

1 H.632

2 Introduced by Representative Sheldon of Middlebury

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; solid waste; water quality; flood

6 control; stormwater

7 Statement of purpose of bill as introduced: This bill proposes to amend
8 multiple environmental subjects. The bill would extend by a year the date by
9 which an assessment of the end-of-life management of certain battery types
10 shall be conducted and requires the battery stewardship organization in the
11 State to complete the assessment instead of the Agency of Natural Resources.
12 The bill would extend multiple deadline dates for reporting or rulemaking for
13 specific flood safety, river corridor, wetlands, and dam programs. The bill
14 would amend notice requirements regarding clean water service providers. In
15 addition, the bill would amend the scope of the stream alteration program so
16 that permits are required when an alteration would occur in any watercourse
17 with a watershed area greater than 0.5 square miles at the location of the
18 proposed alteration. The bill also would strike stormwater impact fees for
19 parcels subject to the three-acre general permit for stormwater discharges. The
20 bill would make multiple amendments to the State Concentrated Animal
21 Feeding Operation permit program. In addition, the bill would allow a State

1 agency to adopt emergency rules if an amendment to a federal statute, rule, or
2 policy would materially conflict with or threaten the ability of a State agency
3 to implement a statutory or regulatory program under Vermont law. The bill
4 also would amend the eligibility requirements for the State emissions repair
5 program.

6 An act relating to miscellaneous environmental amendments

7 It is hereby enacted by the General Assembly of the State of Vermont:

8 * * * Battery Extended Producer Responsibility * * *

9 Sec. 1. 2024 Acts and Resolves No. 152, Sec. 3 is amended to read:

10 Sec. 3. ANR BATTERY ASSESSMENT

11 (a) On or before July 1, ~~2026, the Secretary of Natural Resources~~ 2027, the
12 stewardship organization formed pursuant to 10 V.S.A. chapter 168 shall
13 complete an assessment of the opportunities, challenges, and feasibility of
14 establishing mandatory end-of-life management programs for the following
15 battery types:

16 (1) batteries used in hybrid and electric vehicles;

17 (2) battery energy storage systems; and

18 (3) batteries that are not easily removable from the products they power.

19 (b) The assessment required by this section shall include:

1 (1) a summary of the work and progress other states have made in
2 establishing end-of-life management programs for the three battery types listed
3 under subsection (a) of this section; and

4 (2) policy recommendations on whether mandatory end-of-life
5 management programs are necessary for the battery types listed under
6 subsection (a) of this section.

7 (c) The assessment required by this section shall be provided to the
8 Secretary of Natural Resources, the House Committee on Environment ~~and~~
9 ~~Energy,~~ and the Senate Committee on Natural Resources and Energy.

10 * * * Fuel Storage Tanks * * *

11 Sec. 2. 10 V.S.A. § 1927(d) is amended to read:

12 (d) No person shall deliver a regulated substance to a category one tank
13 that is ~~visibly~~ designated by the Agency as not having a valid permit or not
14 meeting standards adopted by the Secretary ~~related to corrosion protection,~~
15 ~~spill prevention, leak detection, financial responsibility, or overfill protection~~
16 that may result in the tank releasing a regulated substance into the
17 environment.

18 * * * Healthy Homes Initiative * * *

19 Sec. 3. 2024 Acts and Resolves No. 78, Sec. B.1103 is amended to read:

20 Sec. B.1103 CLIMATE AND ENVIRONMENT – FISCAL YEAR 2024

21 ONE-TIME APPROPRIATIONS

* * *

(j)(1) In fiscal year 2024, the amount of \$6,100,000 American Rescue Plan Act (ARPA) – Coronavirus State Fiscal Recovery Funds is appropriated to the Department of Environmental Conservation for the Healthy Homes Initiative. Funds shall be used to make repairs or improvements to drinking water, wastewater, or stormwater systems for Vermonters who have low to moderate income or who live in manufactured housing communities, or both.

(2) All information submitted to or compiled by the Department of Environmental Conservation related to the issuance of individual funding awards under the Healthy Homes Initiative shall be considered confidential unless the person providing the information designates that it is not confidential. This shall include all personal information of applicants that request or receive funding. Notwithstanding 1 V.S.A. § 214, this subdivision shall take effect on passage and shall apply retroactively to July 1, 2023.

* * *

* * * Flood Safety * * *

Sec. 4. 2024 Act and Resolves No. 121, Sec. 3 is amended to read:

Sec. 3. DEPARTMENT OF ENVIRONMENTAL CONSERVATION;
RIVER CORRIDOR BASE MAP; INFILL MAPPING;
EDUCATION AND OUTREACH

(a) On or before January 1, ~~2026~~ 2027, the Department of Environmental

1 Conservation, in consultation with the Agency of Commerce and Community
2 Development and the regional planning commissions, shall amend by
3 procedure the statewide River Corridor Base Map to identify areas suitable for
4 development that are located within existing settlements and that will not cause
5 or contribute to increases in fluvial erosion hazards.

