United States Senate

WASHINGTON, DC 20510

June 6, 2017

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20004

Dear Administrator Pruitt,

We write requesting documents related to Carl Icahn's role in the development of environmental policy and regulations at the Environmental Protection Agency (EPA).

On December 21, 2016, President Trump named Mr. Icahn "special advisor to the President on issues relating to regulatory reform."[1] The Administration has never formally described the role Mr. Icahn plays, the extent of his portfolio, or whether he has recused himself from decisions (or divested himself from financial holdings) that would present conflicts of interest, or the appearance thereof. Reports indicate that Mr. Icahn has not taken these steps.[2]

Mr. Icahn is the majority owner of CVR Energy (CVR), a petroleum refining company that is heavily involved in the renewable fuel credits market. Icahn Enterprises L.P. owned an 82% stake in CVR as of September 30, 2016. CVR is an oil refiner that is required under EPA's Renewable Fuel Standard (RFS) to either blend its oil with renewable fuels or buy credits in lieu of blending in order to meet its obligations under the law. Mr. Icahn has called RFS obligations "completely totally absurd"[3] and according to the *Wall Street Journal* claimed they will cost his company $200 million dollars this year.[4] His interest in CVR coupled with his "special advisor" role presents two related but distinct opportunities for Mr. Icahn to profit from his position.

First, reporting suggests Mr. Icahn has directly participated in negotiations over proposals to make regulatory changes to the RFS that would save CVR hundreds of millions of dollars. On February 27, 2017, Mr. Icahn and the Renewable Fuels Association (RFA) reportedly presented the White House with draft executive order language that would direct the EPA to "shift the burden for complying with the biofuel quotas from refiners to fuel blenders."[5] The RFA had previously opposed such a shift, but its President and CEO stated that he was told "in no

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[1] Trump Transition Press Release, President-Elect Donald J. Trump Names Carl Icahn Special Advisor to the President on Regulatory Reform (December 21, 2016) (online at http://www.presidency.ucsb.edu/ws/index.php?pid=119884).

[2] Zachary Mider and Jennifer A. Dlouhy, "Trump Adviser Carl Icahn Lobbies for Rule Change That Benefits Icahn," *Bloomberg Businessweek* (March 16, 2017) (online at https://www.bloomberg.com/news/articles/2017-03-16/trump-adviser-carl-icahn-lobbies-for-rule-change-that-benefits-icahn).

[3] "Icahn: Pruitt a Great Pick for EPA," *Bloomberg Politics* (December 7, 2016) (online at https://www.bloomberg.com/politics/videos/2016-12-07/icahn-pruitt-a-great-pick-for-epa).

[4] Rebecca Ballhaus, Amy Harder, and David Benoit, "Carl Icahn, Critic of the EPA, Is Helping Donald Trump Shape It" *Wall Street Journal* (December 4, 2016) (online at https://www.wsj.com/articles/carl-icahn-critic-of-the-epa-is-helping-donald-trump-shape-it-1480863601).

[5] Jennifer A. Dlouhy and Mario Parker, "Trump Said to Consider Biofuel Plan Between Icahn, Ethanol Group," *Bloomberg* (February 28, 2017) (online at https://www.bloomberg.com/news/articles/2017-02-28/trump-said-to-consider-biofuel-plan-between-icahn-ethanol-group).

uncertain terms that the point of obligation was going to be" shifted from the refiners to blenders, and that the "executive order was not negotiable."[6] The day Mr. Icahn's proposal (which has yet to be formally signed by President Trump) was sent to the White House, CVR's stock value increased by 3.5%, representing a single-day, multi-million dollar windfall for Mr. Icahn.[7]

Second, Mr. Icahn appears to be profiting through speculation in the market for renewable fuel credits (known as Renewable Identification Numbers or RINs). Reuters has documented "several political events" that drove down the price of the credits to the benefit of CVR and Mr. Icahn at the same time Mr. Icahn was putting himself in position to profit off of these price drops.[8] After President Trump chose you to be EPA Administrator on Mr. Icahn's advice, the price of the credits dropped by approximately 20%.[9] Then, after the February 27, 2017, press reports about the proposed executive order, RIN market prices dropped again, by approximately a third, reaching a 17-month low that represented about a 70% decline from the November 2016 peak cost of the credits.[10] While this was occurring, most refiners were accumulating credits to satisfy renewable fuel standards but CVR was offloading credits in a bet that the price for RINs would continue to plummet and it could buy them at that later date at a discount.[11] The net result was a $50 million windfall for CVR and Mr. Icahn.

