Eight Rules to Live by for Effective Concrete Streets & Roads Advocacy

By Tim Kuebler, Vice President of Titan America Florida Business

As Senior Vice President, Tim Kuebler represented his company on the Executive Committee of the Florida Concrete & Products Association. Members of FC&PA include companies from the cement, aggregate and ready mix industries and every one had been hit hard by the economic downturn.

With Florida's building industry all but shut down, the association's leadership determined it was critically important to open up new markets and therefore set in motion efforts to wage the battle of concrete vs. asphalt in mainline paving and streets and local roads.

The objective was clear: To increase and maximize the use of locally produced, sustainable materials for mainline as well as local streets and roads concrete paving. This new campaign resulted in some successes, some shortcomings and a great deal of learning on how to advocate effectively. To assist others in the effort to develop effective streets and roads advocacy, Tim Kuebler has set down these eight rules to live by.

RULE 1
YOU CAN'T GO HALF-SPEED.
This argument has been fought for over 40 years in our state, resulting in concrete pavements which are few and far between. Florida is 98% asphalt and we needed to understand how that came to be in spite of all of our efforts.

What was found was that while our industry has never lacked for leadership, for a host of reasons we could never mount the unwavering campaign to get over the goal line. To begin with, we wanted it both ways: we thought we could gain market share without upsetting anyone, even our competitors, in the process.

Interests from throughout the transportation industry regularly put pressure on the concrete industry when we spoke up for ourselves, falsely claiming that such lack of unity can lead to diminished budgets on both the state and federal levels. Even at the beginning of this campaign, we were told we should sit and work with the asphalt industry in order to work out agreements on design specifications and life cycle requirements. We punched that ticket, so that it couldn’t be said that we weren’t willing to listen. As suspected, the meeting went nowhere and we moved forward unilaterally.

Additionally, every state faces the conflict that exists for those in our industry who have an aggregate division that sells to asphalt contractors. Further, we had an embarrassment of riches and we couldn’t mine and process enough material to keep up with construction demands. Was it really necessary to take this to the wall? (Every time our industry somehow made it to third base, we would manage to get picked off trying to steal second.)

If your organization truly wants to move this needle, input about how to drive the train has to be limited to those whose interests lie solely in reaching that objective. Our Association has lost members and has had a few heated Board meetings about how aggressive our approach should be. In the end, the leadership of the FC&PA has stayed committed to the mission and that strength in unity has signaled to everyone in this process that we are a force to be reckoned with.
RULE 2
KNOW YOUR TARGET AUDIENCE AND THEIR PRESSURE POINTS.

Florida’s Department of Transportation held an increasing amount of power in regard to Pavement Type Selection. Its design specifications and cost/benefit analyses of our materials on both streets and local roads, as well as for mainline paving, resulted in over-designs of concrete and under-designs of asphalt. Even as the price for our materials dropped, we were fighting an uphill battle with little or no chance of making real progress.

To compound matters, as the FDOT goes, so goes the local governments as to how they address the construction of their streets and roads. Until we make inroads in mainline, we can’t touch streets and roads.

The FDOT would sit down with us, talk to us and hear our concerns. However, nothing would change as the Department would engage in a host of tools at its disposal. Often it was practicing “Death by Question” or “Death by Hypothetical”, it was setting small fires for us to chase and put out or giving us small empty victories. At best, the meetings might result in what would later be understood as a hollow victory. It became a measured dance of “two steps forward, two steps back”.

The three biggest impediments in dealing with the FDOT were:

1) The FDOT has unconditional authority to decide pavements and no obligation to change anything. The Department’s guidance on pavements wasn’t based on state law or administrative code. Rather, it was based on manuals which are pointed to as obligatory when it suits its needs and suggestive, at other times, if that better serves a self-fulfilling prophecy. This lack of any legal input for our industry leads to our having to start from scratch every time there was a change in leadership and made it impossible for us to make true gains and to make certain those gains would be recognized in perpetuity.

Solution: We needed to establish some legally required process, either statutorily by a legislative action or administratively in an administrative code, where our input would have to be responded to by the FDOT to our satisfaction and where any gains would be institutionalized.

