

**STATE OF NEW MEXICO
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD**

**IN THE MATTER OF PROPOSED
REPEAL AND REPLACEMENT OF
7.18.2 THROUGH 7.18.5 NMAC –
*Public Swimming Pools, Spas and Baths***

No. EIB 16-01 (R)

**Environmental Health Bureau,
Environmental Protection Division of the
New Mexico Environment Department,**

Petitioner.



ORDER AND STATEMENT OF REASONS

This matter comes before the New Mexico Environmental Improvement Board (“Board”) upon a petition filed by the New Mexico Environment Department (“NMED” or “Department”), proposing the repeal of 7.18.1 through 7.18.5 – *Public Swimming Pools, Spas, and Baths*, and their replacement with a new 7.18.1 – *Public Aquatic Venues: General Provisions* and a new 7.18.2 – *Public Aquatic Venues: Fees*. A public hearing was held in Santa Fe, New Mexico on May 13, 2016, with a quorum of the Board present during the hearing. The Board heard technical testimony from the Department and admitted exhibits into the record. On May 13, 2016, the Board deliberated and voted to adopt the proposed repeal and replacement for the reasons that follow:

I. STATEMENT OF REASONS

1. On January 29, 2016 NMED filed a petition with the Board for a public hearing in this matter.

2. At a meeting conducted in compliance with the Open Meetings Act and other applicable requirements, the Board granted the Department's request for a hearing and scheduled the hearing for May 13, 2016.
3. Public notice of the hearing was published on the NMED EHB website, in the Albuquerque Journal (in English and Spanish) on March 11, 2016 and in the New Mexico Register on March 15, 2016. The notice stated that the Board may make a decision on the proposed amendments at the conclusion of the hearing, or may convene at a later date to consider action on the proposal.
4. NMED filed a Notice of Intent to Present Technical Testimony (NOI) on April 21, 2016, in accordance with 20.1.1.302 NMAC.
5. No other party filed an NOI.
6. A hearing in this matter was held in Santa Fe, New Mexico on May 13, 2016, at which a reasonable opportunity for all persons to be heard was provided.
7. The Board has the authority to adopt the proposed amendments pursuant to NMSA 1978, §§ 74-1-1 through 74-1-16.
8. In considering the proposed amendments, the Board is required by the Environmental Improvement Act, NMSA 1978, Section 74-1-9, to give weight it deems appropriate to all facts and circumstances, including but not limited to (1) character and degree of injury to or interference with health, welfare, animal and plant life, property and the environment; (2) the public interest, including the social, economic and cultural value of the regulated activity and the social, economic and cultural effects of environmental degradation; and (3) technical practicability, necessity for and economic reasonableness

of reducing, eliminating or otherwise taking action with respect to environmental degradation.

9. 7.18.1 through 7.18.5 NMAC, *Public Swimming Pools, Spas, and Baths* (the “Current Regulations”) were promulgated in 2008 and do not account for the most recent developments in pool design and chemical control technologies.
10. The U.S. Centers for Disease Control and Prevention (“CDC”) has reported a significant increase in the reports of water-borne illnesses contracted by members of the public at aquatic venues in recent decades. Public health investigations have concluded that many of these diseases can be prevented by proper maintenance and water treatment.
11. Accidents such as falling, drowning or near-drowning, chemical burns, and entrapment continue to affect users of aquatic venues, and are leading causes of accidental injury and death for young children.
12. Newer chemical control technologies have the potential to increase the safety of public aquatic venues through the reduction of accidents involving pool chemicals and by reducing the transmission of water-borne pathogens.
13. The Model Aquatic Health Code, 1st Edition (“MAHC”) is based on science and best practices that were developed to help swimming pool programs nationwide reduce the risk of disease, injury, and drowning. The MAHC is the result of a data-driven, knowledge-based risk reduction effort to prevent disease and injuries and to promote healthy recreational water experiences.
14. The MAHC represents the collaborative work of many of the nation’s foremost experts and has been thoroughly vetted through extensive peer review and public comment. In

developing the MAHC, the CDC worked closely with the public health sector, the aquatics industry, and academic representatives from across the United States.

15. The MAHC will allow owners of public aquatic facilities to use innovative approaches to achieve acceptable results.
16. Adoption of the MAHC will improve regulatory certainty for aquatic facility owners and patrons, as it provides clear guidelines that will be more consistent with requirements across the nation.
17. In drafting the new regulations, the Bureau has carefully considered the balance between the protection of the public from accidental injury and water-borne illnesses, and the regulatory burden on businesses that construct, manage, and operate public aquatic venues.
18. The proposed amendments are technically feasible and economically reasonable.
19. The Board concludes that the public interest will be served by the adoption of the proposed amendments.
20. The Board concludes that the factors specified by NMSA 1978, Section 74-1-9 all weigh in favor of adopting the proposed amendments.
21. The notice and hearing requirements of NMSA 1978 Section 74-1-9 and 20.1.1 NMAC were satisfied in this rulemaking process.
22. The proposed amendments are adopted for any or all of the reasons stated above.

II. ORDER

By unanimous vote of a quorum of the Board members, the proposed repeal of 7.18.1 through 7.18.5 NMAC, and replacement with new versions of 7.18.1 and 7.18.2 NMAC, as

contained in NMED's January 29, 2016 petition and request for hearing, was approved by the Board on May 13, 2016.

/s/ John Volkerding
JOHN VOLKERDING
Chair, Environmental Improvement Board

Dated: May 19, 2016

CERTIFICATE OF SERVICE

I hereby certify that a copy of the **Order and Statement of Reasons** was sent via the stated methods below to the following parties on May 20, 2016:

Via First Class U.S. Mail:

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