6 (b) Beginning on January 1, 2025, and ending on January 1, ~~2027~~ 2028, the
7 Department of Environmental Conservation shall conduct an education and
8 outreach program to consult with and collect input from municipalities,
9 environmental justice focus populations, the Environmental Justice Advisory
10 Council, businesses, property owners, farmers, and other members of the
11 public regarding how State permitting of development in mapped river
12 corridors will be implemented, including potential restrictions on the use of
13 land within mapped river corridors. The Department shall develop educational
14 materials for the public as part of its charge under this section. The
15 Department shall collect input from the public regarding the permitting of
16 development in mapped river corridors as proposed by this act. On or before
17 January 15, ~~2027~~ 2028, and until permitting of development in mapped river
18 corridors begins under 10 V.S.A. § 754, the Department shall submit to the
19 Senate Committee on Natural Resources and Energy, the House Committee on
20 Environment and Energy, and the Environmental Justice Advisory Council a
21 report that shall include:

1 (1) a summary of the public input it received regarding State permitting
2 of development in mapped river corridors during the public education and
3 outreach required under this section;

4 (2) recommendations, based on the public input collected, for changes to
5 the requirements for State permitting of development in mapped river
6 corridors;

7 (3) an analysis and summary of State permitting of development in
8 mapped river corridors on environmental justice populations; and

9 (4) a summary of the Department's progress in adopting the rules
10 required under 10 V.S.A. § 754 for the regulation of development in mapped
11 river corridors.

12 Sec. 5. 10 V.S.A. § 754 is amended to read:

13 § 754. MAPPED RIVER CORRIDOR RULES

14 (a) Rulemaking authority.

15 (1) On or before ~~July 1, 2027~~ July 15, 2028, the Secretary shall adopt
16 rules pursuant to 3 V.S.A. chapter 25 that establish requirements for issuing
17 and enforcing permits for:

18 (A) all development within a mapped river corridor in the State; and

19 (B) for development exempt from municipal regulation in flood
20 hazard areas.

1 (2) The Secretary shall not adopt rules under this subsection that
2 regulate agricultural activities without the consent of the Secretary of
3 Agriculture, Food and Markets, provided that the Secretary of Agriculture,
4 Food and Markets shall not withhold consent under this subdivision when lack
5 of such consent would result in the State's noncompliance with the National
6 Flood Insurance Program.

7 (3) The Secretary shall seek the guidance of the Federal Emergency
8 Management Agency in developing and drafting the rules required by this
9 section in order to ensure that the rules are sufficient to meet eligibility
10 requirements for the National Flood Insurance Program.

11 * * *

12 (e) Permit requirement. Beginning on ~~January 1, 2028~~ July 1, 2029, a
13 person shall not commence or conduct development exempt from municipal
14 regulation in a flood hazard area or commence or conduct any development in
15 a mapped river corridor without a permit issued under the rules required under
16 subsection (a) of this section by the Secretary or by a State agency delegated
17 permitting authority under subsection (f) of this section. When an application
18 is filed under this section, the Secretary or delegated State agency shall
19 proceed in accordance with chapter 170 of this title.

20 * * *

1 Sec. 6. 2024 Acts and Resolves 121, Sec. 10 is amended to read:

2 Sec. 10. STUDY COMMITTEE ON STATE ADMINISTRATION OF
3 THE NATIONAL FLOOD INSURANCE PROGRAM

4 * * *

5 (e) Report. On or before August 15, ~~2025~~ 2026, the Study Committee shall
6 submit a written report to the General Assembly with its findings and any
7 recommendations for legislative action. Any recommendation for legislative
8 action shall be as draft legislation.

9 * * *

10 Sec. 7. 2024 Acts and Resolves 121, Sec. 11(a) is amended to read:

11 (a) The Secretary of Natural Resources shall initiate rulemaking, including
12 pre-rulemaking, for the rules required in Sec. 5 of this act, 10 V.S.A. § 754
13 (river corridor development), not later than July 1, 2025. The rules shall be
14 adopted on or before July 1, ~~2027~~ 2028.

15 * * * Wetlands * * *

16 Sec. 8. 10 V.S.A. § 918 is amended to read:

17 § 918. NET GAIN OF WETLANDS; STATE GOAL; RULEMAKING

18 (a) On or before ~~July 1~~ December 1, 2025, the Secretary of Natural
19 Resources shall amend the Vermont Wetlands Rules pursuant to 3 V.S.A.
20 chapter 25 to clarify that the goal of wetlands regulation and management in
21 the State is the net gain of wetlands to be achieved through protection of

1 existing wetlands and restoration of wetlands that were previously adversely
2 affected. This condition shall not apply to wetland, river, and flood plain
3 restoration projects, including dam removals.

4 * * *

5 (c) At a minimum, the Wetlands Rules shall be revised to:

6 (1) Require an applicant for a wetland permit that authorizes adverse
7 impacts to more than 5,000 square feet of wetlands to compensate for those
8 impacts through restoration, enhancement, or creation of wetland resources.

