Pandemic Effect on C&D Operations
5/1/20

Construction is starting back up to some degree in almost all states, which improves the opportunity to see more incoming material to C&D operations, participants in the C&D Recycling Association’s latest conference call with recyclers from across the United States. But dealing with employees, either keeping them busy to keep them employed, or installing protocols on how to get them back online safely—or even getting the workers to come back—are issues C&D recyclers are facing.

Getting them back is a challenge because many furloughed workers are making as much or more from the bonus unemployment insurance payments the federal government is making on top of the state benefits. Hence, they see little reason to go back to work. Some recyclers have started to place ads looking for replacements. However, in a few spots, the workers are raring to go and get back to work. When they are working, employers are using this opportunity to spiff up the plant, cleaning it up and painting it, as well as taking care of back maintenance.

Accepting workers back into the jobsite presents its own challenges. Employers are developing protocols before letting them in, asking them basic questions such as have they been in contact with someone who was infected with Covid-19, or were they infected, etc. (For a complete guide on developing such protocols for your company, as well as all the other information the CDRA has gathered to help members weather the pandemic, go to https://cdrecycling.org/news/covid-19-resources/)

Another issue is funding from the multiple stimulus bills Congress has passed. Several CDRA member companies have received the funds, but are concerned the guidelines may be sometimes difficult to meet. Of course, the main goal is to retain workers, but can you offer them “signing bonuses” to come back to overcome the reluctance to do so cited above? There is no real guidance from the Small Business Administration on that yet.

Also, what other expenses are covered? Utilities? Fuel for work vehicles can be included in approved expenses using the funds. It is suspected the SBA, which is administering the loans, will be the one conducting the audits to make sure the funds were used properly before granting forgiveness of the loans. This is going to make the agency a mini IRS.

One idea to keep the process simple is to deposit the PPP funds into a separate bank account so it will be easier to track. At the end of this article is further guidance on the basics of the program, supplied by John Davis of LEDR.

Across the country, incoming tonnages to C&D facilities are still down in most places, though the end markets are still good for most products, such as OCC and mulch. Many of the meeting participants have detected a slight uptick in scrap metal prices, or heard they were going up in May. Incoming tonnages are expected to rise as well as most of the states that limited construction are allowing it to begin in May, either at the start of the month (Pennsylvania, for example) or in the middle of the month, like New York. In areas where road construction was permitted to continue, which was a good idea with fewer cars on the road, recycled aggregate sales remain good.
Paycheck Protection Program (PPP) Loan Forgiveness Recommendations

As many of you know, the Coronavirus Aid, Relief, and Economic Security (CARES) Act, originally signed into law on March 27, 2020, provided for Paycheck Protection Program (PPP) loans for small business employers. This program is administered by the SBA. The initial law provided $349 billion to fund the PPP loan program and these funds were quickly exhausted. This amount was increased with an additional $310 billion by a supplement to the legislation signed on April 24, 2020.

PPP loan proceeds can only be used for payroll costs, rent, certain interest and utilities. A significant component of PPP is forgiveness of some or all of a PPP loan spent in the eight week period following the date the loan proceeds were received. The amount of forgiveness is principally based on the amount of qualified costs incurred and paid during the eight week period, and may be reduced if full time equivalent employee head count is lower than a base period as defined by the law, also if salaries are reduced more than 25% for workers making under $100,000 annually.

To date, the government has not issued much guidance or official interpretation regarding the forgiveness process or required documentation. We expect that guidance will be forthcoming, however many businesses have already received loans and the eight week clock is ticking.

While official guidelines are not yet available, we have compiled recommendations which should assist you in maintaining records and reporting the expenditures which should help support PPP loan forgiveness application. These recommendations are based on the information that we have at this date, and may prove to be incomplete or excessive based on the guidance and regulations the government ultimately issues. Some of our questions are the end of this memo.

PPP fund expenditures should be supported by complete recordkeeping and documentation. You will have to be able to certify that all the documentation you provide is true and correct. Accuracy and providing digital copies of everything is crucial. It will be necessary to follow the government’s criteria, using the guidance as issued, in managing the funds after the loan has been received. As government guidance is issued, revisions to your recordkeeping may be required.

Our recommendations are for at a minimum the eight week period that the CARES Act specifies as the “covered period” following the date of receipt of the PPP funds; however, we think that you should continue to follow this advice until your PPP funds are fully spent. Please note that our recommendations are our interpretation of the information that is currently available. It should not be considered authoritative or represent a safe harbor.

• Isolate the PPP funds and expenditures in a special bank account. If practical, set up a new bank account solely for the PPP loan funds. An existing bank account that already exists, but is inactive, should suffice. We have learned that some banks will not allow line-of-credit borrowers to establish new accounts for PPP funds. In this case, the company should consider establishing a new general ledger account to track the funds.

2- April 30, 2020

• Until forgiven, the funds should be recorded as debt.

• For expenditures that must be made from the company’s main operating account, such as payroll or electronic funds disbursements, create and maintain an internal PPP Reimbursement Form to track qualified expenses that will be reimbursed from the PPP bank account to the main business operating account.

