

**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-26-07E

For a variance from:

2010 – *Permits Required*
2070 – *Operation according to the
Permit to Operate Conditions*
2201 – *New and Modified Stationary
Source Review*
2520 – *Federally Mandated Operating
Permits*
4623 – *Storage of Organic Liquids*

**ORDER GRANTING AN
EMERGENCY VARIANCE**

District Permit Number:

See Conclusions and Order

Granted on: April 14, 2026

Effective from: April 15, 2026

EPA AIRS Numbers:

06-029-S1246

Effective to: April 20, 2026

On April 14, 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, 2070, 2201, 2520, and 4623.

On April 14, 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, Zachary Dransoff, Douglas Koenig, and David Hauptman represented BERRY, while Chris Kalashian 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 petroleum storage tanks and a vapor recovery system (VRS).
3. Operation of the subject equipment is authorized by duly issued District permits.

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BACKGROUND

Berry operates the Pan Lease, Southwestern Diatomite Lease, Fairfield Lease, and Tidewater Diatomite Lease, which utilizes a series of tanks to receive, store, and process produced water within the Midway Sunset Oil Field. As required by District rules and the conditions of the permits, the tanks located there are required to be controlled by a functional and operating VRS and be maintained in a leak free condition at all times.

BERRY has been experiencing electrical related breakdowns over the past several weeks and needs to perform preventative maintenance. A main concern is that there is a high potential for brush fires if electrical components fail. BERRY has procured the necessary replacement/upgrade electrical equipment and during the investigation will replace electrical components as needed.

In order to conduct the proposed work, it will be necessary to shut down power to the aforementioned tanks which means the VRS will not be operating.

RULE REQUIREMENTS AND VIOLATIONS

1. The equipment subject to this variance is regulated by the following District Rules:
 - A. 2010 – *Permits Required*
 - B. 2070 – *Standards for Granting Applications*
 - C. 2201 – *New and Modified Stationary Source Review Rule*
 - D. 2520 – *Federally Mandated Operating Permits*
 - E. 4623 – *Storage of Organic Liquids*
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 VRS and be maintained leak free at all times.

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 storage of VOC containing liquids in the subject tanks without an operational VRS will result in a violation of applicable requirements of District Rules 2010, 2070, 2201, 2520, and 4623, 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 VRS is down to conduct the proposed work. District rules and permit conditions do not allow the VRS to be offline while VOC containing liquids are being stored in the tanks. 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 the closing or taking would require that the tanks be drained, degassed and cleaned which could result in more emissions than what is proposed due to the equipment and procedures involved. BERRY would need to shut in production of oil during the cleaning process and then continuing through the variance period until they bring the VRS back online. This action would result in an economic loss of \$100,000.00 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 if the tanks are enclosed with a fixed roof and will still have pressure/vacuum vents which will seal in the vapors as long as the pressure inside the tanks does not build up. Also, BERRY will conduct the proposed work at 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 there are no reasonable means to directly monitor fugitive VOC emissions from the subject tanks. However, BERRY will record the amount of time the tanks operate without a VRS, 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 consecutive 10-hour period to occur between April 15, 2026, and April 20, 2026. Variance protection will end once the proposed work is completed and the VRS is returned to compliant operation.
2. Variance relief shall be granted from the applicable requirements of District Rules 2010, 2070, 2201, 2520, and 4623, in addition to the listed conditions of the following permits:
 - A. Condition 5 of S-1246-0-5,
 - B. Conditions 1 of S-1246-334-9, -335-3, -336-3, -339-5, -370-10, -371-3, -382-3, -385-3, -386-3, -389-3, -400-3, and -418-2,
 - C. Conditions 1 and 2 of S-1246-373-3, -374-3, and -384-3,
 - D. Condition 2 of S-1246-419-3, -420-3, and -421-3,
 - E. Condition 9 of S-1246-305-7 and -306-7, and
 - F. Condition 10 of S-1246-153-10 and -155-10.
3. The variance shall allow the continued operation of the tanks without a functional and operating VRS until the proposed work is completed.
4. Excess VOC emissions shall not exceed **80 pounds** over the duration of the variance period.

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5. 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.
6. 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.
7. 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.
8. By May 5, 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 tanks stored VOC containing liquids without an operational VRS,
 - 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*.
9. The end of variance summary report shall be submitted to the attention of:

Chris Kalashian
SJVAPCD, Compliance Department
1990 E. Gettysburg Avenue
Fresno, CA 93726
Telephone: (559) 230-6000
E-mail: chris.kalashian@valleyair.org
10. 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

4/24/2026

Date

ATTEST:

Signed by:

Katrina Rojas

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Katrina Rojas, Deputy Clerk to the Boards

4/27/2026

Date



San Joaquin Valley

AIR POLLUTION CONTROL DISTRICT

PROOF OF SERVICE

I, Noemi Calderon, 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 April 27, 2026, I served the within documents:

ORDER GRANTING A VARIANCE – **DOCKET No. S-26-07E**

☒ 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:

Brent Winn
Berry Petroleum Company
11117 River Run Boulevard
Bakersfield, CA 93311

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 April 27, 2026, at Fresno, California.

Noemi Calderon
Office Assistant II

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4800 Enterprise Way
Modesto, CA 95356-8718
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