



Peacock Piper Tong + Voss LLP

PEACOCK PIPER'S APRIL 2020 ALERT CONCERNING SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT RULE 1142

THE SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

In addition to complying with the U.S. federal government's enforcement of MARPOL Annex VI and the California Air Resources Board's enforcement of its low-sulfur and shore power connection (At-Berth) regulations, commercial vessels calling at the Ports of Los Angeles and Long Beach (the "Ports") must also ensure compliance with the rules of the South Coast Air Quality Management District ("AQMD"). The AQMD regulates air quality in the regions of California where approximately half of the state's population reside, including Los Angeles, Orange County, Riverside and San Bernardino counties.

AQMD RULE 1142

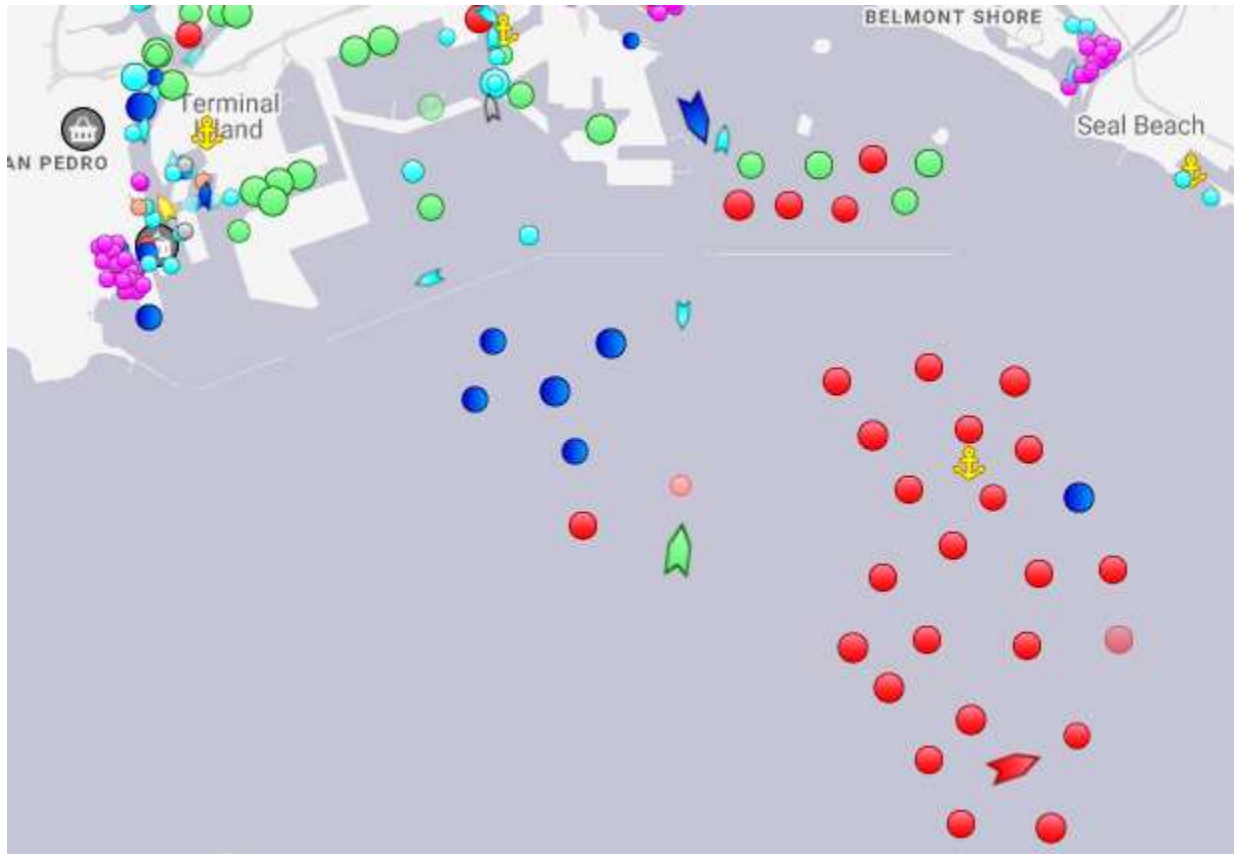
In 1994, the AQMD issued Rule 1142 entitled MARINE TANK VESSELS. Rule 1142(c)(2) provides "...all hatches, pressure relief valves, connections, gauging ports and vents, and other equipment associated with a loading, lightering, ballasting, or **housekeeping event** shall be maintained free of liquid or **gaseous leaks**." (Emphasis added). For the purposes of Rule 1142(c)(2), "housekeeping ... consists of altering the composition of gases contained within marine vessel tanks by tank washing, gas freeing, or purging." (See Rule 1142(b)(7).) "Nothing in [Rule 1142] shall be construed as to ... prevent any act that is necessary to secure the safety of a vessel or the safety of the passengers or crew." (See Rule 1142(f)(2).)

