BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

The Steel Industry Compliance Extension Act Brought About Some Modernization And Unexpected Benefits

The Steel Industry Compliance Extension Act of 1981 was designed to give relief to the ailing steel industry by allowing qualifying steel companies to defer funding of new pollution control equipment for up to 3 years (to December 31, 1985) Under this legislation, the deferred funds had to be used to modernize facilities so steel companies could remain competitive and save American jobs GAO reviewed the Environmental Protection Agency's (EPA's) implementation of the program to determine its success and what might be learned for designing future programs.

Ten companies applied for the program, but only five participated, committing a total of $49 million toward modernization Participation was limited primarily by one provision in the law which required companies, at the time of application approval, to be in compliance with their air pollution control agreements with EPA or have insignificant violations Also, because of poor economic conditions, steel companies were reluctant to commit large amounts of capital for modernization purposes

The program also brought about unexpected benefits such as an agreement by one company to share a highly cost-effective proprietary emission control process with other companies free of charge

This report discusses the program's accomplishments, why it was not more successful, and what the Congress should consider if it designs similar programs in the future

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C 20548

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To the President of the Senate and the
Speaker of the House of Representatives

This report describes the modernization in the domestic steel industry resulting from the Steel Industry Compliance Extension Act of 1981. We undertook this review because of the emphasis on modernizing the ailing steel industry and the importance of balancing economic and environmental objectives.

We are also sending this report today to the Director, Office of Management and Budget; the Administrator, Environmental Protection Agency; the Attorney General; and other interested parties.

Sheldon J. Soodan

Acting Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

THE STEEL INDUSTRY COMPLIANCE EXTENSION ACT BROUGHT ABOUT SOME MODERNIZATION AND UNEXPECTED BENEFITS

D I G E S T

In 1979, a presidential committee studying ways to revitalize the ailing U.S. steel industry reported that the steel industry, more than any other, needed capital to modernize and control pollution. Specifically, the committee estimated that the industry's capital shortfall for the 1980-84 period would be $1.7 to $2.0 billion annually. As a result of the committee's findings and recommendations, the Congress passed the Steel Industry Compliance Extension Act of 1981 (known as Stretchout) on July 17, 1981.

Stretchout allowed the Environmental Protection Agency (EPA) to defer, for approved steel companies, the date for meeting Clean Air Act requirements from December 31, 1982, to December 31, 1985. For a company to qualify for Stretchout, EPA had to (1) determine that the deferral of air pollution control spending was necessary to improve the efficiency and productivity of steel company facilities, (2) find that the company will spend on modernization, by July 1983, an amount equal to the planned capital expenditures being deferred from air pollution control, (3) reach agreement with the company for a federal judicial decree to comply with emission limitations at all its facilities by December 31, 1985,[1] (4) find that the company had sufficient funds to comply with (3) above, (5) find that the company is in compliance with existing federal judicial decrees, and (6) determine that Stretchout would not degrade air quality during the extension.

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[1]Judicial decrees (consent decrees) under this legislation are legally binding agreements between the federal government and a steel company and are approved by a federal district court. They specify air pollution control goals, deadlines, and penalties associated with each of the steel company's facilities.

Overall, the program had only limited success in achieving its objective--assisting the steel industry to modernize its facilities. However, some unexpected cost reduction benefits did occur to the industry from sharing pollution technology. In the final analysis, steel companies committed only $49 million on modernization as a result of Stretchout--compared to $500 to $700 million the steel industry had estimated would be spent if the act were passed. GAO reviewed Stretchout to determine what the program accomplished and what could be learned that would be useful in designing future programs.

STRETCHOUT PRODUCED RESULTS DIFFERENT THAN EXPECTED

Stretchout was expected to appeal to many firms in the steel industry and result in large modernization expenditures which would help revitalize the industry. Ten companies representing about 50 percent of U.S. steel production in 1982 applied to EPA for Stretchout benefits. Although these 10 companies proposed modernization spending of about $828 million, EPA determined that only 6 were eligible. Of these, five companies--representing about 23 percent of U.S. steel production--participated and their actual spending totaled $49 million. (See pp. 7 and 8.)

While spending on modernization was not as high as anticipated, other unexpected benefits did result. For example, Stretchout required that each applicant and EPA agree to a federal judicial decree covering all of the applicant's facilities. According to EPA attorneys who negotiated these decrees with the steel companies, some applicants, wanting to hasten the process and take full advantage of Stretchout, agreed to terms that they may not have agreed to under other circumstances, e.g., consenting to air pollution controls on facilities not previously covered. Additionally, EPA considers these decrees easier to enforce than the more complex enforcement provisions of the Clean Air Act. (See pp. 8 and 9.)

Another benefit of the program was that the United States Steel Corporation--prior to being approved for Stretchout--agreed to share a highly cost-effective proprietary

emission control process with all other companies free of charge. Two companies plan to adopt this new technology at a combined estimated savings to them of $9.8 million. (See p. 9.)

STRICT DE MINIMIS INTERPRETATION FURTHER RESTRICTED PROGRAM ELIGIBILITY

The legislation required that firms applying for Stretchout had to comply with existing federal judicial decrees on air pollution control but could be excused if their violations at the time of the application were de minimis (negligible, insubstantial, or inconsequential). However, the legislation did not provide criteria for determining whether violations were de minimis.

With passage of the legislation, EPA was prepared to grant Stretchout to as many companies as possible because it believed that strict interpretation of the de minimis requirement would preclude virtually all steel companies from qualifying for Stretchout. Subsequently, the Department of Justice, which had to approve the Stretchout agreements, issued an opinion giving de minimis a strict interpretation. (See pp. 11 and 12.)

Using the stricter interpretation, EPA found 4 of the 10 applicants ineligible for Stretchout. EPA believes, however, that three of the four applicants would have been ineligible even if its more liberal view of the de minimis standard had been applied. These three companies had violations which were clearly not de minimis. However, EPA believes that the other company--Inland Steel Company--and its $167 million in proposed modernization might have been included in Stretchout. In total, these four applicants accounted for about $587 million of the $828 million of the proposed modernization spending. (See pp. 13 and 14.)

OTHER FACTORS CONTRIBUTED TO REDUCED MODERNIZATION SPENDING COMMITMENT

Of the six remaining applicants, one withdrew because of poor economic conditions and five were eventually approved for Stretchout. These five applicants initially proposed to spend $235 million on various modernization projects but actually committed only $49

million. Most of this reduction was due to reduced spending by the United States Steel Corporation. In general, less money was spent because EPA or the companies determined that less pollution control funds were eligible to be diverted for modernization projects. In some cases, the companies overestimated the cost of pollution control projects that would be deferred, or completed the projects before Stretchout began. In other cases, EPA determined that the proposed pollution control projects were either not eligible for the Stretchout program or were not necessary to meet air pollution control requirements. Likewise, an industry representative told GAO that many companies did not apply for Stretchout because they could not afford to use diverted pollution control funds for modernization purposes. (See p. 14.)

RECOMMENDATION TO THE CONGRESS

The Congress has recently considered proposed legislation which, similar to Stetchout, would have extended compliance deadlines under the Clean Water Act as well as deadlines for industries other than steel under the Clean Air Act. In addition, a bill was introduced in the Senate that would provide a mechanism for making necessary adjustments to regulatory programs, including extending regulatory compliance deadlines.

If in the future the Congress considers legislation to extend pollution control or other regulatory compliance deadlines, GAO recommends that the Congress specifically define the criteria that EPA or other agencies should use to determine program eligibility. This would be particularly desirable when de minimis requirements are being considered as a criterion for program participation. (See p. 21.)

