

Congress of the United States
House of Representatives
Washington, DC 20515-2003

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May 16, 2018

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

Dear Administrator Pruitt:

I write to request additional information regarding the issuance of an exemption from renewable fuel blending obligation under the renewable fuel standard (RFS) program to Mr. Icahn's company, CVR Refining, and the political review of Freedom of Information Act (FOIA) requests. I questioned you on these issues when you appeared before the Committee on Energy and Commerce at the hearing on April 26, but further information is needed in light of your incomplete answers and troubling new developments.

In your testimony before the Subcommittee, you stated that you were "unsure" about whether CVR Refining applied for or received a waiver under the small refinery exemption of the RFS program.¹ Your stated lack of knowledge on this issue is troubling given the recent widespread criticism of RFS program waivers², and surprising given Mr. Icahn's ownership of a majority position in CVR.

On April 26, the same day you testified before the Subcommittee, CVR Refining issued a News Release informing investors of first quarter 2018 results which included higher profits that CEO David Lamp attributed in part to: "...a reduction to our estimated Renewable Volume Obligation and lower Renewable Identification Number prices."³ Four days later reports⁴ indicated that CVR Refining's Wynnewood, Oklahoma refinery did, in fact, receive a waiver.

While CVR's Wynnewood facility falls within the 75,000 barrels processed per day limit of the small refinery exemption program, it is not the sole CVR Refining facility, a company with a total

¹ House Committee on Energy and Commerce, *Hearing on the Fiscal Year 2019 Environmental Protection Agency Budget*, 115th Cong. (Apr. 26, 2017).

² Letter from 13 Senators to Administrator Scott Pruitt on the small refinery exemptions from the Renewable Fuel Standard program's blending requirements (Apr. 12, 2018) (www.grassley.senate.gov/sites/default/files/Pruitt%20Small%20Refinery%20Letter%204.12.18.pdf).

³ CVR Refining, *News Release - CVR Refining Reports 2018 First Quarter Results and Announces Cash Distribution of 51 Cents* (Apr. 26, 2018) (investors.cvrrefining.com/phoenix.zhtml?c=251539&p=irol-newsArticle&ID=2344946).

⁴ *Exclusive: U.S. EPA grants biofuels waiver to billionaire Icahn's oil refinery - sources*, Reuters (Apr. 30, 2018) (www.reuters.com/article/us-usa-biofuels-epa-icahn-exclusive/exclusive-u-s-epa-grants-biofuels-waiver-to-billionaire-icahns-oil-refinery-sources-idUSKBN1I10YB).

refining capacity that well-exceeds that of a small refinery. The small refinery exemption in the RFS program is intended to provide flexibility and relief to small-scale obligated parties that are under significant financial constraints. It was never intended to be available for large, profitable companies seeking additional opportunity for profit by evading the law.

Press reports and CVR's own reporting do not indicate the company is experiencing "disproportionate hardship." A spokesperson for EPA indicated the Agency was still following their "long-standing established process" and that the "criteria used to grant waivers has not changed since previous administrations."⁵ However, I do not see how consistent application of criteria for granting these waivers could result in the increased numbers of waivers, the increased scrutiny of the program, or the vocal disapproval of its administration by the renewable fuels industry and the agriculture community.

Though you previously disavowed the existence of email correspondence between your staff and CVR Energy for a limited date range,⁶ it appears EPA's review of communications with CVR failed to include telephone communications or meetings that occurred at Agency offices or at other locations. Your correspondence also failed to specify whether EPA reviewed for any communications between yourself and representatives of CVR Energy or its partner company, CVR Refining.⁷

I therefore request additional information regarding any communications between yourself or any other Agency personnel and representatives of CVR Energy and CVR Refining, including but not limited to any communications regarding any waiver of blending obligations under the RFS program or conditions surrounding CVR's history of RFS program compliance or use of the small refinery exemption. Specifically, please provide the following:

- 1) All communications between yourself or any other EPA personnel and CVR Energy or CVR Refining personnel or their representatives from February 17, 2017 through March 30, 2018 including email correspondence and telephone call and meeting logs, including the date and brief description of the purpose of the communication, and the name and title of EPA personnel and CVR personnel or their representative involved;
- 2) A list of each compliance year between 2011 and 2017 in which CVR Energy or CVR Refining applied for a small refinery exemption under 40 CFR part 80.1441;
- 3) A list of each compliance year between 2011 and 2017 in which CVR Energy or CVR Refining received a small refinery exemption pursuant to 40 CFR part 80.1441;
- 4) A list of the compliance years between 2011 and 2017 in which CVR Energy's or CVR Refining elected to comply with the RFS program in aggregate;
- 5) A list of the compliance years between 2011 and 2017 in which CVR Energy or CVR Refining elected to comply with RFS program blending requirements on a refinery by refinery basis;

⁵ *With flood of EPA waivers, refineries find way around ethanol mandate*, The Houston Chronicle (Apr. 4, 2018) (www.houstonchronicle.com/business/article/With-flood-of-EPA-waivers-refineries-find-way-12805971.php).

⁶ Letter from EPA Administrator Scott Pruitt to Rep. Frank Pallone, Jr. (Dec. 6, 2017).

⁷ *Id.*

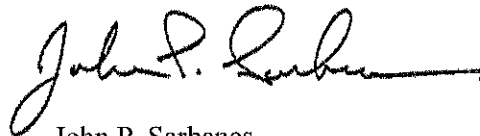
- 6) If a change in the selection of compliance level occurred during this period please indicate in which compliance year the request was made and when during the compliance year the change was requested;
- 7) For each compliance year in which a waiver was granted, what was the total volumes that were waived and what proportion of CVR's obligation for blending under the RFS program was waived?
- 8) Please provide a detailed description of the criteria EPA uses to evaluate applications for small refinery exemptions.
- 9) Please provide examples of conditions a refinery might experience that would support EPA finding that it was experiencing "disproportionate hardship."

During the hearing, I also asked about the awareness reviews that your staff were conducting as part of the FOIA review process. I am concerned these reviews may result in the inappropriate withholding or delay of information and request the following:

- 1) The start date, end date, and length of review for all FOIA awareness reviews conducted during your term as Administrator; and
- 2) A list of all FOIA requests currently under awareness review by EPA political appointees.

Thank you for your attention to these important issues. I respectfully request a response no later than Friday, May 18, 2018. Should you have any questions, please contact Raymond O'Mara or Anna Killius of my staff at (202) 225-4016.

Sincerely,



John P. Sarbanes
Member of Congress