

# Demurrage spotlight glows

*FMC's interim report lists ways to improve application of charges by marine terminals and ocean carriers.*

BY CHRIS GILLIS

An ongoing Federal Maritime Commission investigation hopes to bring much-needed clarity to how marine terminal demurrage and ocean carrier detention charges are levied on shippers to ensure the nation's oceanborne commerce moves efficiently.

During a closed-door meeting of the commission on Sept. 4, FMC Commissioner Rebecca Dye released an interim report that identified six areas for improvement:

- Transparent, standardized language for demurrage, detention and free-time practices;
- Clarity, simplification and accessibility regarding demurrage and detention billing practices and dispute resolution processes;
- Explicit guidance regarding types of evidence relevant to resolving demurrage and detention disputes;
- Consistent notice to shippers of container availability;
- An optional billing model wherein marine terminal operators bill shippers directly for demurrage and ocean carriers bill shippers for detention;
- And an FMC shipper advisory or innovation team.

"Throughout this process, my priority has been how ocean carrier and marine terminal demurrage and detention approaches can optimize, not diminish, the performance of the overall American international freight delivery system," Dye said in a statement about the interim report.

Demurrage pertains to the time an import container sits in a container terminal, with carriers generally responsible for collecting penalties on behalf of container terminals. Detention relates to shippers keeping hold of containers for too long outside of a container terminal.

Shippers long have contended that ocean carriers and marine terminals use these fees not only as a punitive measure to combat excess free time but as revenue generators. The problem most recently came to a head during a period of intense congestion at U.S. West Coast ports in late 2014 and early 2015 and also during the aftermath of Hanjin Shipping's bankruptcy in August 2016.

Twenty-six trade associations formed

the Coalition for Fair Port Practices and filed a petition in December 2016 calling on the FMC to adopt rules to clarify what constitutes "just and reasonable rules and practices" for how demurrage, detention and per diem charges are assessed. This action eventually was followed by two days of public testimony before the commission in January during which numerous shippers and ocean transportation intermediaries complained of mismatched fee assessments by ocean carriers and marine terminals that make it difficult for them to avoid.

The FMC commissioners concluded that further investigation was warranted and on March 5 initiated a fact-finding investigation into the conditions and practices related to these fees. Dye was put in charge of Fact Finding Investigation No. 28. She solicited further information from 23 ocean carriers, 44 marine terminals and numerous shippers and ocean transportation intermediaries as well as drayage providers during the past six months to develop the findings for the interim report.

"We look forward to reviewing the report with our members and coalition members," Jonathan Gold, vice president of supply chain and customs policy at the National Retail Federation and a member of the coalition, told *American Shipper*. "We certainly appreciate the work of the FMC on this issue."

Jennifer Hedrick, executive director of the National Industrial Transportation League and a coalition member, said, "Detention and demurrage practices and associated fees are a significant concern for NITL members and we welcome the release of Commissioner Dye's interim report. We're pleased to see the FMC's commitment toward addressing concerns raised by NITL and members of the Coalition for Fair Port Practices and look forward to commenting following review and analysis of the report's findings."

The Agriculture Transportation Coalition, which is not a member of the Coalition for Fair Port Practices, said its members brought the "unfair free time penalties" to the attention of the FMC commissioners during individual meetings in their offices

in 2014, and since then have continued to engage the commissioners and their staff on detention and demurrage issues.

"After the Fact Finding 28 investigation was launched, AgTC members, including large and small exporters, importers, freight forwarders and truckers, provided volumes of unfair per diem documentation," said Peter Friedmann, the group's executive director. "Many confidential and detailed interviews were arranged with Commissioner Dye at our June annual meeting to share personal impacts, discuss potential solutions and to share extensive documentation for FMC analysis."

He added that obtaining and returning containers within the free time limits remains a problem due to ongoing trucking, chassis and terminal congestion problems, as well as government security and compliance challenges.

"The demurrage/detention penalties continue to be extremely damaging to our exporters, who are already facing China-U.S. tariff barriers and the high value of the U.S. dollar making our exports very expensive in foreign markets," Friedmann said.

Ocean carriers and marine terminal operators (MTOs) during the January hearings said shippers' complaints of excessive demurrage and detention fees were overstated and didn't warrant the FMC's action on a matter that should be handled commercially.

John Butler, president and CEO of the World Shipping Council, which represents the liner carrier industry, warned the commission during the public hearing to weigh carefully any action that would standardize the application of detention or demurrage fees.

The World Shipping Council is reviewing the interim report.

"The commission's interim report, as its name suggests, is not a final recommendation or a regulatory proposal," Butler said to *American Shipper*. "The conversation that we would expect to have with the commission as it continues to look at options will emphasize the difference between transparency and uniformity. By that I mean that it is reasonable to say that MTOs and carriers have to be clear about what their charges are; the law already requires that."

