

# BARNES & THORNBURG

2600 Chase Plaza  
10 South LaSalle Street  
Chicago, Illinois 60603  
(312) 357-1313

Fredric P. Andes  
Partner

Fax (312) 759-5646

APPROVED  
Board of Public Works

April 17, 2002

Jack Dillon, Ph.D.  
Director, Division of Environmental Services  
City of South Bend  
3113 Riverside Drive  
South Bend, IN 46628

MAY 09 2002  
*Paul P. Fitzgerald*  
*Ronald E. Salter*

Re: Proposal for Assistance on Permit Appeal for CSO Discharges

Dear Jack:

As you know, South Bend's NPDES permit for its combined sewer system likely will be issued soon. Based on the language in draft versions of the permit and discussions the City and Barnes & Thornburg have had with IDEM, we believe that the permit will provide inadequate protection to South Bend concerning CSO discharges. Specifically, the permit will expose South Bend to potential enforcement and other liability because:

- 1) It will prohibit CSO discharges that cause or contribute to a violation of water quality standards, even though it will not be possible for the City to avoid standards violations during wet weather events.
- 2) It will require that CSO discharges not violate the narrative water quality criteria (i.e., that no "deleterious" conditions can be created), even though those conditions will likely occur during wet weather events due to no fault of the City.
- 3) While it will provide a 5-year compliance schedule during which CSO discharges will not need to meet the water quality standards for *E. coli*, the compliance schedule will not extend to other parameters or to compliance with the narrative criteria.

We believe that these permit conditions will not provide the liability protections that the City is entitled to under SEA 431, the recently passed State law governing CSO discharges. To gain those protections, we propose that when the permit is issued, South Bend file an appeal of the permit, on the grounds that the permit is not consistent with SEA 431's statutory requirements. If the appeal is successful, the City would be protected against liability for exceedances of water quality standards or narrative criteria during wet weather events during the period that it is developing its Long Term Control Plan. After that Plan is developed and approved, the City could request temporary suspension of the recreational designated

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use, which would result in long-term permit conditions that can be met, even during wet weather events.

In addition to filing this permit appeal, it is also possible for the City to apply for a variance for its CSO discharges. However, we do not know if that variance will be granted by the State. If the State does not agree to issue a variance, then a permit appeal would be the only available means to secure adequate protection against liability.

This appeal would involve filing a petition for review with the Indiana Office of Environmental Adjudication (OEA), briefing the issues and participating in at least one hearing. Barnes & Thornburg, specifically Fred Andes and Kari Evans, would lead this effort. We estimate it will cost \$25,000 to complete an appeal before OEA.

Please let us know if you have any questions about this proposal. We look forward to assisting you in appealing the NPDES permit for your CSO discharges.

Sincerely,



Fredric P. Andes

Kari Evans

~~Enclosure~~

cc: Mr. Gary Gilot, P.E., Public Works Director  
Mr. Ken Zmudzinski, Environmental Services Bureau Manager

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Suite 4400  
One N. Wacker Drive  
Chicago, Illinois 60606  
(312) 357-1313

Fredric P. Andes  
Partner

Fax (312) 759-5646

April 28, 2006

Jack Dillon, Ph.D.  
Director, Division of Environmental Services  
City of South Bend  
3113 Riverside Drive  
South Bend, Indiana 46628

Re: Agreement for Continued Assistance on Clean Water Act Issues

Dear Mr. Dillon:

As you know, Barnes & Thornburg LLP ("Barnes & Thornburg" or "B&T") has been assisting the City of South Bend ("South Bend" or "the City") for some time on Clean Water Act permitting and regulatory issues. This work has involved issues relating to the City's Publicly Owned Treatment Works ("POTW"), as well as issues relating to the City's Combined Sewer Overflows ("CSOs"). During 2006, we expect that this work will primarily relate to securing approval, by the Indiana Department of Environmental Management and the U.S. Environmental Protection Agency, of the City's CSO Long-Term Control Plan. This letter is intended to set forth the terms under which we will perform this work for the City during 2006. Any provisions in previous retention letters that are not addressed in this letter are incorporated by reference.