AGENCY COMMENTS

Both EPA and Justice commented on a draft of this report. EPA generally agreed with GAO's conclusions and recommendations and commended GAO for the clear, accurate reporting of this complicated program. Justice agreed with the recommendation to the Congress and stated that, if crucial terms such as de minimis were clearly defined in any similar legislation,

much confusion and delay could be avoided. Justice noted, however, that obtaining clearer definitions may be difficult, but said that resolving these issues in Congress is far preferable to leaving them to the enforcement or judicial process for resolution.

Other comments by EPA and Justice helped clarify some of the issues discussed in the report. Justice said that the report assumes that the steel industry would have been expected to spend $500 to $700 million on modernization if Stretchout was implemented. Justice stated that these estimates were unrealistic and are not a fair measure by which to judge the success of the act. GAO does not use these estimates to judge the success of the act but to reflect initial judgments in the steel industry as to what could be expected from Stretchout. In addition, the 10 companies which applied for Stretchout proposed over $828 million in modernization, considerably more than even the initial estimates.

Justice said that there was reason to believe that more than $49 million was spent on steel industry modernization projects; therefore, it asked that GAO poll all applicant steel companies to determine how many modernization projects were constructed in addition to projects constructed under Stretchout, and at what cost. The objective of GAO's review was limited to determining the amount of funds committed to modernization specifically under the Stretchout legislation. However, during the review, GAO did request the information suggested by Justice from three companies. They declined to provide the information because divulging the projects and their respective costs could affect their market competitiveness. (See pp. 10 and 21.)

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ABBREVIATIONS

EPA	U.S. Environmental Protection Agency
GAO	U.S. General Accounting Office

CHAPTER 1

INTRODUCTION

In July 1981, the Congress enacted the Steel Industry Compliance Extension Act of 1981 (42 U.S.C. 7401). This act authorized the Environmental Protection Agency (EPA) to consent to the entry of federal judicial decrees[1] extending Clean Air Act compliance deadlines for qualifying domestic steel producers up to 3 years to December 31, 1985. To grant an extension, EPA had to determine that applicant companies meet the legal requirements, including agreement to modernize their facilities by July 17, 1983. The primary impetus behind the law was the domestic steel producers' financial inability to simultaneously purchase air pollution control equipment and modernize their facilities, which would enable them to compete more favorably with foreign producers and thus save American jobs. This report discusses (1) the expected, proposed, and actual modernization spending commitment and (2) what prevented more modernization spending.

HOW AND WHY STRETCHOUT OCCURRED

In 1977, the federal government's Interagency Steel Task Forbe report to the President recommended that a tripartite group study the steel industry's problems and possible ways to revitalize the industry because it is one of our nation's largest industries and its success is critical to our economy and security. The report listed the revision of environmental regulations that affect steel as a step toward stimulating the industry's efficiency and its ability to compete fairly.[2]

In early 1979, the Steel Industry Tripartite Committee was formed to advise the President on the steel industry's problems and to suggest ways to revitalize the industry. Its conclusions formed the basis for the administration's proposals on aiding the steel industry. The Committee represented the federal government (Secretaries of Labor, Commerce, and Treasury), the steel industry (representatives from the American Iron and Steel Institute), and labor (representatives of the United Steelworkers Union). The Committee formed five working groups to report the Committee's conclusions. One of the working groups reported on environmental

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[1]Judicial decrees (consent decrees) under this legislation are legally binding agreements between the federal government and a steel company and approved by a federal district court. Consent decrees set forth procedures and deadlines for meeting certain Clean Air Act requirements and penalties for missed deadlines.

[2]A Comprehensive Program for the Steel Industry, Anthony M. Solomon, Task Force Chairman, Dec. 6, 1977.

protection and another reported on modernization and capital formation.[3]

The environmental protection work group reported that no other industry needed capital-intensive modernization more or was faced with such extensive capital expenditures to control pollution than the steel industry. It also reported that, although steel industry modernization was in the national interest, the industry could and should meet all Clean Air Act requirements.

The modernization and capital formation work group reported that from 1980 to 1984 the U.S. steel industry would need an average of $4.7 billion annually to modernize its existing steelmaking capacity and an additional $1.4 billion annually to meet environmental requirements, meet safety and health requirements, provide for working capital, and pay dividends. This group also reported that annual capital resources, based on (1) 76 percent utilization of total steel-producing capacity in 1980, (2) an average of 90 percent utilization in 1981 to 1984, (3) new debt, and (4) stock and asset sales, would be between $4.1 billion and $4.4 billion. The estimated capital shortfall for 1980 to 1984 would therefore be about $1.7 billion to $2.0 billion annually.

Because of the steel industry's need to modernize and its tight financial condition, the Tripartite Committee recommended that EPA be allowed to extend the date for steel companies to meet final compliance deadlines under the Clean Air Act for up to 3 years (from Dece. 31, 1982, up to Dec. 31, 1985). This extension would allow steel companies to invest funds which would otherwise be spent for air pollution control in modernizing production facilities. The Committee defined modernization as "capital investments in. . .steel making facilities to assure the efficiency, productivity or competitiveness of the company's . . . steel production operations." This recommendation was introduced in the Senate in January 1981 and the House in February 1981 and was enacted as the Steel Industry Compliance Extension Act of 1981, which amended the Clean Air Act.

Quick passage of the pending legislation and EPA implementation of the program were critical to the program's success. In March 1981, the Chairman of the Board of the United States Steel Corporation testified before the House Committee on Energy and Commerce, Subcommittee on Health and the Environment, that each month's delay "would mean basically about $15 to $20 million that otherwise would be available for modernization would have to go to environmental commitments . . . ." To help reduce the time needed to implement the program, the legislation stated that EPA implementing regulations would not be required. The bill was enacted on July 17, 1981. The resulting program is often referred to as "Steel Stretchout." In this report we will refer to it as "Stretchout."

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[3]The other three working groups reported on (1) community and labor adjustment assistance, (2) technological research and development, and (3) international trade.

REQUIREMENTS FOR PARTICIPATION

The act authorized EPA to consent to the entry of a federal judicial decree giving steel companies up to a 3-year extension--to December 31, 1985--to comply with air pollution control requirements of the Clean Air Act. For a company to be eligible for Stretchout, the EPA Administrator would have to find the following:

(1) Stretchout is necessary for the company to have sufficient funds to improve the efficiency and productivity of its production facilities.

(2) Funds deferred from compliance with air pollution control requirements of the Clean Air Act would be spent on modernization of existing facilities by July 17, 1983.

(3) All the company facilities which are in violation of air pollution control standards would be brought under judicial decrees, as agreed upon with EPA, to meet emission limitations by December 31, 1985.

(4) The company would have sufficient funds for (3) above.

(5) The company is complying with existing federal judicial decrees which address violations of air pollution control regulations except for de minimis[4] violations.

(6) Stretchout will not result in degraded air quality during the extension.

Recognizing that Stretchout needed to be implemented quickly, EPA began preparing for this effort in November 1980, some 8 months before passage of the legislation. In June 1981, 1 month before passage, EPA developed basic procedural steps and had assigned staff responsibilities for implementing Stretchout.

Within a week after passage of the act, EPA was scheduling meetings with prospective applicants. About the same time, it finalized an implementation manual which described in detail the Stretchout approval process, designed to take just 90 days from receipt of an application to final approval. (See app. II.)

EPA headquarters and regional offices were involved in evaluating Stretchout requests from the applicant companies. However, EPA headquarters personnel were primarily responsible for determining if applicant steel companies met approval criteria.

The Department of Justice also participated in Stretchout. As required by a memorandum of understanding between EPA and the Attorney General in June 1977, Justice

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[4]"De minimis" is a legal term generally used to denote something as negligible, insubstantial, or inconsequential.

--has control over all cases to which EPA is a party and

--must authorize and concur with any agreement EPA negotiates before it can be filed in court.

