RON WYDEN
OREGON

516 Hart Senate Building
Washington, DC
20510-3703
(202) 224-5244

web site:
http://wyden.senate.gov/

United States Senate

WASHINGTON, DC 20510-3703

Committees:

Budget
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Oregon State Offices:

700 NE Multnomah St
Suite 450
Portland, OR 97232
(503) 326-7525

151 West 7th Ave
Suite 435
Eugene, OR 97401
(541) 431-0229

Sac Annex Building
105 Fir St
Suite 201
La Grande, OR 97850
(541) 962-7691

U.S. Courthouse
310 West 6th St
Room 118
Medford, OR 97501
(541) 858-5122

The Jamison Building
131 NW Hawthorne Ave
Suite 107
Bend, OR 97701
(541) 330-9142

707 13th St, SE
Suite 285
Salem, OR 97301
(503) 589-4555

February 18, 2004

The Honorable Timothy J. Muris
Chairman
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Dear Chairman Muris:

I am writing to request that the Federal Trade Commission (FTC) use its continuing authority to re-examine recent mergers in the gasoline industry in order to investigate Shell Oil's plans to close its 70,000 barrel-per-day Bakersfield, California refinery on October 1, 2004. I urge the FTC to use this authority to determine whether this refinery closure will cause further anti-competitive problems in West Coast gasoline markets and to take appropriate action avoid any such problems.

As you know, the FTC has allowed two major oil industry mergers and acquisitions to proceed that involved Shell Oil's Bakersfield refinery -- the merger of Chevron and Texaco and Shell's acquisition of Pennzoil-Quaker State. Prior to the merger of Chevron and Texaco, the Bakersfield refinery was operated by Equilon Enterprises LLC, a joint venture between Shell and Texaco. However, Shell acquired full ownership of the Bakersfield refinery when Texaco was required by the FTC to sell its Equilon holdings as a condition of the Chevron-Texaco merger in 2001. Subsequently, in 2002, the FTC allowed Shell to acquire Pennzoil-Quaker state.

Although Shell's announcement of its decision to close the Bakersfield refinery maintained "there was simply not enough crude supply to ensure the viability of the refinery in the long-term," recent news articles have reported that both Chevron Texaco and State of California officials estimate that the San Joaquin Valley where the Bakersfield refinery is located has a 20-25 year supply of crude oil remaining. In fact, *The Bakersfield Californian* reported on January 8, 2004, that Chevron Texaco plans on drilling more than 800 new wells in the San Joaquin Valley this year which is "300 more new wells than last year." The fact that Shell's former joint venture partner is increasing its drilling in the area calls into question Shell's claim that a lack of available oil supply is the reason for closing its Bakersfield refinery.

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It is also curious that Shell appears to have made no attempt to sell the Bakersfield refinery before deciding it had to be closed. The attached Shell Bakersfield Refinery Closure FAQ's included the following question and answer put out by the company:

> "10. Instead of closing the refinery, has Shell considered selling it?
>
> Any new owner would face the same issues Shell is facing; there is simply a lack of crude supply to operate this refinery."

Shell's position seems at odds with the rest of the oil industry which typically points to a lack of refinery capacity, rather than availability of crude oil to refine, as a persistent problem. For example, according to the American Petroleum Institute, current refinery utilization rates exceed 91 percent and these high utilization rates leave little excess refining capacity to respond to supply problems or disruptions. Given the lack of spare refining capacity in the oil industry and the impacts this can have on supply and prices, it is interesting that Shell would shut down a major refinery without even attempting to find a buyer.

In 2001, I revealed internal oil company documents showing that major oil companies pursued efforts to curtail refinery capacity as a strategy for stifling competition and boosting their profits. These efforts included working to prevent the restart of the closed Powerine refinery in Southern California. One company document revealed that if the Powerine refinery was restarted, the additional gasoline supply on the market could bring down gas prices and refinery profits by two to three cents per gallon and called for a "full court press" to keep the refinery down. The Powerine refinery's capacity was 20,000 barrels per day. Because of the much larger capacity of the 70,000 barrels-per-day Bakersfield refinery, the FTC should investigate the impacts closure of the Bakersfield refinery could have on both gasoline supply and prices at the pump.

Finally, the FTC should also look into Shell's plans to close its Bakersfield refinery as part of a troubling trend of refinery closures that is further concentrating the oil industry. According to information compiled by the Senate Permanent Investigations Subcommittee, mergers in the oil industry over the last few years and the closing of refineries have dramatically increased the concentration in the oil refining industry. Under one commonly used test for concentration, 28 states would now be considered tight oligopolies. In fact, the number of states which have high levels of concentration doubled from 14 to 28 between 1994 and 2000. And since then, the FTC has allowed additional oil company mergers to occur. The closure of Shell's Bakersfield refinery, the 12th largest in California, would further contribute to this already troubling trend, with potential adverse impacts on competition, production and prices for consumers.

For these reasons, I am requesting that the FTC use its authority to re-examine recent oil mergers to investigate whether the planned closure of Shell's Bakersfield refinery will create further anti-competitive problems in West Coast gasoline markets, such as raising prices or restricting supply. I would also urge that you undertake this investigation expeditiously to ensure there is sufficient time to take appropriate action before the refinery closure takes place.

Thank you for your attention and I look forward to your response.

Sincerely,

RON WYDEN
United States Senator