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Protecting Illinois EPA's Health, so that It Can Protect Ours

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POLICY ANALYSIS

Protecting the Illinois EPA's Health, so that It Can Protect Ours

By Mark Templeton, Robert Weinstock, and Elizabeth Lindberg of the Abrams Environmental Law Clinic at the University of Chicago Law School

And former Illinois EPA Directors
Mary Gade and Doug Scott

With former US EPA Region V Deputy Regional
Administrator Bharat Mathur

November 2019

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Protecting Illinois EPA's Health, so that It Can Protect Ours

By Mark Templeton, Robert Weinstock, and Elizabeth Lindberg of the Abrams Environmental Law Clinic at the University of Chicago Law School and former Illinois EPA Directors Mary Gade and Doug Scott

Executive Summary

During the past decade, environmental challenges across the country and in Illinois have increased and become more complex. During this same period, the resources at Illinois Environmental Protection Agency (IEPA) have decreased significantly. Recent federal roll-backs in both resources and authority to meet these challenges place added pressure on IEPA. Despite the laudable efforts of many IEPA employees, the agency lacks the assets it needs to protect the environment and public health sufficiently. These deficiencies hinder its capacity to execute its historical mission and are barriers to overcome if Illinois chooses to step up efforts to ensure that environmental protection is not compromised. We therefore call on Illinois policymakers to increase the resources available to the agency so that it can hire the quality and quantity of personnel necessary to do the job that the public trusts and needs the agency to do, and we call on IEPA to use existing and additional resources more efficiently and effectively.

Longer-term decline in IEPA's resources is compounded by recent reductions in federal involvement. In many areas, the federal government is rolling back environmental protections, is not enforcing environmental laws sufficiently, and is not working effectively with states to ensure compliance with baseline standards. The absence of federal leadership necessitates agency action at the state level on discrete areas such as coal ash regulation, safe drinking water, and standard-setting (e.g., perfluoroalkyl and polyfluoroalkyl substances (PFAS)), among others. With regard to climate change, Governor J.B. Pritzker signed Executive Order 2019-06, in which he pledged Illinois' commitment to the principles of the Paris Climate Agreement in order to "prevent further impacts of climate change" and to "protect the environment, economy, and residents' health." In the executive order, Governor Pritzker expressly called on IEPA to take a leading role to "protect Illinoisans from dangerous federal environmental policy" and to "monitor the Trump Administration's environmental proposals and identify opportunities to protect Illinoisans from environmental harm." With the added responsibility to monitor environmental issues at a national level and to address broader, systemic environmental challenges such as climate change, nutrient pollution, and environmental justice, among others, IEPA needs greater resources in the form of funds and personnel.

At the same time that the state's responsibilities have grown, technical requirements have increased in complexity and amount in many areas, and staffing levels at IEPA have declined precipitously. Between 2003 and 2018, staffing levels have decreased by almost 50 percent. Since 2003, IEPA has seen a 33 percent reduction in the number of professionals protecting our waters, an almost 50 percent reduction in those protecting our air, and a 43 percent reduction in those protection our lands. This strong downward trend prevails despite occasional increases in funding and staff for individual programs to address particular needs or legislative mandates.

IEPA's budget has not kept pace with other state environmental agencies in recent years. A survey by the Environmental Council of the States (ECOS), the national nonprofit, nonpartisan association of state and territorial environmental agency leaders, documented that state environmental agency budgets increased, on average, by roughly seven percent between 2013 and 2015, in figures unadjusted for inflation. During this period, Illinois' budget increased by only about 2.5 percent.

Impacts are widespread. Among other examples, IEPA has not been able to assess the health of nearly 85 percent of river and stream miles, and more than half of lake, reservoir and pond areas. As of 2016, there were more than 10,000 miles of rivers and streams and more than 140,000 acres of lakes, reservoirs, and ponds that have already been identified as threatened or impaired that are awaiting studies for how to address those threats and impairments. Since 2003, inspections of air pollutant emitting facilities have declined by 81 percent, air-monitoring technology throughout the state is outdated and needs to be replaced, and IEPA has missed several deadlines for filing plans with U.S. EPA to address air pollution. Enforcement cases referred to the Attorney General from the Bureaus of Air, Water, and Land were down significantly in 2015 to 2017 as compared to the years 2010 through 2014. Community engagement and environmental justice efforts have also suffered. Over the last few years, programs, such as Partners for Clean Air, have been disbanded due to lack of resources, and public outreach commitments to environmental justice areas have not been fulfilled.

