



Reprinted
February 2, 2000

SENATE BILL No. 431

DIGEST OF SB 431 (Updated February 1, 2000 3:08 PM - DI 52)

Citations Affected: IC 13-11; IC 13-18; noncode.

Synopsis: Water quality standards and combined sewers. Establishes the circumstances under which a long term control plan for a combined sewer system is considered to fulfill the water quality goals of the state with respect to wet weather discharges that result from overflows from such a system. Requires the department of environmental management to temporarily suspend designated uses on a site specific basis with respect to any water affected by discharges from a combined sewer system by wet weather events if the NPDES permit holder has fulfilled certain requirements. Provides that the temporary suspension shall be for the shortest period consistent with the protection of human health. Permits the water pollution control board to adopt rules concerning temporary suspensions, and directs the board to adopt rules concerning community notice of combined sewer overflows . Allows the department to issue NPDES permits that contain conditions that include alternate water quality based effluent limits that: (1) are based on certain receiving water flows; or (2) provide increased mass limitations, concentration limitations, or mass and concentration limitations for publicly owned treatment works. Directs the department of environmental management to provide guidance to combined sewer overflow communities for compliance with certain requirements of law.

Effective: Upon passage.

Gard, Young R

January 10, 2000, read first time and referred to Committee on Environmental Affairs.
January 25, 2000, amended, reported favorably — Do Pass.
February 1, 2000, read second time, amended, ordered engrossed.

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Second Regular Session 111th General Assembly (2000)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1999 General Assembly.

SENATE BILL No. 431

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 13-11-2-31.3 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE UPON PASSAGE]: **Sec. 31.3. "Combined sewage",**
4 **for purposes of sections 31.4 and 31.6 of this chapter and IC 13-18,**
5 **refers to a combination of wastewater (including domestic,**
6 **commercial, or industrial wastewater) and stormwater transported**
7 **in a combined sewer or combined sewer system.**

8 SECTION 2. IC 13-11-2-31.4 IS ADDED TO THE INDIANA
9 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
10 [EFFECTIVE UPON PASSAGE]: **Sec. 31.4. "Combined sewer",** for
11 **purposes of sections 31.3, 31.6, and 120.5 of this chapter and**
12 **IC 13-18, means a sewer that is designed, constructed, and used to**
13 **receive and transport combined sewage.**

14 SECTION 3. IC 13-11-2-31.5 IS ADDED TO THE INDIANA
15 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
16 [EFFECTIVE UPON PASSAGE]: **Sec. 31.5. "Combined sewer**
17 **operational plan", for purposes of IC 13-18, means a plan that**

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1 contains the minimum technology controls applicable to, and
 2 requirements for operation and maintenance of, a combined sewer
 3 system:

- 4 (1) before;
- 5 (2) during; and
- 6 (3) upon the completion of;

7 the implementation of a long term control plan.

8 SECTION 4. IC 13-11-2-31.6 IS ADDED TO THE INDIANA
 9 CODE AS A NEW SECTION TO READ AS FOLLOWS
 10 [EFFECTIVE UPON PASSAGE]: Sec. 31.6. "Combined sewer
 11 system", for purposes of sections 31.3, 31.5, and 120.5 of this
 12 chapter and IC 13-18, means a system of combined sewers that:

- 13 (1) is designed, constructed, and used to receive and transport
 14 combined sewage to a publicly owned wastewater treatment
 15 plant; and
- 16 (2) may contain one (1) or more overflow points that allow
 17 discharge of combined sewage before arrival at the publicly
 18 owned wastewater treatment plant when the hydraulic
 19 capacity of the system or part of the system is exceeded as a
 20 result of a wet weather event.

21 SECTION 5. IC 13-11-2-120.5 IS ADDED TO THE INDIANA
 22 CODE AS A NEW SECTION TO READ AS FOLLOWS
 23 [EFFECTIVE UPON PASSAGE]: Sec. 120.5. "Long term control
 24 plan", for purposes of section 31.5 of this chapter and IC 13-18,
 25 means a plan that:

- 26 (1) describes changes and improvements to be made to a
 27 combined sewer system or to a publicly owned wastewater
 28 treatment plant for the purpose of meeting the requirements
 29 of the federal Clean Water Act and state law;
- 30 (2) is developed with public participation;
- 31 (3) is submitted to the department for approval; and
- 32 (4) does the following:
 - 33 (A) Uses characterization, monitoring, and modeling of the
 34 combined sewer system to determine:
 - 35 (i) the response of the combined sewer system to various
 36 precipitation events;
 - 37 (ii) the characteristics of overflows from the combined
 38 sewer system; and
 - 39 (iii) the water quality impacts that result from overflows
 40 from the combined sewer system.
 - 41 (B) Considers the impact of combined sewer overflows on
 42 sensitive areas and gives highest priority to controlling