9 (2) Incorporate the net gain rule into requirements for permits issued
10 after ~~September 1~~ December 1, 2025.

11 * * *

12 * * * Clean Water Service Providers * * *

13 Sec. 9. 10 V.S.A. § 922 is amended to read:

14 § 922. WATER QUALITY IMPLEMENTATION PLANNING AND
15 TARGETS

16 (a) After listing a water as impaired on the list of waters required by 33
17 U.S.C. § 1313(d), the Secretary shall include in the implementation plan for
18 the water a strategy for returning the water to compliance with the Vermont
19 Water Quality Standards. With respect to a water that is impaired due to
20 sources outside the State or if there is insufficient data or no data available to
21 quantify reductions required by this subchapter, the Secretary shall not be

1 required to implement the requirements of this subchapter; however, the
2 Secretary shall provide an alternate strategy for attaining water quality
3 standards in the implementation plan for the water. For waters determined to
4 be subject to this subchapter, the Secretary shall include the following in an
5 implementation plan:

6 * * *

7 (c) When implementing the requirements of this section, the Secretary shall
8 ~~follow the type 3 notice process established in section 7714 of this title~~ provide
9 notice to the public and a comment period of not less than 30 days.

10 Sec. 10. 10 V.S.A. § 923 is amended to read:

11 § 923. QUANTIFICATION OF POLLUTION REDUCTION; CLEAN
12 WATER PROJECTS

13 (a) After listing a water as impaired on the list of waters required by 33
14 U.S.C. § 1313(d), the Secretary shall publish a methodology for calculating
15 pollution reduction values associated with a clean water project in that water.
16 When establishing a pollutant reduction value, the Secretary shall consider
17 pollution reduction values established in the TMDL; pollution reduction values
18 established by other jurisdictions; pollution reduction values recommended by
19 organizations that develop pollutant reduction values for a clean water project;
20 applicable monitored data with respect to a clean water project, if available;
21 modeled data, if available; or a comparison to other similar projects or

1 programs if no other data on a pollution reduction value or design life exists.

2 Pollution reduction values established by the Secretary shall be the exclusive
3 method for determining the pollutant reduction value of a clean water project.

4 * * *

5 (c)(1) If a person is proposing a clean water project for which no pollution
6 reduction value or design life exists for a listed water, the Secretary shall
7 publish a timeline, not to exceed one year, to establish a pollution reduction
8 value or design life for that clean water project within 60 days following a
9 request from the person proposing the clean water project. A pollution
10 reduction value or design life established under this subdivision shall be based
11 on a review of pollution reduction values established in the TMDL; pollution
12 reduction values or design lives established by other jurisdictions; pollution
13 reduction values or design lives recommended by organizations that develop
14 pollutant reduction values or design lives for a clean water project; applicable
15 monitored data with respect to a clean water project, if available; modeled
16 data, if available; actual data documenting the design life of a clean water
17 project; or a comparison to other similar projects or programs if no other data
18 on a pollution reduction value or design life exists. Any ~~estimate~~ timeline or
19 pollution reduction value or design life developed under this subsection by the
20 Secretary shall be posted on the Agency of Natural Resources' website.

* * *

* * * Stream Alteration * * *

(a) A person shall not change, alter, or modify the course, current, or cross section of any watercourse with a watershed area greater than 0.5 square miles at the location of the proposed change, alteration, or modification or of designated outstanding resource waters, within or along the boundaries of this State either by movement, fill, or excavation of ten cubic yards or more of

1 instream material in any year, unless authorized by the Secretary. A person
2 shall not establish or construct a berm in a flood hazard area or river corridor,
3 as those terms are defined in subdivisions 752(3) and (11) of this title, unless
4 permitted by the Secretary or constructed as an emergency protective measure
5 under subsection (b) of this section.

6 Sec. 12. 10 V.S.A. § 1022 is amended to read:

7 § 1022. APPLICATION FOR ALTERATION

8 A person proposing to change, alter, or modify the course, current, or cross
9 section of a watercourse with a watershed area greater than 0.5 square miles at
10 the location of the proposed change, alteration, or modification shall apply in
11 writing to the Secretary for a permit to do so. The application shall describe
12 the location and purpose of the proposed change and shall be accompanied by
13 the maps and plans and other information the Secretary shall direct. When an
14 application is filed under this section, the Secretary shall proceed in
15 accordance with chapter 170 of this title and the requirements of this
16 subchapter.

17 Sec. 13. 10 V.S.A. § 1023(a) is amended to read:

18 (a) Upon receipt of an application, the Secretary shall cause an
19 investigation of the proposed change to be made. Prior to making a decision, a
20 written report shall be made by the Secretary concerning the effect of the
21 proposed change on the watercourse with a watershed area greater than 0.5

1 square miles. The permit shall be granted, subject to such conditions
2 determined to be warranted, if it appears that the change:

3 (1) will not adversely affect the public safety by increasing flood or
4 fluvial erosion hazards;

5 (2) will not significantly damage fish life or wildlife;

6 (3) will not significantly damage the rights of riparian owners; and

7 (4) in case of any waters designated by the Secretary as outstanding
8 resource waters, will not adversely affect the values sought to be protected by
9 designation.