IEPA needs additional resources to address these issues. A first step would be to increase funds through some mix of increased environmental fees and general appropriations. Modernized technology and equipment are clear areas where funds are needed. Necessary changes within the agency that update programming and facilitate knowledge transfer as key leaders move into retirement require funds as well. Environmental problems in our country and our state will only become more urgent and complicated during the coming years and decades. While there may be some areas in which IEPA needs to work more efficiently, our legislative and executive leaders must reverse this downward path in IEPA resources and capacity by providing the agency with the additional funds it needs to fulfill its mission.

I. Resource challenges

A. Headcount reductions

Figure 1 shows that staffing levels at IEPA have declined precipitously over the past 15 years.¹ These professionals are the core of Illinois' environmental protection capacity—engineers, chemists, biologists, attorneys, and support staff. Between 2003 and 2018, staffing levels have decreased by almost 50 percent. Staffing levels have decreased by 23 percent since 2014, as compared to 2018.²

IEPA Annual Actual Headcount, 2003-2018

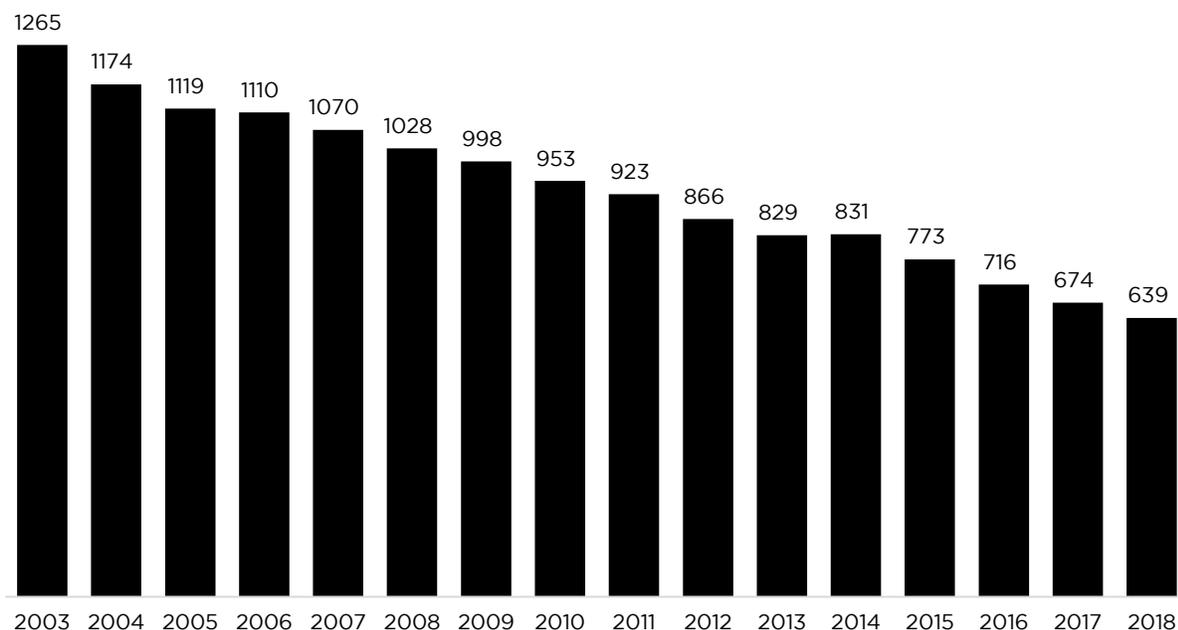


Figure 1

While these numbers are bleak, especially in light of the increasing challenges facing the agency, they do not show another significant personnel problem: succession planning. IEPA has

¹ Figure 1 shows the actual headcount within the agency. Actual headcount is reported after the fiscal year has ended, and reflects the actual number of employees working for the agency. For instance, the FY 2016-2017 Illinois Budget Book reports the actual headcount for FY 2015. See Ill. Office of Mgmt. & Budget, Exec. Office of the Governor, Ill. State Operating Budget, FY 2003-2020, <https://www2.illinois.gov/sites/budget/Pages/BudgetBooks.aspx> (Last Visited Jun. 17, 2019). The authors and contributors appreciate the assistance of former IEPA Director Lisa Bonnett in understanding IEPA's personnel and financial reports.

² *Id.*

already lost key personnel, and long-time leaders are approaching retirement. Decades of accumulated knowledge and relationships have left the agency, and this problem is anticipated to accelerate in the next few years. Without the resources to attract, train, and retain high-quality personnel to replace retiring staff, the agency will not have the people needed to fulfill its mission.