Our fees in this matter will be based primarily on the hours actually worked by each lawyer and legal assistant involved and our hourly billing rates in effect at the time you are billed for the work. My hourly billing rate is currently \$355 per hour. I may be assisted in this matter by other attorneys, including Erika Powers and Nathan Stokes. Their billing rates are \$325 and \$195 per hour, respectively. Our billing rates are adjusted annually, typically in December.

In representing our clients, we also make other charges in addition to our fees. Although I do not expect much along those lines, the typical other charges we could incur for you include printing and reproduction charges, courier and express delivery charges, fax charges and the like. Certain of these other charges may represent more than our direct cost in order to cover our overhead.

We will bill you on a regular basis, normally each month, for both fees and other charges, and like to receive payment within 30 days of your receipt of our statement. A copy of our standard terms and conditions is also attached for your review. Please take a moment to review that document and call me if you have any questions.

Jack Dillon, Ph.D.

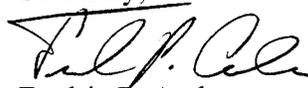
April 28, 2006

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You may terminate our representation at any time simply by notifying us. We may terminate the representation for nonpayment of our bills or where we are required or permitted to do so by the Rules of Professional Conduct after giving you reasonable notice and allowing time for you to engage successor counsel if necessary.

We are pleased to have the opportunity to be of service to you. If you have any questions, please do not hesitate to call me.

Sincerely,

A handwritten signature in black ink, appearing to read "Fredric P. Andes", written over a horizontal line.

Fredric P. Andes

cc: Mr. Gary Gilot, City of South Bend

Indianapolis

Fort Wayne

South Bend

Elkhart

Chicago

Washington, D.C.

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One N. Wacker Drive  
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Fredric P. Andes  
Partner

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February 22, 2007

Jack Dillon, Ph.D.  
Director, Division of Environmental Services  
City of South Bend  
3113 Riverside Drive  
South Bend, Indiana 46628

Re: Agreement for Continued Assistance on Clean Water Act Issues

Dear Mr. Dillon:

As you know, Barnes & Thornburg LLP ("Barnes & Thornburg" or "B&T") has been assisting the City of South Bend ("South Bend" or "the City") for some time on Clean Water Act permitting and regulatory issues. This work has involved issues relating to the City's Publicly Owned Treatment Works ("POTW"), as well as issues relating to the City's Combined Sewer Overflows ("CSOs"). During 2007, we expect that this work will primarily relate to four activities: (1) securing approval, by the Indiana Department of Environmental Management (IDEM) and the U.S. Environmental Protection Agency (EPA), of the City's CSO Long-Term Control Plan; (2) completing negotiations on a consent decree concerning CSO issues between the City, IDEM and EPA; (3) continuing to move forward with the pending appeal of certain CSO-related and POTW-related conditions in the City's NPDES permit, issued by IDEM; and (4) preparation and submittal, if necessary, of an application for a variance from certain provisions of the City's NPDES permit. This letter is intended to set forth the terms under which we will perform this work for the City during 2007. Any provisions in previous retention letters that are not addressed in this letter are incorporated by reference.

Our fees in this matter will be based primarily on the hours actually worked by each lawyer and legal assistant involved and our hourly billing rates in effect at the time you are billed for the work. My hourly billing rate is currently \$375 per hour. I may be assisted in this matter by other attorneys, including Erika Powers and Nathan Stokes. Their billing rates are \$345 and \$220 per hour, respectively. Our billing rates are adjusted annually, typically in December.

In representing our clients, we also make other charges in addition to our fees. Although I do not expect much along those lines, the typical other charges we could incur for you include printing and reproduction charges, courier and express delivery charges, fax charges and the like. Certain of these other charges may represent more than our direct cost in order to cover our overhead.

Jack Dillon, Ph.D.

February 22, 2007

Page 2

We will bill you on a regular basis, normally each month, for both fees and other charges, and like to receive payment within 30 days of your receipt of our statement. A copy of our standard terms and conditions is also attached for your review. Please take a moment to review that document and call me if you have any questions.

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We are pleased to have the opportunity to be of service to you. If you have any questions, please do not hesitate to call me.

Sincerely,

Fredric P. Andes

cc: Mr. Gary Gilot, City of South Bend

Indianapolis

Fort Wayne

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Washington, D.C.

