



Resolution 11-2
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Alexandria, Virginia

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Sausalito, California

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All Members Call

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Savannah, Georgia

As certified by
Ben Grumbles
Executive Director

RESPECTFUL USE OF DATA

WHEREAS, ECOS represents states, territories, and the District of Columbia, throughout this resolution the term “states” indicates states, territories, and the District of Columbia; and

WHEREAS, the overwhelming majority of data in U.S. EPA databases is generated by state, local, and tribal officials; and

WHEREAS, providing public data is good government allowing for use and analysis by others to better understand the state of the environment as well as the implementation of environmental programs; and

WHEREAS, U.S. EPA and the states present data in various ways and forums on their websites; and

WHEREAS, states and U.S. EPA have a shared responsibility to assure the usability and quality of U.S. EPA data applications, and cooperative data stewardship requires a commitment to collaboration and partnership; and

WHEREAS, states acknowledge the continuing need to identify and address any data quality and accuracy concerns; and

WHEREAS, the states are obligated under federal code and rules and various program grants to make quality data and information available to the U.S. EPA in a timely manner; and

WHEREAS, U.S. EPA adopted a Compliance Plan to establish organizational structures and methods to evaluate artificial intelligence (“AI”) projects that utilize U.S. EPA data, including data that states generate, submit, or rely upon; and

WHEREAS, U.S. EPA may augment, integrate, or otherwise present data received through various reporting paths in a manner that may alter what data is presented and states wish data to be as accurate as possible. For example, U.S. EPA provides information through a variety of avenues including its Enforcement and Compliance History Online (ECHO) website and states acknowledge ECHO can be a valuable tool that advances data transparency and provides timely information. Since 2011, states and U.S. EPA have worked together through the ECHO Governance Team (EGT) and other means to improve the quality of compliance and enforcement information prior to it being frozen for state performance reviews, used in ECHO State Dashboards, and used as part of the State Review Framework (SRF); and

WHEREAS, sharing information among and between states and U.S. EPA as co-regulators allows for improved environmental protection, and inconsistent practices may reduce the effectiveness of states implementing federal programs. For example, the U.S. EPA Office of Inspector General's (OIG) report, "[The EPA Is Not on Track to Reach Its National Compliance Initiative Goals to Stop Aftermarket Defeat Devices and Tampered Vehicles](#)," January 25, 2023, notes that some U.S. EPA program offices release confidential business information (CBI) to states implementing Clean Air Act regulations and following proper disclosure steps and also notes a lack of clarity from the Office of Enforcement and Compliance Assurance about releasing CBI and personally identifiable information (PII) to states. Further, OIG recommends that U.S. EPA's Office of General Counsel provide training for headquarters and regional enforcement staff and to release enforcement data to states to use to target and deter installation and use of aftermarket defeat devices within their jurisdictions; and

WHEREAS, U.S. EPA receives requests for information under the federal Freedom of Information Act (FOIA); and

WHEREAS, federal FOIA entitles exemptions on documents being requested by the public including, but not limited to, the following:

1. Information that is classified to protect national security.
2. Information related solely to the internal personnel rules and practices of an agency.
3. Information that is prohibited from disclosure by another federal law.
4. Trade secrets or commercial or financial information that is confidential or privileged.
5. Privileged communications within or between agencies, including deliberative process privilege, attorney work product privilege, and attorney-client privilege.
6. Information that, if disclosed, would invade another individual's personal privacy.
7. Information compiled for law enforcement purposes that:
 - a. Could reasonably be expected to interfere with enforcement proceedings
 - b. Would deprive a person of a right to a fair trial or an impartial adjudication
 - c. Could reasonably be expected to constitute an unwarranted invasion of personal privacy
 - d. Could reasonably be expected to disclose the identity of a confidential source
 - e. Would disclose techniques and procedures for law enforcement investigations or prosecutions
 - f. Could reasonably be expected to endanger the life or physical safety of any individual
8. Information that concerns the supervision of financial institutions.
9. Geological information on wells; and

WHEREAS, the states may be required to comply with states' records laws, which may be different from federal FOIA; and

WHEREAS, some locational information may be considered sensitive, including, but not limited to, locational information for drinking water facilities, treatment processes, onsite septic systems, and animal feeding operations; and

WHEREAS, ECOS Resolution 13-4 “Environmental Performance and Outcomes Data and Metrics” is a companion resolution to this one and relevant statements should be also considered.

NOW, THEREFORE, BE IT RESOLVED THAT THE ENVIRONMENTAL COUNCIL OF THE STATES:

Encourages U.S. EPA to support collaborative data stewardship with joint governance processes, such as the E-Enterprise Leadership Council and EGT, that provide forums for states and U.S. EPA to cooperate and make joint recommendations on data quality concerns, change management, data context and presentation, and use of AI in evaluating data;

Urges U.S. EPA’s Office of General Counsel to provide on-going training for headquarters, regional, and state staff on the appropriate release of CBI and PII enforcement information to states and for U.S. EPA and states jointly to develop a formal process or system for passing CBI and PII between state and federal agencies in such a way that appropriately meets FOIA exemptions;

Urges U.S. EPA offices to release enforcement data to states to use for initiatives within their own jurisdictions as appropriate and based on state interest;

Recommends that U.S. EPA consult with states in advance of and during the period data is posted or removed with regards to the proper metrics and interpretation of state reported data, the manner in which data is presented and displayed in public-facing websites;

Recommends that U.S. EPA identify data and metrics that may be used for benchmarking environmental and public health outcomes so that states are prepared to respond to potential inquiries regarding the data and/or metrics;

Encourages U.S. EPA to first test all new reporting tools, including reporting tools that utilize AI, in a closed environment where states can review the results and discuss any concerns with U.S. EPA prior to the agency making the results available to the public. As a best practice, U.S. EPA should always provide states with a detailed description of any new reporting tool, including the criteria/filters used in the tool and any uses of AI within that tool;

Supports a cooperative process for the scheduled release of routine data, as outlined in the U.S. EPA’s 2010 Data Verification Process, that allows states the opportunity to review data pertaining to their jurisdiction and submit timely corrections of data errors before the data is released, and further supports state and U.S. EPA efforts to continue to refine processes for routine data releases through the shared governance E-Enterprise for the Environment framework;

Encourages U.S. EPA to establish a pre-notification process that alerts states to unscheduled releases of non-routine datasets that contain information pertaining to their jurisdiction;

Requests that U.S. EPA work with states to manage the sharing of sensitive locational and treatment information, to generally exclude/mask this information on public web applications, and to, in the spirit of cooperative federalism, contact states directly when the U.S. EPA is uncertain whether information should be shared;

Requests that when U.S. EPA releases raw datasets, that the raw data be put in context including information limitations and using terms and language that are understandable to the end users and that U.S. EPA include states in the development of those context descriptions;

Requests that U.S. EPA includes, as part of the raw data and its context, the data source/provider and any post-processing that may have altered the data or its original form or meaning and further requests that U.S. EPA refers data queries to the original source/provider;

Supports U.S. EPA's responsible use of AI as a tool to expeditiously and accurately analyze data, including data submitted by or pertaining to states;

Urges U.S. EPA to take steps to ensure that its use of AI to analyze data submitted by or pertaining to states does not violate state or federal data privacy laws and does not result in the release of privileged, protected, sensitive, or confidential information; and

Recommends that U.S. EPA's use of AI to analyze data submitted by or pertaining to states maintain a human-in-the-loop for decision-making and clearly disclose the respective analytical roles of AI and human oversight when data are published or otherwise publicly released.