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Mergers, Manipulation and Mirages: How Oil Companies Keep Gasoline Prices High, and Why the Energy Bill Doesn't Help

Summary
The United States has allowed multiple large, vertically integrated oil companies to merge over the last five years, placing control of the market in too few hands. The result: uncompetitive domestic gasoline markets. Large oil companies can more easily control domestic gasoline prices by exploiting their ever-greater market share, keeping prices artificially high long enough to rake in easy profits but not so long that consumers reduce their dependence on oil (after all, if prices went up too high for too long, then we'd seek alternatives to oil).

The largest five oil companies operating in the United States (ExxonMobil, ChevronTexaco, ConocoPhillips, BP and Royal Dutch Shell) now control:

- 14.2% of global oil production (nearly as much as the entire Middle East members of the OPEC cartel).
- 48% of the domestic oil production (which is significant given the fact that the U.S. is the 3rd largest oil producer in the world).
- 50.3% of domestic refinery capacity.
- 61.8% of the retail gasoline market.
- These same five companies also control 21.3% of domestic natural gas production.

It is therefore little wonder why these top companies enjoyed after-tax profits of $60 billion in 2003 alone.

These figures are in stark contrast to just a decade ago, when the top five oil companies controlled only:

- 7.7% of global crude oil production.
- 33.7% of domestic crude oil production.
- 33.4% of domestic refinery capacity.
- 27.0% of the retail market.
- In addition, in 1993, the top five U.S. companies controlled only 12.7% of domestic natural gas production.

The major difference between 1993 and 2003 is that the largest oil companies have merged with one another, creating just a handful of oil monopolies that control significant chunks of the

American oil and gas markets. Armed with significant market share, companies can more easily pursue uncompetitive activities that result in price-gouging. The lack of investigations into domineering practices by these large companies may be explained by the more than $67 million the oil industry has contributed to federal politicians since 1999—with 79% of that amount going to Republicans. In addition, the oil industry spends an additional $50 million every year lobbying Congress and the White House. These investments into buying support of Congress and the White House is paltry compared to the largest five oil companies' $125 *billion* in after-tax profits since 2001.

Gasoline prices are rising because of uncompetitive actions by this handful of new mega-companies, not because of environmental regulations. Forecasts say that gas prices will reach historic highs this spring, with the national average exceeding $1.80 a gallon, the highest prices (adjusted for inflation) since 1985. Already in some parts of the country, prices passed $2.10 a gallon, with some predicting as much as $3 gallon in certain areas by this summer.

The Bush administration blames environmental rules for causing strains on refining capacity, prompting shortages and driving up prices. But in reality it is uncompetitive actions by this handful of companies with large control over our nation's gas markets that is directly causing these high prices. These uncompetitive actions by the largest oil firms have forced much of the 920,000 barrels of oil per day of refinery capacity formerly owned by smaller, independent refiners that has been shut down in recent years.

The U.S. Federal Trade Commission (FTC) concluded in March 2001 that oil companies had intentionally withheld supplies of gasoline from the market as a tactic to drive up prices—all as a "profit-maximizing strategy." These actions, while costing consumers billions of dollars in overcharges, have not been challenged by the U.S. government.

At the same time that the industry is consolidating, the Bush administration's decision to fill the nation's Strategic Petroleum Reserve (SPR) is contributing to tight domestic supplies, further driving up the price of oil and gasoline. Since 2001, President Bush has been removing more than 100,000 barrels of oil a day from the market to stock the SPR, filling it by more than 100 million barrels since he's been in office to over 640 million barrels—well more than 90% capacity. President Bush's actions, while providing more than enough protection against external supply shocks, severely strains domestic supplies for the market. For example, if the *entire* Middle East OPEC cartel decided today to no longer sell oil to the U.S., we could rely on current SPR reserves for ten months to make up the difference. SPR supplies can be selectively released without harming national security while helping the economy and consumers.

In addition, deregulation of energy trading markets (like the ones exploited by Enron) has removed significant transparency from the futures oil and natural gas markets, allowing oil companies and Wall Street investment banks to potentially manipulate the futures markets as well.

