



US Army Corps  
of Engineers  
Wilmington District

Spring Creek Farms, LLC  
Pamlico County, North Carolina  
(Regulatory)

- **Potential lawsuit over legality of ditches that were excavated in the late 1980's**
- **Proposed change in use of land from silviculture to agriculture**
- **Increasing media and public interest**



---

CONGRESSIONAL DISTRICT: NC-3

DATE: 23 February 2015

1. **PURPOSE:**

To provide information regarding the Corps' jurisdictional status of potentially drained wetlands resulting from past silviculture ditching activities located in Pamlico County, NC.

2. **BACKGROUND:**

a. Spring Creek Farms, LLC (SCF) purchased a 4,600 +/- acre silviculture/agriculture tract in Pamlico County, NC. In August 2013, representatives for SCF requested a Corps wetland determination of a 251 acre tract that is part of the 4,600 +/- tract. Based on their independent assessment, a majority of the property has been drained and no longer exhibits the hydrology parameter characteristic of a jurisdictional wetland. SCF wishes to convert these drained areas from silviculture to agriculture.

b. On August 7, 2013, a thorough investigation was conducted on the 251 acre tract utilizing current guidance for making wetland determinations including the 1987 Corps Wetland Delineation Manual and the Atlantic and Gulf Coastal Plain Regional Supplement to the 1987 Manual. Hydric soils and hydrophytic vegetation were observed. Additionally, multiple 4-foot x 4-

PROJECT INFORMATION – Spring Creek Farms, LLC, Pamlico County, NC (Regulatory) -  
Continued

foot lateral ditches on 660-foot spacing connected to 10-foot x 4-foot perimeter ditches were observed. The Corps determined that the hydrology indicator was not present and issued a no permit required determination (Action ID Number SAW-2013-01700). At this time, only ditch maintenance was being conducted. No additional clearing or ditch construction was observed.

c. Subsequent to this determination, several citizens became concerned that SCF was in violation of the Clean Water Act based on local knowledge that wetlands were present on the site. Ultimately, the Pamlico Board of Commissioners wrote a letter to the Corps requesting that the Corps reexamine their decision of no wetlands present and enforce the illegality of the ditch construction presuming a permit had not been obtained by the original owner. The Commissioners requested that should the ditches be found illegal they should be removed and the hydrology restored to the area.

d. The EPA and the Corps revisited the 251 acre tract in November 2013 as well as an additional 580 acre tract and an 80 acre tract. The intent of the site visit was to assess the condition of these areas as it relates to drainage effects, locate reference points not affected by ditching, and make a determination of jurisdiction of the lateral and perimeter ditches. The Corps is continuing to monitor the hydrology on the 580 acre tract and has deemed the 80 acre tract uplands.

3. **CURRENT STATUS:**

a. On February 6, 2014, the EPA notified the Corps that they were going to contact the consultant and the landowners of SCF and were going to ask Spring Creek to not conduct any further ditch maintenance on the site. They stated that the ditches are in violation of the 404(F) exemptions in that they exceeded the standard for minor drainage.

b. Given that the ongoing land clearing and ditch maintenance activities were occurring in areas that may be subject to Clean Water Act permitting requirements, the Corps formally referred the case to EPA Region IV for their action on April 15, 2014.

c. On Dec 19, 2014, the Corps received a Notice of Intent (NOI) to file suit from the Southern Environmental Law Center regarding the Corps determination that the 251 acre tract did not contain wetlands subject to the requirements of the Clean Water Act. The NOI provides 60-day notice to the Corps that unless the Corps issues a revised determination, it will file the lawsuit.

d. By teleconference with EPA, Region IV representatives on January 6, 2015, the Corps was informed that EPA was in consultation with representatives of SCF and was developing a restoration and conservation plan that may satisfy the concerns expressed in NOI. Based on that conversation, the Corps elected to wait until the outcome of that plan was known before taking action on the NOI. As of today, we have not received a plan.