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- 1 **overflows in the areas.**
 2 **(C) Contains an evaluation of a reasonable range of control**
 3 **alternatives.**
 4 **(D) Contains cost and performance analyses of the control**
 5 **alternatives evaluated.**
 6 **(E) Maximizes treatment at a publicly owned treatment**
 7 **works (POTW) treatment plant.**
 8 **(F) Contains a practicable implementation schedule.**
 9 **(G) Contains a post-construction compliance monitoring**
 10 **program.**

11 SECTION 6. IC 13-11-2-242.5 IS ADDED TO THE INDIANA
 12 CODE AS A NEW SECTION TO READ AS FOLLOWS
 13 [EFFECTIVE UPON PASSAGE]: **Sec. 242.5. "Use attainability**
 14 **analysis", for purposes of IC 13-18, refers to a structured scientific**
 15 **assessment of the physical, chemical, biological, and economic**
 16 **factors affecting the attainment of a designated use as provided in**
 17 **40 CFR 131.**

18 SECTION 7. IC 13-11-2-265.3 IS ADDED TO THE INDIANA
 19 CODE AS A NEW SECTION TO READ AS FOLLOWS
 20 [EFFECTIVE UPON PASSAGE]: **Sec. 265.3. "Wet weather event",**
 21 **for purposes of IC 13-18, means storm water runoff, snow melt**
 22 **runoff, or ice melt runoff flowing into a combined sewer system**
 23 **that results in a total measured precipitation accumulation within**
 24 **a twenty-four (24) hour period of at least one-tenth (0.1) inch of:**
 25 **(1) rainfall;**
 26 **(2) ice melt; or**
 27 **(3) snow melt.**

28 SECTION 8. IC 13-18-3-2.3 IS ADDED TO THE INDIANA CODE
 29 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 30 UPON PASSAGE]: **Sec. 2.3. (a) A long term control plan, upon**
 31 **implementation, fulfills the water quality goals of the state with**
 32 **respect to wet weather discharges that are a result of overflows**
 33 **from the combined sewer system addressed by the plan if the long**
 34 **term control plan provides for the capture for treatment of the**
 35 **percentage of the combined sewage occurring during wet weather**
 36 **events for the entire combined sewer system, as determined by**
 37 **volume on an annual average basis, that corresponds to the point**
 38 **at which the increment of pollution reduction to be achieved by**
 39 **additional controls begins to diminish in comparison to the**
 40 **increment of increased costs of the additional controls for the most**
 41 **cost effective control alternative evaluated in the long term control**
 42 **plan.**

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1 (b) If a use attainability analysis is required for a suspension
 2 under this chapter, the department must use, to the maximum
 3 extent feasible, the information contained in the permit holder's
 4 approved long term control plan before requiring any additional
 5 information from the permit holder in order to satisfy the
 6 requirements of the use attainability analysis.

7 SECTION 9. IC 13-18-3-2.4 IS ADDED TO THE INDIANA CODE
 8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 9 UPON PASSAGE]: Sec. 2.4. (a) The department shall approve
 10 temporary suspension of designated uses on a site specific basis,
 11 taking into account discharges from combined sewer overflows due
 12 to wet weather events, if:

13 (1) the department has approved a long term control plan for
 14 the permit holder;

15 (2) the permit holder:

16 (A) has implemented the long term control plan; or

17 (B) is implementing the approved long term control plan;

18 (3) the permit holder is in compliance with all other
 19 requirements for the operation and maintenance of its
 20 wastewater treatment facilities and combined sewer system,
 21 including its combined sewer operational plan approved by
 22 the department; and

23 (4) the provisions of 40 CFR 131.10 are satisfied.

24 The provisions of 40 CFR 131.10 may be satisfied by including the
 25 appropriate data and information in the long term control plan.

26 (b) To the extent permitted under federal law, the department
 27 shall provide a compliance schedule in the National Pollutant
 28 Discharge Elimination System (NPDES) permit during the period
 29 when the long term control plan is being developed.

30 (c) The granting of a temporary suspension of a designated use
 31 applies only to the permittee requesting the suspension and shall be
 32 for the shortest period consistent with the protection of human
 33 health, as outlined in the approved use attainability analysis and
 34 set forth in the permittee's approved long term control plan.