2) The FDOT wasn’t really going to listen to material suppliers on how they should build roads. We were cement producers, aggregate producers and ready mix producers, not road builders.

Solution: By attracting the concrete paving contractors to join our Association and lead the initiative, we would gain the credibility necessary in communicating with the FDOT. Therefore, we established the Concrete Paving Alliance of Florida as a division within the FC&PA that would subsequently prove critical in our making strides.

3) We thought we knew how the FDOT, the Legislature and State Government worked. We had the highest priced lobbyist in Tallahassee and we were well connected, but even with those attributes just scratched the surface as to what we needed to know. Without a confident and broad understanding of the process, you are flying blind and the FDOT and our detractors knew that.

Solution: Our Association went out of its way to hire a president who had over 20 years of experience in the government and the legislative process and had a reputation in Tallahassee as a highly worthy adversary. The FDOT and others knew immediately that we were suiting up for battle, if need be, and that we would be setting our own path rather than looking to them for direction.

Why would the FDOT be so hesitant to switch to concrete? To protect the “status quo”, and in this instance, the status quo is asphalt. In order to make meaningful change, and to change the status quo, they have to have a compelling reason to do so, and a shield should that change be proven to be the wrong choice.

It was our hope that by the time we were finished we would put together all the ingredients which would lead the FDOT into doing the right thing— that is to create a competitive playing field and finally have a competitive two pavement system in the state of Florida.
RULE 3
EXHAUST YOUR ADMINISTRATIVE REMEDIES, BUT PUT THEM ON THE CLOCK.

This initiative began in October 2008 with the belief that ultimately we would have to have the Florida Legislature put into law legislation which dictated to the FDOT a fair two pavement system. However, prior to our soliciting the support of senators and representatives, we needed to “exhaust our administrative remedies”. Invariably, a legislator will say, “I’d love to file that bill for you, but you need to talk to the agency and see if they are willing to compromise.”

Accordingly, a meeting was held with our members, FDOT Secretary Stephanie Kopelousos and her staff. The department didn’t have an “Aha!” moment and it didn’t profess the error of its ways, admitting that a 20-year asphalt design really lasts for 8-10 years and that “when in doubt” it added another inch to the concrete design. However, this first meeting was critical to our laying the groundwork as to what we expected from the FDOT, how we expected to be treated by the department going forward and the fact that we would only be so patient before we looked for a legislative solution.

Our contingency was comprised of both “good cops” and “bad cops” and we were giving them the opportunity to “do the right thing”. The meeting got heated with the Secretary ruffling at the request for “drop dead dates” for the return on answers to the questions we had for the Department. Even if they weren’t going to agree to deadlines, we were going to create deadlines in order thwart non-responsiveness or slow-walking. Some questioned the wisdom of taking such an aggressive posture with the department, but at 2% market share, we really didn’t have far to fall.

Numerous meetings with the FDOT would follow, where our members went in fully prepared with well-defined objectives and a choreographed approach. The meetings would end with a to-do list and plans for a follow-up meeting. Whether it was a life cycle cost comparison presented by Karl Watson, Jr. or a PowerPoint on the Mechanistic Empirical Pavement Design Guide by Dr. Mike Darter, we were going to present strong evidence that concrete should be the pavement of choice.

RULE 4
MAKE THE DECISIONMAKERS OWN THE DECISION AND THE OUTCOME.

People and organizations often make the mistake of personifying agencies rather than having the bureaucrats and government officials who make the decisions own the outcomes. “The Department of Transportation missed the deadline” rather than, “the assistant secretary John Doe missed the deadline”. On the other hand, it isn’t that “The Department was responsive”, it was “The FDOT Secretary who was responsive.”

Agency folks need to know that they will be dealt with respect, with fairness, but most importantly, they need to know that they will be dealt with as individuals, or else they can fade into the woodwork as the buck gets passed around and no one ever takes responsibility.

RULE 5
THE THREAT OF LEGISLATION CAN SOMETIMES BE AS GOOD AS OR BETTER THAN PASSING LEGISLATION.

