

United States Senate

WASHINGTON, DC 20510

May 08, 2018

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, D.C. 20460

Dear Administrator Pruitt,

A new report earlier this week indicated that the Environmental Protection Agency (EPA) granted CVR Energy Inc. (CVR) – a petroleum refining company linked to Carl Icahn – an “economic hardship waiver” from the Renewable Fuel Standard (RFS).¹ We have previously raised concerns about Mr. Icahn's actions related to the RFS, and his access to key Administration RFS decisionmakers, and are troubled by the news that a corporation that made a profit of over \$200 million in 2017², and 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 a “hardship waiver” from the RFS. We are writing today to request information about the reported exemption for CVR and about Mr. Icahn's role in EPA's decision to grant this waiver.

Mr. Icahn, a former “special advisor to the President on issues relating to regulatory reform”³ resigned from his position at the White House last August after reports surfaced that he was actively working to change RFS regulations to benefit CVR, a company in which he currently serves as chairman of the board and owns a controlling interest.⁴ Mr. Icahn “made a massive bet in 2016” that the price of the renewable fuel credits would drop.⁵ He 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 Mr. Icahn's initial investment.⁶

Mr. Icahn also publicly supported your nomination, and claimed was consulted before President-elect Trump selected you for the position.⁷ After you were nominated as EPA

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-idUSKBN1I10YB>).

² CVR Energy Inc. (2017). “Form 10-K” *SEC* (Online at: <https://www.sec.gov/Archives/edgar/data/1376139/000137613918000016/cvi2017form10-kx12312017.htm>).

³ David Benoit, “Trump Names Carl Icahn as Adviser on Regulatory Overhaul,” *Wall Street Journal* (Dec. 21, 2016) (Online at www.wsj.com/articles/trump-to-name-icahn-as-adviser-on-regulatory-overhaul-1482354552).

⁴ 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>).

⁵ 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>).

⁶ 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>).

⁷ Mario Parker, “Icahn Cheers Trump EPA Pick Amid Calls for Fuel-Rule Revamp,” *Bloomberg* (December 9,

Administrator, Mr. Icahn 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....”⁸ The Justice Department has since opened an investigation into whether Mr. Icahn violated any laws while working on RFS policy during his tenure at the White House.⁹

As you know, 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.”¹⁰ 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”¹¹ on them. According to public reports, the EPA has granted at least 24 waivers in recent months – a significant change from the 6 to 8 waivers that have been granted annually for the past several years. CVR - which reported profits of over \$230 million in 2017¹² - received an exemption this year after having been denied in a previous year.¹³

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 provide which refineries or refinery got the exemption and their daily operating production.
2. For refineries listed in response to question 1 with daily operating capacity above 75,000 barrels of oil per calendar day, please explain how EPA determined that CVR qualified for a hardship waiver, as this would be in direct conflict with the statutory requirement.¹⁴
3. For refineries listed in response to question 1 with daily operating capacity below 75,000 barrels of oil per day, the statutory small refinery exemption language requires that evaluation of these hardship petitions are done in consultation with the Secretary of Energy.

2016) (Online at: <https://www.bloomberg.com/news/articles/2016-12-09/oil-friendly-epa-pick-has-icahn-seeing-trump-revamp-of-fuel-rule>).

⁸ “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>)

⁹ 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>)

¹⁰ “Renewable Fuel Standard Program” *EPA* (Online at: <https://www.epa.gov/renewable-fuel-standard-program/renewable-fuel-standard-exemptions-small-refineries>)

¹¹ 40 CFR Part 80.1441(e)(1)

¹² CVR Energy Inc. (2017). “Form 10-K” *SEC* (Online at: <https://www.sec.gov/Archives/edgar/data/1376139/000137613918000016/cvi2017form10-kx12312017.htm>).

¹³ 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>).

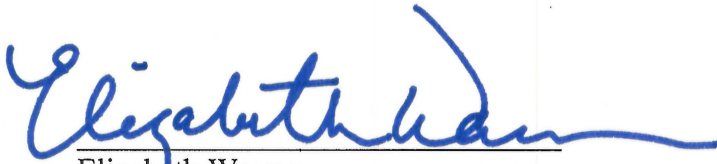
¹⁴ See, 42 U.S. Code Section 7545 (o)(1)(K)

- a. Was DOE consulted during the process of determining whether there was disproportionate economic hardship for the refinery in question?
 - b. The law also requires that DOE modeling and economic analysis be used to determine the nature of the economic hardship,¹⁵ please provide all reports and background data that was used in approval of the waiver.
4. Which officials at EPA determined that CVR was entitled to a hardship waiver?
 5. When and how did you become aware of the waiver request?
 6. Were you involved in the decision to grant the waiver? If so, what role did you play?
 7. Did you or any other EPA official have any discussion of this exemption, or RFS policy generally, with Mr. Icahn or anyone else affiliated with or representing CVR? If so, please identify all such conversations, the date on which they occurred, and the nature of the conversation.
 8. Were any White House officials involved in, or aware of, the decision to grant CVR an exemption? If so, please identify which individuals were involved, and the nature of their involvement.
 9. Please provide copies of all email or other communications between any EPA officials and any CVR employees or representatives related to the CVR waiver request.

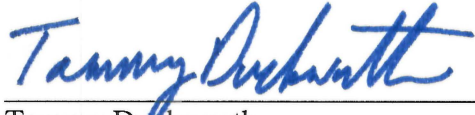
Thank you for your attention to this matter.

Sincerely,

¹⁵ See, 42 U.S. Code Section 7545 (o)(9)(B)(ii)



Elizabeth Warren
United States Senator



Tammy Duckworth
United States Senator



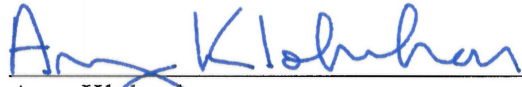
Sherrod Brown
United States Senator



Tammy Baldwin
United States Senator



Sheldon Whitehouse
United States Senator



Amy Klobuchar
United States Senator



Tina Smith
United States Senator