As a result, Justice participated in negotiating all consent decree terms (compliance schedules, type of pollution control equipment, penalties, etc.) with EPA and the steel companies and filed the consent decrees in the appropriate federal district court.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of this assignment were to determine the extent that the steel industry participated in Stretchout and why the amount of funds committed to modernization was less than anticipated. Also, because thec Congress has recently considered proposed legislation extending pollution control deadlines under the Clean Air Act and the Clean Water Act and has introduced legislation which designs a process for making necessary adjustments in regulatory programs (such as extension of deadlines), one of the objectives was to determine what might be learned from Stretchout that could assist in designing future programs. To accomplish these objectives, we planned our review to examine and report on the following issues:

--Why companies participated in Stretchout, what benefits were realized, and why companies did not commit more to modernization.

--Why all applying companies did not participate in Stretchout.

--Why more steel companies did not apply for Stretchout.

--What impact various EPA requirements had on participation in Stretchout.

--What improvements could be used in similar future programs.

We did our work between March and September 1983 at the following locations:

--EPA headquarters in Washington, D.C., and Region V headquarters in Chicago, Illinois.

--Department of Justice in Washington, D.C.

--Michigan Department of Natural Resources, Lansing, Michigan.

--Air Pollution Control Division of the Wayne County Health Department, Detroit, Michigan.

--American Iron and Steel Institute, Washington, D.C.

--State and Territorial Air Pollution Program Administrators, Washington, D.C.

In addition, we obtained information from officials from 14 steel companies--the 10 companies which applied for Stretchout, the 3 largest companies which did not apply, and the 1 company which had expressed interest but did not apply. The company officials included senior attorneys involved with Stretchout negotiations and corporate managers of environmental control activities. Appendix I shows the 15 largest steel producers and, of these, the ones that applied for Stretchout.

We also did extensive literature and legislative searches to determine the purpose of Stretchout and its intended benefits, including a review of Federal Register notices, House and Senate reports, and congressional testimony pertaining to Stretchout.

To determine why companies participated in Stretchout, what benefits were derived, and why companies did not commit more to modernization, we obtained information from EPA officials responsible for administering the Stretchout program, such as the Associate Enforcement Counsel for Air and other senior attorneys. In addition, we obtained information from officials of the five companies which participated in Stretchout (Alabama By-Products Corporation, Rouge Steel Company, Sharon Steel Corporation, United States Steel Corporation, and Wheeling-Pittsburgh Steel Corporation). We also reviewed EPA documents pertaining to consent decree negotiations.

To determine why companies which applied did not participate in Stretchout, we obtained information from (1) EPA officials responsible for negotiating with applicant steel companies, (2) officials from the five steel companies which had applied for Stretchout but either withdrew or were denied participation by EPA (Inland Steel Company, Jones & Laughlin Steel Corporation, Kaiser Steel Corporation, National Steel Corporation, and Shenango Incorporated), and (3) reviewed EPA documents pertaining to negotiations with these five companies.

To determine why companies did not apply, we obtained information from officials of the three largest steel producers which did not apply for Stretchout (Armco Incorporated, Bethlehem Steel Corporation, and Republic Steel Corporation) and one company which expressed interest but did not apply (Lukens Steel Company).

To determine the impact that various requirements had on participation, we discussed these requirements with EPA attorneys responsible for administering Stretchout at EPA headquarters and its Chicago regional office, state environmental engineers in Michigan responsible for enforcing the Clean Air Act, local officials (the meteorologist, attorney, and Director of the Air Pollution Control Division) in Wayne County, Michigan, responsible for enforcing the Clean Air Act, a Department of Justice enforcement

attorney who assisted EPA in the Stretchout negotiations, and officials from the 14 steel companies mentioned above.

Our review was performed according to generally accepted government auditing standards.

CHAPTER 2

STRETCHOUT'S RESULTS WERE DIFFERENT THAN EXPECTED

The actual amount of spending for modernization from Stretchout fell far short of spending anticipated by the Congress, EPA, and the steel industry. However, program participants did realize some unforeseen benefits in addition to being allowed to modernize their facilities and spread out air pollution control spending. This chapter discusses the results of Stretchout. The reasons why few companies used Stretchout are discussed in chapter 3.

MODERNIZATION SPENDING WAS LESS THAN EXPECTED

The Chairman of the Board of United States Steel Corporation, speaking as a member of the Steel Tripartite Advisory Committee, testified during Senate hearings in March 1981 that, on the basis of comments and judgments made in the industry, if Stretchout was implemented, the industry would spend $500 to $700 million on modernization that would not have been spent otherwise. The Chairman of the Board of National Steel Corporation, also speaking as a member of the Committee, testified in the same hearings that EPA had estimated that as much as $600 million could be spent on modernization. After Stretchout was implemented, 10 companies applied for the program and proposed about $828 million in modernization. These 10 represented nearly 50 percent of U.S. steel production for 1982. However, only five of these, with initial modernization spending proposals of about $235 million, received EPA approval for Stretchout. Further, the total modernization spending committed to by those five companies under Stretchout was about $49 million--about 21 percent of their initial modernization proposals.

The following table shows each Stretchout applicant's proposed and actual modernization spending commitment.

Stetchout Program Applicants' Proposed and Actual Modernization Spending

Applicant	Stretchout status	Proposed modernization	Actual modernization
		(000 omitted)	
Alabama By-Products Corporation	Approved	$ 6,859	$ 6,859
Rouge Steel Company	Approved	10,500	10,500
Sharon Steel Corporation	Approved	8,000	3,000
United States Steel Corporation	Approved	195,000	13,680
Wheeling-Pittsburg Steel Corporation	Approved	15,000	15,400
Jones & Laughlin Steel Corporation	Denied	320,000	-
Inland Steel Company	Withdrew	167,000	-
Kaiser Steel Corporation	Withdrew[a]	-	-
National Steel Corporation	Withdrew	100,000	-
Shenango Incorporated	Withdrew	5,730	-
Total		$828,089	$49,439

[a]Kaiser Steel Corporation's application proposed to extend compliance dates but did not propose any specific modernization.

OTHER PROGRAM RESULTS WERE BENEFICIAL

Although Stretchout's primary purpose of allowing companies to defer certain pollution control costs and use the money to modernize facilities was not fully realized, the program produced other results which, according to a senior EPA attorney involved with enforcing the Clean Air Act, were beneficial to air pollution control. These benefits stem from (1) the act's requirement that participating steel companies submit all of their facilities to consent decrees establishing a schedule for installing air pollution control equipment which would achieve certain emissions limitations specified by EPA and (2) technology sharing as required in one company's consent decree.

Stretchout's consent decree requirement, combined with the steel companies' desire to get quick disposition of Stretchout applications, gave EPA negotiating leverage that it normally would not have had because companies were more willing to negotiate a quick agreement. As a result, steel companies, according to EPA, agreed to certain terms that generally they would not have agreed to under other circumstances. For example, since negotiations for a consent decree began in 1978, United States Steel Corporation and EPA had not reached agreement on what the company needed to do

to bring one of its facilities into compliance with the Clean Air Act by December 31, 1982. United States Steel believed it was in compliance with applicable pollution control requirements. However, EPA disagreed. After the company applied for Stretchout for other facilities, it agreed to EPA's terms for that facility because Stretchout legislation required that all of a company's facilities be under a consent decree. Because of the same requirement, the company agreed to EPA's terms for a consent decree at a second facility not previously covered.

The requirement that Stretchout be implemented through consent decrees provided EPA with an easier monitoring and enforcement tool for facilities under these decrees. EPA attorneys responsible for negotiating them told us that consent decrees, with their specific goals, deadlines, and penalties, were easier to enforce than provisions of the Clean Air Act, which involve more difficult standards of proof and more complex procedures. For example, Wheeling-Pittsburgh Steel Corporation's Stretchout consent decree requires it to install specified equipment which will reduce emissions to a specific level. The consent decree sets forth (1) a timetable for submitting plans to EPA for approval, executing purchase orders, beginning construction, completing construction, and achieving and demonstrating compliance with the specified air pollution control standards, and (2) cash penalty amounts for not meeting the terms of the decree.