While the Bush administration and members of Congress claim that the stalled energy bill will provide new supplies to the market and therefore force down prices, the government's official analysis concludes that the billions of dollars the energy bill would spend on subsidies to energy corporations will neither significantly increase production nor lower prices for consumers. And rather than improve consumer protections by strengthening regulations, the energy bill actually further deregulates the energy industry by repealing the Public Utility Holding Company Act (PUHCA), a vital consumer protection act that prevents non-utility parent companies, such as oil companies, investment bankers, electrical manufacturers, or insurance firms, from owning and controlling public utilities.

Effectively addressing America's uncompetitive oil markets should take seven steps—none of which are included in either the energy legislation developed in Vice President Cheney's secret energy task force or the latest congressional version written behind the closed doors of the congressional energy conference committee.

The Bush administration should take the following actions or seek congressional authority to do so if necessary. These actions would have an immediate impact on driving down oil and gas prices, protecting consumers, and bolstering economic growth:

- Release oil supplies from the SPR to provide plenty of surplus domestic supply, or, at a minimum, discontinue filling the SPR. Such an action will immediately and dramatically lower oil and gas prices while still ensuring for the protection of national security.

- Enforce antitrust laws making it illegal for companies to intentionally withhold energy from the market for the sole purpose of creating supply shortages in order to drive up prices.

- Assess how recent mergers have made it easier for large oil companies to engage in uncompetitive practices and take concrete steps, such as forcing companies to sell assets, to remedy the situation.

- In order to address excessive control over market share of production and refining by the largest vertically integrated companies, order oil companies to increase the size of their storage capacities, require them to hold significant amounts in that storage, and reserve the right to order these companies to release this stored oil and gas in order to address supply and demand fluctuations. Such a requirement would also offset temporary supply disruptions from fires and other calamities, such as the recent one at BP's Texas City refinery.

- Reduce America's oil consumption by implementing strong fuel economy standards. Improving fuel economy standards for all "passenger vehicles" from 27.5 to 40 miles per gallon (mpg), and for light trucks (including SUVs and vans) from 20.7 to 27.5 mpg, by 2015 would save the U.S. an estimated 54 billion gallons of oil between 2005 and 2012. Combining cars and light trucks and increasing the fuel economy standard of the combined fleet to 34 mpg by 2015 would save a whopping total of 33 billion gallons.[1]

[1] Union of Concerned Scientists, "Oil Savings of Various Fuel Economy Options" calculated by David Friedman, June 12, 2003.

- Restore transparency to energy futures markets by asking Congress to re-regulate trading exchanges that were exploited by Enron and continue to be abused by ExxonMobil, Goldman Sachs and other energy traders.

- Impose a windfall profits tax to discourage price gouging.

Recent Mergers Create Uncompetitive Markets
Over the past few years, mergers between giant oil companies—Exxon and Mobil, Chevron and Texaco, Conoco and Phillips, just to name a few—have resulted in just a few companies controlling a significant amount of the U.S.'s gasoline market, squelching competition. As a result, consumers are paying more at the pump *than if they had access to competitive markets* and five oil companies are reaping some of the largest profits in history.

Although gasoline prices typically reflect the price of crude oil, oil still must be refined into gasoline, mostly at the 145 refineries located in the U.S. But recent mergers have consolidated ownership of refinery capacity, allowing just a handful of companies to control the flow of gasoline in the U.S. And a number of independent refineries have been closed, some due to uncompetitive actions by larger oil companies, further restricting capacity.

Although the U.S. is the third largest oil producing nation in the world, we consume 25% of the world's oil every day, forcing us to import oil. Domestic sources of oil (more than three-quarters of our domestic oil is produced in Alaska, California, Texas and the Gulf of Mexico) provide 37% of our daily crude oil needs, while crude oil imports account for 63%. Middle Eastern OPEC nations supply only 15% of our total crude oil needs, and non-OPEC nations—such as Canada, Mexico, Norway and England—provide 34% of our daily oil.[2]

All of the large oil companies, such as ExxonMobil and ChevronTexaco, have financial dealings with Middle East OPEC nations. ExxonMobil obtains more than a quarter of its oil from Middle East OPEC nations; ChevronTexaco more than 40%.