10 * * * Stormwater * * *

11 Sec. 14. 10 V.S.A. § 1264(f) is amended to read:

12 (f) Rulemaking. On or before December 31, 2017, the Secretary shall
13 adopt rules to manage stormwater runoff. At a minimum, the rules shall:

14 (1) Establish as the primary goals of the rules:

15 (A) assuring compliance with the Vermont Water Quality Standards;

16 and

17 (B) maintenance after development, as nearly as possible, of the
18 predevelopment runoff characteristics.

19 (2) Establish criteria for the use of the basin planning process to
20 establish watershed-specific priorities for the management of stormwater
21 runoff.

1 (3) Assure consistency with applicable requirements of the federal Clean
2 Water Act.

3 (4) Include technical standards and best management practices that
4 address stormwater discharges from existing development, new development,
5 and redevelopment.

6 (5) Specify minimum requirements for inspection and maintenance of
7 stormwater management practices.

8 (6) Include standards for the management of stormwater runoff from
9 construction sites and other land disturbing activities.

10 (7) Allow municipal governments to assume the full legal responsibility
11 for a stormwater system permitted under these rules as a part of a permit issued
12 by the Secretary.

13 (8) Include standards with respect to the use of offsets ~~and stormwater~~
14 ~~impact fees~~.

15 (9) Include minimum standards for the issuance of stormwater permits
16 during emergencies for the repair or maintenance of stormwater infrastructure
17 during a state of emergency declared under 20 V.S.A. chapter 1 or during
18 flooding or other emergency conditions that pose an imminent risk to life or a
19 risk of damage to public or private property. Minimum standards adopted
20 under this subdivision shall comply with National Flood Insurance Program
21 requirements.

1 (10) To the extent appropriate, authorize in the permitting process use of
2 certifications of compliance by licensed professional engineers practicing
3 within the scope of their engineering specialty.

4 (11) Include standards for alternative best management practices for
5 stormwater permitting of renewable energy projects and telecommunication
6 facilities located in high-elevation settings, provided that the alternative best
7 management practices shall be designed to:

8 (A) minimize the extent and footprint of stormwater-treatment
9 practices in order to preserve vegetation and trees;

10 (B) adapt to and minimize impact to ecosystems, shallow soils, and
11 sensitive streams found in high-elevation settings;

12 (C) account for the temporary nature and infrequent use of
13 construction and access roads for high-elevation projects; and

14 (D) maintain the predevelopment runoff characteristics, as nearly as
15 possible, after development.

16 (12) Establish best management practices for improving healthy soils in
17 order to improve the capacity of soil to retain water, improve flood resiliency,
18 reduce sedimentation, and prevent stormwater runoff.

19 Sec. 15. 10 V.S.A. § 1264(g) is amended to read:

20 (g) General permits.

* * *

* * *

* * * Concentrated Animal Feeding Operations * * *

(a) No person shall, without a Large Farm Operation permit from the secretary, construct a new barn, or expand an existing barn, designed to house more than 700 mature dairy animals, 1,000 cattle or ~~cow/calf~~ cow or calf pairs,

1 1,000 veal calves, 2,500 swine weighing over 55 pounds, 10,000 swine
2 weighing less than 55 pounds, 500 horses, 10,000 sheep or lambs, 55,000
3 turkeys, 30,000 laying hens or broilers with a liquid manure handling system,
4 82,000 laying hens without a liquid manure handling system, 125,000 chickens
5 other than laying hens without a liquid manure handling system, 5,000 ducks
6 with a liquid manure handling system, or 30,000 ducks without a liquid
7 manure handling system. No permit shall be required to replace an existing
8 barn in use for livestock or domestic fowl production at its existing capacity.
9 The Secretary of Agriculture, Food and Markets, in consultation with the
10 Secretary of Natural Resources, shall review any application for a permit under
11 this section with regard to water quality impacts prior to approval of a permit
12 under this subsection. If, upon review of a large farm application for a permit
13 under this subsection, the Secretary of Agriculture, Food and Markets
14 determines that the farm may be discharging to waters of the State, the
15 Secretary of Agriculture, Food and Markets shall promptly refer the potential
16 discharge to the Secretary of Natural Resources for response in accordance
17 with the federal Clean Water Act regarding concentrated animal feeding
18 operations. The Secretary of Natural Resources shall direct a large farm to
19 obtain a National Pollutant Discharge Elimination System permit under 10
20 V.S.A. § 1263 if required by federal regulations for concentrated animal
21 feeding operations or by the VPDES CAFO Rules. If the farm is not required

1 to obtain a CAFO permit and is not in violation of federal regulations for
2 Concentrated Animal Feeding Operations, the Secretary of Natural Resources
3 shall promptly notify the Secretary of Agriculture, Food and Markets.

