§ 8-0109. Preparation of environmental impact statement.

1. Agencies shall use all practicable means to realize the policies and goals set forth in this article, and shall act and choose alternatives which, consistent with social, economic and other essential considerations, to the maximum extent practicable, minimize or avoid adverse environmental effects, including effects revealed in the environmental impact statement process.

2. All agencies (or applicant as hereinafter provided) shall prepare, or cause to be prepared by contract or otherwise an environmental impact statement on any action they propose or approve which may have a significant effect on the environment. Such a statement shall include a detailed statement setting forth the following:

(a) a description of the proposed action and its environmental setting;

(b) the environmental impact of the proposed action including short-term and long-term effects;

(c) any adverse environmental effects which cannot be avoided should the proposal be implemented;

(d) alternatives to the proposed action;

(e) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;

(f) mitigation measures proposed to minimize the environmental impact;

(g) the growth-inducing aspects of the proposed action, where applicable and significant;

(h) effects of the proposed action on the use and conservation of energy resources, where applicable and significant, provided that in the case of an electric generating facility, the statement shall include a demonstration that the facility will satisfy electric generating capacity needs or other electric systems needs in a manner reasonably consistent with the most recent state energy plan;

(i) effects of proposed action on solid waste management where applicable and significant;

(j) effects of any proposed action on, and its consistency with, the comprehensive management plan of the special groundwater protection area program, as implemented by the commissioner pursuant to article

fifty-five of this chapter;

(k) effects of any proposed action on disadvantaged communities, including whether the action may cause or increase a disproportionate pollution burden on a disadvantaged community; and

(l) such other information consistent with the purposes of this article as may be prescribed in guidelines issued by the commissioner pursuant to section 8-0113 of this chapter.

Such a statement shall also include copies or a summary of the substantive comments received by the agency pursuant to subdivision four of this section, and the agency response to such comments. The purpose of an environmental impact statement is to provide detailed information about the effect which a proposed action is likely to have on the environment, to list ways in which any adverse effects of such an action might be minimized, and to suggest alternatives to such an action so as to form the basis for a decision whether or not to undertake or approve such action. Such statement should be clearly written in a concise manner capable of being read and understood by the public, should deal with the specific significant environmental impacts which can be reasonably anticipated and should not contain more detail than is appropriate considering the nature and magnitude of the proposed action and the significance of its potential impacts.

3. An agency may require an applicant to submit an environmental report to assist the agency in carrying out its responsibilities, including the initial determination and, (where the applicant does not prepare the environmental impact statement), the preparation of an environmental impact statement under this article. The agency may request such other information from an applicant necessary for the review of environmental impacts. Notwithstanding any use of outside resources or work, agencies shall make their own independent judgment of the scope, contents and adequacy of an environmental impact statement.

4. As early as possible in the formulation of a proposal for an action but not more than one year from the establishment of a lead agency, the responsible agency shall make an initial determination as to whether an environmental impact statement need be prepared for the action. In

making such determination for any proposed action the responsible agency shall consider whether such action may cause or increase a disproportionate pollution burden on a disadvantaged community that is directly or significantly indirectly affected by such action. When an action is to be carried out or approved by two or more agencies, such determination shall be made as early as possible after the designation of the lead agency.

With respect to actions involving the issuance to an applicant of a permit or other entitlement, the agency shall notify the applicant in writing of its initial determination specifying therein the basis for such determination. Notice of the initial determination along with appropriate supporting findings on agency actions shall be kept on file in the main office of the agency for public inspection.

If the agency determines that such statement is required, the agency or the applicant at its option shall prepare or cause to be prepared a draft environmental impact statement. If the applicant does not exercise the option to prepare such statement, the agency shall prepare it, cause it to be prepared, or terminate its review of the proposed action. Such statement shall describe the proposed action and reasonable alternatives to the action, and briefly discuss, on the basis of information then available, the remaining items required to be submitted by subdivision two of this section. The purpose of a draft environmental statement is to relate environmental considerations to the inception of the planning process, to inform the public and other public agencies as early as possible about proposed actions that may significantly affect the quality of the environment, and to solicit comments which will assist the agency in the decision making process in determining the environmental consequences of the proposed action. The draft statement should resemble in form and content the environmental impact statement to be prepared after comments have been received and considered pursuant to subdivision two of this section; however, the length and detail of the draft environmental statement will necessarily reflect the preliminary nature of the proposal and the early stage at which it is prepared.