While our reliance on imported oil overall has increased, from 43% in 1989 to 63% in 2003, the consolidation of downstream assets—particularly refineries—play a bigger role in determining the price of a gallon of gas. Recent mergers joined vertically integrated companies owning significant market shares of exploration, production, refining, and marketing of oil and gas. As a result, just five companies now control 48% of domestic crude oil production, 50.3% of domestic refining capacity, and 61.8% of the domestic retail gasoline market. Although the U.S. imports 63% of its oil needs, these mega-companies are major international producers, controlling 14.2% of global oil production.

In 1993, the largest five oil companies operating in the U.S. controlled one third (34.5%) of domestic oil refinery capacity; the top ten companies controlled 55.6%.

In just ten years, because of mergers, the largest five oil companies now control half (50.3%) of domestic oil refinery capacity, while the top ten control 78.5%. This dramatic increase in the control of just the top five companies—from one third of capacity in 1993 to one half of capacity

[2] U.S. Energy Information Administration, www.eia.doe.gov

in 2003—makes it easier for oil companies to manipulate gasoline supplies by intentionally withholding supplies in order to drive up prices. And because the largest companies are vertically integrated, in addition to their control over refining capacity, they enjoy significant market share in oil drilling and retail sales.

The federal government has reached a similar conclusion. According to a March 2001 U.S. Federal Trade Commission report:[3]

The completed [FTC] *investigation uncovered no evidence of collusion or any other antitrust violation. In fact, the varying responses of industry participants to the* [gasoline] *price spike suggests that the firms were engaged in individual, not coordinated, conduct. Prices rose both because of factors beyond the industry's immediate control and because of conscious (but independent) choices by industry participants…each industry participant acted unilaterally and followed individual profit-maximization strategies…It is not the purpose of this report - with the benefit of hindsight - to criticize the choices made by the industry participants. Nonetheless, a significant part of the supply reduction was caused by the investment decisions of three firms…One firm increased its summer-grade RFG* [reformulated gasoline] *production substantially and, as a result, had excess supplies of RFG available and had additional capacity to produce more RFG at the time of the price spike. This firm did sell off some inventoried RFG, but it limited its response because selling extra supply would have pushed down prices and thereby reduced the profitability of its existing RFG sales.* ***An executive of this company made clear that he would rather sell less gasoline and earn a higher margin on each gallon sold than sell more gasoline and earn a lower margin. Another employee of this firm raised concerns about oversupplying the market and thereby reducing the high market prices. A decision to limit supply does not violate the antitrust laws, absent some agreement among firms. Firms that withheld or delayed shipping additional supply in the face of a price spike did not violate the antitrust laws. In each instance, the firms chose strategies they thought would maximize their profits.*** *(emphasis added)*

The report’s amazing conclusion is that although federal investigators found ample evidence of oil companies intentionally withholding supplies from the market in the summer of 2000, the government has not taken any action to prevent it. The ability of oil companies to manipulate the market would have been far more difficult in 1993—before many mergers were enacted—and, unfortunately, much easier in 2003, since more mergers have been approved after the FTC concluded its investigation in March 2001.

Companies have exploited this strong market position to intentionally restrict refining capacity by driving smaller, independent refiners out of business. A congressional investigation[4] uncovered internal memos written by the major oil companies operating in the U.S. discussing their successful strategies to maximize profits by forcing independent refineries out of business, resulting in tighter refinery capacity. From 1995-2002, 97% of the more than 920,000 barrels of oil per day of capacity that have been shut down were owned and operated by smaller, independent refiners.[5] Were this capacity to be in operation today, refiners could use it to better meet today’s reformulated gasoline blend needs.