CURRENT CONDITIONS AT THE PORTS OF LOS ANGELES & LONG BEACH ARE "PERFECT" FOR RULE 1142 VIOLATIONS

On 15 April 2020, the AQMD issued an Advisory Notice regarding its enforcement discretion to help address impacts of COVID-19. That notice is available here: <http://www.aqmd.gov/docs/default-source/covid-19/advisory-for-enforcement-discretion-4-15-20.pdf>, Critically, the notice only relates to "non-emissions-related requirements." AQMD enforcement attorneys have confirmed to us that the AQMD is not relaxing its enforcement efforts in connection with Rule 1142.

Gaseous leaks which violate Rule 1142 tend to occur on tankers which are at anchor off the Ports of Los Angeles and Long Beach for extended periods of time during the times of year when ambient air and water temperatures are warm. The weather in Southern California is expected to get much warmer over the weekend. On Friday 24 April, the temperature is forecasted to reach 84 degrees Fahrenheit / 29 degrees Celsius. This is a 20 degree increase from Monday 20 April.

The crash of the oil market has resulted in tankers being used as de facto storage facilities. Our research indicates that as of 22 April, there are 28 tankers at anchor off Los Angeles/Long Beach. The image below is taken from Marine Traffic. The red circles are tankers. There are 3 others tankers alongside conducting cargo operations



Attached as Appendix 1 is list of the names of the tankers at LA/LB.

APPLICABLE CIVIL PENALTIES: HSC §§ 42400 - 42411

Each "... gaseous leak detected by the [AQMD] shall constitute a violation of [Rule 1142(c)(2)]." (AQMD Rule 1142(c)(2).) Furthermore, each day there was a gaseous leak from an item of the Vessel's emission control equipment constitutes as separate offense. (See *generally* Cal. Health & Safety Code (HSC) §§ 42400 – 42411.)

Intentional violations of Rule 1142(c)(2) are subject to a civil penalty of up to one million dollars (\$1,000,000) per violation/gaseous leak. (C.) Negligent violations of Rule 1142(c)(2) are subject to a civil penalty of up to twenty-five thousand dollars (\$25,000) per violation/gaseous leak. (HSC § 42400.1.) There is also a strict liability (i.e., "no fault") civil penalties of not more than ten-thousand dollars (\$10,000) per violation/gaseous leak. (HSC § 42402(b).)

MITIGATING FACTORS

California law requires the AQMD to account for the following mitigating factors when determining the argument of civil penalties: The extent of the harm; the nature and persistence of the violation; the length of time the violation occurred; the frequency of past violations; the

record of maintenance; the unproven or novel nature of the emission control equipment; the nature, extent, time, and cost of construction, cleanup or mitigation; the financial burden of the civil penalty; and any other relevant facts and circumstances warranting mitigation of the penalty. (See HSC § 42400.8.)