35 (d) The board may adopt rules in accordance with IC 13-14-8
 36 and IC 13-14-9 amending the water quality standards to include
 37 the terms of the temporary suspension allowed by this section.

38 (e) When the department approves a temporary suspension of
 39 a designated use, the department shall incorporate the approval in
 40 the permit holder's NPDES permit.

41 SECTION 10. IC 13-18-19-2 IS ADDED TO THE INDIANA
 42 CODE AS A NEW SECTION TO READ AS FOLLOWS



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1 [EFFECTIVE UPON PASSAGE]: **Sec. 2. (a) The department may**
 2 **issue National Pollutant Discharge Elimination System (NPDES)**
 3 **permits containing conditions that include alternate water quality**
 4 **based effluent limits that:**

5 (1) are based on receiving water flows associated with, or
 6 characteristic of:

7 (A) wet weather events of various degrees of duration and
 8 intensity; or

9 (B) low flow stream conditions derived on a monthly,
 10 quarterly, or annual basis;

11 (2) provide increased mass limitations, concentration
 12 limitations, or mass and concentration limitations, for
 13 publicly owned treatment works (POTW) that:

14 (A) are capable of treating wastewater flows that exceed
 15 the design flow used to calculate normal water quality
 16 based effluent limitations; and

17 (B) as a result of the increased limitations, can reduce the
 18 volume of discharge of wastewater from plant bypasses or
 19 combined sewer overflows; or

20 (3) include any factor or combination of factors described in
 21 subdivisions (1) and (2).

22 (b) The department may require an applicant for an NPDES
 23 permit containing at least one (1) of the conditions described in
 24 subsection (a) to document, in a reasonable manner, stream
 25 conditions and local controls that are germane to a condition
 26 described in subsection (a) before the department issues the
 27 NPDES permit.

28 SECTION 11. [EFFECTIVE UPON PASSAGE] (a) As used in this
 29 SECTION, "NPDES" refers to a National Pollutant Discharge
 30 Elimination System.

31 (b) As used in this SECTION, "combined sewer" has the
 32 meaning set forth in IC 13-11-2-31.4.

33 (c) The water pollution control board established under
 34 IC 13-18-1 shall adopt a rule before September 1, 2001,
 35 establishing requirements for community notification by NPDES
 36 permit holders of the potential health impact of combined sewer
 37 overflows whenever information from any source indicates that:

38 (1) a discharge or discharges from one (1) or more combined
 39 sewer overflow points is occurring; or

40 (2) there is a reasonable likelihood that a discharge or
 41 discharges from one (1) or more combined sewer overflow
 42 points will occur within the next twenty-four (24) hours.



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1 (d) Until the rule described in subsection (c) is adopted, an
2 NPDES permit holder qualifying for a suspension of designated
3 uses and water quality standards under this section must notify one
4 (1) or more news media providing daily news coverage in the
5 community served by the NPDES permit holder and any
6 immediately downstream communities:

7 (1) whenever information obtained from the National
8 Weather Service, the permit holder's monitoring system, or
9 any other source indicates that there is a reasonable likelihood
10 that a discharge or discharges from one (1) or more combined
11 sewer overflow points will occur within the next twenty-four
12 (24) hours; and

13 (2) whenever information obtained from sources described in
14 subdivision (1) indicates, for each twenty-four (24) hour
15 period subsequent to the twenty-four (24) hour period
16 identified in subdivision (1), that there is a reasonable
17 likelihood that a discharge or discharges from one (1) or more
18 combined sewer overflow points will interfere with attainment
19 of a designated use otherwise applicable to the waters that
20 receive the overflow.

21 (e) A notice required under subsection (d) must identify the
22 water bodies likely to be affected by combined sewer discharges
23 and describe, reasonably and succinctly, the potential impacts of
24 the discharges on human health.

25 (f) This SECTION expires January 1, 2002.

26 SECTION 12. [EFFECTIVE UPON PASSAGE] (a) As used in this
27 SECTION, "combined sewer" has the meaning set forth in
28 IC 13-11-2-31.4.

29 (b) As used in this SECTION, "long term control plan" has the
30 meaning set forth in IC 13-11-2-120.5.

31 (c) Before July 1, 2000, the department of environmental
32 management shall provide guidance to all combined sewer
33 overflow communities explaining the requirement of the use
34 attainability analysis and the long term control plan to aid
35 communities in determining how to comply with the requirements.

36 (d) This SECTION expires January 1, 2001.