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[3] *Midwest Gasoline Price Investigation*, www.ftc.gov/os/2001/03/mwgasrpt.htm

[4] *The Oil Industry, Gas Supply and Refinery Capacity: More Than Meets the Eye*, Office of Senator Ron Wyden, June 14, 2001, http://wyden.senate.gov/

[5] *Petroleum Supply Annual*, U.S. Energy Information Administration, www.eia.doe.gov

The virtual monopoly status of the largest oil firms enhances their ability to "earn a higher margin on each gallon sold than sell more gasoline and earn a lower margin." With full control over 48% of domestic production, half of domestic refining capacity and 62% of the retail market, the largest five oil firms have plenty of ability to manipulate supplies.

Precedent Exists of Companies Conspiring to Inflate Prices

If these allegations of price gouging sound too conspiratorial for some to accept, examples in related industries demonstrate that price-fixing, collusion and price-gouging are regular occurrences in today's economy, as large corporations routinely abuse their market power to engage in anti-competitive behavior.

The U.S. Government Accounting Office (GAO) issued a recent report[6] raising concerns that "high concentration would tend to limit competition" in the domestic ethanol-producing industry because the top eight *ethanol*-producing firms controlled 71% of the national market.

The top eight *oil* refiners control 70% of the domestic oil refinery market (ConocoPhillips, Royal Dutch Shell, ExxonMobil, BP, Valero, ChevronTexaco, Citgo-Lyondell, Marathon-Ashland). In comparison, the top eight oil refineries controlled 48% of the national market in 1993. So, concerns raised by the federal government regarding overconcentration of domestic ethanol markets should also apply to domestic oil refinery markets, since the structure and economics of the two industries are similar.

And, of course, one of the largest cases of multiple corporations engaging in price-fixing and manipulating markets is the West Coast energy crisis of 2000-2001 and the widespread manipulation of natural gas prices that followed by Enron and other energy traders. So far, federal and state authorities have issued nearly $400 million in fines, penalties and settlements and ordered energy companies to repay an additional $3.3 billion in overcharges for intentional manipulation of electricity and natural gas markets.

FTC Not Adequately Protecting Consumers

At the same time that the FTC concludes that refining markets are uncompetitive, the agency consistently allows refining capacity to be controlled by fewer hands, allowing companies to keep most of their refining assets when they merge, as a recent overview of FTC-approved mergers demonstrates.

The major condition demanded by the FTC for approval of the August 2002 ConocoPhillips merger was that the company had to sell two of its refineries—representing less than 4% of its domestic refining capacity. Phillips was required only to sell a Utah refinery, and Conoco had to sell a Colorado refinery. But even with this forced sale, ConocoPhillips remains by far the largest domestic refiner, controlling refineries with capacity exceeding 2.2 million barrels of oil per day —or more than 13% of the U.S.'s entire capacity.

The major condition the FTC set when approving the October 2001 ChevronTexaco merger was that Texaco had to sell its shares in two of its joint refining and marketing enterprises (Equilon and Motiva). Prior to the merger, Texaco had a 44% stake in Equilon, with Shell owning the rest;

[6] *U.S. Ethanol Market: MTBE Ban in California*, GAO-02-440R, February 27, 2002, www.gao.gov/new.items/d02440r.pdf

Texaco owned 31% of Motiva, with the national oil company of Saudi Arabia (Saudi Aramco) also owning 31%, and Royal Dutch Shell owning the remaining 38%. The FTC allowed Shell to purchase 100% of Equilon, and Shell and Saudi Aramco bought out Texaco's share of Motiva, leaving Motiva a 50-50 venture between Shell and Saudi Aramco.

Prior to the merger, Texaco's share of Equilon and Motiva refinery capacity equaled more than 500,000 barrels of oil per day—which was simply scooped up by another member of the elite top five companies, Shell. Had the FTC forced Texaco to sell its share to a smaller, independent company, the stranglehold by the nation's largest oil companies could have been weakened.