THE AQMD'S RECENT ENFORCEMENT OF RULE 1142

Although Rule 1142 has been in effect since 1994, the AQMD has only recently begun actively enforcing it. Residents in communities surrounding the Ports and beach communities to the southeast of the Ports have been complaining to the AQMD of odors. Upon receipt of odor complaints, the AQMD dispatches personnel to locations within these communities from which infrared video footage of tank vessels at anchor off the Ports can be taken. The AQMD contends that this type of video can detect gaseous leaks from the anchored tankers.

If the AQMD detects leaks from a tanker, it will send inspectors to meet the ship when it comes alongside to conduct cargo discharge operations. The inspectors will walk the main deck of the vessel and use a portable, forward looking infrared radar ("FLIR") device to detect whether there are any gaseous leaks emanating from components of the emission control system including mast risers, pressure relief valves, and vents.

If the FLIR device detects a release of 1,000 ppm or more from any emission control system component, it will consider that a "gaseous leak" in violation of Rule 1142. Prior to disembarking the tanker, the AQMD will leave a notice of violation (NOV) with the Master and/or the local agent. In our experience, the NOV will identify how many gaseous leaks were detected and the component from which the lead was detected, typically pressure relief valves, but not the PPM level of the leak(s).

The NOV does not itself trigger civil penalty enforcement proceedings. Rather, if the AQMD does decide to pursue civil penalties, it will follow up the NOV with a letter requesting additional information. If the case cannot be resolved informally, the AQMD can commence civil enforcement proceedings.

THOUGHTS FROM THE FRONT LINES

Again, we understand that one likely cause of gaseous leaks from tankers is the high, ambient air and sea temperatures common to the San Pedro Bay (where the Ports are located) in the summer and fall months. Tankers can often be at anchor off the Port for periods exceeding 1 week while they wait for their berth to open. These periods could be extended for even longer as it may prove to make more financial sense to store crude oil on ships at anchor than to sell the product as the current, extremely depressed prices.

When a tanker's steel deck and hull are exposed to these high ambient temperatures for extended periods, it can cause the cargo tank pressures to increase to a point above their threshold mmWG pressure for triggering automatic releases. One mitigation measure employed by some vessels is the running of sea water over the deck. The operation reportedly succeeds in reducing the deck temperature which has a resulting effect of reducing cargo tank pressures. If this practice is employed by a vessel, it is important that the crew record and log it as best as possible as that will serve as helpful evidence warranting mitigation of any civil penalties pursued by the AQMD.

The AQMD also has a self-reporting policy:

<https://www.aqmd.gov/nav/about/authority/self-reporting-policy>

In the AQMD's own words:

The General Counsel's Office encourages companies to audit their own facilities and correct any South Coast AQMD rule violations in a timely manner. Depending on the circumstances of the case, a penalty sought for a violation discovered through self-auditing and promptly reported to the South Coast AQMD should be significantly reduced **or when appropriate, waived** in order to encourage all facilities to implement an effective self-reporting program

(Emphasis added).

Therefore, tankers on which gaseous leaks occur while at the Ports (or at anchor off the Ports) should notify their local agent to contact the AQMD immediately. The following chart summarizes the AQMD's eligibility requirements for obtaining penalty reductions through self-reporting:

Eligible vessels	Ineligible vessels
<ol style="list-style-type: none">1. Vessel discovers the leaks on its own; It is not first notified by AQMD or another agency.2. Vessel report was "voluntary," i.e. not required by law, statute, or regulation.3. Report to AQMD was prompt.4. Gaseous leaks were promptly and effectively fixed after report.	<ol style="list-style-type: none">1. Gaseous leaks were made knowingly, intentionally, or were the result of gross negligence.2. Release was of a "TOXIC AIR CONTAMINANT." (See AQMD Rule 1401, Table 1)3. Violation created a public nuisance.4. Vessel or company has prior violation.