

# United States Senate

WASHINGTON, DC 20510

February 17, 2017

Catherine McCabe  
Acting Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

*Docket ID no: EPA-HQ-OAR-2016-0544*

Dear Acting Administrator McCabe:

We write to submit the attached letter as a comment in docket number EPA-HQ-OAR-2016-0544. The comment is a letter dated February 13, 2017, to the White House Counsel Don McGahn seeking more information about Carl Icahn's role as "special advisor" for regulations under President Trump. As of this date we have not received a response, which we requested by February 15, 2017.

The letter raises concerns about Mr. Icahn's potential influence over EPA's pending denial of several petitions requesting that EPA initiate a rulemaking process on regulations that identify refiners and importers of gasoline and diesel fuel as the entities responsible for complying with the annual percentage standards adopted under the Renewable Fuel Standard (RFS) program. In light of Mr. Icahn's financial conflicts of interest with respect to this rule, and the apparent failure of the Trump Administration to address them, we wish to lodge our concerns as part of EPA's official record. We also urge you to undertake any internal review processes that may be warranted to ensure that no improper influence is exerted over this rulemaking process.

Sincerely,



Sheldon Whitehouse  
United States Senator



Debbie Stabenow  
United States Senator



Sherrod Brown  
United States Senator



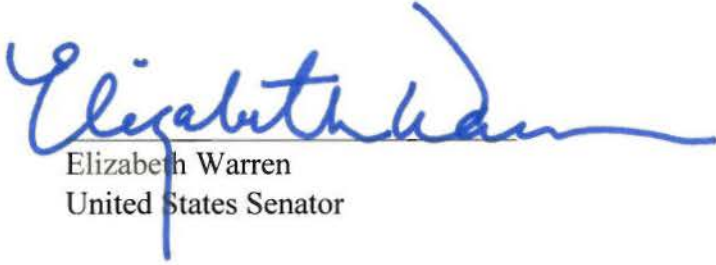
Amy Klobuchar  
United States Senator



Al Franken  
United States Senator



Tammy Baldwin  
United States Senator



Elizabeth Warren  
United States Senator

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February 13, 2017

Donald F. McGahn II  
White House Counsel  
The White House  
1600 Pennsylvania Avenue NW  
Washington, D.C. 20500

Dear Mr. McGahn:

We write seeking information on the role Carl Icahn is playing in the Trump Administration. On December 21, 2016, then President-elect Trump's transition team announced that Mr. Icahn would be serving the President as a special advisor for overhauling federal regulations.<sup>1</sup> At the time of this announcement, President-elect Trump said of Mr. Icahn: "He is not only a brilliant negotiator, but also someone who is innately able to predict the future especially having to do with finances and economies. His help on the strangling regulations that our country is faced with will be invaluable."<sup>2</sup>

Mr. Icahn is chairman of the board and 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."<sup>3</sup> All of these "business segments" are regulated by federal agencies that would be within Mr. Icahn's broad portfolio of giving advice to the President on how to address "strangling regulations."

We have specific concerns about Mr. Icahn's role given his previous public statements and significant ownership interest in CVR Energy (CVR). Icahn Enterprises owned an 82% stake in CVR as of September 30, 2016. CVR is an oil refiner that is required under the Environmental Protection Agency (EPA) 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"<sup>4</sup> and according to the *Wall Street Journal* claimed they will cost his company \$200 million dollars this year.<sup>5</sup> According to press reports, on February 9, 2017, subsidiaries of CVR sued the EPA over its 2017 biofuel mandate.<sup>6</sup>

On November 22, 2016, EPA announced that it intended to deny petitions to change RFS regulations in a way that would relieve CVR and similar refiners of some of their requirements under the law. Mr. Icahn has been one of the most vocal advocates for this rule change. EPA chose to initiate a comment period regarding its decision to deny these petitions. The comment period closes on February 22, 2017, meaning the final decision on whether to initiate a

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<sup>1</sup> <https://greatagain.gov/icahn-advisor-regs-cd3c949af118#.7mkms6k9y>

<sup>2</sup> *Id.*

<sup>3</sup> <http://www.ielp.com/index.cfm>

<sup>4</sup> <https://www.bloomberg.com/politics/videos/2016-12-07/icahn-pruitt-a-great-pick-for-epa>

<sup>5</sup> <https://www.wsj.com/articles/carl-icahn-critic-of-the-epa-is-helping-donald-trump-shape-it-1480863601>

<sup>6</sup> <https://www.bna.com/icahn-subsidiaries-sue-n57982083618/>

rulemaking will be made by Trump Administration officials. Mr. Icahn has been one of the most vocal advocates for EPA approval of the petitions.

On December 8, 2016, Scott Pruitt was formally announced as President-elect Trump's choice to be Administrator of the EPA. Mr. Pruitt has also been a vocal critic of the RFS, calling it "unworkable" in its current form. During his confirmation process, he refused to provide clear answers about the future of the RFS, particularly EPA's petition denial.