As a condition of the 1999 merger creating ExxonMobil, Exxon had to sell some of its gas retail stations in the Northeast U.S. and a single oil refinery in California. Valero Energy, the nation's fifth largest owner of oil refineries, purchased these assets. So, just as with the ChevronTexaco merger, the inadequacy of the forced divestiture mandated by the FTC was compounded by the fact that the assets were simply transferred to another large oil company, ensuring that the consolidation of the largest companies remained high.

The sale of the Golden Eagle refinery was ordered by the FTC as a condition of Valero's purchase of Ultramar Diamond Shamrock in 2001. Just as with ExxonMobil and ChevronTexaco, Valero sold the refinery, along with 70 retail gas stations, to another large company, Tesoro. But while the FTC forced Valero to sell one of its four California refineries, the agency allowed the company to purchase Orion Refining's only refinery in July 2003. This acquisition of Orion's Louisiana refinery defeats the original intent of the FTC's order for Valero to divest one of its California refineries.

Bush and the Strategic Petroleum Reserve (SPR): Making a Bad Situation Worse
The purpose of the SPR is to "store petroleum to reduce the adverse economic impact of a major petroleum supply interruption to the United States." Federal law further states that the reserves can be tapped if the "President has found drawdown and sale are required by a severe energy supply interruption." A "severe energy supply interruption shall be deemed to exist if the President determines that an emergency situation exists and there is a significant reduction in supply which is of significant scope and duration; a severe increase in the price of petroleum products has resulted from such emergency situation; and such price increase is likely to cause a major adverse impact on the national economy."[7] Previous presidents, such as Bill Clinton, have interpreted domestic price spikes like the ones the U.S. is now experiencing as satisfying the criteria to release reserves. In September 2000, President Clinton authorized the release of 30 million barrels of oil, which resulted in gasoline prices dropping 10% in just six months.

At the same time that industry consolidation is limiting competition in the domestic production and refining sectors, the Bush administration has exacerbated domestic supply shortages through its mismanagement of the (SPR). After September 11, 2001, the administration set a priority of filling the 700 million SPR to capacity. While the goal is laudable, the administration has aggressively purchased oil from the market for delivery into the SPR regardless of the market price. To reach the goal, President Bush has been removing more than 100,000 barrels of oil every day, increasing the amount stored from 541 million barrels at the end of Clinton's term

[7] 42 U.S.C. § 6241, www.gpoaccess.gov/uscode/

(77% capacity) to more than 641 million barrels today (more than 90% capacity). While previous administrations have typically filled the SPR only at times when oil prices were low and domestic supplies in surplus, President Bush has been filling it at times when prices are above $30/barrel and domestic supplies are tight. Moving so much oil out of an expensive, tight market has made oil even more expensive here at home—a boon for oil company profits but a bust for consumers. As a result, Bush's policy is actually undermining the goals of the SPR.

Right now, the SPR is more than 90% full. If all Middle Eastern members of OPEC were to cease exports to the U.S., we could rely on the SPR, at current levels, to supply enough oil to the U.S. market for nearly 300 days. This is more than enough of a buffer to protect national security in the event of an oil embargo by nations most likely to carry out such an action.

The Bush administration thus far has ignored pleas from Congress[8] to cease filling the SPR. Although the current administration claims we need to rely on market solutions to address current high prices, recent mergers have helped ensure that truly competitive markets don't exist in the domestic gasoline industry.

When the Senate passed a *non-binding* resolution by a vote of 52-43 buried as an amendment to unrelated legislation on March 11, 2004, mandating that President Bush merely *stop filling* the SPR, Wall Street speculators immediately drove down the price of crude oil 1.6%.[9]

Over-the-Counter Energy Disclosure is Underegulated

Contracts representing hundreds of millions of barrels of oil are traded every day on the London, New York and other energy trading exchanges. An increasing share of this trading, however, has been moving off regulated exchanges such as the New York Mercantile Exchange (NYMEX) and into unregulated Over-the-Counter (OTC) exchanges. Traders operating on exchanges like NYMEX are required to disclose significant detail of their trades to federal regulators. But traders in OTC exchanges are not required to disclose such information allowing companies like Enron, ExxonMobil, and Goldman Sachs to escape federal oversight and more easily engage in manipulation strategies.