“It’s easier to kill a bill than to pass one” is a statement that has been said frequently by detractors who wished to soften our resolve and keep us from getting off the mat. If we can’t pass a bill to get the agency to do something that would give us a greater opportunity to compete for mainline paving projects, what’s the point of investing the time and effort?

However, one of the many things we have learned is that agency heads don’t like getting up in front of any committee and speaking against any legislator’s bill. Nor do they wish to risk being questioned by some committee member who might have a host of grievances against their agency and may take that opportunity to unleash a barrage. In other words, don’t let the possibility of a bill failing preclude you from using it as a weapon to get the agency to the bargaining table. Keep moving forward without flinching.

Tim Kuebler testifying before the House Transportation and Economic Development Appropriations Committee
RULE 6
LOOK BIG, BE EVERYWHERE.
The FDOT needed to know that we just weren’t taking our case to them and wishing and hoping for some positive outcome. They needed to feel that our story was being told at every possible level.

On the political front, we engaged our state’s eight regional promotion groups to meet one-on-one with the 160 legislators in their district offices over the course of 2009. An actual constituent is the strongest contact your association can have with any politician and our RPG members went out in force; armed with scripts to tell their legislator that our locally produced, cradle-to-end-use products put more of their constituents to work than imported oil and it saves tax dollars. They left, asking the legislators to, “Check with the FDOT and ask them to let concrete fairly compete.”

During our state’s legislative session which runs for 60 days during the beginning of March, our industry held a fly-in which included a legislative reception and breakfast and over 90 meetings with legislators in their Capitol offices. Everyone checked their ego at the door and they took marching orders, directions and a script and ventured forth into a process that was foreign to many of them. For the first time, concrete was recognized as an independent voice in the political arena and not just another association that goes in lock-step with the overall construction and transportation interests.

While we were putting pressure on the FDOT through legislative channels, we were also utilizing contacts in the governor’s office to add to that effort. Following, our meeting with the governor’s deputy chief of staff whose policy area includes transportation, the governor’s office began “monitoring” the issue; just enough to keep the department moving toward the final decision we needed in order to ascertain our next step.

Our association participated, as best it could, in fundraising for candidates who supported our efforts. During one such reception, where I had showed up early enough to get a one-on-one with the representative, I was asked if I would be willing to present to the House Transportation and Economic Development Appropriations Committee. I accepted the invite and found myself testifying as to why the legislature should encourage the use of Florida made concrete. During my testimony, the FDOT secretary was called up to answer questions, and, as noted above in RULE 6, she wasn’t overjoyed to be answering questions as to when her department would be coming to a resolution.

While we had limited funds, we also needed to get some free and purchased media in order to look as though we had a groundswell. We hired a media consultant who organized plant tours which got television, radio and press coverage; we met with editorial boards, talked on radio shows and even bought a single billboard on a stretch of concrete road on I-95. That single billboard became legendary, as folks mistakenly reported seeing it from South Florida all the way up to the panhandle and we did nothing to correct that misperception.

On the web, we built a microsite and advertised on the Sayfierenview, the single most important political website in Florida, knowing that all the policymakers and elected officials would be checking in and would be reminded that concrete was the best possible choice for mainline.

The bottom line was that we weren’t trying to change the mind of every Floridian. For that matter, not every Floridian truly cares about the issue, even if some may argue that they should. The goal was to target the handful of decision makers by making them understand that we are knowledgeable, organized and committed.
RULE 7
YOU MUST HAVE ONE CHAMPION IN THE HOUSE AND THE SENATE.
By early 2010, we had made some inroads with the FDOT. However, while we were working on implementation of the MEPDG and the chairman of the Concrete Paving Alliance, Sam Joiner, was respected by the department’s leadership, there was no guarantee that any of the changes would be around longer than the administration. As such, we met with the Senate Chairman of Transportation and Economic Development Appropriations Mike Fasano. In the House, our champion was House Appropriations Chair David Rivera from Miami who was close friends with many of our South Florida members.

Both Senator Fasano and Representative Rivera had known our issues for years, but it wasn’t until then that everything had been lined up where legislation to address the need for a two pavement system was warranted. As stated, both wanted to be assured that we had done all we could to exhaust our administrative remedies and we had given the department ample time to do the right thing.