B. Budget Reductions

In general, financial resources have declined as well. While the IEPA's financial picture can be difficult to depict clearly due to the timing of fees receipts and federal grant payments and funding surges from one-time programs such as the American Recovery and Reinvestment Act

IEPA Annual Enacted Appropriations (\$Millions), 2003-2019

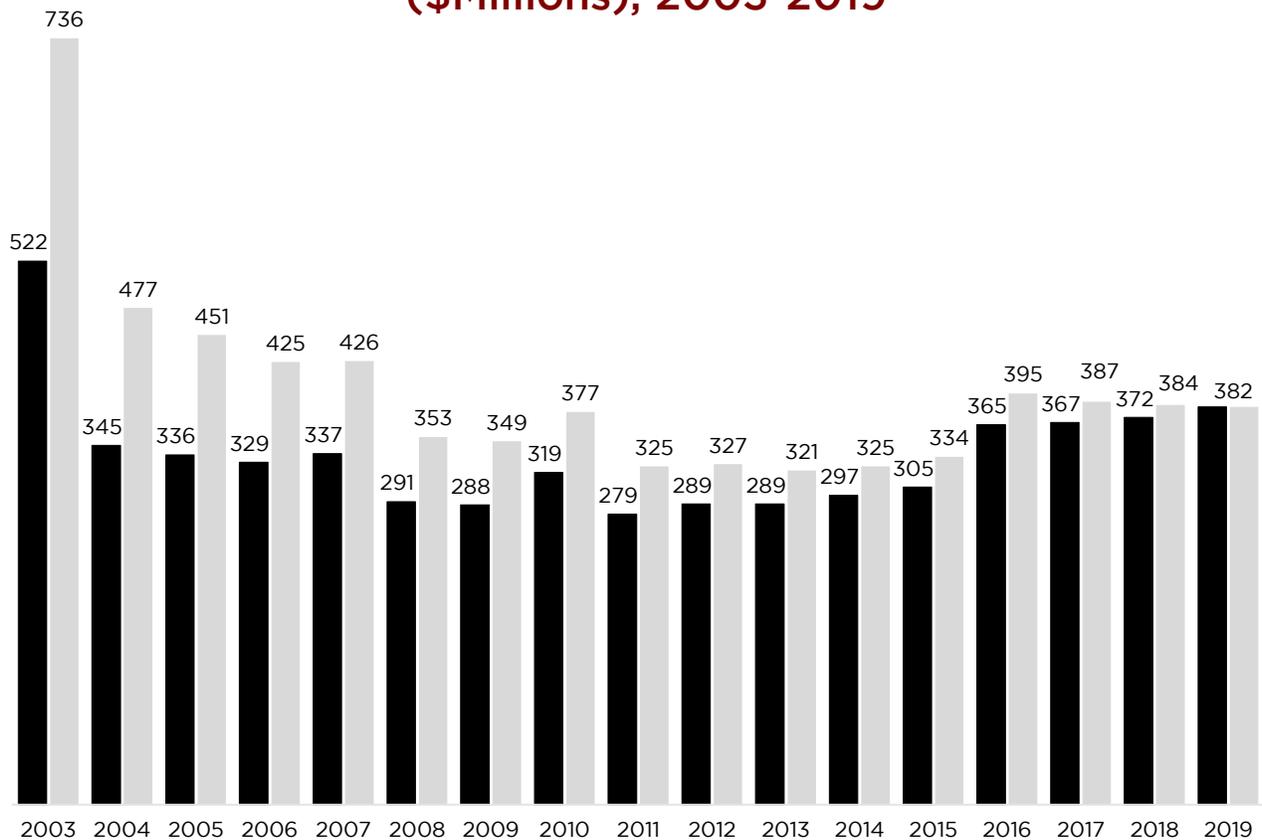


Figure 2

■ Unadjusted for Inflation ■ Adjusted for Inflation

and the Volkswagen Settlement, Figure 2 shows that the agency’s budget is on a downward trend in terms of the financial assets it has to do its job.³

IEPA’s budget has not kept pace with other state environmental agencies in recent years. A survey by the Environmental Council of the States (ECOS), the national nonprofit, nonpartisan association of state and territorial environmental agency leaders, documented that state environmental agency budgets increased, on average, by roughly seven percent between 2013 and 2015, in figures unadjusted for inflation.⁴ During this period, Illinois’ budget increased by only about 2.5 percent.

Since 2003, the General Assembly has not provided any general fund appropriation for IEPA’s regulatory programs, and Illinois is one of only three states where the environmental agency receives no yearly general fund appropriations.⁵ Between 2013 and 2015, ECOS data shows that nationally, funds from general state appropriations increased by 35 percent on average; however, IEPA continued to receive no general appropriation funds. In 2015, the last year of the ECOS report, Illinois was the only state in EPA Region V that did not receive any general state appropriation funds.⁶ As a result, IEPA has primarily had to rely on revenues from environmental fees and federal grants. While it may be appropriate to update and increase environmental fees, it is also appropriate and necessary to increase the general revenues for the agency, because IEPA’s work benefits all who reside in Illinois.