Finally, one additional benefit resulting from Stretchout involves a provision in United States Steel Corporation's Stretchout consent decree which has helped other steel companies reduce their pollution control costs. As part of its Stretchout consent decree, the company agreed to make available to any domestic steel producer, without charge, a recently developed and highly cost-effective process for controlling blast furnace emissions. According to an EPA attorney who participated in negotiating the consent decrees, this new technology costs about $1 million per installation compared with approximately $6 million for older technologies.

By implementing this consent decree provision, United States Steel Corporation agreed to provide technical information packages to other steel companies, to conduct an informational seminar, and to provide consultation services. Two other Stretchout participants plan to use this newly available technology and save an estimated $9.8 million combined. One--Sharon Steel Corporation--plans to install the equipment at one facility for $1 million, whereas its previous plans for air pollution control equipment would have cost $6 million. The other--Rouge Steel Company--plans to install the equipment for $3 million, whereas its previously planned equipment would have cost $7.8 million. Also, EPA told us that the agreement by United States Steel to make this technology freely available to any domestic steel producer will help EPA resolve emissions control problems at other steel producers.

CONCLUSION

The Stretchout program was intended to provide relief to the steel industry by allowing qualified steel companies up to a 3-year extension in meeting Clean Air Act standards so they could modernize their facilities. Overall, much less money was spent on modernization than originally estimated. However, unexpected benefits did occur as some companies agreed to improve air pollution controls on all their facilities and to share air pollution control technology.

AGENCY COMMENTS AND OUR EVALUATION

EPA and Justice responded to our draft report on May 31, 1984, and May 30, 1984, respectively. (See apps. III and IV.)

EPA generally agreed with the conclusions and recommendations in the report and commended GAO for clear, accurate reporting of a complicated program. Justice provided two comments concerning the matters discussed in chapter 2.

Justice stated that the report assumes that the steel industry would have been expected to spend $500 to $700 million on modernization if Stretchout was implemented. Justice stated that these estimates were unrealistic and are not a fair measure by which to judge the success of the act. We did not use these estimates to judge the success of the act, but rather to reflect initial judgments in the steel industry as to what could be expected from Stretchout. In addition, the 10 companies which applied for Stretchout proposed over $828 million in modernization, considerably more than the initial estimates.

Justice said that there was reason to believe that more than $49 million was spent on steel industry modernization projects. Therefore, it asked that we poll all applicant steel companies to determine how many modernization projects were constructed in addition to projects constructed under Stretchout, and at what cost. Although our objective was to determine the amount of funds committed to modernization specifically under the Stretchout legislation, during our review we did request the information suggested by Justice from three companies. The companies declined to provide the information because divulging the projects and their respective costs could affect their market competitiveness.

CHAPTER 3

REASONS WHY STRETCHOUT DID NOT ACCOMPLISH WHAT WAS EXPECTED

Of the $828 million in modernization spending proposed by firms applying for Stretchout, only $49 million eventually was approved by EPA. About $587 million of the proposed spending was disallowed by EPA because certain applicant firms had violations of their existing consent decrees which made them ineligible based on program criteria. For two of the five firms that were approved, several factors caused them to substantially scale down their initial modernization spending proposals. These factors included the submission of project proposals later deemed by EPA to be ineligible for Stretchout benefits and the impact of the economic recession on the steel industry. Further, two of the five companies applying for Stretchout had to incur substantial additional costs because EPA's review of the applications took much longer than anyone, including EPA, had anticipated.

DE MINIMIS REQUIREMENT REDUCED MODERNIZATION SPENDING

Because 9 of the 10 companies that applied for Stretchout had outstanding consent decree violations, the decision as to which firms would be eligible for program benefits hinged primarily on how the de minimis requirement in the law would be interpreted and applied.

The Stretchout legislation did not define the de minimis requirement, although both the House and Senate reports discussed the subject. In each case, however, what might be construed as a de minimis violation was different. The House report states that only companies making good faith efforts to comply with existing pollution control obligations should be allowed to benefit from Stretchout.[1] The Senate report, however, referred only to emission limitations, taking a stricter view that

> "A de minimis violation of an emission limitation is a violation resulting from circumstances beyond the control of the source owner or employee which causes no measurable increase in emission from a source."[2] [Emphasis added.]

In 1982, the House Committee on Energy and Commerce considered legislation which would have eliminated the "de minimis" standard from the law and substituted a requirement that applicants be in "substantial compliance" with existing consent agreements. Although the Committee supported the change, other parts of the bill not related to Stretchout were very controversial and thus the bill was never reported out of Committee. (H.R. 5252.)

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[1]H.R. Rep. No. 121, 97th Cong., 1st Sess. 10 (1981).

[2]S. Rep. No. 133, 97th Cong., 1st Sess. 4 (1981).

In implementing Stretchout, EPA was concerned that a strict interpretation of de minimis would sharply limit the statute's application to the extent that almost no companies could qualify. According to the former Deputy Associate Administrator for Enforcement Policy who was in charge of EPA's Stretchout program when the legislation was enacted, EPA was prepared to interpret de minimis so as to grant Stretchout to as many companies as possible. This official told us that EPA planned to consider a company's overall compliance record when determining whether a violation was de minimis. In a November 9, 1981, memorandum to the EPA Administrator recommending that Alabama By-Products Corporation's violations of existing consent decrees be ruled de minimis, the Deputy Associate Administrator wrote

> "Environmental groups may attack these determinations as not being within the meaning of "de minimis" contemplated by Congress, however we believe that a strict reading of the term would preclude virtually all steel companies from qualifying for an extension. Since Congress passed this statute specifically to give relief to the steel industry, we would argue that it could not have intended any definition which would necessarily deny them such relief."

On the same date as the above memorandum, the Assistant Attorney General in the Department of Justice's Office of Legal Counsel issued an opinion to the Assistant Attorney General, Land and Natural Resources Division, concluding that each violation by a company should be considered on its own merit and that a company's overall compliance record should not be taken into account to determine whether a particular violation is de minimis. Justice based its opinion on several factors, including the following:

- --It determined that Stretchout required that extensions be considered individually and not on a company-wide basis.
- --It could not find support that violations be measured against the company's total compliance with the Clean Air Act or outstanding consent decrees.
- --The traditional meaning of de minimis is "insignificant" or "insubstantial."

In a memorandum to Justice, EPA's General and Enforcement Counsels stated that this interpretation was so narrow that most companies might not be approved for Stretchout.

In response to a draft of this report, Justice emphasized that "the Act was the result of a carefully drafted compromise and that the choice of words was not inadvertent." Justice also stated that the de minimis requirement was suggested by an environmental organization in response to the steel companies' suggestion that they be required to be in "substantial compliance" with existing consent decrees to be eligible for Stretchout.

Therefore, Justice stated that de minimis has a narrower meaning than "substantial compliance.

Justice also pointed out in its response that representatives of the major steel companies testified that they were in compliance with all consent decrees and that the Chairman of National Steel Corporation acknowledged that any violation of a consent decree would render a company ineligible for Stretchout.

EPA, in carrying out the Stretchout program, followed Justice's interpretation in accordance with a memorandum of understanding between the two agencies. This memorandum, signed in June 1977, gives Justice control over all civil litigation to which EPA is a party. It requires that Justice must authorize and concur with any agreement which EPA reaches with other parties before it can be filed in court. In addition, according to the former Deputy Associate Administrator for Enforcement Policy, EPA did not ask Justice to reconsider the interpretation because (1) the office in Justice which issued the opinion is the office where legal interpretation matters are ultimately resolved and (2) any reconsideration would have taken time which would have reduced Stetchout's benefits to the participating steel companies. EPA generally took a broader view than Justice on how to define and apply the de minimis standard. However, in three of four cases where disagreement existed about some violations by a company, other violations by the same company were not de minimis by both EPA and Justice standards, thus rendering the companies ineligible for Stretchout.

