

## § 77.5

(3) Upon approval of the offset plan by the Administrator, the offset plan will be incorporated into the Acid Rain permit in accordance with § 72.84 (automatic permit amendment) and shall supersede any inconsistent provision of the permit.

[58 FR 3757, Jan. 11, 1993, as amended at 62 FR 55487, Oct. 24, 1997; 62 FR 66279, Dec. 18, 1997; 70 FR 25337, May 12, 2005]

### § 77.5 Deduction of allowances to offset excess emissions of sulfur dioxide.

(a) The Administrator will deduct allowances to offset excess emissions in accordance with the offset plan approved under § 77.4(b) (1) or (k) or in accordance with § 72.91(b) of this chapter.

(b) The designated representative shall hold enough allowances in the appropriate compliance account to cover the deductions to be made in accordance with paragraph (a) or paragraph (c) of this section.

(c) If the designated representative does not submit a timely and complete proposed offset plan, or if the Administrator disapproves a proposed offset plan under § 77.4 (c) or (k), the Administrator will immediately deduct allowances allocated for the year after the year in which the source has excess emissions, from the source's compliance account on a first-in, first-out basis in accordance with § 73.35(c)(2) of this chapter, equal to the amount of the source's excess emissions of sulfur dioxide.

[58 FR 3757, Jan. 11, 1993, as amended at 70 FR 25337, May 12, 2005]

### § 77.6 Penalties for excess emissions of sulfur dioxide and nitrogen oxides.

(a)(1) If excess emissions of sulfur dioxide occur at the affected source or nitrogen oxide occur at an affected unit during any year, the owners and operators respectively of the affected source and the affected units at the source or of the affected unit shall pay, without demand, an excess emissions penalty, as calculated under paragraph (b) of this section.

(2) If one or more affected units governed by an approved NO<sub>x</sub> averaging plan under § 76.11 of this chapter fail (after applying § 76.11(d)(1)(ii)(C) of this chapter) to meet their respective alter-

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native contemporaneous emission limitations or annual heat input limits, then excess emissions of nitrogen oxides occur during the year at each such unit. The sum of the excess emissions of nitrogen oxides of such units shall equal the amount determined under § 76.13(b) of this chapter. The owners and operators of such units shall pay an excess emissions penalty, as calculated under paragraph (b) of this section using the sum of the excess emissions of nitrogen oxides of such units.

(3) Except as otherwise provided in this paragraph (a)(3), payment under paragraphs (a) (1) or (2) of this section shall be submitted to the Administrator by 30 days after the date on which the Administrator serves the designated representative a notice that the process of recordation set forth in § 73.34(a) of this chapter is completed or by July 1 of the year after the year in which the excess emissions occurred, whichever date is earlier. Payment under paragraph (a)(1) of this section for any increase in excess emissions of sulfur dioxide determined after adjustments made under § 72.91(b) of this chapter shall be submitted to the Administrator by 30 days after the date on which the Administrator serves the designated representative a notice that process set forth in § 72.91(b) of this chapter is completed.

(b) *Penalty formula.* (1) The following formulas shall be used to determine the excess emissions penalty:

Penalty for excess emissions of sulfur dioxide = \$2000/ton × annual adjustment factor × tons of excess emissions of sulfur dioxide.

Penalty for excess emissions of nitrogen oxides = \$2000/ton × annual adjustment factor × tons of excess emissions of nitrogen oxides.

(i) The annual adjustment factor will be calculated as follows:

$$\text{Annual adjustment factor} = 1 + \frac{\{\text{CPI}(\text{year}) - \text{CPI}(1990)\}}{\text{CPI}(1990)}$$

where:

(A) "CPI(year)" is the Consumer Price Index as defined in § 72.2 of this chapter and "year" is the year in which the source or unit as appropriate had excess emissions.