* * *

In addition to lack of general funds over the long term, IEPA’s increasing resource deficit is revealed in more recent, administration-specific, trends that can be tracked through programmatic metrics within each bureau, such as compliance monitoring, enforcement, accurate reporting, community involvement, and environmental justice.

³ Data showing enacted appropriations was gathered from the Illinois State Budget Books for each fiscal year from 2003 through 2020. The Illinois State Budget Books from these years provide figures for the IEPA’s enacted appropriations, as well as the agency’s actual expenditures. Our data draws only from the total enacted appropriations for each fiscal year. The figure for the total enacted appropriations reflects the summation of general funds, other state funds, and federal funds. To calculate the enacted appropriations in 2003, we subtracted the “appropriation authority actual” figure—distinguished from the “expenditures estimated” or the “appropriation authority recommended”—for the Water Revolving Fund from the total enacted appropriations. Following 2003, the Water Revolving Fund was not included in the total enacted appropriations for IEPA, so we did not subtract it from the total enacted appropriations from 2004 forward. See Ill. Office of Mgmt. & Budget, Exec. Office of the Governor, Ill. State Operating Budget, 2003 to 2020, <https://www2.illinois.gov/sites/budget/Pages/BudgetBooks.aspx> (Last Visited Jun. 17, 2019).

⁴ Beth Graves et al., Env’t Council of the States, Status of State Environmental Agency Budgets (EAB), 2013-2015 at 3, (March 15, 2017), https://www.ecos.org/wp-content/uploads/2017/03/Budget-Report-FINAL-3_15_17-Final-4.pdf.

⁵ *Id.*

⁶ States in EPA Region V include Wisconsin, Ohio, Minnesota, Michigan, Indiana, and Illinois. *Id.* at 14.

II. Program and function-specific challenges

A. Bureau of Water

During the past two decades, IEPA's responsibilities with respect to protecting the state's waters and assuring safe drinking water have only increased. This is true of both the agency's specific state and federal statutory mandates, as well as in the more general sense of responding to specific, known threats to the state's water resources.

With respect to statutory mandates, the agency's core responsibilities delegated under the federal Clean Water Act and Safe Drinking Water Act have placed constant or increasing demands on the agency. Regular permit renewals continue apace, and US EPA has periodically rolled out new requirements that all or some of those permits are to implement, such as federal regulations for cooling water intakes under section 316(b) of the Clean Water Act. These heightened requirements can necessitate significant time, effort, and technical expertise to implement. Additionally, the state legislature has imposed new programmatic requirements, such as the microbeads ban (2014),⁷ lead service line inventory legislation (2017),⁸ and audit functions under school lead testing legislation (2017).⁹ IEPA is also managing a growing portfolio of infrastructure loan and grant programs.¹⁰

Simultaneously, additional environmental problems are coming more into focus. For example, the federal government has pushed to the states responsibility for developing strategies to address nutrient pollution and emerging environmental contaminants such as perfluoroalkyl and polyfluoroalkyl substances (PFAS). With contamination and overuse, groundwater protection has become a more pressing concern in Illinois than ever before. At the end of 2018, IEPA regulated 1,747 Community Water Supplies in 1,749 communities, which utilize both groundwater and surface water sources to serve a total of 12,001,944 people.¹¹ For the IEPA, maintaining the safety and protection of drinking water source water involves

⁷ S.B. 2727, 98th Gen. Assemb. (Ill., 2014).

⁸ S.B. 0550, 99th Gen. Assemb. (Ill., 2017).

⁹ *Id.*

¹⁰ Ill. Env't Protection Agency, State Revolving Fund Postings, <https://www2.illinois.gov/epa/topics/grants-loans/state-revolving-fund/Pages/postings.aspx> (last visited Jan. 23, 2019).

¹¹ Data recorded during phone conversation with Mary Reed, Manager over Compliance Assurance, Ill. Env't Protection Agency (Oct. 10, 2019). This data will be published in Ill. Env't Protection Agency, Annual Groundwater and Drinking Water Program Review, Calendar Year 2018 (forthcoming).

implementing a permitting program for the design, construction and operation of public water supply treatment facilities and maintaining a surveillance program for water systems' untreated and treated waters.¹² To keep up with these existing responsibilities and to meet new challenges, the Bureau of Water's resource needs have only grown over time.

