Congress of the United States
Washington, DC 20515

June 21, 2017

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

Dear Administrator Pruitt:

We write to you with concerns of potential conflicts of interest and impartiality regarding Carl Icahn's role as special adviser on regulatory policy in the Trump Administration. Recent reports about Mr. Icahn's actions with respect to the Renewable Fuel Standard (RFS) program have raised significant ethical and legal concerns given his oil refinery business interests.[1] The Committee has a longstanding interest in ensuring that the Administration operates transparently and in compliance with all applicable conflict of interest regulations and policies.

Pursuant to section 211(o) of the Clean Air Act (42 U.S.C. 7545(o)), the RFS program requires oil refiners and importers to blend renewable fuel into transportation fuel or obtain credits (called Renewable Identification Numbers or "RINs") to meet their annual obligations under the law.[2] The U.S. Environmental Protection Agency (EPA) received several petitions urging the Agency to change the point of obligation for the RFS program by shifting it away from refiners and importers. In November 2016, EPA issued a proposed denial of these petitions and initiated a public comment process for its decision.[3]

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[1] *Icahn Raises Ethics Flags with Dual Roles as Investor and Trump Advisor*, New York Times (Mar. 26, 2017); *Icahn Guides Trump's Policy and Scores $60 Million*, Bloomberg News (May 24, 2017).

[2] U.S. Environmental Protection Agency, *Program Overview for Renewable Fuel Standard Program* (Aug. 16, 2016) (www.epa.gov/renewable-fuel-standard-program/program-overview-renewable-fuel-standard-program).

[3] U.S. Environmental Protection Agency, *Proposed Denial of Petitions for Rulemaking to Change the RFS Point of Obligation* (Nov. 2016) (www.epa.gov/sites/production/files/2016-11/documents/420d16004.pdf).

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In December, then President-elect Trump named Mr. Icahn his special adviser on regulatory reform.[4] In describing Mr. Icahn's new role, President-elect Trump remarked that "[h]is help on the strangling regulations that our country is faced with will be invaluable."[5] Mr. Icahn is the majority shareholder of Icahn Enterprises, "a diversified holding company engaged in ten primary business segments: Investment, Automotive, Energy, Gaming, Railcar, Mining, Food Packaging, Metals, Real Estate and Home Fashion."[6] As special adviser, Mr. Icahn purportedly will oversee the overhaul of rules promulgated by federal agencies that regulate all areas of his business portfolio.

Within the energy sector, Mr. Icahn owns an 82 percent stake in CVR Energy (CVR), an oil refiner.[7] Notably, CVR, as an oil refiner, is required to meet the blending obligations under the RFS.[8] Jack Lipinski, chief executive officer of CVR Refining, remarked that the obligations "continue to be an egregious tax on our business and have become our single largest operating expense, exceeding labor, maintenance and energy costs."[9] The company estimates that it would cost $200 million to meet those obligations this year.[10] Two petroleum refiners that are subsidiaries of CVR filed a lawsuit against the EPA in February challenging the 2017 biofuel mandate.[11]

According to *Forbes*, one day after Mr. Icahn was named special adviser, "[s]hares of his firm Icahn Enterprises surged 8 percent...boosting Icahn's $6.8 billion stake to $7.3 billion."[12]

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[4] Office of the President Elect and the Vice President Elect, *President-Elect Donald J. Trump Names Carl Icahn Special Advisor to the President on Regulatory Reform* (Dec. 21, 2016) (www.greatagain.gov/icahn-advisor-regs-cd3c949af118#.7f2bjsilm).

[5] *Id.*

[6] Icahn Enterprises L.P., *Welcome* (2017) (www.ielp.com).

[7] *Carl Icahn's Shares in CVR Energy Have Doubled Since Trump Won the Election*, CNBC (Jan. 27, 2017).

[8] *Oil, Biofuels Groups Urge U.S. EPA Deny Refiner Requests to Tweak RFS Program*, Reuters (Mar. 2, 2017).

[9] *Oil Refiners Cry Foul as 'RINsanity' Returns Amid Margin Squeeze*, Bloomberg News (Aug. 4, 2016).

[10] *Carl Icahn, Critic of the EPA, Is Helping Donald Trump Shape It*, Wall Street Journal (Dec. 4, 2016).

[11] *Icahn Subsidiaries Sue EPA Over 2017 Biofuel Mandate,* Bloomberg BNA (Feb. 10, 2017).

[12] *Trump Advisor Icahn Gains $510 Million Day After Accepting Role*, Forbes (Dec. 22, 2016).

