Congress of the United States
Washington, DC 20515

October 21, 2016

The Honorable James M. Inhofe
Chairman
Committee on Environment and Public Works
U.S. Senate
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Barbara Boxer
Ranking Member
Committee on Environment and Public Works
U.S. Senate
456 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
2251 Rayburn House Office Building
Washington, DC 20515

The Honorable Peter DeFazio
Ranking Member
Committee on Transportation and Infrastructure
U.S House of Representatives
2164 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Inhofe, Ranking Member Boxer, Chairman Shuster, and Ranking Member DeFazio;

We would first like to thank you for your work and leadership in passing the House and Senate versions of the Water Resources Development Act (WRDA). As the two chambers reconcile these bills, we urge you to retain Section 2004 of S.2848, the Senate-passed bill. This section is critical to ensure that the U.S. Army Corps of Engineers (Corps) disposes of dredged sediment from the Cuyahoga shipping channel in Cleveland, Ohio in a manner that is consistent with the State of Ohio's water quality standards.

The Port of Cleveland ships and receives more than 12 million tons of goods each year, including iron ore, limestone, sand and gravel, salt, and cement destined for customers in Ohio and throughout the Midwest and Europe. The Port supports nearly 18,000 jobs and $1 billion in personal income. Dredging the shipping channel to operable depths is essential for the 800-900 freighters that transit the channel each shipping season.

For the past eighty years, the Corps has dredged the Cuyahoga shipping channel almost annually. In determining how to dispose of the dredged sediment responsibly, referred to as the Federal Standard, the Corps is directed to follow the guidelines under Section 404(B)(1) of the Clean Water Act (CWA). These guidelines state that "*no discharge of dredged or fill material shall be permitted if it causes or contributes…to violations of any applicable State water quality standard*" (40 CFR 230.10).

For more than forty years, the Corps has disposed of dredged material onshore in a confined disposal facility (CDF) due to high concentrations of contaminants in the sediment. However, in late 2014, as the Corps' CDF was reaching capacity, the Corps determined that the sediment was clean enough for open lake placement into Lake Erie. Consequently, the Corps applied for a water quality certification to the Ohio Environmental Protection Agency (EPA) with open lake placement as the Federal Standard. The sediment sampling done by the Ohio EPA determined that the sediment contained concentrations of contaminants that would threaten public health and the water quality of Lake Erie. As such, OEPA did not approve the 401 permit certification.

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Despite the Corps' failure to meet applicable state water quality standards in its determination of the Federal Standard for disposal of dredged material in Cleveland, the Corps continues to make reduced funding requests to both OMB and Congress for open lake placement. The Corps has asserted that it can only fund open lake disposal, and that it may defer dredging unless a non-federal partner agrees to pay for the additional cost of placing dredged sediment into a CDF. Just last month, the State of Ohio, Cleveland-Cuyahoga County Port Authority, and ArcelorMittal – a steel company that relies on the river for shipments of limestone and iron ore - filed a complaint regarding the Corps' refusal to dredge the shipping channel in 2016 despite sediment build-up in the Cuyahoga River that resulted in light-loading of ships on the river. This is in addition to the ongoing litigation between the State of Ohio, the Cleveland-Cuyahoga County Port Authority, and the Corps over the environmentally safe disposal method of the contaminated dredged sediment. While we were pleased that the Corps agreed to dredge the channel in 2016 and safely dispose of the sediment in a CDF at full federal cost, we must ensure that the channel continues to be dredged annually and that the sediment is disposed of in a responsible way.

Section 2004 of the Senate-passed WRDA bill is intended to ensure that the Corps abides by state water quality standards when determining the Federal Standard. It also guarantees that the Corps' determination of the Federal Standard can be reviewed in court. This section is crucial to ensuring that the channel is dredged on an annual basis and that the State of Ohio can continue to protect Lake Erie. As Ohioans, we know the importance of the lake to our state and the significant water quality improvements that have been made over decades. The Corps' actions would directly undermine these hard-fought gains.

Thank you for your leadership on these important issues, and for your consideration of our request.

Sincerely,

Sherrod Brown
U.S. Senator

Rob Portman
U.S. Senator

Marcia L. Fudge
Member of Congress

Tim Ryan
Member of Congress

David P. Joyce
Member of Congress

Marcy Kaptur
Member of Congress

Jim Renacci
Member of Congress