For any action for which the agency determines that such statement is not required and which would take place in a special groundwater protection area, as defined in section 55-0107 of this chapter, the agency shall show how such action would or would not be consistent with the comprehensive management plan of the special groundwater protection program, as implemented by the commissioner pursuant to article fifty-five of this chapter.

The draft statement shall be filed with the department or other designated agencies and shall be circulated to federal, state, regional and local agencies having an interest in the proposed action and to interested members of the public for comment, as may be prescribed by the commissioner pursuant to section 8-0113. In addition, unless impracticable, the draft statement shall be posted on a publicly-available Internet website. The website posting of such draft statement may be discontinued when the environmental impact statement is posted pursuant to subdivision six of this section.

5. After the filing of a draft environmental impact statement the agency shall determine whether or not to conduct a public hearing on the environmental impact of the proposed action. If the agency determines to hold such a hearing, it shall commence the hearing within sixty days of the filing and unless the proposed action is withdrawn from consideration shall prepare the environmental impact statement within forty-five days after the close of the hearing, except as otherwise provided. The need for such a hearing shall be determined in accordance with procedures adopted by the agency pursuant to section 8-0113 of this article. If no hearing is held, the agency shall prepare and make available the environmental impact statement within sixty days after the filing of the draft, except as otherwise provided.

Notwithstanding the specified time periods established by this article:

(a) an agency shall vary the times so established herein for preparation, review and public hearings to coordinate the environmental review process with other procedures relating to review and approval of an action. An application for a permit or authorization for an action

upon which a draft environmental impact statement is determined to be required shall not be complete until such draft statement has been filed and accepted by the agency as satisfactory with respect to scope, content and adequacy for purposes of subdivision four of this section. Commencing upon such acceptance, the environmental impact statement process shall run concurrently with other procedures relating to the review and approval of the action so long as reasonable time is provided for preparation, review and public hearings with respect to the draft environmental impact statement; and

(b) for actions involving applications for a permit or authorization, the agency shall prepare and make available the environmental impact statement within two years after the date a draft environmental impact statement is determined to be required, unless the agency extends the deadline in writing and, in consultation with an applicant and at the discretion of the agency, establishes a new deadline that provides only so much additional time as is necessary to complete the environmental impact statement, considering any changes made by the applicant to the project design after the issuance of the scoping document that result in new significant environmental impacts, or additional actions that could not have been reasonably anticipated during scoping, or the failure of an applicant to timely provide necessary information despite good faith effort by an agency, or delay in circumstances beyond the control of an agency or an applicant.

6. To the extent as may be prescribed by the commissioner pursuant to section 8-0113, the environmental impact statement prepared pursuant to subdivision two of this section together with the comments of public and federal agencies and members of the public, shall be filed with the commissioner, made available to the public, and, unless impracticable, posted on a publicly-available Internet website prior to acting on the proposal which is the subject of the environmental impact statement. The website posting of such statement may be discontinued one year after all necessary permits have been issued by the federal, state and local governments.

7. a. An agency may charge a fee to an applicant in order to recover the costs incurred in preparing or causing to be prepared or reviewing a

draft environmental impact statement or an environmental impact statement on the action which the applicant requests from the agency; provided, however, that an applicant may not be charged a separate fee for both the preparation and review of such statements. The technical services of the department may be made available on a fee basis reflecting the costs thereof, to a requesting agency, which fee or fees may appropriately be charged by the agency to the applicant under rules and regulations to be issued under section 8-0113.

b. Such rules and regulations shall require the applicant to reimburse the conservation fund, as established pursuant to subdivision (a) of section eighty-three of the state finance law, in order to recover all costs incurred in preparing or causing to be prepared or reviewing a draft environmental impact statement or an environmental impact statement by employees of the department, whose salary and expenses are paid, in whole or in part, from the conservation fund.

8. When an agency decides to carry out or approve an action which has been the subject of an environmental impact statement, it shall make an explicit finding that the requirements of this section have been met and that consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided.

9. An environmental impact statement shall be prepared for any action found to have a significant impact on the special groundwater protection area, as defined in section 55-0107 of this chapter. Such statement shall meet the requirements of the most detailed environmental impact statement required by this section or by any such rule or regulation promulgated pursuant to this section.