



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

JUL 18 2006

Debra Warner

Rio, IL 61472-9685

RE: MUR 5765

Dear Ms. Warner:

On June 20, 2006, the Federal Election Commission found that there is reason to believe you violated 2 U.S.C. § 441f, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). This finding was based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2). The Factual and Legal Analysis, which more fully explains the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Mark Allen, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,


Michael E. Toner
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 RESPONDENT: Debra Warner

MUR 5765

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7 **I. INTRODUCTION**

8 This matter was generated by the Federal Election Commission (“Commission”) pursuant
9 to information ascertained in the normal course of carrying out its supervisory responsibilities.

10 The available information indicates that Crop Production Services, Inc. (“CPS”), an agricultural
11 products company based in Galesburg, Illinois, used corporate funds to reimburse the
12 contributions of six individuals totaling \$43,305.¹ These six individuals included Debra Warner,
13 her spouse, then-CPS vice president Thomas Warner, three CPS managers and one of their
14 spouses. The activity occurred during the period 2001-2003. All the reimbursed contributions
15 were made to the Agricultural Retailers Association Political Action Committee (“ARA-PAC”).²

16 As more fully set forth below, it appears that Debra Warner knowingly permitted her
17 name to be used to effect contributions in the name of another, in violation of 2 U.S.C. § 441f, a
18 provision of the Federal Election Campaign Act of 1971, as amended (“the Act”).
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¹ CPS is a retailing subsidiary of Agrium US, Inc., whose parent company is Agrium, Inc., a Canadian corporation.

² ARA-PAC is a separate segregated fund of the Agricultural Retailers Association.

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1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Summary of Information**

3 **1. Contributions and Reimbursements**

4 The reimbursed contributions are set forth in the following table.³

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<u>Contributor Name</u>	<u>Amount</u>	<u>Contribution Date</u>	<u>Occupation</u>
Alan Steele	\$7,800	12/07/01	CPS manager
Thomas Warner	\$5,550	01/10/03	CPS vice president
Debra Warner	\$5,550	01/10/03	spouse
Thomas Warner	\$7,805	12/23/03	CPS vice president
Alan Steele	\$5,000	12/23/03	CPS manager
Nancy Steele	\$4,600	12/23/03	spouse
Denny Horstman	\$2,900	12/23/03	CPS manager
Duane Mol	\$4,100	12/23/03	CPS manager

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7 The available information indicates that CPS reimbursed the six individuals for items
8 they purchased at auctions sponsored by ARA-PAC at the Agricultural Retailers Association
9 Annual Conference and Exposition in December 2001, December 2002⁴ and December 2003. At
10 each auction, ARA-PAC offered up for bidding an array of agricultural supplies and equipment,
11 among other things. CPS employees bid on and won certain items at the auctions, with the
12 expectation that the items would be used by CPS in its business. The available information
13 indicates that the employees then sought and received payments from CPS in order to pay for the
14 amounts of their winning bids. Shortly after receiving these payments from CPS, the employees

³ Several of the identified reimbursed contributions exceeded the applicable \$5,000 calendar year contribution limit for individuals to non-candidate, non-party committees. See 2 U.S.C. § 441a(a)(1)(C). Since these contributions were reimbursed by CPS, the fact that the contributions exceeded the individuals' limits is not the subject of Commission findings here.

⁴ The reimbursed contributions related to the December 2002 auction were disclosed by ARA-PAC as received in January 2003.

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1 contributed the funds to ARA-PAC. These contributions and the CPS payments that reimbursed
2 the contributions are set forth in detail below.

3 The available information indicates that the employee reimbursements were all approved
4 by Thomas Warner, then a CPS vice president and currently president of CPS. The
5 reimbursements were accomplished through the use of CPS Orders for Payment, which list the
6 employee's name in the "To" field, the equipment or materials purchased in the ARA-PAC
7 auction in the "Payment Is For" field, and contain what appears to be Warner's signature in the
8 "Approved By" field. No other signatures appear on the forms. The Orders for Payment also
9 state "Reimbursement" in the "No." field for the December 2001 and January 2003 contribution
10 reimbursements, and state "ARAPAC Auction" in this field for the December 2003 contribution
11 reimbursements.

