

TITLE 7 HEALTH
CHAPTER 18 AQUATIC VENUES
PART 2 PUBLIC AQUATIC VENUES: FEES

7.18.2.1 ISSUING AGENCY: New Mexico Environmental Improvement Board.
[7.18.2.1 NMAC - Rp, 7.18.2.1 NMAC, 8/1/16]

7.18.2.2 SCOPE: Owners and operators of public aquatic venues and other public bathing attractions.
[7.18.2.2 NMAC - Rp, 7.18.2.2 NMAC, 8/1/16]

7.18.2.3 STATUTORY AUTHORITY: Sections 74-1-1 through 74-1-16 NMSA 1978.
[7.18.2.3 NMAC - Rp, 7.18.2.3 NMAC, 8/1/16]

7.18.2.4 DURATION: Permanent.
[7.18.2.4 NMAC - Rp, 7.18.2.4 NMAC, 8/1/16]

7.18.2.5 EFFECTIVE DATE: August 1, 2016, unless a later date is cited at the end of a section.
[7.18.2.5 NMAC - Rp, 7.18.2.5 NMAC, 8/1/16]

7.18.2.6 OBJECTIVE: To establish fees for the administration of rules and standards regarding the inspection, enforcement, training, review of plans, and other appropriate program components for public aquatic venues and other public bathing attractions as specified in 7.18.1 NMAC, Public Aquatic Venues: General Provisions.
[7.18.2.6 NMAC - Rp, 7.18.2.6 NMAC, 8/1/16]

7.18.2.7 DEFINITIONS: [RESERVED] [See 7.18.1 NMAC for Definitions.]

7.18.2.8 ADOPTION BY REFERENCE: Outside standards, listings, and publications referenced in this rule are part of this rule.
[7.18.2.8 NMAC - Rp, 7.18.5.8 NMAC, 8/1/16]

7.18.2.9 ENFORCEMENT AUTHORITY:
A. Private aquatic venues shall not be subject to the provisions of this rule or to 7.18.1 NMAC.
B. Department representatives shall be responsible for the enforcement of this rule.
[7.18.2.9 NMAC - Rp, 7.18.5.9 NMAC, 8/1/16]

7.18.2.10 CONSTRUCTION PERMIT FEES:
A. Permit fees for new construction, remodeling, or renovation issued pursuant to Section 7.18.1.12 NMAC, Construction Permits, shall be the following:
(1) for a class A, class B, class C, or class D aquatic venue, or for a spa, the fee shall be \$150.00;
(2) for multiple class A, class B, class C or class D aquatic venues or spas located in the same aquatic facility, the fee shall be \$150.00 for each aquatic venue;
B. All applicable fees shall be paid at the time the construction permit application is submitted to the department.
C. All fees shall be remitted to the department by check or money order made payable to the “water recreation facilities fund” or “New Mexico environment department (NMED).”
D. Any check returned for non-payment for any reason shall result in cancellation of the construction permit.
E. All fees are non-refundable.
[7.18.2.10 NMAC - Rp, 7.18.5.10 NMAC, 8/1/16]

7.18.2.11 OPERATING PERMIT FEES:
A. Operating permit fees issued pursuant to 7.18.1.14 NMAC, Operating Permits, shall be the following:
(1) for all class A aquatic venues, the fee shall be \$150.00 per year;

- (2) for class B aquatic venues, the shall be:
 - (a) up to 600 square feet of aquatic venue surface area, \$100.00 per year;
 - (b) from 601 square feet to 1000 square feet of aquatic venue surface area, \$125.00 per year;
 - (c) from 1001 square feet of aquatic venue surface area and greater, \$150.00 per year;
- (3) for all class C aquatic venues, the fee shall be \$150.00 per year.
- (4) for all class D aquatic venues, the fee shall be \$150.00 per year.
- (5) for all public spas, the fee shall be \$150.00 per year.

B. Payment of fees.

- (1) An operating permit fee shall be assessed for each separate aquatic venue at a facility or site.
- (2) Fees are payable in the month that the permit is to be issued. Operating permits will not be issued until the department receives all appropriate fees.
- (3) All fees shall be remitted to the department by check or money order made payable to the “water recreation facilities fund” or “New Mexico environment department (NMED).”
- (4) Non-payment of all appropriate fees, including the return of any check for non-payment for any reason, shall result in cancellation of the operating permit.
- (5) All fees are non-refundable.

[7.18.2.11 NMAC - Rp, 7.18.2.11 NMAC, 8/1/16]

7.18.2.12 RE-INSPECTION PENALTY: If a site inspection results in the issuance of a written notice of non-approval or suspension, the department may assess a re-inspection penalty of \$50.00 to re-inspect each public aquatic venue in the aquatic facility. For each additional re-inspection required, an additional \$50 will be added to the re-inspection penalty for each aquatic venue, up to \$250 per aquatic venue per year. The re-inspection fee shall be remitted to the department prior to a subsequent re-inspection being conducted. Re-inspection penalties shall not be charged for aquatic venues that have been closed for 30 days or more and require a re-opening inspection.

[7.18.2.12 NMAC - Rp, 7.18.5.12 NMAC, 8/1/16]

7.18.2.13 VARIANCE FEE: If a variance is requested pursuant to 7.18.2.22 NMAC, Variance, an application fee of \$50.00 shall be remitted by the applicant at the time the variance application is submitted to the department. The fee is non-refundable.