Mr. Icahn has made no secret of the role he is playing in this administration. On two occasions, Icahn Enterprises L.P., in its March 1, 2017, 10-K filing, stated that "Mr. Icahn is currently serving as a special advisor to President Donald J. Trump on issues relating to regulatory reform."[12] Accordingly, statements made by him or actions taken by his companies may now be seen as signaling changes in EPA or administration policy which may, in turn, affect the price of CVR stock and the RIN market. So that we may conduct appropriate and necessary oversight into Mr. Icahn's role, and whether he has access to and influence over EPA information and internal policy deliberations, please provide documents responsive to the following:

- All communications between (1) any person in the Office of the Administrator, the Office of Policy, or the Office of Air and Radiation, as well as anyone acting on behalf of those individuals, and (2) Carl Icahn; any individual acting on behalf of Mr. Icahn; any officer, director, or employee of Icahn Enterprises or CVR Energy, Inc.; or any individual acting on behalf of Icahn Enterprises or CVR Energy since November 9, 2016.
- Any reports, documents, analyses, briefing materials, information, talking points, summaries, or other data shared with or by Carl Icahn; any individual acting on behalf of Mr. Icahn; any

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[6] *Id.*

[7] Jennifer A. Dlouhy, Ari Natter, and Bill Allison, "'Purest Definition of a Conflict': Icahn's $126 Million Gain on Biofuel Deal Draws Criticism," *Bloomberg Markets* (March 1, 2017) (online at https://www.bloomberg.com/news/articles/2017-02-28/icahn-s-126-million-gain-on-biofuel-deal-prompts-criticism).

[8] Chris Prentice and Jarrett Renshaw, "Inside Edge – Trump Advisor Icahn's Big Bet against Biofuels Credits" *Reuters* (April 12, 2017) (online at http://www.reuters.com/article/us-usa-biofuels-icahn-exclusive-idUSKBN17E0D6).

[9] Jacob Pramuk, "Trump Names Icahn as Special Advisor on Regulation, Vows to Shred Obama Rules" *CNBC* (December 21, 2016) (online at http://www.cnbc.com/2016/12/21/trump-to-name-icahn-as-special-adviser-on-regulatory-overhaul-report.html).

[10] Chris Prentice and Jarrett Renshaw, "Inside Edge – Trump Advisor Icahn's Big Bet against Biofuels Credits" *Reuters* (April 12, 2017) (online at http://www.reuters.com/article/us-usa-biofuels-icahn-exclusive-idUSKBN17E0D6).

[11] *Id.*

[12] *See* Icahn Enterprises, L.P. 2016 10-K, pp. 23, 229.

officer, director, or employee of Icahn Enterprises or CVR Energy, Inc.; or any individual acting on behalf of Icahn Enterprises or CVR Energy since November 9, 2016.

With respect to information responsive to either request, please indicate the date on which the communications were made or the information transmitted because the timing of Mr. Icahn's receipt of information is relevant to his ability to profit from EPA decisions. In light of the representation made by the Trump transition team that Mr. Icahn is not "serving as a federal employee or a Special Government Employee,"[13] we see no reason why this information cannot be produced promptly and completely. We request the courtesy of a response no later than June 16, 2017.

Sincerely,

Sheldon Whitehouse
United States Senator

Debbie Stabenow
United States Senator

Jeffrey A. Merkley
United States Senator

Elizabeth Warren
United States Senator

Tammy Duckworth
United States Senator

[13] Trump Transition Press Release, President-Elect Donald J. Trump Names Carl Icahn Special Advisor to the President on Regulatory Reform (December 21, 2016) (online at http://www.presidency.ucsb.edu/ws/index.php?pid=119884).