Bureau of Water Actual Headcount, 2003-2018

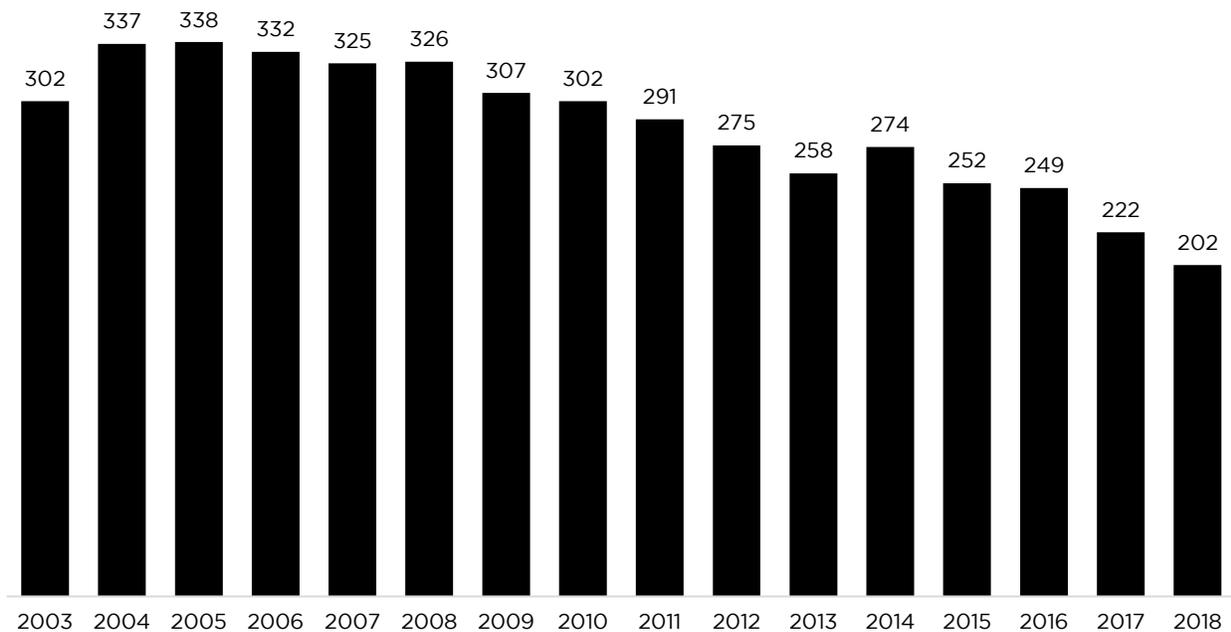


Figure 3

At its current capacity, the Bureau of Water is unable to keep up. Figure 3 shows that IEPA has seen a 33 percent reduction in the number of professionals protecting our waters since 2003.¹³ Federal funds do not make up for this decline. For instance, in June 2016, IEPA reported that due to attrition, the administrative support unit of IEPA's Division of Public Water Supplies (DPWS) had decreased to two full-time staff, and as a result, DPWS would have to come up with a "continuity of operation plan" to address the large shortage of administrative support in 2016

¹² *Id.* at 3.

¹³ Office of Mgmt. & Budget, Exec. Office of the Governor, Ill. State Operating Budget, FY 2003-2020, <https://www2.illinois.gov/sites/budget/Pages/BudgetBooks.aspx> (Last Visited Jun. 17, 2019).

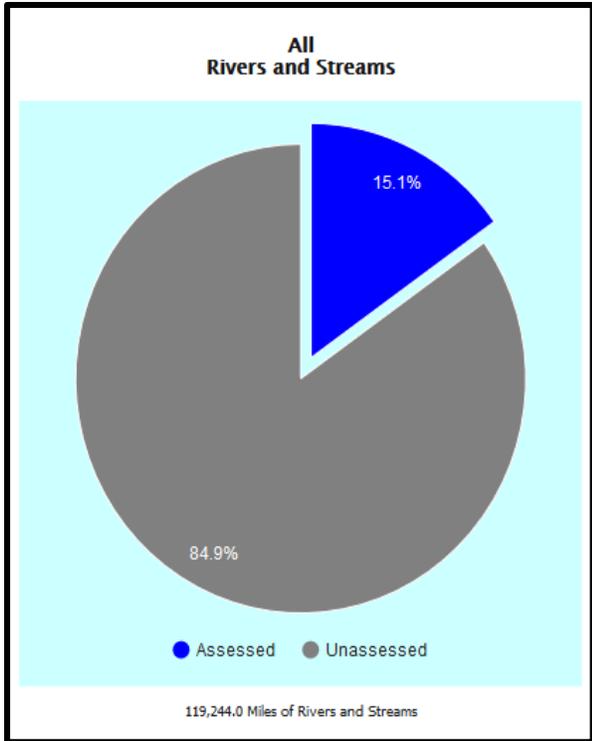
and beyond.¹⁴ In subsequent program reviews, IEPA has reported the exact same problem: as of June 2018, there were still only two full-time administrative support-staff members in the Division, which oversees a broad range of work including field operations, compliance assurance, permitting, infrastructural and financial assistance, and groundwater protection, and IEPA has confirmed that this problem continues up to present.¹⁵ In June 2018, IEPA reported that federal funds provided by the Public Water Supply Supervision (PWSS) Program grant currently supply less than half of the funds that are used to protect drinking water in Illinois. IEPA has acknowledged that for public water supplies (PWS) that are “in distress,” technical assistance “remains the cornerstone in developing capacity.”¹⁶ However, US EPA’s recent evaluations of the Illinois Capacity Development Program have highlighted low staff levels as an area of concern.¹⁷