4 Sec. 17. 10 V.S.A. § 1263 is amended to read:

5 § 1263. DISCHARGE PERMITS

6 (a) Any person who intends to discharge waste into the waters of the State
7 or who intends to discharge into an injection well or who intends to discharge
8 into any publicly owned treatment works any waste that interferes with, passes
9 through without treatment, or is otherwise incompatible with that works or
10 would have a substantial adverse effect on that works or on water quality, or is
11 required to apply for a CAFO permit, shall make application to the Secretary
12 for a discharge permit. Application shall be made on a form prescribed by the
13 Secretary. An applicant shall pay an application fee in accordance with
14 3 V.S.A. § 2822.

15 * * *

16 (g) Any person who owns or operates a concentrated animal feeding
17 operation that requires a permit under the federal National Pollutant Discharge
18 Elimination System permit regulations or the VPDES CAFO Rules shall
19 submit an application to the Secretary for a discharge permit and pay the
20 required fees specified in 3 V.S.A. § 2822. Not later than ~~December 15, 2025~~
21 September 1, 2027, the Secretary shall amend and issue the CAFO General

1 Permit and Notice of Intent. Not later than July 1, 2026, the Secretary shall
2 issue a CAFO application and an individual CAFO permit. The Secretary may
3 request any additional information from a farm as necessary to process a
4 permit and administer the CAFO program. The Secretary may direct a farm to
5 apply for an individual or general permit in accordance with the procedural
6 requirements of subsection (b) of this section.

7 (h) A large CAFO shall not be required to have a CAFO permit unless one
8 of the following conditions ~~are~~ is met:

9 (1) wastes are discharged into waters via a point source;

10 (2) wastes are discharged directly into waters that originate outside or
11 pass over, across, or through the facility or otherwise come into direct contact
12 with the animals confined in the operation; ~~or~~

13 (3) a precipitation-related discharge of manure, litter, or process
14 wastewater from land areas under the control of a LFO has occurred that was
15 not in accordance with site-specific nutrient management practices that ensure
16 appropriate agricultural utilization of the nutrients in the manure, litter, or
17 process wastewater, as determined by the Secretary; or

18 (4) the Secretary determines in the Secretary's discretion that a CAFO
19 permit is required.

20 (i) The Secretary shall require nutrient management plans for all CAFOs
21 and shall include ~~the~~ plans approved by the Secretary in the permits for public

1 comment in accordance with the process set forth in chapter 170 of this title.

2 The Secretary may amend a permit in accordance with chapter 170 of this title
3 or revoke a permit in accordance with 3 V.S.A. § 814.

4 (j) Once a CAFO is covered under a CAFO permit, the farm shall be
5 covered for the five-year duration of the permit. A ~~farm covered by a CAFO~~
6 permit shall ~~renew the permit~~ be renewed in accordance with its terms, unless
7 the farm wants to opt out and can demonstrate it is not discharging and shall
8 accordingly comply with the federal CWA and the Vermont CAFO rules.

9 Sec. 18. 10 V.S.A. § 1351 is amended to read:

10 § 1351. DEFINITIONS

11 As used in this subchapter:

12 * * *

13 (2)(A) “Animal feeding operation” or “AFO” means a lot or facility,
14 other than an aquatic animal production facility, where the following
15 conditions are met:

16 (i) animals, other than aquatic animals, have been, are, or will be
17 stabled or confined and fed or maintained for a total of 45 days or more in any
18 12-month period; and

19 (ii) crops, vegetation, or forage growth are not sustained in the
20 normal growing season over any portion of the lot or facility.

(3) “Concentrated animal feeding operation” or “CAFO” means an AFO that is defined as a large CAFO, a medium CAFO, or a small CAFO.

(5) “Large concentrated animal feeding operation” or “~~Large large~~ CAFO” means an AFO that houses 700 or more mature dairy animals, whether milked or dry, 1,000 or more cattle or cow or calf pairs, 1,000 or more veal calves, 2,500 or more swine weighing over 55 pounds, 10,000 or more swine weighing 55 pounds or less, 500 or more horses, 10,000 or more sheep or lambs, 55,000 or more turkeys, 30,000 or more laying hens or broilers with a liquid manure handling system, 82,000 or more laying hens without a liquid manure handling system, 125,000 or more chickens other than laying hens

1 without a liquid manure handling system, 5,000 or more ducks with a liquid
2 manure handling system, or 30,000 or more ducks without a liquid manure
3 handling system.

4 (6) “Large farm operation” or “LFO” ~~has the same meaning as in 6~~
5 ~~V.S.A. chapter 215~~ means an AFO that stables or confines as many as or more
6 than the numbers of animals specified in any of the following categories: (i)
7 700 mature dairy cows, whether milked or dry; (ii) 1,000 veal calves; (iii)
8 1,000 cattle other than mature dairy cows or veal calves (includes heifers,
9 steers, bulls, and cow or calf pairs); (iv) 2,500 swine each weighing 55 pounds
10 or more; (v) 10,000 swine each weighing less than 55 pounds; (vi) 500 horses;
11 (vii) 10,000 sheep or lambs; (viii) 55,000 turkeys; (ix) 30,000 laying hens or
12 broilers, if the AFO uses a liquid manure handling system; (x) 125,000
13 chickens (other than laying hens), if the AFO uses other than a liquid manure
14 handling system; (xi) 82,000 laying hens, if the AFO uses other than a liquid
15 manure handling system; (xii) 30,000 ducks, if the AFO uses other than a
16 liquid manure handling system; or (xiii) 5,000 ducks, if the AFO uses a liquid
17 manure handling system.

