ARIZONA DEPARTMENT OF AGRICULTURE OFFICE OF PEST MANAGEMENT **SUBSTANTIVE POLICY STATEMENT** A.R.S. § 32-2326 and Suspensions	**SP 13-03** POLICY NO. SIGNATURE DATE

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under section 41-1033, Arizona Revised Statutes, for a review of the statement.

1. BACKGROUND

Laws 2011, ch. 20, § 6 required the Director of the Arizona Department of Agriculture to appoint a nine member task force to study the regulation of structural pest management in Arizona, specifically as it related to the following four items: (1) a review of all laws and regulations governing structural pest management in this state, (2) a review of possible organizational configurations within ADA for structural pest management regulation, (3) a review of personnel and funding issues relating to the administration of structural pest management regulation within ADA and (4) statutory changes necessary to accomplish the future structural pest management program. The task force and its subcommittees met 18 times between August 2011 and October 2012. In November 2012, the task force's final recommendations for changing OPM's statutes and rules were submitted to the Governor, the President of the Senate, and the Speaker of the House. These recommendations were adopted by the Legislature in substantial part and signed into law in 2013. *See* Laws 2013, ch. 125.

In the process of taking the task force's recommendations and converting them to law, the Legislature made some formatting changes, which OPM believes were not intended to differ in meaning from the changes recommended by the task force, that leave the meaning of the revised statute unclear or ambiguous. The purpose of this substantive policy statement is to inform the general public of OPM's approach to or opinion of one of these potentially confusing statutes. See A.R.S. § 41-1001(21).

2. POLICY

A.R.S. § 32-2326(A) reads: "The office shall deny an application for a new business license or a renewal of an existing business license if a principal of the applicant was also a principal of another business that currently owes past due termite action registration form fees, owes civil penalties to the office or has had its business license suspended or revoked within the last five years and was a principal at the time the fees became due or the acts resulting in the disciplinary action occurred."

The purpose of this statute is to prevent a business owner from escaping discipline by shifting

the pest management services of a business to another licensed business owned by the same person. Accordingly, with respect to suspensions, OPM believes the intent of this provision is to only cover suspensions that have not yet been lifted. For example, if a business license were suspended three years ago for not having a valid proof of financial security on file with OPM (see A.R.S. § 32-2313(E)), but the business license is now in good standing, then the former suspension would not invoke A.R.S. § 32-2326(A). The task force recommendation was clear on this point, but unfortunately the actual statute is not clear.

Additionally, if this subsection applied to suspensions that have been lifted, then absurd results could occur. For example, suppose a person is a principal (i.e., owner) of two pest control companies and one of the two companies gets suspended for a week for having an expired proof of financial security. Under this alternative reading of the statute, the second company would not be able to have its business license renewed for five years even though the first company's suspension had been lifted after one week. There is no purpose accomplished by this view.

Accordingly, OPM will administer and enforce A.R.S. § 32-2326 as relating to suspensions that are still in effect and not to suspensions that have been lifted.

3. EFFECTIVE DATE

This policy is effective _____, 2013 and shall continue in effect until repealed, modified, or superseded.