[7.18.2.13 NMAC - Rp, 7.18.5.13 NMAC, 8/1/16]

7.18.2.14 RIGHT OF ENTRY:

- A.** Upon presentation of credentials, department representatives may enter any premises where a public aquatic venue is located or where records required by the aquatic venue rules are located during the aquatic venue’s operating hours.
- B.** When entry is denied by the property owner, the department may seek a district court order to:
 - (1) have a right of entry to, upon, or through any premises where a public aquatic venue is located;
 - (2) have a right of entry on any premises where any records required by the aquatic venue rules or by permit condition are kept;
 - (3) have access to and copy any records that the aquatic venue rules or a permit requires the facility to maintain;
 - (4) inspect any premises or equipment to determine compliance with the aquatic venue rules or any permit condition; and
 - (5) obtain any sample(s) required to determine compliance with the aquatic venue rules or any permit condition.

[7.18.2.14 NMAC - Rp, 7.18.5.14 NMAC, 8/1/16]

7.18.2.15 to 7.18.2.50 [RESERVED]

7.18.2.51 CONSTRUCTION: This part shall be liberally construed to carry out its purpose.

[7.18.2.51 NMAC - Rp, 7.18.5.51 NMAC, 8/1/16]

7.18.2.52 SEVERABILITY: If any provision or application of this part is held invalid, the remainder of this part, or its application to other situations or persons, shall not be affected.
[7.18.2.52 NMAC - Rp, 7.18.5.52 NMAC, 8/1/16]

7.18.2.53 REFERENCES IN OTHER REGULATIONS: Any reference to the aquatic venue regulations or any prior version of the aquatic venue regulations in any other rule shall be construed as a reference to this rule. References to the “aquatic venue rules” in this part refer to all provisions contained in 7.18.1 through 7.18.2 NMAC.
[7.18.2.53 NMAC - Rp, 7.18.5.53 NMAC, 8/1/16]

7.18.2.54 SAVINGS CLAUSE: Repeal or supersession of prior versions of this part or the aquatic venue rules shall not affect any administrative or judicial action initiated under those prior versions.
[7.18.2.54 NMAC - Rp, 7.18.5.54 NMAC, 8/1/16]

7.18.2.55 COMPLIANCE WITH OTHER REGULATIONS: Compliance with the aquatic venue rules or this part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local regulations.
[7.18.2.55 NMAC - Rp, 7.18.5.55 NMAC, 8/1/16]

7.18.2.56 PENALTY: Any person who violates any provision of this rule shall be subject to the penalty provisions in Section 74-1-10 NMSA 1978 of the Environmental Improvement Act, in addition to any other penalties provided for in the aquatic venue rules.
[7.18.2.56 NMAC - Rp, 7.18.5.56 NMAC, 8/1/16]

7.18.2.57 LIMITATION OF DEFENSE: The existence of a valid permit for the installation, modification or operation of an aquatic venue shall not constitute a defense to a violation of any section of this regulation, except the requirement for obtaining a permit.
[7.18.2.57 NMAC - Rp, 7.18.5.57 NMAC, 8/1/16]

HISTORY OF 7.18.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives:

HSSD 72-2, Swimming Pool Regulations Governing the Sanitary Design, Equipment, Construction and Operation, filed 9/27/72.

EIB 74-2, Regulations Governing Public Baths and Public and Semi-Public Swimming Pools, filed 7/15/74.

EIB 76-1, Regulations Governing Public Swimming Pools And Public Baths, filed 3/25/76.

History of Repealed Material:

7 NMAC 18.1, Public Swimming Pools and Public Baths (filed 10/27/1995) repealed 03/30/05.

7.18.2 NMAC, Public Swimming Pools, Spas and Baths: General Provisions (filed 2/09/05) Repealed 07/30/08.

7.18.2 NMAC, Public Swimming Pools, Spas and Baths: General Provisions (filed 12-2-13) Repealed effective 10-1-2015.

7.18.2 NMAC, Public Swimming Pools, Spas and Baths: General Provisions (filed 6/12/2008), repealed and replaced by 7.18.1 NMAC, Public Aquatic Venues: General Provisions, effective 8/1/2016.

Other History:

EIB 76-1, Regulations Governing Public Swimming Pools And Public Baths (filed 3/25/76) was reformatted, renumbered and replaced by 7 NMAC 18.1, Public Swimming Pools and Public Baths, effective 11/30/1995.

Portions of 7 NMAC 18.1, Public Swimming Pools and Public Baths (filed 10/27/1995), was replaced by 7.18.2 NMAC, Public Swimming Pools, Spas and Baths: General Provisions, effective 03/30/05.

7.18.2 NMAC, Public Swimming Pools, Spas and Baths: General Provisions (filed 2/09/05), was replaced by 7.18.2 NMAC, Public Swimming Pools, Spas and Baths: General Provisions effective 07/30/08.

7.18.5 NMAC, Public Swimming Pools, Spas and Baths: Fees (filed 6/12/2008), repealed and replaced by 7.18.2 NMAC, Public Aquatic Venues: Fees, effective 8/1/2016.