In reviewing Stretchout applications, EPA determined that the Rouge Steel Company was the only one of 10 applicants that did not have violations of existing consent decrees. By February 1982, EPA had also found that violations of existing consent decrees by three other applicants[3] were de minimis. If an existing violation would not preclude the company from meeting its final compliance date, the violation was considered de minimis.

EPA determined that the six other applicants[4] could not be approved for Stretchout because their violations of interim dates would preclude them from meeting final compliance dates already established in existing consent decrees. However, these six firms still had the opportunity to have violations ruled de minimis if they could show EPA that they would meet final compliance deadlines by expediting delivery of materials and construction efforts.

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[3]Alabama By-Products Corporation, Sharon Steel Corporation, and Shenango Incorporated.

[4]Jones & Laughlin Steel Corporation, Inland Steel Company, National Steel Corporation, Kaiser Steel Corporation, United States Steel Corporation, and Wheeling-Pittsburgh Steel Corporation.

The de minimis problem for two of the six companies was subsequently resolved. Due to the poor economy, United States Steel and Wheeling-Pittsburgh Steel shut down some facilities which were not in compliance with existing consent decrees (see p. 15 for further discussion of the economy). The companies' other noncompliance items were ruled de minimis by EPA because either significant progress had been made to correct them or they were "late maturing." A late maturing obligation was an existing consent decree deadline which fell due after Stretchout's enactment and was also the subject of the companies' extension requests. In this situation, EPA determined that neither company would have to continue spending on pollution control projects (for which compliance deadlines extensions had been sought) while their Stretchout applications were being processed. Such continued spending could have resulted in these projects being completed before application approval and, consequently, leaving less funds available for modernization. EPA believed that this would have defeated the purpose of the Stretchout legislation, which was to free up money for plant modernization by deferring air pollution control spending, and ruled such violations as de minimis. Because the act's other requirements were met, these two companies became eligible for Stretchout.

In the end, 4 of the 10 applicant companies did not resolve the de minimis issue with EPA. Inland Steel, Kaiser Steel, and National Steel withdrew their applications after EPA indicated that it would not approve them for Stretchout due to the companies' consent decree violations. Jones & Laughlin Steel did not withdraw, but EPA eventually denied its application on the grounds of the company's violations. Because these four companies did not participate in Stretchout, the potential modernization spending was reduced by $587 million, as shown in the following table.

Company	Proposed modernization
	(millions)
Inland Steel Company	$167
Jones & Laughlin Steel Corporation	320
Kaiser Steel Corporation	- (Note, p. 8)
National Steel Corporation	100
	$587

According to the senior EPA attorney who supervised the Stretchout program, if EPA had not used Justice's interpretation of de minimis, Inland Steel Company, with its proposed modernization of $167 million, might have been included in the Stretchout program. However, the other three companies would not have been approved.

OTHER FACTORS REDUCED NUMBER OF PARTICIPANTS AND MODERNIZATION

Several other factors were instrumental in reducing the number of Stretchout participants and the money spent on

modernization. In general, less money was spent because EPA or the company determined that less pollution control funds were eligible to be diverted for modernization projects. Likewise, many companies did not participate in Stretchout because they could not afford to use diverted pollution control funds for modernization purposes. More specifically,

--the companies overestimated costs for some pollution control projects for which the diversion of funds and compliance deadline extensions were being sought;

--EPA determined that some of the proposed air pollution control projects were not eligible for compliance deadline extensions;

--unanticipated technology improvements reduced the estimated cost of certain air pollution control projects;

--several facilities achieved final compliance with air pollution standards by December 31, 1982, thus eliminating the need for extending the deadlines;

--EPA reached agreement with two companies that some of the proposed pollution controls were not necessary; and

--the impact of the nation's economic recession on the steel industry limited the ability of several companies to fund modernization projects.

United States Steel Corporation was affected by all six of these factors. Based on EPA estimates, these resulted in a 93 percent reduction in United States Steel's modernization spending commitment ($181.5 million of the $195 million proposed), as shown in the following table.

Factor	Reduced modernization (millions)
Cost estimates too high	$35.5
Nonqualifying projects	42.5
Technology improvements	13.9
Final compliance reached	23.0
Controls not needed	49.4
Poor economic conditions	17.2
	$181.5

Following is an explanation of how these factors affected United States Steel and other companies.

United States Steel's initial application in September 1981 involved 21 air pollution control projects for which Stretchout was being sought. EPA allowed the company to use less costly

controls on five projects. EPA recomputed the company's estimated cost of six other projects based on its (1) experience with similar projects and (2) discussions with United States Steel and suppliers of the equipment that was proposed. As a result, the estimated cost of these 11 projects was reduced by $35.5 million, which reduced potential modernization spending by the same amount.

United States Steel's initial Stretchout application included three pollution control projects, totaling $42.5 million, which EPA determined did not qualify. Two of these projects did not qualify because United States Steel was applying to extend the compliance date to December 31, 1985, without installing additional pollution control equipment. The equipment would have cost $39 million if installed, but United States Steel was only proposing to extend the compliance date and then close the facilities without installing the additional equipment. EPA ruled these proposals ineligible, thus reducing United States Steel's proposed modernization spending by $39 million. The third project--a $3.5 million project at a fuel distribution facility--was ruled ineligible in August 1982 because it was not subject to any federally approved air pollution control requirements.

As discussed in chapter 2, United States Steel developed a highly cost-effective emission control process. Because of this new process, United States Steel lowered its costs for certain pollution control projects by about $13.9 million. Sharon Steel Corporation adopted the same process and lowered the cost of its two projects from an estimated $8 million to $3 million. Corresponding modernization spending was therefore reduced the same amount by the two companies.

United States Steel continued spending on air pollution control projects subsequent to its Stretchout application. By December 31, 1982, it had completed seven projects, thus making Stretchout unnecessary for these projects. This reduced the amount eligible under Stretchout by $23 million.

United States Steel's Stretchout application included the cost of air pollution control equipment at four facilities. EPA determined later that this equipment was not necessary to reach compliance. This unnecessary equipment would have cost $49.4 million, but because it was eliminated from the company's application, proposed modernization under Stretchout was reduced the same amount.

Implementation of the Stretchout program coincided with difficult times for the U.S. economy in general and for the steel industry in particular. An economic recession began in mid-1981 and continued through 1982, a disastrous year for the domestic steel industry. Demand for steel was at record lows and steel imports were at record highs. Most steel companies reported financial losses for the year. Total domestic steel industry shipments were about 59.8 million tons--the lowest level since 1949. Plant capacity utilization was only about 47 percent, far

Committee had based its estimate for capital resources in the steel industry. These poor market conditions were cited by industry officials as a major contributing factor for companies not applying for Stretchout and for reduced modernization spending commitment by those companies approved for Stretchout.

According to a legislative representative of the American Iron and Steel Institute, based on discussions with steel company representatives, a major reason most companies did not apply for Stretchout was that they were reluctant to commit funds deferred from air pollution control equipment to modernization at a time when the steel market was down and their financial future was uncertain.

Bethlehem Steel and Republic Steel Corporations (the second and seventh largest producers, respectively) were two of the largest companies that did not apply for Stretchout. Senior attorneys and environmental control directors from these two companies told us that negotiating consent decrees with EPA would be too costly and time-consuming and that committing funds deferred from air pollution control equipment to modernization was too financially difficult because of the poor economy.

The poor economy also contributed to reduced modernization commitment by those companies approved for Stretchout. For example:

--Between August and December 1982, United States Steel shut down five production facilities due to the poor economy. Stretchout had been initially approved for these facilities. Prior to shutdown, the company had proposed $17.2 million in modernization at these five facilities.

