



Chiquita responds that the People's motion is untimely. Chiquita asserts that although the motion itself is dated December 20, 2002, it was not mailed for filing until at least eleven days later, on December 31, 2002. Resp. at 1. Chiquita contends that the motion was filed at least 40 days after the Board's November 21, 2002 order was entered, and as result, even if the motion is otherwise properly brought, it is untimely and must be denied on that basis. Resp. at 2. Chiquita also argues that the motion presents no new evidence and references no changes in the law. Resp. at 9.

### **DISCUSSION**

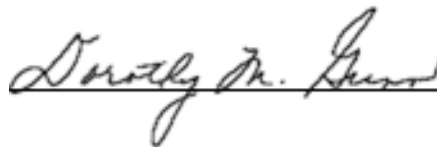
The People's motion is entitled a motion to vacate summary judgment, and is brought pursuant to Section 101.520 of the Board's procedural rules. 35 Ill. Adm. Code 101.520. In ruling on a motion for reconsideration under 35 Ill. Adm. Code 101.520, the Board is to consider "newly-discovered evidence which was not available at the time of the hearing, changes in the law or errors in the court's previous application of the existing law." Citizens Against Regional Landfill v. County Board of Whiteside, PCB 93-156, slip op. at 2 (Mar. 11, 1993), *citing* Koroglyun v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 572 N.E.2d 1154, 1158 (1st Dist. 1992). Section 101.902 of the Board's procedural rules sets forth the factors the Board will consider when ruling upon a motion under 35 Ill. Adm. Code 101.520. Those factors include "new evidence, or a change in the law, to conclude that the Board's decision was in error." 35 Ill. Adm. Code 101.902.

The Board issued the order in question on November 21, 2002. Any motion to reconsider must be filed within 35 days of adoption of the Board order, in this instance December 26, 2003. *See* 35 Ill. Adm. Code 101.520(a). The People's motion was sent for filing on December 31, 2002.

As more than 35 days after the adoption of the Board order had passed before the motion was filed, the Board does not accept the motion. However, the Board notes that the People's motion does not present any new evidence or claim that the law has changed since November 21, 2002. In fact, the People make their argument without regard to new evidence or change in the law, but instead assert that the Board's rationale for its order granting summary judgment was mistaken. Accordingly, as the People have failed to meet the standard for the filing of a motion under 35 Ill. Adm. Code 101.520, the motion would be denied even if timely filed.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 17, 2003, by a vote of 6-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board