The growth of these OTC exchanges exploded in 2000[10] when Congress passed the Commodity Futures Modernization Act.[11] The Act, among other things, punched a large loophole in government oversight of energy trading by greatly expanding the ability of traders to operate in unregulated over-the-counter exchanges. These OTC markets do not feature the tighter regulation that typically applies to traders engaged in regulated exchanges, such as the New York Mercantile Exchange (NYMEX). Since this deregulation law took effect, the industry—led by Enron—has been plagued by dozens of high-profile scandals attributed to the lack of adequate regulatory oversight over traders' operations. Free from government transparency regulations, energy traders have demonstrated an ability to manipulate prices more easily.

[8] H.R.1221 and S.AMDT.2817 to S.CON.RES.95, 108th Congress, http://thomas.loc.gov/

[9] Terin Miller, "Crude-Oil, Gasoline Prices Fall After Senate Plan on Supplies," *The Wall Street Journal*, March 15, 2004.

[10] For more info, see Public Citizen's December 2001 report "Blind Faith: How Deregulation and Enron's Influence Over Government Looted Billions from Americans," www.citizen.org/documents/Blind_Faith.pdf

[11] S. 3283, 106th Congress, http://thomas.loc.gov

Oil futures markets are no different. A recent congressional investigation[12] concluded that "crude oil prices are affected by trading not only on regulated exchanges like the NYMEX, but also on unregulated OTC markets that have become major trading centers for energy contracts and derivatives. The lack of information on prices and large positions in OTC markets makes it difficult in many instances, if not impossible in practice, to determine whether traders have manipulated crude oil prices."

Public Citizen has supported efforts to re-regulate energy trading by subjecting OTC markets to tougher oversight. But the latest such effort, an amendment to the energy bill, was rejected by the Senate by a vote of 55-44 in June 2003.[13]

The measure was defeated after a high-profile public spat between Warren Buffett, chairman of Berkshire Hathaway, and Alan Greenspan, chairman of the Federal Reserve, over the danger posed by under-regulation of derivatives. Buffett called the untamed derivatives "weapons of mass destruction" in March 2003, and Greenspan took the unusual step of publicly disputing Buffett's assertions.

Raise Fuel Economy Standards to Lower Our Oil Consumption

The fuel economy average for passenger vehicles in the U.S. peaked in 1988. Due to the changing mix of vehicles on the road and the absence of meaningful government action, the average is currently lower today than it was a decade ago. This fuel economy average is stagnating because no new significant car or truck fuel economy standards have taken effect for 15 years, and SUVs and pickups are subject to lower standards than regular autos. But SUVs and pickups now occupy a much larger part of the new vehicle market.

Overall, fuel economy peaked in 1987 at 26.2 mpg at a time when only 21.1% of the vehicles on the road were light trucks (a category including SUVs, minivans and pickup trucks). By 2001, light trucks were 48% of the new vehicles sold and total fleet average fuel economy was 24.4 mpg on the highway.[14]

Market share for SUVs increased by more than a factor of ten from 1975 to 2003, from under 2% of sales in 1975 to 24% in 2003. Over that same period, market share for vans increased by 80%, while demand for pickups was relatively constant. The increasing market share for light trucks, and their poor gas mileage—now averaging at least six mpg less than cars—is causing the decline in fuel economy for the new light vehicle fleet.