37 SECTION 13. An emergency is declared for this act.

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SENATE MOTION

Mr. President: I move that Senator Young R be added as second author of Senate Bill 431.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Environmental Affairs, to which was referred Senate Bill No. 431, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 4, after "purposes of " insert "**sections 31.4 and 31.6 of this chapter and**".

Page 1, line 4, after "wastewater" insert "**(including domestic, commercial, or industrial wastewater)**".

Page 1, line 10, after "31.3" insert ", **31.6,**".

Page 1, line 11, delete "wastewater collection sewer owned by the state or a" and insert "**sewer that is designed, constructed, and used to receive and transport combined sewage.**".

Page 1, delete lines 12 through 17.

Page 2, delete lines 1 through 2.

Page 2, line 18, delete "wastewater collection system owned" and insert "**system of combined sewers that:**

(1) is designed, constructed, and used to receive and transport combined sewage to a publicly owned wastewater treatment plant; and

(2) may contain one (1) or more overflow points that allow discharge of combined sewage before arrival at the publicly owned wastewater treatment plant when the hydraulic capacity of the system or part of the system is exceeded as a result of a wet weather event."

Page 2, delete lines 19 through 22.

Page 2, line 29, after "system" insert "**or to a publicly owned wastewater treatment plant**".

Page 2, line 34, delete "Contains" and insert "**Uses**".

Page 2, line 35, delete "the response of" and insert ":",

Page 2, delete line 36.

Page 2, line 37, after "(i)" insert "**the response of the combined sewer system to**".

Page 2, line 38, after "overflows" insert "**from the combined sewer system**".

Page 2, line 39, delete "an".

Page 2, line 40, delete "overflow" and insert "**overflows from the combined sewer system**".

Page 3, line 4, delete "evaluations for" and insert "**analyses of**".

Page 3, line 8, delete "an" and insert "**a practicable**".

Page 3, line 14, delete "use attainability" and insert "**structured**".

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scientific assessment of the physical, chemical, biological, and economic factors affecting the attainment of a designated use".

Page 3, line 15, delete "analysis".

Page 3, line 17, after "CODE" delete "A S" and insert "AS".

Page 3, line 19, after "event" insert ", or combination of precipitation events,".

Page 3, line 19, delete "results" and insert "results".

Page 3, line 20, after "accumulation" insert "**within a twenty-four (24) hour period**".

Page 3, line 21, delete "rainfall, ice melt, or snow melt." and insert ":",

Page 3, between lines 21 and 22, begin a new line block indented and insert:

- "(1) rainfall;
- (2) ice melt; or
- (3) snow melt."

Page 3, line 24, delete "submitted" and insert ", upon implementation, fulfills the water quality goals of the state with respect to wet weather discharges that are a result of overflows from the combined sewer system addressed by the plan if the long term control plan provides for the capture for treatment of the percentage of the combined sewage occurring during wet weather events for the entire combined sewer system, as determined by volume on an annual average basis, that corresponds to the point at which the increment of pollution reduction to be achieved by additional controls begins to diminish in comparison to the increment of increased costs of the additional controls for the most cost effective control alternative evaluated in the long term control plan."

Page 3, delete lines 25 through 40, begin a new paragraph and insert:

"(b) If a use attainability analysis is required for a suspension under this chapter, the department must use, to the maximum extent feasible, the information contained in the permit holder's approved long term control plan before requiring any additional information from the permit holder in order to satisfy the requirements of the use attainability analysis."

Page 4, line 1, delete "A" and insert "**(a) Designated uses and associated**".

Page 4, line 1, delete "standard" and insert "**standards**".

Page 4, line 2, delete "article" and insert "**title for waters of the state**".



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Page 4, line 2, delete "from a designated use".

Page 4, line 3, delete "when a wet weather event causes or contributes" and insert ", **with respect to any water affected by**".

Page 4, line 4, delete "to".

Page 4, line 4, after "from" insert "**a**".

Page 4, line 4, delete "overflows" and insert "**system caused by wet weather events,**".

Page 4, line 4, after "if" insert "**with respect to its combined sewer system**".

Page 4, line 8, delete ";".

Page 4, line 9, delete "(B) has".

Run in lines 8 through 9.

Page 4, line 10, after "(i)" insert "**has**".

Page 4, line 14, after "document;" insert "**or**".

Page 4, between lines 14 and 15, begin a new line double block indented and insert:

"(B) is developing a long term control plan that satisfies the requirements of section 2.3 of this chapter in accordance with the compliance schedule."

Page 4, between lines 20 and 21, begin a new paragraph and insert:

"(b) A suspension of designated uses and water quality criteria under this section applies only:

(1) to an NPDES permit holder for discharges from its combined sewer system; and

(2) during the time and to the physical extent that water quality criteria associated with the designated uses for the waters affected by the discharges from combined sewer system overflows would otherwise be exceeded."