¹⁴ Ill. Env’t Protection Agency, Annual Drinking Water Program Review, Calendar Year 2015 at 39 (June, 2016), <https://www2.illinois.gov/epa/Documents/uploads/2015%20drinking%20water%20program%20review-consolidatedannualreport%20-%20final.pdf>.

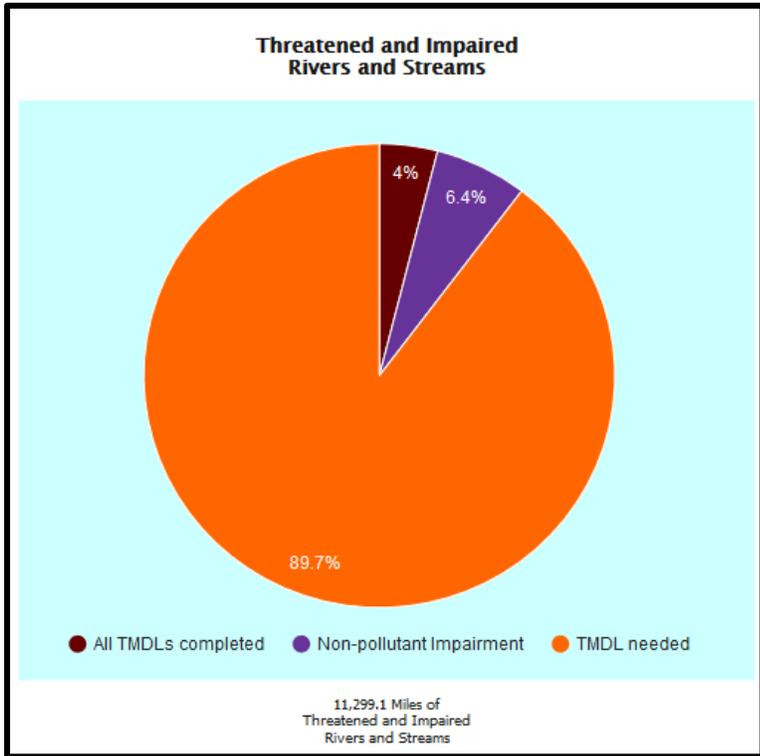
¹⁵ Ill. Env’t Protection Agency, Annual Groundwater and Drinking Water Program Review, Calendar Year 2017 (June 2018), at 47, https://www2.illinois.gov/epa/Documents/iepa/compliance-enforcement/drinking-water/2018_20groundwater-drinking_20water_20program_20review_20report_20-20final.pdf. During a phone conversation, Mary Reed, Manager over Compliance Assurance, Ill. Env’t Protection Agency, confirmed that low staff levels remain a problem (Oct. 10, 2019). This data will be published in Ill. Env’t Protection Agency, Annual Groundwater and Drinking Water Program Review, Calendar Year 2018 (forthcoming).

¹⁶ *Id.* at 7.

¹⁷ The capacity development program was established in 2000 and aims to ensure that water suppliers have the capacity to achieve compliance. *Id.* at 25.

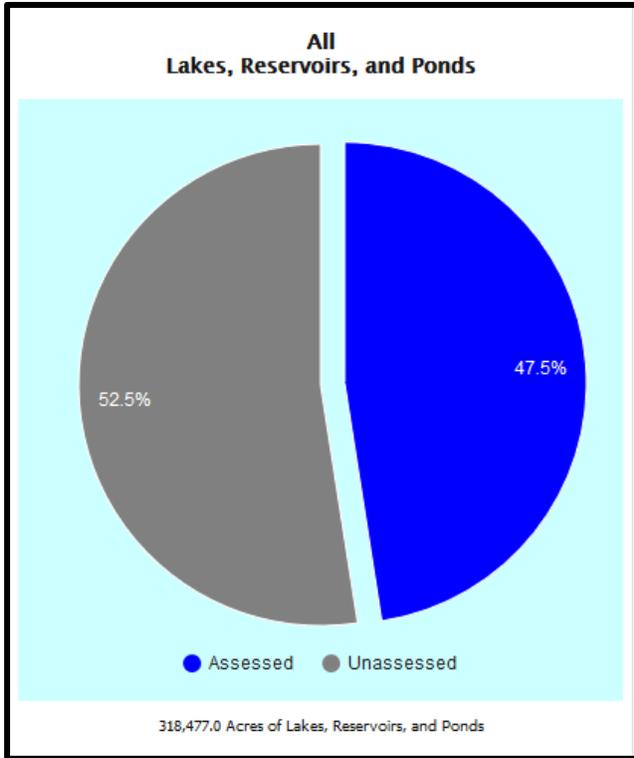


Assessed Status	Miles
Assessed	18,056.4
Unassessed	101,187.6
Total Miles	119,244.0