18 * * *

19 (8) “Medium concentrated animal feeding operation” or “medium
20 CAFO” means an AFO that is defined as an AFO by the VPDES CAFO Rules
21 adopted by the Secretary, including an AFO that:

1 (A) houses 200 to 699 mature dairy animals, whether milked or dry,
2 300 to 999 cattle or cow or calf pairs, 300 to 999 veal calves, 750 to 2,499
3 swine weighing over 55 pounds, 3,000 to 9,999 swine weighing 55 pounds or
4 less, 150 to 499 horses, 3,000 to 9,999 sheep or lambs, 16,500 to 54,999
5 turkeys, 9,000 to 29,999 laying hens or broilers with a liquid manure handling
6 system, 25,000 to 81,999 laying hens without a liquid manure handling system,
7 37,500 to 124,999 chickens other than laying hens without a liquid manure
8 handling system, 1,500 to 4,999 ducks with a liquid manure handling system,
9 or 10,000 to 29,999 ducks without a liquid manure handling system; and

10 (B) either of the following conditions are met:

11 (i) wastes are discharged into waters through a man-made ditch,
12 flushing system, or other similar man-made device; or

13 (ii) wastes are discharged directly into waters that originate
14 outside of or pass over, across, or through the facility or otherwise come into
15 direct contact with the animals confined in the operation.

16 (9) “Medium farm operation” or “MFO” ~~has the same meaning as~~
17 ~~medium farm operation in 6 V.S.A. chapter 215 and rules adopted under the~~
18 ~~chapter~~ means any AFO with the following type and number of animals: 200
19 to 699 mature dairy cows, whether milked or dry; 300 to 999 veal calves; 300
20 to 999 cattle other than mature dairy cows or veal calves (includes heifers,
21 steers, bulls, and cow or calf pairs); 750 to 2,499 swine each weighing 55

1 pounds or more; 3,000 to 9,999 swine each weighing less than 55 pounds; 150
2 to 499 horses; 3,000 to 9,999 sheep or lambs; 16,500 to 54,999 turkeys; 9,000
3 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling
4 system; 37,500 to 124,999 chickens (other than laying hens), if the AFO uses
5 other than a liquid manure handling system; 25,000 to 81,999 laying hens, if
6 the AFO uses other than a liquid manure handling system; 10,000 to 29,999
7 ducks, if the AFO uses other than a liquid manure handling system; or 1,500 to
8 4,999 ducks, if the AFO uses a liquid manure handling system.

9 (10) “Point source” means any discernible, confined, and discrete
10 conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete
11 fissure, container, rolling stock, concentrated animal feeding operation, or
12 vessel or other floating craft from which pollutants are or may be discharged.
13 This term does not include agricultural stormwater discharges and return flows
14 from irrigated agriculture.

15 (11) “Process wastewater” means water directly or indirectly used in the
16 operation of an AFO or CAFO for any or all of the following: spillage or
17 overflow from animal or poultry watering systems; washing, cleaning, or
18 flushing pens, barns, manure pits, or other AFO or CAFO facilities; direct
19 contact swimming, washing, or spray cooling of animals; or dust control.

20 Process wastewater also includes any water that comes into contact with any

1 raw materials, products, or byproducts, including manure, litter, feed, milk,
2 eggs, or bedding.

3 (12) “Production area” means that part of an AFO or CAFO that
4 includes the animal confinement area, the manure storage area, the raw
5 materials storage area, and the waste containment areas. The animal
6 confinement area includes open lots, housed lots, feedlots, confinement houses,
7 stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards,
8 medication pens, walkers, animal walkways, and stables. The manure storage
9 area includes lagoons, runoff ponds, storage sheds, stockpiles, under house or
10 pit storages, liquid impoundments, static piles, and composting piles. The raw
11 materials storage area includes feed silos, silage bunkers, and bedding
12 materials. The waste containment area includes settling basins, and areas
13 within berms and diversions that separate uncontaminated ~~storm water~~
14 stormwater. Also included in the definition of production area is any egg
15 washing or egg processing facility and any area used in the storage, handling,
16 treatment, or disposal of mortalities.

17 (13) “Secretary” means the Secretary of Natural Resources.

18 (14) “Small animal feeding operation” or “SFO” means an AFO that is
19 not a large CAFO or a medium CAFO.

20 (15) “Small concentrated animal feeding operation” or “small CAFO”
21 means a small AFO designated as a small CAFO by the Secretary upon

1 determining that the AFO is a significant contributor of pollutants to waters of
2 the State and is defined as a CAFO by the regulations adopted under the
3 federal Clean Water Act.