--In June 1982, Shenango Incorporated withdrew from the program because of the poor economy, even though EPA had preliminarily approved $3.36 million in modernization commitments.

APPLICATION REVIEW PROCESS WAS LENGTHY

Because of the importance of implementing the Stretchout program quickly and providing relief to the ailing steel industry, the law stated that EPA regulations for implementing Stretchout were not required. The Congress hoped that this would shorten the time EPA needed to start implementing Stretchout. To expedite handling of applications, EPA developed an implementation manual which discussed the role of each responsible group in EPA and provided examples of policy papers, Federal Register notices, and letters which would be needed in the approval process. Although the manual outlined what EPA considered as a best-case scenario, a 90-day application review process, actual review times took considerably longer.

The following table shows the processing time from initial application by each company to final disposition.

Application Review Times

Company	Elapsed time (days)	Outcome
Rouge Steel Company	171	Approved
Alabama By-Products Corporation	268	Approved
United States Steel Corporation	464	Approved
Sharon Steel Corporation	490	Approved
Wheeling-Pittsburgh Steel Corporation	495	Approved
Jones & Laughlin Steel Corporation	414	Denied
Kaiser Steel Corporation	211	Withdrew
National Steel Corporation	234	Withdrew
Shenango Incorporated	236	Withdrew
Inland Steel Company	269	Withdrew

The application review process for all 10 companies substantially exceeded the 90-day period. Rouge Steel Company experienced the fastest review--171 days. The average review time for the approved companies was 378 days. Even those companies that withdrew and were not subjected to the full review process experienced review times ranging from 211 to 269 days.

The involvement of various EPA offices, Justice, state and local governments, labor unions, and environmental groups resulted in a complex, time-consuming application review process. For example, in August 1981 (about 3 weeks after Stretchout's enactment) EPA held a meeting on United States Steel Corporation's application. This meeting involved 24 people representing EPA headquarters and three regional offices, an EPA contractor used for assistance in reviewing Stretchout applicants' financial data, two states, one county, and the company. Appendix II describes EPA's seven-step review procedure and shows the linkage of these various parties and the complexity of the review process.

According to a senior EPA attorney involved with reviewing Stretchout applications, most initial applications did not contain sufficient information for EPA to make an adequate determination of eligibility. When the information was insufficient, EPA would request additional information from the company. In addition, some companies voluntarily submitted additional data which required EPA's review. As a result, the average time needed by applicants in supplementing their initial applications took about 6 months, as shown below.

Number of Supplements and Days Lapsed

Applicant name	Number of application supplements filed	Days needed to develop sufficient application information
Rouge Steel Company	1	7
National Steel Corporation	4	35
Alabama By-Products Corporation	1	36
Shenango Incorporated	2	54
Kaiser Steel Corporation	3	94
Inland Steel Company	4	116
Sharon Steel Corporation	4	116
Jones & Laughlin Steel Corporation	5	374
United States Steel Corporation	8	414
Wheeling-Pittsburgh Steel Corporation	6	500
Average	3.8	187

The five participants approved for the Stretchout program and the one company denied by EPA averaged about four supplements and over 8 months to supply sufficient information to EPA.

According to an EPA attorney involved with Stretchout negotiations, much of the additional information EPA requested dealt with (1) financial data, (2) status of compliance with previous consent decrees (whether any violations were de minimis), and (3) the eligibility of projects proposed for Stretchout. For example, after receiving Sharon Steel Corporation's initial application in October 1981, EPA requested information on the proposed modernization projects in November. EPA then questioned the eligibility of one of the two modernization projects in Sharon Steel's December response and requested additional information in January 1982. Sharon Steel's response, also in January, was sufficient for EPA. However, in January, EPA questioned whether two violations of existing consent decrees were de minimis and requested compliance status information. EPA accepted Sharon Steel's response, but Justice believed the information was inadequate. Sharon Steel's second response in January was also accepted. In total, nearly 4 months elapsed while Sharon Steel furnished this supplemental information.

During the time used to furnish supplemental data to EPA, some companies continued spending under existing consent decrees. The Stretchout legislation (Section 113(e)(1)(E)) required that applicants comply with existing consent decrees until EPA and the company agreed to an amended decree under Section 113(e) and it was entered in an appropriate federal district court. In September 1981, EPA advised potential applicants that postponing actions required under existing decrees would jeopardize their Stretchout

applications (unless such violations could be viewed as de minimis) and that they would bear the risks of subsequent enforcement action.

Two successful applicants--Rouge Steel Company and Sharon Steel Corporation--continued to spend on pollution control projects as required by existing consent decrees even though these projects were included in their Stretchout applications. Rouge Steel spent about $1 million on two air pollution control projects required by its existing consent decree. The company later eliminated one project in January 1982 in favor of more cost-effective technology agreed to in its Stretchout consent decree in February 1983. Sharon Steel initially suspended spending in anticipation of a quick review process but incurred additional expenses to catch up with the schedule in its existing consent decree and avoid violations which could have jeopardized its eligibility. However, the lengthy review process enabled these two companies to benefit from refinements to new pollution control technology. (See p. 9.)

Jones & Laughlin Steel Corporation applied for Stretchout in November 1981 and suspended some pollution control spending under several consent decrees in anticipation of a quick review process. However, the review took about 14 months. The company's application was denied because of continuing violations dating back to September 1980. EPA then filed motions in January 1983 seeking enforcement of the existing consent decrees and $108.7 million in penalties for missing deadlines which fell due during the application review period. Jones & Laughlin Steel brought suit against the United States in January 1983, claiming that EPA improperly interpreted the de minimis standard in denying its application and seeking extension of its compliance dates as set forth in its Stretchout application. EPA and Jones & Laughlin Steel settled the cases in March 1984. The settlement included the dismissal of the company's suit and (1) establishes new schedules for installing air pollution controls and demonstrating compliance with the Clean Air Act, (2) requires the company to pay a civil penalty of $4 million--the largest ever under the Clean Air Act, and (3) requires the company to undertake additional air pollution control projects valued at $10 million.

STRETCHOUT'S FUTURE IMPLICATIONS

In the past, the Congress has considered proposed legislation extending other pollution control compliance deadlines. For example, in 1982 the House considered a bill (H.R. 5252) amending the Clean Air Act which could have resulted in extending compliance dates for states to achieve the national ambient air quality standards up to 1993. In 1983, the Senate considered amending the Clean Water Act to extend compliance deadlines for industry until 1987 (S. 431 and S. 432). Also, the proposed Regulatory Policy Act of 1983 (S. 1736) would have established a process for making adjustments in regulatory programs, such as extension of compliance deadlines. If in the future the Congress considers legislation to extend pollution control or other regulatory

compliance deadlines, the experiences from the Stretchout program should be considered. This would be particularly desirable when de minimus requirements are being considered as part of the criteria for program participation.

CONCLUSION

The de minimis provision of the law limited Stretchout's application because EPA determined that most applicant steel companies' violations could not be considered de minimis. Adding to the burden was the economic recession which hit the steel industry very hard and made many companies reluctant to commit large amounts of capital to modernize through mid-1983 as well as to purchase pollution control equipment through 1985. As a result, Stretchout's relief to the steel industry as envisioned by the Steel Tripartite Advisory Committee and the Congress had very little effect. Ten companies applied for Stretchout, and only five companies, committing $49 million on modernization over a 2-year period, participated in Stretchout. Either a clear definition of the de minimus provision or alternative language--such as "substantial compliance," which was being considered at one time during congressional deliberations--might have enabled EPA to determine that more companies were eligible for Stretchout.

The Congress has considered legislation to extend regulatory compliance deadlines. The experience with the Stretchout program provides useful information should the Congress consider similar programs in the future. This is particularly true with regard to the need to clearly define program participation criteria.

