely to cause a public nuisance, BERRY shall cease the operations causing the problems and take all necessary actions to abate the problem immediately.
8. At the conclusion of this variance, BERRY must be in compliance with all their permit conditions and applicable District Rules. If BERRY will not achieve compliance prior to conclusion of this variance they must contact the District as soon as practicable and before the variance period ends.
9. By November 11, 2026, BERRY shall submit a summary report to the District. If the report due date should fall on a day the District is closed, it shall be due the next business day. The report shall include the following:
 - A. A detailed summary of all activities performed during the variance period,
 - B. The date(s), time(s), and total duration that the subject sulfur treatment system was bypassed.
 - C. A calculation of excess emissions, and
 - D. The required certification of truth, accuracy, and completeness, signed by the designated official of the Corporation, as required by sections 9.13.1 and 10.0 of District Rule 2520 – *Federally Mandated Operating Permits*.
10. The end of variance summary report shall be submitted to the attention of:

Will Coon
SJVAPCD, Compliance Department
1990 E. Gettysburg Avenue
Fresno, CA 93726
Telephone: (559) 230-5878
E-mail: will.coon@valleyair.org
11. Failure to comply with any condition of this variance may render the variance null and void with the possibility of enforcement action taken that may include monetary penalties.

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THE FOREGOING DECISION IS APPROVED:

DocuSigned by:

John Stovall

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John Stovall, Chair
Hearing Board – Southern Region
San Joaquin Valley APCD

10/13/2026

Date

ATTEST:

Signed by:

KR

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Katrina Rojas, Deputy Clerk to the Boards

10/14/2026

Date



San Joaquin Valley

AIR POLLUTION CONTROL DISTRICT

PROOF OF SERVICE

I, Bailey Chavez, declare:

I am a resident of the State of California and over the age of 18 years, and not a party to the within action; my business address is San Joaquin Valley Air Pollution Control District, 1990 E. Gettysburg, Fresno, California 93726.

On October 14, 2026, I served the within documents:

ORDER GRANTING A VARIANCE – DOCKET No. S-26-17E

by placing the document(s) listed above in a sealed envelope, and placing the same for mailing in the United States mail at Fresno, California, in accordance with the company's ordinary practices, and addressed as set forth below.

☒ based on an agreement of the parties with email addresses below, to accept service by transmitting via email, the above listed document(s) to the email addresses set forth below on this date before 5 p.m.

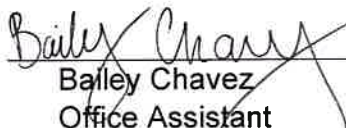
by personally delivering the document(s) listed above to the person(s) at the address(s) set forth below:

Sam Parks
Berry Petroleum Company
11117 River Run Boulevard
Bakersfield, CA 93311
Sam.Parks@crc.com

Roshni Brahmhatt
USEPA Region IX
75 Hawthorne Street
San Francisco, CA 94105-3901
AEO_R9@epa.gov
CARB – Enforcement Division
PO Box 2815
Sacramento, CA 95814
variance@arb.ca.gov

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 14, 2026, at Fresno, California.


Bailey Chavez
Office Assistant

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4800 Enterprise Way
Modesto, CA 95356-8718
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Central Region Office
1990 East Gettysburg Avenue
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