4 (16) “Waters of the United States” ~~shall have~~ has the same meaning as defined
5 by the federal Clean Water Act.

6 Sec. 19. 10 V.S.A. § 1352 is amended to read:

7 § 1352. POWERS OF THE SECRETARY

8 The Secretary has the authority to exercise all of the following:

9 (1) Implement the federal Clean Water Act to administer a Vermont
10 pollutant discharge elimination system (VPDES) CAFO program that is at
11 least as stringent as the federal Clean Water Act and enabling rules.

12 (2) Make, adopt, revise, and amend rules as necessary to administer a
13 VPDES CAFO program that is at least as stringent as the federal Clean Water
14 Act and enabling rules.

15 (3) Make, adopt, revise, and amend procedures, guidelines, inspection
16 checklists, and other documents as necessary for the administration of the
17 VPDES CAFO program.

18 (4) Designate any AFO that meets the definition of a CAFO under the
19 federal Clean Water Act regulations or under the VPDES CAFO Rule as a
20 CAFO, in the Secretary’s sole discretion.

1 (5) Establish technical standards and require a CAFO to comply with
2 technical standards that are consistent with current U.S. Department of
3 Agriculture nutrient management standards, vegetative buffers, and any other
4 CAFO requirements that comply with the federal Clean Water Act and
5 enabling rules, such as 40 CFR § 412.4 and 40 CFR § 123.36.

6 (6) Require any AFO to obtain a CAFO permit under this chapter upon a
7 determination that the AFO is discharging to waters of the State.

8 ~~(6)~~(7) Designate any small AFO as a CAFO if after an on-site
9 inspection, the Secretary determines that the small AFO is discharging into
10 water and is a significant contributor of pollutants to waters of the State. The
11 Secretary shall consider the following factors:

12 (A) the size of the AFO and the amount of wastes reaching waters;

13 (B) the location of the AFO relative to waters;

14 (C) the means of conveyance of animal wastes and process waste
15 ~~waters~~ wastewaters into waters;

16 (D) the slope, vegetation, rainfall, and other factors affecting the
17 likelihood or frequency of discharge of animal wastes, manure, and process
18 wastewaters into waters; and

19 (E) other relevant factors.

20 ~~(7)~~(8) Access private or public property to inspect AFOs and CAFOs,
21 take photos and samples, and review and copy AFO and CAFO land

1 management records, including nutrient management plans, as may be
2 necessary to carry out the provisions of this subchapter.

3 ~~(8)~~(9) Solicit and receive federal funds to implement the CAFO
4 program.

5 ~~(9)~~(10) Cooperate fully with the federal government or other agencies in
6 the operation of any joint federal-state programs concerning the regulation of
7 agricultural pollution.

8 ~~(10)~~(11) Appoint assistants or contract with persons with applicable
9 expertise, subject to applicable laws and State policies, to perform or assist in
10 the performance of the duties and functions of the Secretary under this chapter.

11 Sec. 20. 10 V.S.A. § 1353 is amended to read:

12 § 1353. CAFO PERMIT REQUIREMENTS AND EXEMPTIONS

13 (a) The discharge of manure, litter, or process wastewater to waters of the
14 State from a permitted CAFO as a result of the application of that manure,
15 litter, or process wastewater by the CAFO to land areas under its control is a
16 discharge from that CAFO subject to VPDES permit requirements, except
17 where it is an agricultural stormwater discharge as provided under the federal
18 Clean Water Act. For purposes of this subsection, where the manure, litter, or
19 process wastewater has been applied in accordance with the federal regulations
20 under the Clean Water Act, a precipitation-related discharge of manure, litter,
21 or process wastewater from land areas under the control of a CAFO is an

1 agricultural stormwater discharge. For unpermitted Large CAFOs, a
2 precipitation-related discharge of manure, litter, or process wastewater from
3 land areas under the control of the CAFO shall be considered an exempt
4 agricultural stormwater discharge only where the manure, litter, or process
5 wastewater has been land applied in accordance with site-specific nutrient
6 management practices that ensure appropriate agricultural utilization of the
7 nutrients in the manure, litter, or process wastewater, as specified in the federal
8 CAFO regulations and as determined by the Secretary.

9 * * *

10 Sec. 21. 10 V.S.A. § 8003 is amended to read:

11 § 8003. APPLICABILITY

12 (a) The Secretary may take action under this chapter to enforce the
13 following statutes and rules, permits, assurances, or orders implementing the
14 following statutes, and the Board may take such action with respect to
15 subdivision (10) of this subsection:

16 * * *

17 (3) 10 V.S.A. chapters 47 and 56, relating to water pollution control,
18 water quality standards, public water supply, and lakes in crisis;

19 * * *

20 (d) Upon the request of the Secretary of Agriculture, Food and Markets, the
21 Secretary may take action under this chapter to enforce the agricultural water

1 quality requirements of, rules adopted under, and permits and certifications
2 issued under 6 V.S.A. chapter 215. The Secretary of Natural Resources and
3 the Secretary of Agriculture, Food and Markets shall ~~enter into a memorandum~~
4 ~~of understanding to implement this subsection~~ execute a document that
5 outlines the process for implementing this subsection.

