

United States Senate

WASHINGTON, DC 20510

May 08, 2018

Carl C. Icahn
Chairman of the Board
Icahn Enterprises, L.P.
767 Fifth Avenue, 47th Floor
New York, New York 10153

Dear Mr. Icahn,

A new report earlier this week indicated that the Environmental Protection Agency (EPA) granted CVR Energy Inc. (CVR) – a petroleum refining company owned almost entirely by Icahn Enterprises – an “economic hardship waiver” from the Renewable Fuel Standard (RFS).¹ We have previously raised concerns about your actions related to the RFS, and your access to key Administration RFS decisionmakers, and are troubled that a company that is owned by a billionaire former “special adviser” to the President who is currently under investigation by federal prosecutors for his activities in the RFS market, has now received an “economic hardship waiver” from its RFS obligations. We are writing today to request information about the reported exemption for CVR and about any potential role you played in EPA's decision to grant this waiver.

You resigned from your White House position as an adviser to President Trump last August after reports surfaced that you were actively working to change RFS regulations to benefit CVR, a company in which you currently serve as chairman of the board and own a controlling interest.² You “made a massive bet in 2016” that the price of the renewable fuel credits would drop.³ You then – as an unpaid adviser to President Trump – recommended personnel and policies that did in fact cause the price of these credits to drop. The net result was an “impossible” “rare profit” on the credits, “a \$50 million turnaround” from your initial investment.⁴ The Justice Department has opened an investigation into your activities in the RFS market during your tenure at the White House.⁵

¹ Jarrett Renshaw and Chris Prentice, “U.S. EPA grants biofuels waiver to billionaire Icahn's oil refinery – sources,” *Reuters* (April 30, 2018) (Online at: <https://www.reuters.com/article/us-usa-biofuels-epa-icahn-exclusive/exclusive-u-s-epa-grants-biofuels-waiver-to-billionaire-icahns-oil-refinery-sources-idUSKBN1110YB>).

² Patrick Radden Keefe, “Carl Icahn’s failed raid on Washington,” *The New Yorker* (August 28, 2017) (Online at: <https://www.newyorker.com/magazine/2017/08/28/carl-icahns-failed-raid-on-washington>).

³ Chris Prentice and Jarrett Renshaw, “Inside Edge – Trump advisor Icahn’s big bet against biofuels credits,” *Reuters* (Apr. 12, 2017) (Online at: <https://www.reuters.com/article/us-usa-biofuels-icahn-exclusive-idUSKBN17E0D6>).

⁴ Jarrett Renshaw and Chris Prentice, “Big short position on biofuels generated profit for Icahn’s refiner,” *Reuters* (May 1, 2017) (<http://www.reuters.com/article/us-cvr-energy-biofuels-idUSKBN17X2HX>).

⁵ Matthew Goldstein, “Prosecutors Are Examining Carl Icahn’s Role as Trump Adviser,” *Bew York Times* (November 8, 2017) (Online at: <https://www.nytimes.com/2017/11/08/business/carl-icahn-trump-ethanol-subpoena.html>).

You also publicly supported Scott Pruitt's nomination for EPA Administrator, and claimed you were consulted before President-elect Trump selected Mr. Pruitt for the position.⁶ After Mr. Pruitt received the nomination, you said, "He's someone I think will do away with many of the problems at EPA...and I do think he feels strongly about the absurdity of these [RFS] obligations...."⁷

The RFS requires refiners and importers of fossil fuels in the United States to blend "renewable fuels into their gasoline or diesel fuel products, or ... [acquire] credits that represent the required renewable fuel volume."⁸ Refiners can receive a temporary exemption from these requirements if they produce less than 75,000 barrels of oil per calendar day (small refinery), and prove to the EPA that complying with the RFS "would impose a disproportionate economic hardship"⁹ on them. CVR - which reported profits of over \$230 million in 2017¹⁰ - received an exemption this year after having been denied in a previous year.¹¹

In order to better understand the reports that CVR was able to receive an exemption, I ask that you provide answers to the following questions no later than May 22, 2018

1. Are the reports accurate that CVR received an exemption from RFS standards? If so, please describe the timing and detailed process by which this exemption was requested and approved. What information did CVR provide to the EPA in its request for an exemption?
2. How many times has CVR applied for small refiner exemptions in the past five years? How many of those applications were approved?
3. Between August 18, 2017, and the present, did you have any communications with Administrator Pruitt, about the RFS waiver for CVR, about CVR, or about any other aspect of RFS policy? If so, please identify all such communications, the date on which they occurred, and the nature of the communications.
4. Between August 18, 2017, and the present, did you have any communications with any Administration official, including any official in the White House, about the RFS waiver for CVR, about CVR, or about any other aspect of RFS policy? If so, please identify all

⁶ Mario Parker, "Icahn Cheers Trump EPA Pick Amid Calls for Fuel-Rule Revamp," *Bloomberg* (December 9, 2016) (Online at: <https://www.bloomberg.com/news/articles/2016-12-09/oil-friendly-epa-pick-has-icahn-seeing-trump-revamp-of-fuel-rule>).

⁷ "Icahn: Pruitt a Great Pick for EPA," *Bloomberg* (Online at: <https://www.bloomberg.com/politics/videos/2016-12-07/icahn-pruitt-a-great-pick-for-epa>)

⁸ "Renewable Fuel Standard Program" *EPA* (Online at: <https://www.epa.gov/renewable-fuel-standard-program/renewable-fuel-standard-exemptions-small-refineries>).

⁹ 40 CFR Part 80.1441(e)(1)

¹⁰ CVR Energy Inc. (2017). "Form 10-K" *SEC* (Online at: <https://www.sec.gov/Archives/edgar/data/1376139/000137613918000016/cvi2017form10-kx12312017.htm>).

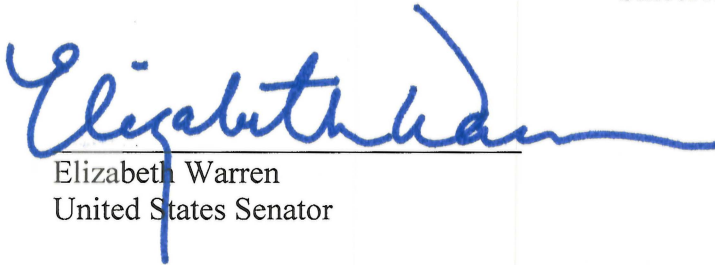
¹¹ Luis Sanchez and Miranda Green, "EPA grants waiver to oil refinery owned by billionaire ex-Trump adviser: report," *The Hill* (April 30, 2018) (Online at: <http://thehill.com/homenews/administration/385455-epa-grants-waiver-to-oil-refinery-owned-by-billionaire-ex-trump>).

such communications, the date on which they occurred, and the nature of the communications.

5. Please provide copies of all email or other communications between you and any Administration officials, or between any other CVR employees or representatives and Administration officials, related to the CVR waiver request.

Thank you for your attention to this matter.

Sincerely,



Elizabeth Warren
United States Senator



Sheldon Whitehouse
United States Senator



Sherrod Brown
United States Senator



Tammy Duckworth
United States Senator



Amy Baldwin
United States Senator



Amy Klobuchar
United States Senator



Tina Smith
United States Senator