Mr. Icahn vocally supported Mr. Pruitt's nomination, and claimed "he had been consulted" before President-elect Trump selected him.<sup>7</sup> Commenting on the imminent nomination of Mr. Pruitt on December 7, 2016, 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...."<sup>8</sup> Since the election, CVR's stock has risen 68.7%. On December 7, 2016 alone, the stock rose 12.5% and trading volume more than tripled over the prior day.<sup>9</sup>

These publicly reported facts suggest a conflict of interest between Mr. Icahn and advice he gave President Trump on the nomination of Mr. Pruitt. They further suggest he will be actively working to change RFS regulations to benefit CVR. And with a sprawling business empire and potentially unlimited portfolio in the Administration to address "strangling regulations," Mr. Icahn's role presents an unacceptable risk of further real or potential conflicts of interest absent immediate and thorough steps to address them. Given those concerns, we request answers to the following questions:

- Has the White House determined whether Mr. Icahn is a federal employee? Was the Department of Justice Office of Legal Counsel consulted in making that determination? If the White House has received a legal opinion from the Office of Legal Counsel, when will you make that opinion public? On what date did Mr. Icahn begin serving as Special Advisor? How many days during this calendar year is he expected to work?
- If Mr. Icahn is not considered a federal employee, what steps have been taken to prevent his access to non-public, confidential, or otherwise privileged information in the course of his duties? Will Mr. Icahn have access to agency officials for briefings or meetings that would not otherwise be available to members of the public? Will Mr. Icahn be required to disclose the names, dates, and subject matter of any briefings or meetings he has in conjunction with this role?
- What financial disclosures has Mr. Icahn made to the Administration? Has Mr. Icahn completed a Form 278 financial disclosure? If he has not made any financial disclosures, why not?
- On what regulations will Mr. Icahn provide advice to the President? Is Mr. Icahn barred from providing advice on any regulations? What systems have been put in place to

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<sup>7</sup> <https://www.bloomberg.com/politics/videos/2016-12-07/icahn-pruitt-a-great-pick-for-epa>

<sup>8</sup> *Id.*

<sup>9</sup> On the day Mr. Icahn's position with the Administration was announced, the price of Icahn Enterprises shares increased by 8%, an estimated \$510 million windfall to Mr. Icahn.

<http://www.forbes.com/sites/danalexander/2016/12/22/trump-advisor-icahn-gains-510-million-day-after-accepting-role/#4bfcbl96312>

ensure Mr. Icahn is not providing advice on the modification or elimination of regulations which might be intended to, or will actually, financially benefit him or his companies?


- Has Mr. Icahn provided advice to the President on any Senate-confirmed or schedule C appointees in the Administration? If so, what steps have been taken to ensure that Mr. Icahn is not providing advice on nominations in areas in which he or his companies stand to benefit financially?
- Does the Administration believe that 18 U.S.C. §§ 201-209 or 5 U.S.C. app. 4 (federal criminal and civil conflict of interest statutes) and associated regulations apply to Mr. Icahn in his role as a Special Advisor to the President? If not, is Mr. Icahn subject to any laws or regulations governing conflicts of interest?
- Has Mr. Icahn recused himself from any decisions or from providing advice relating to policies or personnel that may present a conflict of interest, or the appearance thereof, with his personal financial holdings?
- Has Mr. Icahn been required to divest from any of his holdings? Has the Administration provided waivers for Mr. Icahn from any of these provisions? If so, what are the waivers and what was the legal justification for providing them? If not, why has the Administration concluded these laws and regulations do not apply?

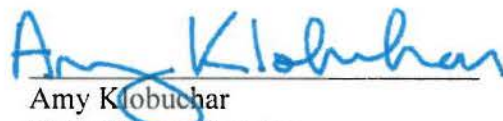
Thank you for your attention to these issues. As you may know, the Senate is expected to take up the nomination of Scott Pruitt this week, so the courtesy of a reply before February 15, 2017 is requested.

Sincerely,

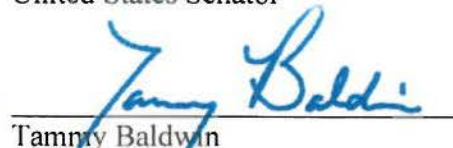
  
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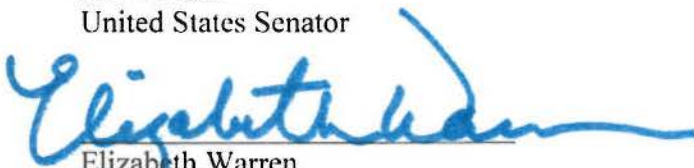
  
Debbie Stabenow  
United States Senator

  
Sherrod Brown  
United States Senator

  
Amy Klobuchar  
United States Senator

  
Al Franken  
United States Senator

  
Tammy Baldwin  
United States Senator

  
Elizabeth Warren  
United States Senator

Cc: Acting EPA Administrator Catherine McCabe