

## **Failure to Discover An Agency's Approval Of An Exempt Project Does Not Extend The Time To File CEQA Lawsuit**

The First District Court of Appeal has ruled that the accrual of a claim that a public agency exemption determination violated CEQA is not postponed by the plaintiff's failure to discover the violation. [\*Communities for a Better Environment et al. v. Bay Area Air Quality Management District\*](#), No. A143634 (1st Dist., July 19, 2016; modified Aug. 10, 2016). *Communities for a Better Environment* brought an action against the Bay Area Air Quality Management District challenging BAAQMD's determination that its approval of a permit authorizing a rail-to-truck transloading facility to switch from loading ethanol to crude oil was exempt from CEQA. In July 2013, BAAQMD had found its approval was an exempt ministerial action, but did not file a Notice of Exemption. Two months later, the transloading facility began transloading crude oil. Over the next few months, BAAQMD modified several conditions of the permit and ultimately issued another permit incorporating the modifications. CBE subsequently filed its lawsuit against BAAQMD. During the trial court proceedings, BAAQMD argued that CBE's petition was time-barred because it was filed more than 180 days after the issuance of the first permit, the time to file suit specified by statute when no Notice of Exemption is filed. CBE responded that a "discovery rule" should apply, which would mean that the limitations period did not begin to run until CBE first became aware of the operational change in January, 2014. The trial court rejected CBE's claim and dismissed the case as time-barred because it was filed more than 180 days after BAAQMD's decision to approve the project. The court of appeal agreed, holding that a discovery rule cannot be applied to postpone the running of the CEQA's statutory limitations periods because the specified time periods are dates on which the public is deemed to have *constructive notice* of a potential CEQA violation. The court of appeal distinguished the situation from a case decided by the California Supreme Court three decades ago, and a recent court of appeal case, in which the plaintiffs successfully argued a challenge was not time-barred because substantial changes had been made to the project after the initial approval. The court of appeal observed that in both cases the courts determined "that an action accrues on the date a plaintiff knew or reasonably should have known of the project only if no statutory triggering date has occurred." CBE, however, "offered no theory" demonstrating that the applicable triggering date in the statute did not occur. The court of appeal held that CBE's contention that the discovery rule could delay the statutory triggering date ran counter to the general principle that CEQA's statutes of limitation specify dates a plaintiff is deemed to have constructive notice of a potential CEQA violation. A plaintiff's lack of actual notice of the violation is irrelevant. Accordingly, the court of appeal upheld the trial court's dismissal of CBE's petition. The court of appeal's decision reinforces the strong public interest underlying CEQA's short statutes of limitation. As the court of appeal stated, a discovery exception could not be read into the statute without violating "the Legislature's clear determination that the public interest is not served unless CEQA challenges are promptly filed and diligently prosecuted."

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