12 CPS reimbursed the contributors using corporate checks. In the case of the
13 reimbursements of Debra Warner's and Thomas Warner's contributions, however, CPS did not
14 directly reimburse them. Instead, CPS reimbursed the Warners through Alan Steele.
15 Specifically, CPS issued an \$11,100 check to Steele dated December 10, 2002, which he signed
16 over to Thomas Warner to reimburse Thomas and Debra Warner's \$5,550 contributions to ARA-
17 PAC in January 2003. In addition, CPS issued a \$16,850 check to Steele dated December 9,
18 2003 to reimburse Thomas Warner's December 2003 contribution, as well as Alan and Nancy
19 Steele's December 2003 contributions. Alan Steele subsequently paid Warner \$7,250 of the
20 \$16,850 to reimburse him.⁵

⁵ The difference between this \$7,250 reimbursement to Thomas Warner and the amount of his \$7,805 contribution dated December 23, 2003, is \$555 that CPS reimbursed directly by check to Debra Warner relating to her \$555 bid at the ARA-PAC auction for a floral arrangement and retirement gift cufflinks. CPS's reimbursement check payable to Debra Warner was for an amount greater than the contribution.

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1 Within a few days after the employees were provided the reimbursements by CPS, they
2 made their contributions to ARA-PAC by personal check and transferred their auction items to
3 CPS for use in its business.

4 **2. Refunds and Repayments**

5 The available information indicates that the subject reimbursements came to light at CPS
6 on September 1, 2005. Less than two weeks later, on September 14, 2005, CPS Chief Executive
7 Officer, Richard Gearheard, sent written directives to each of the four reimbursed CPS
8 employees, listing the reimbursed contributions, explaining that the reimbursements are unlawful
9 and must be paid back in full to CPS as soon as possible, asking the employees to report to
10 Gearheard any additional reimbursed contributions, and stating that the company is in the process
11 of drafting correspondence for the employees' use in apprising ARA-PAC of the illegal nature of
12 the contributions and the PAC's legal obligation to refund the contributions.⁶

13 Two days later, on September 16, 2005, CPS provided letters to the four reimbursed
14 employees to use to notify ARA-PAC of the likely illegal nature of their contributions; the letters
15 advise ARA-PAC of its obligation under federal law to disgorge and return these illegal
16 contributions within 30 days, citing 11 C.F.R. § 103.3(b)(2). On September 19, 2005, the four
17 reimbursed CPS employees sent such letters to ARA-PAC.⁷

⁶ The contributions identified in Gearheard's letters correspond to the reimbursement checks issued by CPS. Thus, his letter to Alan Steele attributes to Steele the contributions made by Steele as well as those made by Thomas Warner. Similarly, Gearheard's letter to Thomas Warner lists only the \$555 reimbursement to Debra Warner. *See supra* footnote 5.

⁷ Alan Steele's letter to ARA-PAC, which is dated September 18, 2005 and cc's CEO Gearheard, identifies his December 2001 contribution and his and his wife's December 2003 contributions; the letter does not mention the contributions by Thomas Warner for which Steele was reimbursed by CPS.

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1 On September 21, 2005, ARA-PAC issued refunds to the four reimbursed CPS
2 employees and the two spouses. The PAC refunded only a portion of the contributions,
3 however,⁸ the remaining portion of the contributions were refunded a few days later, on
4 September 30, 2005, from a separate ARA account used for administrative expenses.⁹ Together,
5 these refunds match the total amounts of the reimbursed contributions by the four CPS
6 employees and the two spouses, as summarized in the table below.

<u>Contributors</u>	<u>Total Contributions</u>	<u>Refunds from ARA-PAC</u>	<u>Refunds from ARA Admin Account</u>	<u>Total Refunds</u>
Thomas and Debra Warner	\$18,905.00	\$9,521.67	\$ 9,383.33	\$18,905.00
Denny Horstman	\$ 2,900.00	\$1,333.33	\$ 1,566.67	\$ 2,900.00
Duane Mol	\$ 4,100.00	\$ 393.33	\$ 3,706.67	\$ 4,100.00
Al and Nancy Steele	\$17,400.00	\$4,766.67	\$12,633.33	\$17,400.00

7 Finally, the reimbursed employees wrote checks to CPS to repay the reimbursements.
8
9 These checks range in date from September 18, 2005 to October 11, 2005.¹⁰ At this point, it
10 appears that CPS, the four employees and two spouses, and ARA-PAC have all been returned to
11 their *status quo ante* financially.

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⁸ ARA-PAC disclosed the partial refunds on its October 2005 monthly report.

⁹ The cover letters from both ARA-PAC and the ARA explain that portions of the contributions at issue had been disbursed by the PAC into the ARA administrative account, and thus the refunds came from both places. Specifically, ARA-PAC refunded to the contributors the amounts of the contributions that had remained in the ARA-PAC account, and the ARA administrative account refunded those portions that had been disbursed by the PAC into the administrative account.