• The PPP Reimbursement Form should include payment details such as:
  - Coverage date (example: May rent, May 1 - May 15 payroll)
  - Payment date
  - Check or wire number
  - Amount (Note, for payroll transaction include the number of full-time equivalent employees)

  - Obtain review and approval to ensure the transaction qualifies as “reimbursable” prior to transfer of funds. The objective here is to assure that more than one person in the
organization has a common understanding of the rules and is involved in authorizing the PPP expenditures

- Maintain an exact and accurate record of the amount and date of the funds transfer (or payment)
  - Maintain documents and vendor invoices or statements as backup to this reimbursement form in a digital format, as your lender is likely to require these documents

Funds must be used for the purposes specified in the law, which are as follows:
- Gross payroll for employees up to a maximum of annual compensation of $100,000, including commissions, bonuses etc.
- State unemployment tax and local payroll taxes
- Company’s share of group healthcare premiums
- Company’s cost of employee retirement plan funding
- Rent
- Utilities
- Interest paid on certain debt obligations incurred before February 15, 2020.

There are also some general matters to keep in mind.

As of this date, it is unclear if accrued and unpaid expenses outside the eight week forgiveness period will qualify for forgiveness. We believe there will be further guidance on this issue, but, for now, use PPP funds for amounts expended for the permitted expenses both incurred and paid during the eight week period.

For example, payroll periods that end before the conclusion of the eighth week but not normally paid until after that time should be paid before the end of the eighth week. Therefore, you should plan to pay payroll and related costs in the eighth week for the services rendered through the eighth week. This will likely not be your regular process or timing and you can go back to your normal policies after that eighth week. We recommend you discuss this with your payroll provider well in advance.

As noted above, you will be preparing an “expense report” document to support your use of the PPP funds. Gross payroll includes the compensation of employees and owners that have normal compensation exceeding $100,000. Remember to only expend PPP funds for average monthly compensation of up to $8,333 per month ($100,000 per year) including bonuses. This will amount to $15,385 for the eight week period.

The SBA requires that 75% of the total proceeds from the PPP be devoted to payroll as defined in the act. There will be a reduction in the percentage of expenses that will qualify to be forgiven depending upon two factors (which, at this point, are not fully explained by the SBA)
- The percent of FTEs you employ during the covered period as compared to the total of average FTEs during one of two periods (your choice).
  - February 15, 2019 ending on June 30, 2019 or
  - January 1, 2020 and ending on February 29, 2020
- Reductions in total salaries of any employee during the covered period that is in excess of 25% of the total salary or wages of the employee during the most recent full quarter during which the employee was employed will reduce your FTEs.

When it comes time to apply for forgiveness, we understand that these are some of the items you will need:
1. Copies of payroll tax reports filed with the IRS & States which may include:
   - Form 941
   - State unemployment tax filing reports for the 8 weeks following the loan origination date and the first quarterly period preceding the loan origination date. Q1 March 31, 2020, and Q2 June 30, 2020, when available.
2. Copies of payroll reports by employee, including vacation, sick, and PTO, should be reflected.
4. If you have had a reduction in wages: Provide a report by employee for all employees earning less
than $100,000 per year that lists wages between January 1, 2020 and March 31, 2020.
5. Documentation reflecting the health insurance premiums paid by the company under its group health plan.
6. Documentation of all employer-paid retirement plan funding.
7. Proof of payment and copies of all lease agreements for real estate and tangible personal property.
8. Copies of all loan statements indicating interest paid on all debt obligations incurred prior to February 15, 2020.
9. Copies of cancelled checks, statements or other evidence of utilities (gas, water, heat, phone, internet etc.) paid.
We recommend that you create a well-organized spreadsheet that calculates how much you believe should be forgiven. Try to make the bank’s job easy. They may not agree with you, but it gives them a starting point and a document that you can discuss with the bank or the SBA.
Some of our unanswered questions include:
• Some politicians have suggested objective financial tests at the end of the eight week period to support the need for the funds in order to qualify for loan forgiveness. We have not seen anything from an authoritative source on this possibility. Will such a condition be imposed?
• How will Full Time Equivalent (FTE) employees be defined and determined for forgiveness?
• Are related party rents in some way excluded or treated differently for purposes of qualified expenditures of PPP funds?
• Will there be additional guidance regarding discretionary bonuses and discretionary retirement plan contributions?
• The existing guidance states that expenses during the eight week covered period must be “incurred and paid” during the eight week covered period. This can be conflicting; similar to the differences between the cash and accrual methods of accounting. Will there be more guidance issued that will clarify this question? At this point, we think that you should plan to pay with PPP funds, all qualified expenses incurred in the eight week period before the eight week period ends.
Each PPP borrower was required to certify in their PPP loan application, that “current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant”. The CARES Act suspended the ordinary requirement that SBA borrowers must be unable to obtain credit elsewhere to qualify for a PPP loan. On April 23, 2020 the SBA issued guidance in that “Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business.” Lenders were able to rely on the borrower’s certification regarding the necessity of the loan. We recommend that you should consider preparing a statement document supporting the certification. The statement should detail the current economic uncertainty related to the Covid-19 pandemic, how your business’s ongoing operations are anticipated to be affected (including actual impact to date), affirmative statement that the PPP loan proceeds will be used to and are necessary to continue the business operations. In the April 23rd guidance, the SBA stated that “any borrower that applied for a PPP loan prior to April 23rd and repays the loan in full by May 7, 2020 will be deemed by SBA to have made the required certification in good faith.”
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