RECOMMENDATION TO THE CONGRESS

We recommend that, in considering any future legislation which extends pollution control or other regulatory compliance deadlines, the Congress specifically define the criteria that EPA or other agencies should use to determine program eligibility.

AGENCY COMMENTS AND OUR EVALUATION

As stated previously, in commenting on our draft report, EPA generally agreed with the conclusions and recommendations in the report.

Justice, in its comments on the draft report, agreed with the recommendation to the Congress and stated that if crucial terms such as de minimis were clearly defined in any similar legislation much confusion and delay could be avoided. Justice said that resolving these issues in the Congress is far preferable to leaving them to the enforcement or judicial process for resolution.

Other comments were provided by EPA and Justice to help clarify some of the issues discussed in chapter 3. All these suggestions were incorporated in the report.

LARGEST U.S. STEEL PRODUCERS IN 1982

Company	Tons produced	Percent of U.S. total
1. United States Steel Corporation[a]	12,100,000	16.2
2. Bethlehem Steel Corporation	10,520,000	14.1
3. Jones & Laughlin Steel Corporation[c]	6,484,000	8.7
4. National Steel Corporation[b]	5,501,000	7.4
5. Inland Steel Company[b]	5,171,000	6.9
6. Armco Incorporated	5,100,000	6.8
7. Republic Steel Corporation	5,086,000	6.8
8. Rouge Steel Company[a]	2,204,000	3.0
9. Wheeling-Pittsburg Steel Corporation[a]	1,818,173	2.4
10. Nucor Corporation	1,216,000	1.6
11. Korf Industries Incorporated	1,175,000	1.6
12. Sharon Steel Corporation[a]	1,053,800	1.4
13. Kaiser Steel Corporation[b]	873,000	1.2
14. North Star Steel Company	861,285	1.2
15. CF&I Steel Corporation	793,552	1.1
Total	59,956,810	80.4

[a]Participated in Stretchout.

[b]Applied for Stretchout but withdrew.

[c]Applied for Stretchout but was denied.

Source: Metal Statistics 1983, p. 167

Note: In 1981, the Lone Star Steel Company was the eleventh largest steel producer in the U.S. However, it did not report its 1982 production so we have not included it in this table.

APPENDIX II

EPA'S STRETCHOUT REVIEW PROCEDURE

(1) Upon receipt of an application, EPA published the required Federal Register notice and notified all intervenors[1] and affected state and local units of government. If the applicant was not subject to a federal consent decree or a Clean Air Act enforcement action, a complaint was filed in the appropriate federal district court(s) to provide a forum for potential intervenors.

(2) EPA quickly reviewed the application to identify data omissions or deficiencies and advised the applicant of possible additional information requirements.

(3) Once EPA determined that a compliance deadline extension was likely to be granted, negotiations on the substance of the actual decree began. Affected states and official intervenors could attend all negotiating sessions. Because these decrees were comprehensive and on a company-wide basis, negotiations began as soon as possible.

(4) Once EPA decided to grant an extension, it published its findings in the Federal Register.

(5) Consent decree negotiations continued after EPA's publication of findings in the Federal Register so that EPA's interests could be incorporated in the consent decree.

(6) Assuming a consent decree(s) was successfully negotiated, the decree(s) was filed in all federal district courts where the applicant had emission sources covered by the decree. The Department of Justice then published a notice under 28 CFR 50.7 and accepted public comment.

(7) After the appropriate public comment period and evaluation of such comments by EPA and Justice, the decrees were submitted to the federal district courts for approval.

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[1]Intervenors referred to here are parties, typically environmental advocacy organizations or local units of government, which had formally joined the federal government in legal actions (complaints) against the corporation alleging Clean Air Act violations.

APPENDIX III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
POLICY, PLANNING AND EVALUATION

MAY 31 1984

Mr. J. Dexter Peach
Director
Resources, Community and
Economic Development Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Peach:

On April 25, 1984, the General Accounting Office (GAO) issued a draft report entitled "The Steel Industry Compliance Extension Act Brought About Little Modernization" for the Environmental Protection Agency's (EPA's) review and comment. The Agency, as required by Public Law 96-226, has prepared this formal response expressing views on the draft report. Comments on specific passages of the report are found in the enclosure.

Implementing the Steel Industry Compliance Extension Act has been complex, and GAO is commended for the clear, accurate reporting of this complicated program. We generally agree with the conclusions and recommendations set forth in the report.

I hope that these comments assist GAO when preparing the final report. We appreciate the opportunity to review and comment on draft reports prior to their issuance.

Sincerely yours,

Milton Russell
Assistant Administrator
for Policy, Planning and Evaluation

Enclosure

APPENDIX III

Specific Comments on GAO Draft Report,
"The Steel Industry Compliance Extension Act
Brought About Little Modernization"

Pages 11 and 17

The report indicates that two of the five companies applying for stretchout "had to incur substantial additional cost because EPA's review of the applications took much longer than anyone, including EPA, had anticipated," page 11. The report is apparently referring to the Rouge Steel Company and the Sharon Steel Corporation, page 21. It should be pointed out that the lengthy review process also enabled the companies to benefit from the refinements to blast furnace casthouse control technology that occurred during this period of time. While the application review period was progressing, suppression technology was developed to the point where EPA accepted it as a means for controlling blast furnace casthouse emissions. As noted by the report, this is a much less costly control technique than what was previously available. For example, Sharon saved $5 million in blast furnace casthouse control costs as a result of its implementation of this newly-developed control strategy. The Rouge Steel Company also realized substantial cost savings by implementing suppression technology.

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The report indicated that two companies (the Wheeling-Pittsburgh and United States Steel Corporations) resolved initial de minimis problems by shutting down the facilities which were not in compliance with existing judicial decrees. The reasons for these shutdowns should be clarified. Because of the legislative history applicable to source shutdowns, EPA was very careful in determining whether the cessation of operations at a violating facility corrected an otherwise non-de minimis violation. The Congressional Conference Report states "it is not the policy of the Clean Air Act or the intent of Congress that air quality standards or emission limitations be met by cutbacks in production or reductions in employment" (H. Rept. No. 97-161, page 6). This same policy of avoiding cutbacks in production or reductions in employment is reflected in the Senate Committee report (S. Rept. No. 97-133, page 6). United States Steel shut down some of its sources which were not in compliance with existing consent decrees because of the poor state of the economy. In a May 24, 1982, letter from P. X. Masciantonio, the United States Steel Corporation certified by signed affidavits that the sources were shut down because of the "low level of actual and projected shipments."

APPENDIX III

The "late maturing date" concept was applied to the other U.S. Steel violations. Wheeling-Pittsburgh Steel also shut down some of its facilities which were not in compliance with existing decrees because of the poor state of the economy.

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The report attributes some of the reduction in the modernization expenditures initially proposed by the companies applying under the Act to determinations by EPA that some of the pollution controls were not necessary. While the conclusion is correct, it would be more precise to indicate that the reductions in projected modernization occurred because the companies subsequently argued, and in some cases EPA agreed, that certain emission limitations could be met without the implementation of additional capital programs for pollution controls. As the stretchout review process progressed, applying companies generally sought to minimize their modernization commitments. Because an extended pollution control schedule in essence doubled a company's financial commitment (the cost of compliance plus an equal amount targeted to modernization), the steel companies attempted to minimize the number of compliance extensions and the control costs associated with each extension.

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In its discussion of the factors that reduced modernization commitments by the United States Steel Corporation, the draft indicates that ..."a $3.5 million project at a fuel distribution facility was ruled ineligible in August 1982 because EPA had not established emission limitations for this type of project." However, the project was ruled ineligible for an extension under the Act because the affected source was not subject to any requirements under the Federally-approved State Implementation Plan. Under the Stretchout Act, extensions are only appropriate for sources "not in compliance with the emission limitation requirements of an applicable implementation plan," section 113 (e) (1).

