

# Modifying No Further Action Letters Under the New Jersey Privatized Site Remediation Program

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Under the new privatized Site Remediation Program, consultants are confronted with situations where previously issued No Further Action Letters (NFAs) have been issued “conditionally”, with a Deed Notice or Classification Exception Area (CEA). In certain instances, CEAs can be lifted where contaminants have degraded to acceptable levels and therefore would have warranted an “unconditional NFA” under the old law. Ambiguity in the law now leaves consultants and responsible parties with uncertainty as to whether a “new” Response Action Outcome (RAO) is legally necessary to validate the removal of conditions to the previously issued NFA. In some cases, lenders or investors may require a new RAO in light of the fact that the CEA has been lifted. It remains to be seen whether the Department will, in all cases, require new approvals in such cases. Responsible parties should be conservative in approaching any modifications to previously issued approvals, whether in the context of NFAs, conditional-NFAs or RAOs.

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