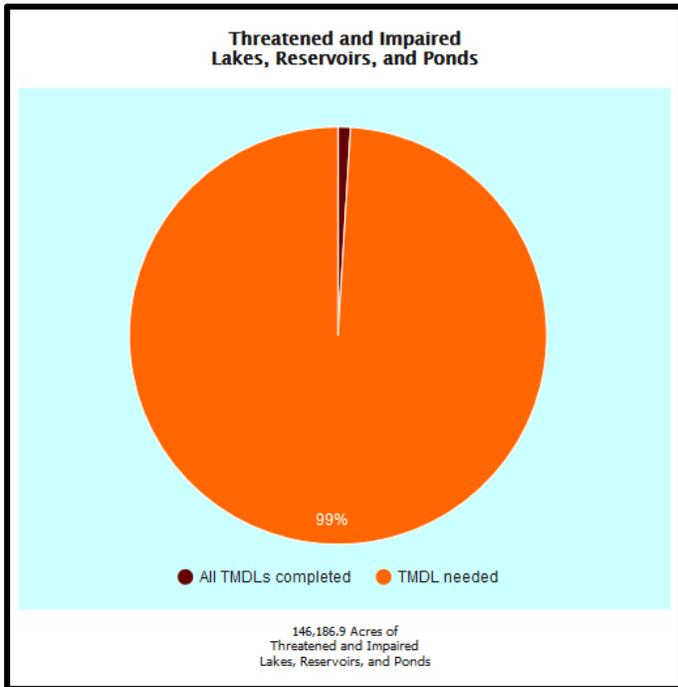


TMDL Development Status	Miles
All TMDLs completed	450.1
TMDL alternative	.0
Non-pollutant impairment	718.1
TMDL needed	10,130.9
Total Threatened and Impaired	11,299.1

Figure 4



Assessed Status	Acres
Assessed	151,434.9
Unassessed	167,042.1
Total Acres	318,477.0



TMDL Development Status	Acres
All TMDLs completed	1,407.4
TMDL alternative	.0
Non-pollutant impairment	.0
TMDL needed	144,779.5
Total Threatened and Impaired	146,186.9

Figure 5

The Bureau also needs more staff resources to support effective rulemakings that are essential to establish water quality standards, such as standards to address PFOA/PFAS and nutrient-related eutrophication in the state's rivers and streams. Other regulatory processes necessary to protect our waters also require additional resources. Figures 4 and 5 show that as of 2016, there were more than 10,000 miles of rivers and streams and more than 140,000 acres of lakes, reservoirs, and ponds that have already been identified as threatened or impaired and yet are waiting for Total Maximum Daily Load studies.¹⁸ Figures 4 and 5 also show that as of 2016, IEPA had not been able to assess the health of nearly 85 percent of river and stream miles, and more than half of lake, reservoir and pond areas.¹⁹ The Bureau's monitoring data is also backlogged, and as of 2017, data on surface monitoring and assessment activities funded by section 106 of the Clean Water Act was not consistently entered into EPA's Ambient Water Quality Monitoring System (AWQMS) database.²⁰

B. Bureau of Air

Since 2010, IEPA has made significant headway in reducing its permit backlog, both for Title V and New Source Review (NSR) permitting.²¹ However, as of 2017, lack of resources has impacted issues such as air toxics regulation, air monitoring, and climate change, as well as community outreach. Similar to the Bureau of Water, staffing levels in the Bureau of Air have dropped by almost 50 percent since 2003 (Figure 6).²² In 2017, lack of available staff prevented the drafting of agreements and the development of regulations consistent with federal air quality rules on transportation conformity.²³

In addition, over the past few years, the Bureau's Ambient Air Quality Monitoring Network has operated below its optimum level. For instance, IEPA has had only enough funding to switch 14 of its 35 Fine Particulate Matter (PM_{2.5}) monitors from older, manual filter-based monitors to updated, continuous monitors.²⁴ The IEPA reported in May 2018 that increasing the number of

¹⁸ US Env't Protection Agency, Ill. Assessment Data for 2016, https://ofmpub.epa.gov/waters10/attains_state.control?p_state=IL&p_cycle=2016 (last visited Jan. 22, 2019).

