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

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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.
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
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
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

http://msue.anr.msu.edu/news/maintaining_irrigation_on_michigan_blueberries
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