Page 20

Two points should be raised concerning the discussion of the contempt actions which were filed against the Jones & Laughlin Steel Corporation. The report indicates that the Corporation was sued "for missing deadlines which fell due during the application review period." This creates the invalid inference that had EPA's review time been shorter, the Corporation would have been eligible for stretchout.

The government's suit was based, in part, upon violations of judicial decrees which occurred before stretchout was enacted and before the Corporation applied under the Act. The violations which occurred prior to stretchout enactment also formed the basis for EPA's denial of the Corporation's stretchout application. For example, the Pennsylvania decree required the Corporation to place purchase orders for pushing controls at its Aliquippa A-1 coke battery by September 2, 1980. Commencement and completion of installation of the controls were due by March 15, 1981, and February 15, 1982, respectively. Compliance was required by March 15, 1982. The decree also required the Corporation to comply with the emission standard for coke oven gas desulfurization at the Pittsburgh Works by September 1, 1980, and to continuously operate the existing desulfurizer in compliance with the standard on and after March 25, 1981. All of these requirements were violated by the company.

The Stretchout Act was enacted on July 17, 1981. The Corporation submitted its initial application under the Act on November 9, 1981. The violations cited above, as well as violations of the Ohio judicial decree, occurred prior to the passage of the Act and continued during EPA's review process. These violations of existing consent decrees formed the basis for EPA's denial of the Corporation's application. These violations, as well as violations which occurred subsequent to the passage of the Act, also formed the basis of the government's contempt actions. The admittedly long review time on the Corporation's stretchout application, which occurred in part to afford the Corporation an opportunity to supplement its deficient application, did not affect the Corporation's eligibility under the Act.

The report also indicates that the government's contempt actions were settled in March 1984 and are awaiting court approval. We suggest that the Agency provide a brief explanation of the terms of the settlement. The proposed settlement agreements establish new schedules for the installation of air pollution controls and demonstration of compliance with the Clean Air Act. The settlements also require the company to pay a civil penalty of $4.0 million dollars and to undertake air pollution control projects which will yield environmental benefits beyond what is required by Federal and State law. The settlement agreements were negotiated to ensure more stringent provisions than what would have been required if the company had been eligible for stretchout. A larger civil penalty was imposed and more expeditious compliance was required.

[GAO note: Page references in this appendix which referred to our draft report were changed to reflect their location in this final report.]

APPENDIX IV

U.S. Department of Justice

Washington, D C 20530

May 30, 1984

Mr. William J. Anderson
Director
General Government Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

This letter responds to your request to the Attorney General for the comments of the Department of Justice (Department) on your draft report entitled "The Steel Industry Compliance Extension Act Brought About Little Modernization."

The draft report has been reviewed by organizational components within the Department having an interest in the subject of the report. While we consider the General Accounting Office's (GAO) description of the facts surrounding the interpretation and application of the "de minimis" provision of the Steel Industry Compliance Extension Act of 1981 (referred herein as the Act or Stretchout), 42 U.S.C. § 7413(e) to be generally accurate, we are offering three comments which relate to (1) the "de minimis" provision, (2) the appropriateness of assumptions made concerning the Act's results, and (3) our belief that the report would present a more balanced perspective of the effects of the Act by including a basic description of the United States settlement with the Jones & Laughlin Steel Corporation.

With respect to GAO's description and observations of the "de minimis" provision in the Act, there are certain points we suggest be inserted into the discussion on pages 11-13 of the draft report.

1. The report should emphasize more clearly that the Act was the result of a carefully drafted compromise and that the choice of words was not inadvertent. As noted in the Office of Legal Counsel's opinion, 1/ the use of "de minimis" as the standard was suggested by Ms. Frances Dubrowski, the representative of the Natural Resources Defense Council on the Steel Tripartite Committee's working group on environmental issues. It was made in response to the steel companies' suggestion that the test be "substantial compliance." This certainly suggests that "de minimis" has a narrower meaning than "substantial compliance."

1/ Memorandum to Carol E. Dinkins, Assistant Attorney General, Land and Natural Resources Division, from Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel, November 9, 1981 at 5.

2. Representatives of the major steel companies in fact testified that they were in compliance with all their consent decrees at the time the Act was under consideration. Steel Industry Compliance Extension Act of 1981: Hearings on S. 63 Before the Senate Committee on Evironment and Public Works, 97th Cong., 1st Sess. 47 (1981). The Chairman of the National Steel Corporation acknowledged that:

> Any violation of the agreement [i.e., the consent decree] would in turn make us ineligible under the provisions of H.R. 1817 if it becomes law.
>
> For these reasons, we and others need this amendment very soon if it is to have any benefit toward a rapid modernization of the industry.

Steel Tripartite Committee Proposal: Hearings on H.R. 1817, H.R. 2024, H.R. 2219, H.R. 2055, H.R. 2286 Before the Subcommittee on Health and the Environment of the House Committee on Energy and Commerce, 97th Cong., 1st Sess. 65 (1981). The steel industry argued vigorously that it needed this legislation for the very reason that it was spending all its money on compliance and had nothing left for modernization.

3. We agree that much confusion and delay could be avoided in similar legislation if crucial terms such as "de minimis" were clearly defined in the law. However difficult this may be in legislation that is the result of compromise and where varied interest groups have a stake in leaving terms ambiguous, the result of facing and resolving these issues in Congress is far preferable to leaving them to the enforcement or judicial process for resolution.

One underlying assumption of the report is that the industry could have been "expected" to spend "$500 to $700 million on modernizing plant and equipment" under the Act. These estimates were not entirely realistic, and are not necessarily a fair measure by which to judge the success of the Act. This conclusion is borne out by later discussion in the report, acknowledging that companies (1) made initial overestimations of the cost of some pollution control projects for which compliance deadline extensions were being sought, (2) did not consider the impact of technology changes on project cost estimates, (3) submitted air pollution control projects which the Environmental Protection Agency (EPA) ruled ineligible (these were presumably included in initial estimates of expenditures which could be deferred), (4) achieved final compliance by December 31, 1982, or (5) proposed unnecessary pollution controls. Moreover, some of these companies may have been precluded from maximum participation in Stretchout by other economic factors, such as market conditions (Report, pp. 15-18).

A second questionable assumption is that the industry only committed $49 million to modernization as a result of the Act (Report, p. 8). Although it is true that the consent decrees negotiated under the Act only required $49 million in modernization, there is reason to believe that more was actually spent. For example, the amount of required modernization for the U.S. Steel Corporation was reduced by $13.9 million because of technology improvements which reduced pollution control costs. Because this $13.9 million was not

required for pollution control, it may well have been diverted to actual modernization. In order to get the full picture, we would suggest that GAO undertake a quick poll of all applicant companies to ascertain how many of the modernization projects were in fact constructed, and at what cost.

Finally, we believe the report will more accurately portray the results of the program if it contains a description of the settlement between the United States and Jones & Laughlin Steel Corporation. As written, the report only alludes to this settlement (Report, p. 20). In fact, the settlement resolves outstanding consent decree violations and includes dismissal of Jones & Laughlin Steel's challenge to a Stretchout participation denial. The company agreed to undertake pollution control projects valued at $10 million, in addition to statutory requirements, and to a cash civil penalty of $4 million--the largest ever under the Clean Air Act. It is difficult to see how, under any construction of the term "de minimus," the EPA Administrator could have allowed the company to participate in the Stretchout program.

We appreciate the opportunity to comment on the report. Should you have any questions regarding our comments, please feel free to contact me.

Sincerely,

William D. Van Stavoren
Deputy Assistant Attorney General
for Administration

[GAO note: Page references in this appendix which referred to our draft report were changed to reflect their location in this final report.]

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