¹⁰ The checks from Steele and Thomas Warner match their reimbursements from CPS, which as noted above do not match their contributions because the reimbursements to Thomas Warner were routed through Steele. Accordingly, Steele's repayment to CPS is \$35,750 and Warner's repayment is \$555, the latter check signed by Debra Warner. Thomas Warner presumably paid to Steele \$18,350, an amount equivalent to that Steele had earlier paid to Mr. Warner out of the reimbursement checks Steele received from CPS.

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1 **B. Liability of Debra Warner**

2 The available information indicates that CPS used corporate funds to reimburse employee
3 contributions to ARA-PAC. Under the Act, no person shall make a contribution in the name of
4 another person or knowingly permit his or her name to be used to effect such a contribution.
5 2 U.S.C. § 441f. In addition, no person may knowingly help or assist any person in making a
6 contribution in the name of another. 11 C.F.R. § 110.4(b)(1)(iii).

7 Debra Warner appears to have knowingly permitted her name to be used to effect
8 contributions in the name of another. Accordingly, there is reason to believe that Debra Warner
9 violated 2 U.S.C. § 441f.

10 Because section 441f violations are usually knowing and willful, the issue necessarily
11 arises whether the apparent violations here were knowing and willful. The phrase “knowing and
12 willful” indicates that “actions [were] taken with full knowledge of all of the facts and a
13 recognition that the action is prohibited by law.” 122 Cong. Rec. H3778 (daily ed. May 3, 1976).
14 A knowing and willful violation may be established “by proof that the defendant acted deliberately
15 and with knowledge that the representation was false.” *United States v. Hopkins*, 916 F.2d 207,
16 214 (5th Cir. 1990).

17 In other *sua sponte* matters involving reimbursed contributions, the Commission has
18 considered factors such as whether the available information indicated that respondents were aware
19 that their conduct was illegal, whether respondents were fully forthcoming in their submissions,
20 and the timing of respondents’ notice to federal authorities. In MUR 5628 (AMEC), respondents
21 asserted that the violations were not knowing and willful, despite the absence of written records,

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1 which suggested that respondents intentionally disguised their corporate political contributions.
2 See MUR 5628 First General Counsel's Report at 2-3. Respondents had also not been fully
3 forthcoming with relevant information despite two requests. See *id.* at 3, 11. Consequently, the
4 Commission found reason to believe that respondents knowingly and willfully violated 2 U.S.C.
5 §§ 441b(a) and 441f.

6 By contrast, in MUR 5643 (Carter's Inc.), the *sua sponte* submission was complete, the
7 available information indicated that respondents were unaware that their conduct was illegal, and
8 respondents revealed the violation of the law to federal authorities as soon as it was discovered and
9 had taken steps to remedy the violation. See MUR 5643 First General Counsel's Report at 2, 5.
10 Under these circumstances, the Commission did not find reason to believe that respondents had
11 knowingly and willfully violated the Act. See also MUR 5357 (Centex) (the Commission did not
12 make any knowing and willful reason to believe findings); MUR 5398 (Lifecare) (the Commission
13 made knowing and willful reason to believe findings regarding the two corporate executives who
14 disguised the reimbursements as bonuses but did not make knowing and willful reason to believe
15 findings regarding the corporation or several conduits).

16 In the present matter, there is no information available at this time indicating that Debra
17 Warner was involved in a scheme to disguise the reimbursements; rather, the payments on the CPS
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- 1 Orders for Payment were expressly described as "Reimbursement" and "ARAPAC Auction."¹¹
- 2 Moreover, substantial information has been provided to the Commission, and steps have been
- 3 quickly taken to remedy the violations. Under these circumstances, the Commission is not at this
- 4 time finding that the violation was knowing and willful.

¹¹ ARA-PAC literature describing the auctions states:

ARAPAC may only accept contributions from ARA members. Payment in the form of a personal or a Limited Liability Company check or credit card (LLC must be taxed as a partnership) is preferred for auction items and/or contributions. Federal law stipulates that individuals may not receive reimbursement from a corporation for personal funds contributed to the ARAPAC.

Donations made by corporate check and individual contributions in excess of federal limits will be accepted to pay for the administrative expenses of the PAC and non-candidate related political activities. These funds are also helpful to the association.

This matter, however, does not involve CPS providing corporate checks directly to ARA-PAC.

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