Page 4, delete lines 21 through 42.

Page 5, delete lines 1 through 10.

Page 5, line 29, after "(B)" insert "**as a result of the increased limitations, can**".

Page 5, line 31, after "factor" insert "**or combination of factors**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 431 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 9, Nays 0.

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SENATE MOTION

Mr. President: I move that Senate Bill 431 be amended to read as follows:

Page 3, line 21, delete "a precipitation event , or" and insert "**storm water runoff, snow melt runoff, or ice melt runoff flowing into a combined sewer system**".

Page 3, line 22, delete "combination of precipitation events,".

Page 4, line 9, delete "Designated uses and associated" and insert "**The department shall approve temporary suspension of designated uses on a site specific basis, taking into account discharges from combined sewer overflows due to wet weather events, if:**

(1) **the department has approved a long term control plan for the permit holder;**

(2) **the permit holder:**

(A) **has implemented the long term control plan; or**

(B) **is implementing the approved long term control plan;**

(3) **the permit holder is in compliance with all other requirements for the operation and maintenance of its wastewater treatment facilities and combined sewer system, including its combined sewer operational plan approved by the department; and**

(4) **the provisions of 40 CFR 131.10 are satisfied.**

The provisions of 40 CFR 131.10 may be satisfied by including the appropriate data and information in the long term control plan.

(b) **To the extent permitted under federal law, the department shall provide a compliance schedule in the National Pollutant Discharge Elimination System (NPDES) permit during the period when the long term control plan is being developed.**

(c) **The granting of a temporary suspension of a designated use applies only to the permittee requesting the suspension and shall be for the shortest period consistent with the protection of human health, as outlined in the approved use attainability analysis and set forth in the permittee's approved long term control plan.**

(d) **The board may adopt rules in accordance with IC 13-14-8 and IC 13-14-9 amending the water quality standards to include the terms of the temporary suspension allowed by this section.**

(e) **When the department approves a temporary suspension of a designated use, the department shall incorporate the approval in the permit holder's NPDES permit."**

Page 4, delete lines 10 through 41.

Page 5, between lines 28 and 29, begin a new paragraph and insert:

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"SECTION 11. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "NPDES" refers to a National Pollutant Discharge Elimination System.

(b) As used in this SECTION, "combined sewer" has the meaning set forth in IC 13-11-2-31.4.

(c) The water pollution control board established under IC 13-18-1 shall adopt a rule before September 1, 2001, establishing requirements for community notification by NPDES permit holders of the potential health impact of combined sewer overflows whenever information from any source indicates that:

- (1) a discharge or discharges from one (1) or more combined sewer overflow points is occurring; or
- (2) there is a reasonable likelihood that a discharge or discharges from one (1) or more combined sewer overflow points will occur within the next twenty-four (24) hours.

(d) Until the rule described in subsection (c) is adopted, an NPDES permit holder qualifying for a suspension of designated uses and water quality standards under this section must notify one (1) or more news media providing daily news coverage in the community served by the NPDES permit holder and any immediately downstream communities:

- (1) whenever information obtained from the National Weather Service, the permit holder's monitoring system, or any other source indicates that there is a reasonable likelihood that a discharge or discharges from one (1) or more combined sewer overflow points will occur within the next twenty-four (24) hours; and
- (2) whenever information obtained from sources described in subdivision (1) indicates, for each twenty-four (24) hour period subsequent to the twenty-four (24) hour period identified in subdivision (1), that there is a reasonable likelihood that a discharge or discharges from one (1) or more combined sewer overflow points will interfere with attainment of a designated use otherwise applicable to the waters that receive the overflow.

(e) A notice required under subsection (d) must identify the water bodies likely to be affected by combined sewer discharges and describe, reasonably and succinctly, the potential impacts of the discharges on human health.

(f) This SECTION expires January 1, 2002.

SECTION 12. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "combined sewer" has the meaning set forth in



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IC 13-11-2-31.4.

(b) As used in this SECTION, "long term control plan" has the meaning set forth in IC 13-11-2-120.5.

(c) Before July 1, 2000, the department of environmental management shall provide guidance to all combined sewer overflow communities explaining the requirement of the use attainability analysis and the long term control plan to aid communities in determining how to comply with the requirements.

(d) This SECTION expires January 1, 2001."

Renumber all SECTIONS consecutively.

(Reference is to SB 431 as printed January 26, 2000.)

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