Billions of gallons of oil could be saved if meaningful and possible fuel economy increases were mandated. Improving fuel economy standards for "passenger vehicles" from 27.5 to 40 miles per gallon (mpg), and for light trucks (including SUVs and vans) from 20.7 to 27.5 mpg, by 2015 would save the U.S. an estimated 54 billion gallons of oil between 2005 and 2012. Combining cars and light trucks and increasing the fuel economy standard of the combined fleet to 34 mpg

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[12] *U.S. Strategic Petroleum Reserve: Recent Policy has Increased Costs to Consumers but not Overall U.S. Energy Security,* Minority Staff of the Permanent Subcommittee on Investigations of the U.S. Senate Committee on Governmental Affairs, March 5, 2003, http://govt-aff.senate.gov/

[13] Amendment 876 to S. 14, 108th Congress, http://thomas.loc.gov/

[14] U.S. Environmental Protection Agency, "Light-Duty Automotive Technology and Fuel Economy Trends: 1975 Through 2003," EPA420-R03-006, April 2003.

by 2015 would save a whopping total of 33 billion gallons. Demand reduction is a pro-consumer, environmentally-friendly method of reducing the U.S.'s reliance on foreign sources of oil, and would also improve safety if the behemoth vans and SUVs were downsized.

Federal Energy Bill Does Nothing to Address Overconcentration or Conservation
Contrary to recent statements by congressional leaders and Executive Branch officials, the stalled energy bill[15] will do nothing to reduce high prices of gasoline because it fails to either improve regulations of an oil industry that is over-concentrated or rein in demand by adopting tougher fuel economy standards. Instead, the legislation proposes just what the industry wants—giving billions of the taxpayers' dollars to large oil companies in the form of subsidies and tax breaks with no real conservation requirement.

Contrary to the administration's public statements, the Bush administration's own analysis[16] concludes that the legislation's incentives to reduce our reliance on foreign sources of oil will have only a negligible success. The Bush administration report concludes that implementation of the energy bill would reduce net petroleum imports only by 1.2% by 2025—a reduction hardly worth the billions of dollars taxpayers would spend. In addition, the report finds that, as a result of the energy bill, gasoline prices would actually *increase* 0.4 cents per gallon by 2010 and 5.5 cents per gallon by 2025 due to the bill's new ethanol mandate.

Second, the Bush administration's Department of Interior recently concluded[17] that only 15% of the oil in the 104 million acres of federal land stretching from Montana to New Mexico is currently unavailable due to wilderness designations and other environmental restrictions. It is therefore safe to conclude that the vast majority of oil reserves on federal land are easily accessible for drilling, and that environmental laws do not need to be weakened—as proposed in the energy bill and by the Bush administration—in order to supply America's energy needs.

Further, the energy bill would actually lead to *increased* concentration in the U.S. energy industry by repealing the Public Utility Holding Company Act (PUHCA). PUHCA prevents large, non-electric utility companies from controlling utilities without first divesting their non-utility businesses.[18] If PUHCA is repealed, numerous mergers would quickly follow, further consolidating the domestic energy industry.

Conclusion

The most effective way to protect consumers is to restore competitive markets is for President Bush to adopt the following seven proposals:

- Release oil supplies from the SPR, or, at a minimum, cease filling it.
- Make it illegal for companies to intentionally withhold any energy commodity from the market for the sole purpose of creating supply shortages in order to drive up prices.

[15] S. 2095, 108th Congress, http://thomas.loc.gov/
[16] *Summary Impacts of Modeled Provisions of the 2003 Conference Energy Bill*, U.S. Energy Information Administration, February 2004, www.eia.doe.gov
[17] *Scientific Inventory of Onshore Federal Lands' Oil and Gas Resources and Reserves and the Extent and Nature of Restrictions or Impediments to Their Development*, BLM/WO/GI-03/002+3100, January 2003, www.doi.gov/epca/
[18] For more info on PUHCA, see Public Citizen's *PUHCA for Dummies*, www.citizen.org/documents/puhcafordummies.pdf

- Document how recent mergers have made it easier for large oil companies to engage in uncompetitive practices, and take concrete steps—including forced divesture of assets to independent companies - to remedy the problem of too few companies controlling too much of the market.

- Require oil companies to increase the size of their storage capacities, mandate them to hold significant amounts of product in that storage, and reserve the right to order these companies to release this stored oil and gas in order to address supply and demand fluctuations.

- Reduce America's oil consumption by 54 billion gallons of oil by 2012 by improving fuel economy standards.

