



**MICHIGAN'S WETLAND LAW:
AGRICULTURAL PERSPECTIVE**

**Laura Campbell, Ag Ecology Manager
Michigan Wetlands Association Meeting
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MICHIGAN WETLANDS LAW: HISTORY

1984: Delegated authority over Clean Water Act (Part 404)—first in the nation

1998: EPA review began to determine if program was CWA-compliant

2008: EPA published review finding deficiencies, including ag exemptions



Vernal Pond

WHAT DOES 2013 PA 98 MEAN FOR FARMERS?

EXEMPTIONS NARROWED FOR AGRICULTURE

- As of October 1, 2013, agricultural activities in wetlands must be established and ongoing or will require a permit



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WHAT DOES 2013 PA 98 MEAN FOR FARMERS?

EXEMPTIONS NARROWED FOR DRAIN CONSTRUCTION

- As of July 1, 2014, activities that change the width, depth, or location of a drain in wetlands will require a permit



Wet Meadow

WHY FARMERS SUPPORTED PA 98: JURISDICTION

- Retains delegated authority
- Balances resource protection with economic opportunity
- Allows DEQ to work with farmers on permits and compliance
- Maintains time limits for permitting response
- Allows DEQ approval of exemptions to 500-foot proximity of wetlands to lakes and streams



Marsh

WHY FARMERS SUPPORTED PA 98: DRAINAGE

- Drain definition, maintenance exemption, and upland construction
- Ag drain cannot be used to determine a wetland is contiguous
- Drainage structures cannot be considered wetlands
- Temporary obstruction of drainage is not a wetland until wetland definition is achieved

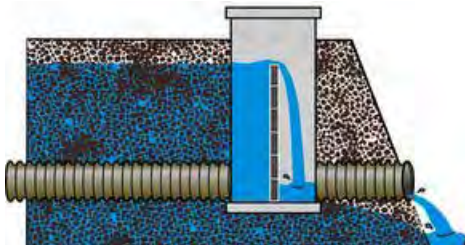


Two-Stage Ditch

<http://www.nature.org/ourinitiatives/regions/northamerica/unitedstates/indiana/howwework/two-stage-ditches.xml>

COUNTY DRAINS VS. AG DRAINS

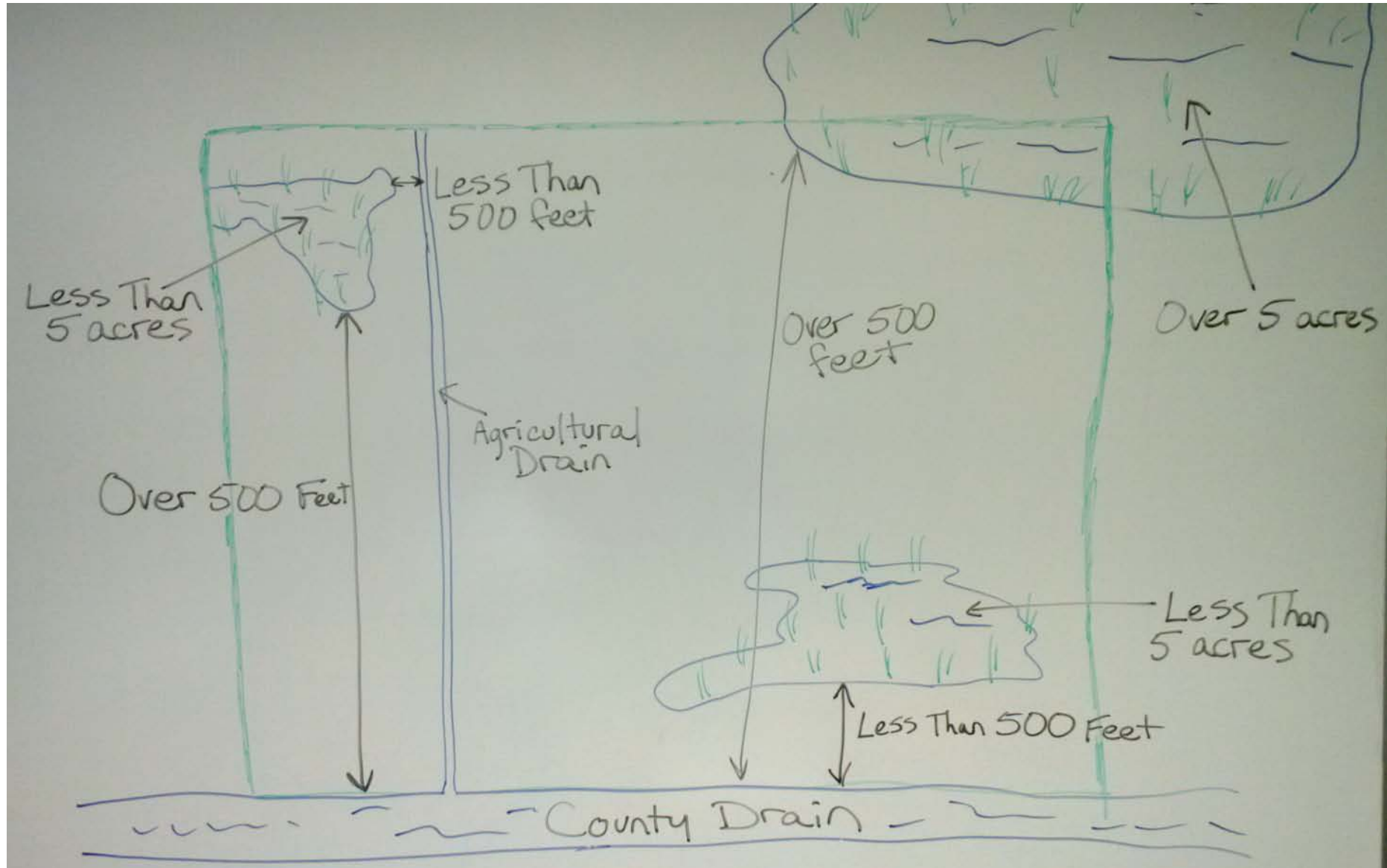
- County Drain:
 - Landowners need arrangement with Drain Commission to do work
 - Can be regulated as streams
 - Drain Commissioners have some exemptions
- Ag Drain:
 - Man-made
 - Non-continuous flow
 - Precipitation-driven flow
 - Serves ag production
 - Constructed before 1/1/73 or in compliance with Parts 301 and 303



Drainage Control Structure

<https://engineering.purdue.edu/watersheds/conservation/drainage/>

WHAT IS REGULATED?



WHY FARMERS SUPPORTED PA 98: AGRICULTURAL PRACTICES

- Exemptions for:
 - Fencing for grazing
 - Tree cutting or stump grinding
 - NRCS-approved stream crossings
 - Incidental wetlands
 - Farm ponds/roads
- Permitting flexibility:
 - Mitigation
 - Blueberry assistance



WHAT IS NEXT?

- DEQ Permitting
 - New categories for ag activity
 - New blueberry general permit
 - New drain activity permits—general and minor categories
- EPA Review
 - Issue: Waters of the United States



Wooded Swamp

THANK YOU!
ANY QUESTIONS?



<http://www.c21drews.com>