

The Regulation of Mud Flaps

By April of 1983 James R. Lockwood, Vice-President for Marketing of the Koneta Rubber Company of Wapakoneta, Ohio, knew that his firm was fighting for its life. Four months before, in a lame-duck session of the 97th Congress, Senator John Danforth (Republican-Missouri) had successfully attached a midnight amendment to a five cent-a-gallon gas tax bill to require the Department of Transportation (DOT) to issue regulations that would require all trucks to use mud flaps that would reduce their splash and spray by at least 75 percent on the tests used by DOT. Lockwood knew that the law and the resulting regulations were written so that only one manufacturer's mud flaps could qualify—those of the Monsanto Company of St. Louis, Missouri.

Until 1979 Monsanto had never produced mud flaps for vehicles. At that time the industry was made up of nine relatively small firms—the Akro Corporation, Koneta Rubber, Lotridge Rubber, the Rondy Corporation and the Roppee Rubber Corporation, all of Ohio; the Poly-Jec Corporation of Michigan; the G-P Manufacturing Corporation of Illinois; Caple-Shaw Industries of Texas; and the National Rubber Corporation of Canada. In the past, given the nature of their business, none of these firms had spent very much on advertising their products, concentrating instead on personal selling.

Then Walter Reddaway entered the picture. In 1979, Reddaway, an Oregon trucker, was washing out his garage. He noticed that when he pointed his garden hose toward the garage floor the water splashed in all directions, but when he pointed the hose at a broom the splash was greatly reduced. He then picked up his wife's new Monsanto Astroturf doormat. When he pointed the hose at the doormat almost all the water dropped to the ground. He then went out, bought several more mats, cut them up and glued them to his truck's existing mud flaps. The Reddaway (or fuzzy) mud flap had been born.

Reddaway patented his new design and took his idea to Monsanto. Through persistence he managed to see the company's CEO who liked the product as it would allow Monsanto to increase its production of Astroturf. Monsanto then purchased Reddaway's patent and entered the mud flap market. Unlike the existing firms in the market, however, Monsanto poured several millions of dollars into an advertising campaign. It also developed video presentations showing off the virtues of its new product and displayed it at a variety of auto and trucking shows. But the new product did not sell.

Monsanto then decided that a political strategy might work where its marketing strategy had failed. It invited representatives of all the major mud flap manufactures (including Jim Lockwood) to its Washington offices for a meeting. At the meeting the Monsanto representatives proposed that the mud flap manufacturers unite to push a bill through Congress that would require all trucks on US roads

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to be fitted with mud flaps. Feeling that Monsanto was trying to use their support to gain a foothold in their market the representatives of the other firms refused to cooperate.

Monsanto's representatives then approached Senator Danforth. Danforth, who had a long interest in highway safety issues, was chairman of the Subcommittee on Surface Transportation of the Senate Committee on Commerce, Science, and Transportation. He faced the prospect of a difficult reelection battle in the fall of 1982 against Missouri's popular Secretary of State Harriet Woods. In the past Monsanto had supported Danforth. Before the 1982 campaign was completed the company's Political Action Committee would contribute \$4,000 to the Senator's reelection effort.

Monsanto's greatest advantage was that Danforth was deeply committed to improving highway safety and had a long record of introducing and supporting measures that would strengthen federal safety regulations of the trucking industry. Monsanto showed its promotional film—which stressed the safety aspects of its new mud flaps—to Danforth who was excited over the prospect of this new device that could save lives. The senator often told of how a Missouri mother of five had recently been killed when she was blinded by the spray from a truck and drove into a concrete abutment. He also admitted, however, that Monsanto's success in selling its new product could help Missouri. As his press secretary, Steve Hilton, put it, "We hope it creates some Missouri jobs, but we do not view it as a one-company provision." Danforth rejected arguments that the proposed regulation would give Monsanto a competitive, if not a monopoly, advantage. "Frankly, if our industry has deteriorated to the point where only one company can figure out how to build a better mud flap, we're in pretty bad shape," he stated.

Senator Danforth took advantage of the crush of business that is typically associated with the end of a Congressional session. In 1982 one of the last issues tackled by Congress was a five cent-a-gallon increase in the federal tax on gasoline in order to raise revenue to decrease the federal deficit. Danforth brought up his amendment—that required the National Highway Traffic Safety Administration (NHTSA) to issue regulations that would require installation within two years of spray-reducing mud flaps on new trucks and trailers operating on interstate highways—close to midnight as the session was drawing to a close. In the press to enact the needed revenue legislation no one questioned the merits of the Senator's amendment and it was passed on a voice vote in the Senate and was accepted by the House conferees.

By April of 1983 Lockwood knew that Monsanto had pulled off a coup. The new regulation would lead to additional sales of mud flaps that according to DOT would generate \$620 million in revenues (or \$1 billion in revenues according to the American Trucking Association). But Lockwood knew that he had some potential allies. The regulators of the NHTSA were not sure that the new mud flaps would be effective. When it issued its initial set of regulations for comment, NHTSA asserted that it had "misgivings about the appropriateness with rule making at this time" because it was "unable to conclude" whether there were "practicable and reliable means" for improving the visibility of drivers following trucks and trailers. The only studies of effectiveness of the new flaps had been conducted in wind tunnels rather than in actual road conditions. Some experts believed that the only way to really cut down on the splash and spray thrown up by the trucks was to redesign the shape of the vehicles.

Others, both inside and outside of the Reagan administration, questioned the cost-effectiveness of the new devices. Estimates of the number of lives that would be saved by the new rule ranged from 990 to 73,800.

Several trade associations worried about the additional costs that would be imposed in their membership. The American Truckers Association worried about the additional cost that the regulation would impose on its members (approximately \$200 per truck or trailer). The American Association of Railroads argued that most of the 4.6 million trailers its members haul on flatbed (rail) cars were not widely used on highways and thus should be exempted from the new rule. It also questioned whether it would have to redesign its rail cars to accommodate the new mud flaps. These associations, however, were fairly quiet in their criticisms of the new rule since they did not want to be publicly perceived as being anti-safety.

Lockwood knew that while these other groups might be able to pass along the costs imposed by the new regulation, the small companies that made up the existing mud flap market faced extinction. Although five firms had introduced "fuzzy" mud flaps, none of these designs met the standard required by the new regulation.

His first action was to contact the Cincinnati law firm of Taft, Stettinius and Hollister. They referred him to their Washington office where he immediately met with one of the firm's partners, Randy Stayin. With Stayin's help Lockwood organized the Effective Spray Control Organization, whose membership consisted of the nine firms that controlled 80 percent of the mud flap industry.

The association, Lockwood, and Stayin's first task was to decide how they would argue against the proposed rule. They had to decide what type of arguments they should use to oppose the proposed regulations and then to undo the Danforth amendment. Should they use arguments based on the loss of economic efficiency? Or should they stress equity considerations—the unfairness of the proposed regulation?