The FMC's final report for the fact-finding investigation is scheduled for release by Dec. 2.

"We are at the point in this process where it is time for those leaders to share their expertise and in the coming months I look forward to discussing how reasonable clarifications to demurrage and detention practices, as outlined in the interim report, will be implemented," Dye said. ■

**C**ongressman Alan Lowenthal fervently believes that efficient freight transportation infrastructure improves both the national economy and environment. The Democratic lawmaker realized this years ago and drove many infrastructure policy changes related to freight transportation in California — sometimes in the face of stiff industry opposition — during his time in that state’s Legislature in the 1990s and early 2000s. Since coming to Congress in 2012, Lowenthal has continued to champion freight transportation infrastructure at the national level. He is now recognized by ports and terminal operators, ocean carriers and truckers, and exporters and importers across the country as a go-to lawmaker for driving freight transportation infrastructure improvements. The *Adam Smith Project* recently caught up with the congressman to discuss his legislative endeavors.

**Q:** Unlike so many politicians who only pay attention to freight transportation infrastructure in times of emergency or when new budgets are being drafted, why did this topic become so important to you? What was that crystalizing event?

**A:** I’ve been representing the Port of Long Beach in one form or another, first on the Long Beach City Council starting in 1992 and then on the state Assembly in 1998, where I represented both the Port of Long Beach and the Port of L.A. And then in the state Senate in 2004, I represented just the Port of Long Beach, and right now in Congress since 2012. So I’ve been around these issues. I live not too far from the port. I was a community activist, professor at Cal State Long Beach and very much interested in lots of different issues.

When I first ran for city council in 1992 ... I started to walk along Ocean Boulevard and along the coast, telling people why I was running for office. And they would all say, “Hey Alan, what’s this black soot in my window?” And everywhere I went, people would ask me about the black soot. I had the same black soot in my garden patio, in my furniture and in my windows. I never really thought about it, but I said, “If I’m elected, let’s form a task force and let’s understand where this black soot comes from.”

In 1992, after I was elected to the city council, I began to work with a small group of residents, maybe 10 or 12 of them, to understand this problem, which we knew very little about. It turned out that the black



COURTESY OF THE OFFICE OF CONGRESSMAN LOWENTHAL

## Talking trade

*With California  
Congressman  
Alan Lowenthal*

BY CHRIS GILLIS

soot had to do with diesel particulates that were coming out. And then we saw that the South Coast Air Quality Management District had done some studies on air quality.

The particulate matter around the ports was extremely high in those days. We had long lines of dirty trucks in the early 1990s that would come in and out of our ports. And when I first started to work with the port, they said, “You can’t deal with this. We’ll deal with the environmental issues later on, but right now we’re in competition with L.A. and other ports. And if we start to deal with, right now as our highest priority, cleaning up the ports, we’re going to be at a competitive disadvantage.” And that started me thinking about the issue, and I began to realize that one can

have both environmental protection and economic growth.

**Q:** As a California state senator, you were recognized for your work among shippers, carriers, terminal operators and freight transportation proponents nationwide. What were the most important freight transportation infrastructure regulations and policies that you instituted in California during your time in office there? Did they evolve to your satisfaction?

**A:** In the 1990s they all said I was crazy. And so then when I was elected to the state Legislature, I began to introduce lots of legislation about some of the first, the smallest impacts that I wanted to deal with. That was covering the petroleum coke piles that were left uncovered and not having trucks idling in the ports. And I became convinced at the time that one of the major steps would be to work with the industry even though they were not wild about me. They saw me at that time as very much a threat, to figure out how do we get trucks off the road during the daytime and move as much as possible towards the night?

And I began to talk to the terminal operators and others about what we could do. They said, well, they’ve been trying to deal with keeping the ports open. This was in the late 1990s, early 2000. And they said they’d been trying to deal with these issues for a long time, but were not really successful. They couldn’t get the terminal operators to share information, to run a system that would keep the ports open at night. And the distributors didn’t want to keep their distribution centers open at night and on and on.

I said, “Well, here’s the story. I’m going to introduce legislation in the state Legislature that will call for a state system. We would set up a state system under the California Department of Transportation to keep the ports open at night. But I will get rid of that bill before it gets to the governor if you [the industry] will come up with your own program and I’ll work with you, but I’ll give you one year to come up with something.” And that led to them coming up with PierPass, which was more of a market-based approach than a state-run approach. I had no problem with that. I just wanted to get trucks off the road and I knew we weren’t going to build a huge amount of new infrastructure and keeping the ports open at night. And with that, our relationship began to change. Once I began to work with the terminal operators in the maritime industry who had opposed