CVR saw greater gains, with shares rising by 10 percent.[13] According to press accounts, Mr. Icahn's investments have continued to increase in value since the start of the new administration. The *New York Times* reports that CVR remains "up 50 percent from the pre-election level, generating a windfall, at least on paper, of $455 million."[14]

As special adviser, Mr. Icahn has been vocal in his criticism of the RFS, calling it "the quintessential example of the type of insane regulations throttling our economy that Donald Trump said all throughout his campaign he wanted to see changed."[15] Mr. Icahn has also remarked upon his role in screening candidates for the role of EPA Administrator, stating that he specifically inquired about your position regarding the renewable fuels program.[16] According to Mr. Icahn, you felt "strongly about the absurdity of these [RFS] obligations."[17]

On February 27th, *Bloomberg* reported that Mr. Icahn and the Renewable Fuels Association "presented the White House with a memorandum containing draft language" that could be used to change the RFS.[18] This agreement would shift the point of obligation in return for the ability to sell gasoline blends containing 15 percent ethanol (E15) year-round.[19] Upon news of the deal, CVR's shares again climbed by 6 percent over two days, temporarily "increas[ing] the value of Icahn's stake by $101 million."[20] More recently, CVR revealed a savings of $60 million in the first quarter of the year due to expectations that regulations for the RFS program would ease.[21] Because CVR's refineries purchase RINs to meet their obligations under the RFS program, changes in the price of RINs have a direct financial impact on CVR's position.

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[13] *Id.*

[14] *Icahn Raises Ethics Flags With Dual Roles as Investor and Trump Advisor*, New York Times (Mar. 26, 2017).

[15] *White House Debates Icahn Plan Revamping Ethanol Rule,* Bloomberg News (Mar. 1, 2017).

[16] *See* note 14.

[17] *Icahn: Pruitt a Great Pick for EPA*, Bloomberg Politics (Dec. 7, 2016).

[18] *Trump Said to Consider Biofuel Plan Between Icahn, Ethanol Group,* Bloomberg News (Feb. 28, 2017).

[19] *Id.*

[20] *Icahn Dismisses Conflict of Interest Concerns as 'Absurd,'* CNN Money (Mar. 8, 2017).

[21] *Icahn Guides Trump's Policy and Scores $60 Million*, Bloomberg News (May 24, 2017).

These reports raise significant concerns regarding Mr. Icahn's ability to advise President Trump impartially on regulatory matters that impact Mr. Icahn's financial interests. This is especially troubling because, as an unpaid adviser, Mr. Icahn presumably has not undergone a review by the Office of Government Ethics and is not subject to conflicts of interest regulations applicable to government employees.

It is critically important that all federal agencies maintain adequate safeguards against undue influence by individuals who stand to financially profit from regulatory actions. EPA's mission is to protect human health and the environment. The Agency must maintain its independence from any attempt to manipulate regulatory policy to favor the financial interests of specific individuals, companies, or industries. To that end, we respectfully request responses to the following:

1. What is Carl Icahn's current and anticipated future role in the discussion or development of any Agency action regarding the RFS program under section 211(o) of the Clean Air Act (42 U.S.C. 7545(o))?

2. Please provide a copy of all communications or memos exchanged between Carl Icahn and any Agency personnel regarding the development or issuance of any Agency action relating to the RFS program.

3. What disclosure is required by the Agency when it receives communication from the President's unpaid advisers relating to particular Agency actions, including instances where the action may impact the financial interests of the adviser? What reporting systems does the Agency use to report these disclosures?

4. Please provide a schedule of all meetings and telephone calls between any EPA personnel and Mr. Icahn or any representative of Mr. Icahn from January 20, 2017 to present, including the date and the name and title of all participants.

5. What Agency policies and procedures govern disclosure of non-public confidential, or otherwise privileged information to individuals serving as unpaid advisers to the President? What actions has the Agency taken to date to assess the sufficiency of these policies, and how will the Agency otherwise ensure that unpaid advisers do not receive information not otherwise available to the public?

6. What Agency policies or procedures ensure that unpaid advisers do not have undue access to EPA officials, including yourself? Please provide copies of all

applicable policies, and describe any Agency actions taken to assess whether these policies ensure unpaid advisers do not have unequal access to Agency officials compared to members of the public.

7. What other actions has the Agency taken to safeguard from undue influence by the President's unpaid advisers, especially those with potential financial conflicts of interest with Agency actions?

Thank you for your attention to this important issue. We respectfully request a response no later than Monday, June 30, 2017. Should you have any questions, please contact Jean Fruci or Jon Monger with the Committee on Energy and Commerce at (202) 225-3641.

Sincerely,

Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce

Bobby L. Rush
Ranking Member
Subcommittee on Energy

Diana DeGette
Ranking Member
Subcommittee on Oversight and Investigations

Paul D. Tonko
Ranking Member
Subcommittee on Environment

John P. Sarbanes
Chair
Democracy Reform Task Force