Administration $1.00 Fee is an Unjustified Penalty and a Disguised Tax

The penalty is unfair because a shortfall is likely to occur, regardless of extraordinary measures and best efforts by industry

- The standard is infeasible and thus arbitrary
- The technology needed to meet the 35 billion gallon mandate is not now commercially available
- The shortfall in 2017 could be as high as 20+ billion gallons
- Obligated parties have little control over production or the availability of low-carbon or renewable fuels

The penalty acts like an arbitrary stealth tax on the manufacture of motor fuels

- Other than not producing the motor fuel needed, there will be no alternative to paying the $1 penalty
- This provision will establish a precedent and a convenient mechanism for other federal and state authorities to generate funds by arbitrarily setting infeasible standards coincident with government sale of "paper" compliance credits

EPA has not been authorized to tax or to impose alternative compliance measures

- EPA would be setting an infeasible, arbitrary standard and then penalizing obligated parties for not meeting it
- Only Congress has the power to tax, and Congress has not delegated this power to EPA

The penalty has the potential to create additional stress on this country's gasoline supply

- The penalty provision could result in an inefficient refinery production slate as it imposes a disincentive to gasoline production
- The penalty is also a market disincentive for the importation of gasoline

The penalty serves no beneficial purpose and in fact would be counterproductive to the economy and consumers

- Historically, higher taxes have usually resulted in higher prices for consumers, reduced earnings for investors, or some combination of both
- This penalty could likely reduce investment in the R&D and commercialization needed to reach the low-carbon or renewable fuels goals and deprive the fuels sector of the investment capital needed to meet future U.S. energy demand

The penalty eliminates the usefulness of the credit trading program

- This provision breaks with historical precedent of credit trading programs because it requires obligated parties to purchase credits that are unrelated to physical assets such as biofuels or a piece of capital equipment that mitigates emissions
- Because the 35 billion gal/year goal is likely to be unachievable, the $1/gal penalty will likely be the compliance method for nearly all obligated parties

Conclusion: Rather than setting an infeasible standard, EPA should set the LCFS at a level that is challenging but realistically attainable within the timeline specified. To the extent that the standard relies on newly developing and/or non-commercial technology, EPA's regulations should include a process that checks progress against the goal and makes necessary adjustments in the standard if compliance becomes infeasible due to lack of progress in the development or commercialization of expected enabling technology.

Administration $1.00 Fee is an Unfair Penalty and a Disguised Tax

BACKGROUND:

- **Supreme Court:** In April, 2007 the Supreme Court ruled that carbon dioxide (CO2) is a "pollutant" under the Clean Air Act and that EPA must consider whether to regulate greenhouse gas emissions from motor vehicles under section 202(a) of the Clean Air Act

- **Executive Order:** In May, President Bush issued an Executive Order and directed the EPA and other federal agencies to take the first steps toward regulations that would cut gasoline consumption and greenhouse gas emissions from motor vehicles, using the 20-in-10 plan (a 20% reduction in gasoline consumption over 10 years) as a starting point.

    - The 20-in-10 plan included 35 billion gallons of alternative fuels by 2017

- **Current Regulatory Schedule:**

    - Proposed LCFS regulation in December 2007
    - Final regulation by October 2008

- **EPA's Regulatory Plan:** EPA is planning to propose a low-carbon fuel standard (LCFS) that is based upon a mandate of 35 billion gallons of low-carbon or renewable fuel in 2017

    - Refiners and importers will be the responsible (obligated) parties under this regulation
    - The regulation is expected to build upon the existing renewable fuel standard credit trading program (explained below)
    - However, EPA is considering adding a provision which would require obligated parties to pay $1 for every gallon shortfall in mandated low-carbon fuel
    - Funds collected in FYs 2010-2017 will be deposited into the General Treasury

- **Existing Renewable Fuel Standard (RFS) Trading Program:**

    - Uses Renewable Identification Numbers (RINs) as the basis of compliance. Compliance by obligated parties is based on the accumulation of RINs, not on the physical purchase or blending of renewable fuels. RINs can then be traded any number of times until they are used for compliance by an obligated Party.
    - A trading program allows parties who are liable for the standard to comply through the purchase of credits if they cannot or do not wish to blend their pro-rata share of renewable fuels into gasoline themselves. Also, it allows renewable fuels that are not blended into gasoline, such as biodiesel and renewable diesel, to participate in the RFS program.
    - Trading is intended to allow renewable fuels not blended or used by obligated parties, or renewable fuels blended at a non-obligated party's terminal to generate credits that can be used by obligated parties to meet the standard. Trading allows cost-minimization across obligated parties.