6 * * * Emergency Rule * * *

7 Sec. 22. 3 V.S.A. § 844 is amended to read:

8 § 844. EMERGENCY RULES

9 (a) Where an agency believes that there exists an imminent peril to public
10 health, safety, or welfare, it may adopt an emergency rule. The rule may be
11 adopted without having been prefiled or filed in proposed or final proposed
12 form, and may be adopted after whatever notice and hearing the agency finds
13 to be practicable under the circumstances. The agency shall make reasonable
14 efforts to ensure that emergency rules are known to persons who may be
15 affected by them.

16 * * *

17 (g) In the alternative to the grounds specified in subsection (a) of this
18 section, an agency may adopt emergency amendments to existing rules using
19 the process set forth in this section if each of the subdivisions (1)–(5) of this
20 subsection applies. On a majority vote of the entire Committee, the Legislative
21 Committee on Administrative Rules may object to the emergency amendments

1 on the basis that one or more of these subdivisions do not apply or under
2 subdivision (e)(1)(A), (B), or (C) of this section, or both.

3 (1) The existing rules implement a program controlled by federal statute
4 or rule or by a multistate entity.

5 (2) The controlling federal statute or rule has been amended to require a
6 change in the program, or the multistate entity has made a change in the
7 program that is to be implemented in all of the participating states.

8 (3) The controlling federal statute or rule or the multistate entity requires
9 implementation of the change within 120 days or less.

10 (4) The adopting authority finds each of the following in writing:

11 (A) The agency cannot by the date required for implementation
12 complete the final adoption of amended rules using the process set forth in
13 sections ~~837 through 843~~ 837–843 of this title.

14 (B) Failure to amend the rules by the date required for
15 implementation would cause significant harm to the public health, safety, or
16 welfare or significant financial loss to the State.

17 (5) On the date the emergency rule amendments are adopted pursuant to
18 this subsection, the adopting authority profiles a corresponding permanent rule
19 pursuant to section 837 of this title.

20 (h) In addition to the grounds for emergency rulemaking under subsections
21 (a) and (g) of this section, an agency may adopt an emergency rule under this

1 section if an amendment to a federal statute, rule, or policy will materially
2 conflict with or threaten the ability of the agency to implement a statutory or
3 regulatory program required under Vermont law. On a majority vote of the
4 entire Committee, the Legislative Committee on Administrative Rules may
5 object to proposed emergency rules for adoption under this subsection on the
6 basis that the provisions of this subsection do not apply.

7 Sec. 23. SUNSET OF AGENCY EMERGENCY RULEMAKING

8 AUTHORITY

9 3 V.S.A. § 844(h) (emergency rulemaking in response to federal action) is
10 repealed on July 1, 2028.

11 * * * Emissions Repair Program * * *

12 Sec. 24. 2021 Acts and Resolves No. 55, Sec. 25 is amended to read:

13 Sec. 25. EMISSIONS REPAIR PROGRAM

14 (a) Program creation. The Department of Environmental Conservation, in
15 consultation with the Agency of Transportation, shall establish and administer
16 an emissions repair program that shall:

17 (1) apply to repairs of certain vehicles that failed the on board diagnostic
18 (OBD) systems inspection;

19 (2) provide point-of-repair vouchers and base eligibility for vouchers on
20 ~~the same criteria used for income qualification for the Low Income Home~~
21 ~~Energy Assistance Program (LIHEAP) through the State's Economic Services~~

1 ~~Division within the Department for Children and Families a Vermont~~
2 registered vehicle owner's Vermont income tax status or adjusted gross income
3 of the most recent Vermont income tax return, adjusted for the number of
4 dependents claimed, as follows:

5 (A) a Vermont resident not required to file a Vermont income tax
6 return because the resident is not required to file a federal income tax return
7 qualifies for up to the maximum voucher amount of \$2,500.00;

8 (B) a Vermont resident with an adjusted gross income at or below
9 185 percent of the federal poverty level as determined by the U.S. Census
10 Bureau qualifies for up to the maximum voucher amount of \$2,500.00;

11 (C) a Vermont resident with an adjusted gross income at or below
12 250 percent of the federal poverty level as determined by the U.S. Census
13 Bureau qualifies for a reduced voucher amount up to \$1,875.00; or

14 (D) a Vermont resident with an adjusted gross income at or below
15 300 percent of the federal poverty level as determined by the U.S. Census
16 Bureau qualifies for a reduced voucher amount up to \$1,250.00; and

17 (3) provide a point-of-repair voucher to repair a motor vehicle that was
18 ready for testing, failed the OBD systems inspection, requires repairs that are
19 not under warranty, and will be able to pass the State's vehicle inspection once
20 the repairs are made provided that the point-of-repair voucher is commensurate
21 with the fair market value of the vehicle to be repaired and does not exceed

6 This act shall take effect on passage.