**BARNES & THORNBURG**

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Suite 4400  
One N. Wacker Drive  
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Fredric P. Andes  
Partner

Fax (312) 759-5646

May 26, 2009

Charles S. Leone, Esq.  
City Attorney  
Department of Law  
City of South Bend  
1400 County-City Building  
South Bend, Indiana 46601-1830

Re: Agreement for Continued Assistance on Clean Water Act Issues

Dear Mr. Leone:

As you know, Barnes & Thornburg LLP ("Barnes & Thornburg" or "B&T") has been assisting the City of South Bend ("South Bend" or "the City") for some time on Clean Water Act permitting and regulatory issues. This work has involved issues relating to the City's Publicly Owned Treatment Works ("POTW"), as well as issues relating to the City's Combined Sewer Overflows ("CSOs"). During 2009, we expect that this work will primarily relate to three activities: (1) securing approval, by the Indiana Department of Environmental Management (IDEM) and the U.S. Environmental Protection Agency (EPA), of the City's CSO Long-Term Control Plan; (2) securing approval, by IDEM, EPA and the Indiana Water Pollution Control Board (WPCB), of revisions to applicable water quality standards based on development of an acceptable Use Attainability Analysis (UAA); and (3) completing negotiations on a consent decree concerning CSO issues between the City, IDEM and EPA. This letter is intended to set forth the terms under which we will perform this work for the City during 2009. Any provisions in previous retention letters that are not addressed in this letter are incorporated by reference.

Our fees in this matter will be based primarily on the hours actually worked by each lawyer and legal assistant involved and our hourly billing rates in effect at the time you are billed for the work. My hourly billing rate is currently \$425 per hour. I may be assisted in this matter by other attorneys, including Kari Evans. Her billing rate is \$375 per hour. Our billing rates are adjusted annually, typically in December.

In representing our clients, we also make other charges in addition to our fees. Although I do not expect much along those lines, the typical other charges we could incur for you include printing and reproduction charges, courier and express delivery charges, fax charges and the like. Certain of these other charges may represent more than our direct cost in order to cover our overhead.

Charles S. Leone, Esq.

May 26, 2009

Page 2

We will bill you on a regular basis, normally each month, for both fees and other charges, and like to receive payment within 30 days of your receipt of our statement. A copy of our standard terms and conditions is also attached for your review. Please take a moment to review that document and call me if you have any questions.

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We are pleased to have the opportunity to be of service to you. If you have any questions, please do not hesitate to call me.

Sincerely,



Fredric P. Andes

cc: Mr. Gary Gilot, City of South Bend  
Mr. Jack Dillon, City of South Bend

Indianapolis Fort Wayne South Bend Elkhart Chicago Washington, D.C.

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Suite 4400  
One N. Wacker Drive  
Chicago, Illinois 60606  
(312) 357-1313

Fredric P. Andes  
Partner

Fax (312) 759-5646

May 12, 2010

Charles S. Leone, Esq.  
City Attorney  
Department of Law  
City of South Bend  
1400 County-City Building  
South Bend, Indiana 46601-1830

Re: Agreement for Continued Assistance on Clean Water Act Issues

Dear Mr. Leone:

As you know, Barnes & Thornburg LLP ("Barnes & Thornburg" or "B&T") has been assisting the City of South Bend ("South Bend" or "the City") for some time on Clean Water Act permitting and regulatory issues. This work has involved issues relating to the City's Publicly Owned Treatment Works ("POTW"), as well as issues relating to the City's Combined Sewer Overflows ("CSOs"). During 2010, we expect that this work will primarily relate to three activities: (1) securing approval, by the Indiana Department of Environmental Management (IDEM) and the U.S. Environmental Protection Agency (EPA), of the City's CSO Long-Term Control Plan; (2) securing approval, by IDEM, EPA and the Indiana Water Pollution Control Board (WPCB), of revisions to applicable water quality standards based on development of an acceptable Use Attainability Analysis (UAA); and (3) completing negotiations on a consent decree concerning CSO issues between the City, IDEM and EPA. This letter is intended to set forth the terms under which we will perform this work for the City during 2010. Any provisions in previous retention letters that are not addressed in this letter are incorporated by reference.