With the beginning of the 2010 session, it was strategically calculated not to do legislation; however, an amendment was prepared which could be placed on any transportation legislation. The amendment would mandate that all pavements would have to last for at least 20 years before maintenance is required. This would preclude the continued use of under-designed asphalt designs which require resurfacing well before they are projected. Also, the amendment would require a 40-year life cycle cost analysis in order to determine which pavement is the most economical beyond initial cost.

Most certainly, FDOT balked, asphalt balked and the road builders balked. However, we were resolute, telling the department that we had gone through the motions with it, including its continued over-designs of concrete and under-designs of asphalt even though they had made a commitment to address those issues.

The opposition was in a precarious position; no one wanted to tell committee chairmen they had to get up and speak against their amendment. Nor did they want to have to get up and defend what everyone had begun to view as status quo that was not so easily defensible.

Ultimately, the FDOT leadership handed out an olive branch. What it offered in return for not moving legislation in 2010, was to commence with rulemaking that would create a legally mandated Pavement Type Selection where the department reviews a project, make its findings and our industry is then afforded the opportunity to contest those findings should we disagree. In turn, the department must respond to our concerns and we subsequently have legal points of entry that allows us to formally protest should we believe that the department’s decision has been biased. The proposal by the department also included a mandated life cycle cost analysis.

The department believed that the existing statutes governing it allowed it the authority to implement such rules, so no further legislation would be needed. Following discussions with our sponsors, Senator Fasano drafted a letter to the secretary, outlining what he believed was the agreed upon direction of the proposed rule and, upon her acknowledgement, our industry agreed to forgo legislation and participate in the rulemaking process.
EVENTUALLY YOU HAVE TO WORK TOGETHER WITH THE DOT, BUT NEVER LET IT FORGET JUST WHAT IT IS YOU’RE CAPABLE OF.

Subsequently, rulemaking workshops were conducted with the department in order to outline a legal Pavement Type Selection which would allow for legal points of entry for our materials, as well as for asphalt. It was a major milestone for an agency to summarily divest itself of some authority and give legal standing to industry during the decision making process. It will be up to us to be persistent and vigilant in making certain that we maximize these tools in order to turn this ship. To assist our Concrete Paving Alliance Chair Sam Joiner, our association hired Tom Malerk, a retired 40-year veteran of the FDOT to be the FC&PA’s director of transportation engineering.

Two key ingredients which round out what we hope will move toward a two pavement system:
1) We respond to all Pavement Type Selections issued on all projects by the department, even those which we feel we currently have little chance of winning. Because even if we lose the war, there will be one or two battles within that project which we can take to the next PTS and insure that that particular concession made by the department is implemented in the next project; eroding the unfair disparity on initial cost over time.
2) The FDOT has established within the Department several committees which will optimize our designs and insure that the inputs in pavement design software are correct. Those committees include the Concrete Specifications Task Force, the Life Cycle Input Committee and the Rigid Pavement Committee. Also, the department is working with our industry to build a concrete test road on US 301 in North Florida in order to study a variety of concrete designs. We continue to maintain an active governmental advocacy component, including several more presentations before legislative committees; my participation on the governor’s transition team; a yearly fly-in to the Capitoll and candidate meet and greets during the election cycle. Our Regional Promotion Group members have turned their sites to those Streets and Local Roads on the county and municipal level and it is our hope that FDOT breaking bread with us will signal to those local government bureaucrats that they have coverage should they choose to do the right thing and use our highly sustainable, locally produced materials by a domestic workforce in plants that pays ad valorem taxes that are 9 times greater than our asphalt counterparts.

Our arguments are universal, but it is critical be united, be educated and to show no fear. You must create expectations, decision points and drop dead dates; otherwise you will always be working on a solution instead of implementing one.

How To guide for any state interested in legislating concrete paving:
I. Have consensus from the industry that this is a major initiative worthy of financial support.
II. Have an industry sponsor that has decision making ability.
III. Create your message and make sure all participants are staying on message.
IV. Find your legislative partners – the key elected positions that will carry your legislation and give proper care and feeding.
V. Exhaust all administration remedies.
VI. Prepare to compromise to get the job done.
VII. Update industry often.