- Restore transparency to energy futures markets by re-regulating Over-the-Counter exchanges.

- Impose a windfall profits tax to discourage price gouging.

Table 1.

Mergers Concentrate the U.S. Oil Refinery Industry: Changes in Control of Market Share 1993 to 2003

1993		2003	
Company	Market Share	Company	Market Share
Chevron	9.1%	ConocoPhillips (Tosco-Flying J)	13.2%
Exxon	6.6%	Shell (Motiva-Equilon-Pennzoil-Quaker State-Deer Park)	10.8%
Amoco	6.5%	ExxonMobil	10.8%
Texaco-Star Enterprise	6.2%	BP (Amoco-Arco)	9.0%
Mobil	6.0%	Valero (Ultramar-Diamond Shamrock-Orion Refining)	8.4%
Top 5 in 1993	**34.5%**	**Top 5 in 2003**	**52.2%**
Shell	4.9%	ChevronTexaco	6.4%
BP	4.4%	Citgo-PDV-Lyondell	5.8%
Citgo (PDV)/Lyondell	4.2%	Marathon-Ashland	5.6%
Arco/Lyondell	3.8%	Sunoco	5.2%
Marathon	3.8%	Tesoro	3.4%
Top 10 in 1993	**55.6%**	**Top 10 in 2003**	**78.5%**
Sun Co (Sunoco)	3.4%	Koch	3.1%
Conoco	2.9%	Blackstone Group-Premcor	2.5%
Ashland	2.3%	Williams Co	2.3%
Koch	2.3%	Chalmette Refining	1.1%
Phillips	2.0%	TotalFinaElf	1.0%
Top 15 in 1993	**68.6%**	**Top 15 in 2003**	**88.6%**

Note: Lyondell refinery capacity in 1993 is equally split between two of its equity partners at the time, Citgo and Arco.

SOURCE: Compiled by Public Citizen's Energy Program <www.citizen.org/cmep> from corporate annual reports and U.S. Energy Information Administration data.

Table 2.

The Top 5 Oil Company 2003 Market Share, Profits and Campaign Contributions

Company	Merger Activity	Domestic Oil Production Market Share	Domestic Oil Refinery Capacity Market Share	Domestic Retail Gasoline Market Share	After-Tax Profits Since 2001	Campaign Contributions From 2000 Cycle to Present	% to GOP
BP	April '00 - BP acquires Arco; 1998 BP acquires Amoco	12.7%	9.0%	12.7%	$ 25,704,000,000	$ 1,893,217	69%
ChevronTexaco	Oct. '01 - Chevron + Texaco	9.8%	6.4%	8.3%	11,650,000,000	2,987,415	74%
ConocoPhillips	Aug. '02 - Conoco + Phillips merge; Tosco acquired in Sept. '01; 50-50 venture in Flying J	7.4%	13.2%	13.0%	6,101,000,000	1,462,104	88%
ExxonMobil	Nov. '99 - Exxon + Mobil merge	10.6%	10.8%	13.7%	48,290,000,000	2,742,546	90%
Royal Dutch Shell	Feb. '02 - Acquired Texaco's shares in Equilon and Motiva, so Shell now owns all of Equilon while Motiva is a 50-50 venture with Saudi Aramco; In 2002 Shell Acquired Pennzoil-Quaker State	7.2%	10.8%	14.0%	33,496,000,000	392,060	78%
Total, Top 5		47.7%	50.3%	61.8%	$ 125,241,000,000	$ 9,477,342	80%

addendum a

Valero Energy	2001 - Valero merged with Ultramar/Diamond Shamrock. In July 2003, Valero acquired Orion Refining	0.0%	8.4%	9.9%	$ 1,276,600,000	$ 760,150	68%

addendum b

total campaign contributions by entire oil industry from 2000 election to present **$ 66,869,819** **79%**

SOURCE: Compiled in March 2004 by Public Citizen's Energy Program <www.citizen.org/cmep> based on corporate annual reports; the U.S. Energy Information Administration; and the Center for Responsive Politics.