Our fees in this matter will be based primarily on the hours actually worked by each lawyer and legal assistant involved and our hourly billing rates in effect at the time you are billed for the work. My hourly billing rate is currently \$450 per hour. I may be assisted in this matter by other attorneys, including Erika Powers. Her billing rate is \$420 per hour. Our billing rates are adjusted annually, typically in December.

In representing our clients, we also make other charges in addition to our fees. Although I do not expect much along those lines, the typical other charges we could incur for you include printing and reproduction charges, courier and express delivery charges, fax charges and the like. Certain of these other charges may represent more than our direct cost in order to cover our overhead.

Charles S. Leone, Esq.  
May 12, 2010  
Page 2

We will bill you on a regular basis, normally each month, for both fees and other charges, and like to receive payment within 30 days of your receipt of our statement. A copy of our standard terms and conditions is also attached for your review. Please take a moment to review that document and call me if you have any questions.

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We are pleased to have the opportunity to be of service to you. If you have any questions, please do not hesitate to call me.

Sincerely,  
  
Fredric P. Andes

cc: Mr. Gary Gilot, City of South Bend  
Mr. Jack Dillon, City of South Bend

Indianapolis      Fort Wayne      South Bend      Elkhart      Chicago      Washington, D.C.

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Suite 4400  
One N. Wacker Drive  
Chicago, Illinois 60606  
(312) 357-1313

Fredric P. Andes  
Partner

Fax (312) 759-5646

July 12, 2011

Charles S. Leone, Esq.  
City Attorney  
Department of Law  
City of South Bend  
1400 County-City Building  
South Bend, Indiana 46601-1830

Re: Agreement for Continued Assistance on Clean Water Act Issues

Dear Mr. Leone:

As you know, Barnes & Thornburg LLP ("Barnes & Thornburg" or "B&T") has been assisting the City of South Bend ("South Bend" or "the City") for some time on Clean Water Act permitting and regulatory issues. This work has involved issues relating to the City's Publicly Owned Treatment Works ("POTW"), as well as issues relating to the City's Combined Sewer Overflows ("CSOs"). During 2011, we expect that this work will primarily relate to three activities: (1) securing approval, by the Indiana Department of Environmental Management (IDEM) and the U.S. Environmental Protection Agency (EPA), of the City's CSO Long-Term Control Plan; (2) securing approval, by IDEM, EPA and the Indiana Water Pollution Control Board (WPCB), of revisions to applicable water quality standards based on development of an acceptable Use Attainability Analysis (UAA); and (3) completing negotiations on a consent decree concerning CSO issues between the City, IDEM and EPA. This letter is intended to set forth the terms under which we will perform this work for the City during 2011. Any provisions in previous retention letters that are not addressed in this letter are incorporated by reference.

Our fees in this matter will be based primarily on the hours actually worked by each lawyer and legal assistant involved and our hourly billing rates in effect at the time you are billed for the work. My hourly billing rate is currently \$470 per hour. I may be assisted in this matter by other attorneys, including Erika Powers. Her billing rate is \$440 per hour. Our billing rates are adjusted annually, typically in December.

In representing our clients, we also make other charges in addition to our fees. Although I do not expect much along those lines, the typical other charges we could incur for you include printing and reproduction charges, courier and express delivery charges, fax charges and the like. Certain of these other charges may represent more than our direct cost in order to cover our overhead.

Indianapolis

Fort Wayne

South Bend

Elkhart

Chicago

Washington, D.C.

Charles S. Leone, Esq.  
May 12, 2010  
Page 2

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We are pleased to have the opportunity to be of service to you. If you have any questions, please do not hesitate to call me.

Sincerely,



Fredric P. Andes

cc: Mr. Gary Gilot, City of South Bend  
Mr. Jack Dillon, City of South Bend

Indianapolis Fort Wayne South Bend Elkhart Chicago Washington, D.C.

BARNES & THORNBURG

March 12, 2012

Aladean DeRose, Esq.  
Interim City Attorney  
Department of Law  
City of South Bend  
1200 County-City Building  
South Bend, Indiana 46601-1830

Re: Agreement for Continued Assistance on Clean Water Act Issues

Dear Ms. DeRose:

As you know, Barnes & Thornburg LLP ("Barnes & Thornburg" or "B&T") has been assisting the City of South Bend ("South Bend" or "the City") for some time on Clean Water Act permitting and regulatory issues. This work has involved issues relating to the City's Publicly Owned Treatment Works ("POTW"), as well as issues relating to the City's Combined Sewer Overflows ("CSOs"). During 2012, we expect that this work will primarily relate to three activities: (1) assisting in implementation of the City's approved CSO Long-Term Control Plan; (2) providing advice regarding compliance with the final CSO consent decree between the City, IDEM and EPA; (3) securing approval, by IDEM, EPA and the Indiana Water Pollution Control Board (WPCB), of revisions to applicable water quality standards based on development of an acceptable Use Attainability Analysis (UAA); and (4) providing advice regarding compliance with the City's wastewater discharge permit. This letter is intended to set forth the terms under which we will perform this work for the City during 2012. Any provisions in previous retention letters that are not addressed in this letter are incorporated by reference.

Our fees in this matter will be based primarily on the hours actually worked by each lawyer and legal assistant involved and our hourly billing rates in effect at the time you are billed for the work. My hourly billing rate is currently \$490 per hour. I may be assisted in this matter by other attorneys, including Erika Powers. Her billing rate is \$460 per hour. Our billing rates are adjusted annually, typically in December.

In representing our clients, we also make other charges in addition to our fees. Although I do not expect much along those lines, the typical other charges we could incur for you include printing and reproduction charges, courier and express delivery charges, fax charges and the like.

Aladean DeRose, Esq.  
March 12, 2012  
Page 2

Certain of these other charges may represent more than our direct cost in order to cover our overhead.

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We are pleased to have the opportunity to be of service to you. If you have any questions, please do not hesitate to call me.

Sincerely,

  
Fredric P. Andes

cc: Mr. Jack Dillon, City of South Bend

# BARNES & THORNBURG

Suite 4400  
One N. Wacker Drive  
Chicago, Illinois 60606  
(312) 357-1313

Fredric P. Andes

Fax (312) 759-5646

May 15, 2013

Cristal Brisco, Esq.  
Corporation Counsel  
City of South Bend  
227 W. Jefferson Boulevard, #1200 S  
South Bend, Indiana 46601

Re: Agreement for Continued Assistance on Clean Water Act Issues

Dear Ms. Brisco:

As you know, Barnes & Thornburg LLP ("Barnes & Thornburg" or "B&T") has been assisting the City of South Bend ("South Bend" or "the City") for some time on Clean Water Act permitting and regulatory issues. This work has involved issues relating to the City's Publicly Owned Treatment Works ("POTW"), as well as issues relating to the City's Combined Sewer Overflows ("CSOs"). During 2013, we expect that this work will primarily relate to three activities: (1) assisting in implementation of the City's approved CSO Long-Term Control Plan; (2) providing advice regarding compliance with the final CSO consent decree between the City, IDEM and EPA; (3) securing approval, by IDEM, EPA and the Indiana Water Pollution Control Board (WPCB), of revisions to applicable water quality standards based on development of an acceptable Use Attainability Analysis (UAA); and (4) providing advice regarding compliance with the City's wastewater discharge permit. This letter is intended to set forth the terms under which we will perform this work for the City during 2013. Any provisions in previous retention letters that are not addressed in this letter are incorporated by reference.

Our fees in this matter will be based primarily on the hours actually worked by each lawyer and legal assistant involved and our hourly billing rates in effect at the time you are billed for the work. My hourly billing rate is currently \$510 per hour. I may be assisted in this matter by other attorneys, including Erika Powers. Her billing rate is \$480 per hour. Our billing rates are adjusted annually, typically in December.

In representing our clients, we also make other charges in addition to our fees. Although I do not expect much along those lines, the typical other charges we could incur for you include printing and reproduction charges, courier and express delivery charges, fax charges and the like. Certain of these other charges may represent more than our direct cost in order to cover our overhead.

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Cristal Brisco, Esq.  
May 15, 2013  
Page 2

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We are pleased to have the opportunity to be of service to you. If you have any questions, please do not hesitate to call me.

Sincerely,

A handwritten signature in black ink, appearing to read "Fredric P. Andes", written in a cursive style.

Fredric P. Andes

cc: Mr. Jack Dillon, City of South Bend