¹⁹ *Id.*

²⁰ Ill. Env't Protection Agency, FY 16/17 Performance Partnership Grant Annual Performance Report (January 25, 2018) at 44.

²¹ US Env't Protection Agency, Review of Illinois Environmental Protection Agency's New Source Review and Title V Permit Programs (Sept. 2017) at 3.

²² Ill. Office of Mgmt. & Budget, Exec. Office of the Governor, Ill. State Operating Budget, FY 2003-2020, <https://www2.illinois.gov/sites/budget/Pages/BudgetBooks.aspx> (Last Visited Jun. 17, 2019).

²³ Ill. Env't Protection Agency, FY 16/17 Performance Partnership Grant Annual Performance Report (January 25, 2018) at 8-9.

²⁴ Ill. Env't Protection Agency, Bureau of Air, Ambient Air Monitoring 2019 Network Plan (May 2018) at 7, 26-30, https://www2.illinois.gov/epa/Documents/iepa/air/monitoring/2018/2019_20illinois_20network_20plan.pdf.

continuous monitors depends on “funding availability and monitoring site logistics.”²⁵ IEPA generally lacks a robust monitoring network for all air pollutants.

Bureau of Air Actual Headcount, 2003-2018

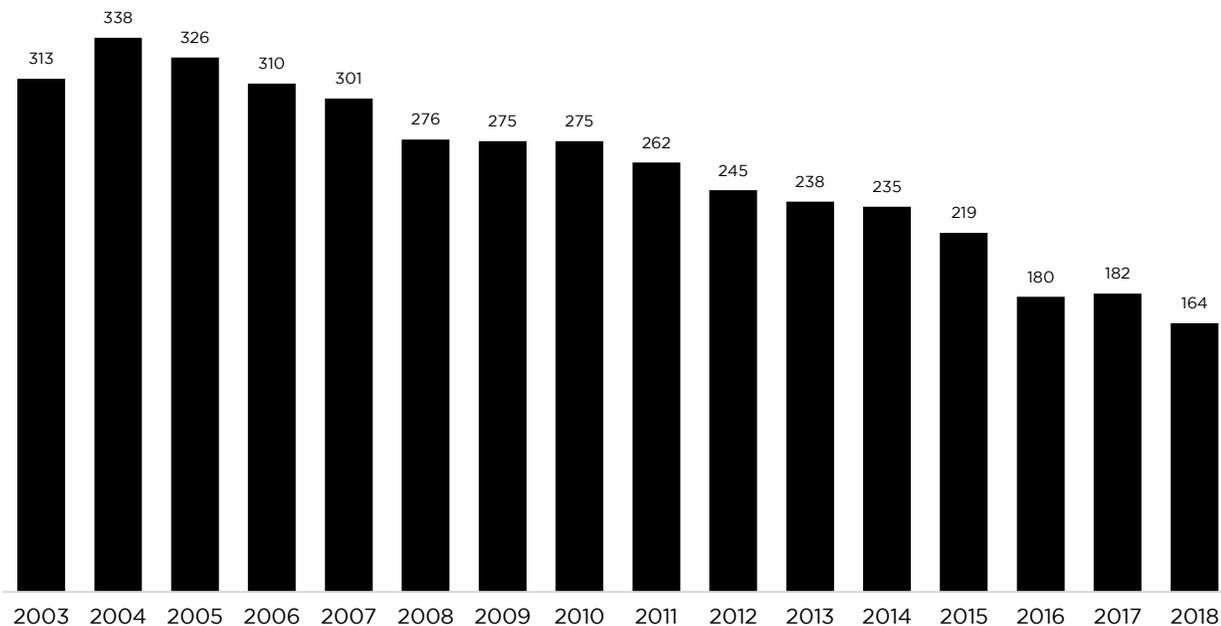


Figure 6

Low staff levels have affected the Bureau’s ability to record and to report information. As of 2017, the Bureau only had one analyst entering data on Best Available Technology (BACT) determinations into the US EPA’s RACT/BACT/LAER Clearinghouse (RBLC) permit database, which aids both permit applicants and reviewers in their decisions about pollution prevention and control technology for stationary air pollution sources.²⁶ In addition, data on particulate pollution throughout Illinois has been missing from 2014 to present.²⁷

²⁵ *Id.*

²⁶ US Env’t Protection Agency, Review of Illinois Environmental Protection Agency’s New Source Review and Title V Permit Programs, (Sept. 2017) at 18.

²⁷ American Lung Association, State of the Air 2018 (2018) at 8 <https://www.lung.org/assets/documents/healthy-air/state-of-the-air/sota-2018-full.pdf>.

Number of Pollutant Emitting Facilities Inspected, 2003-2017

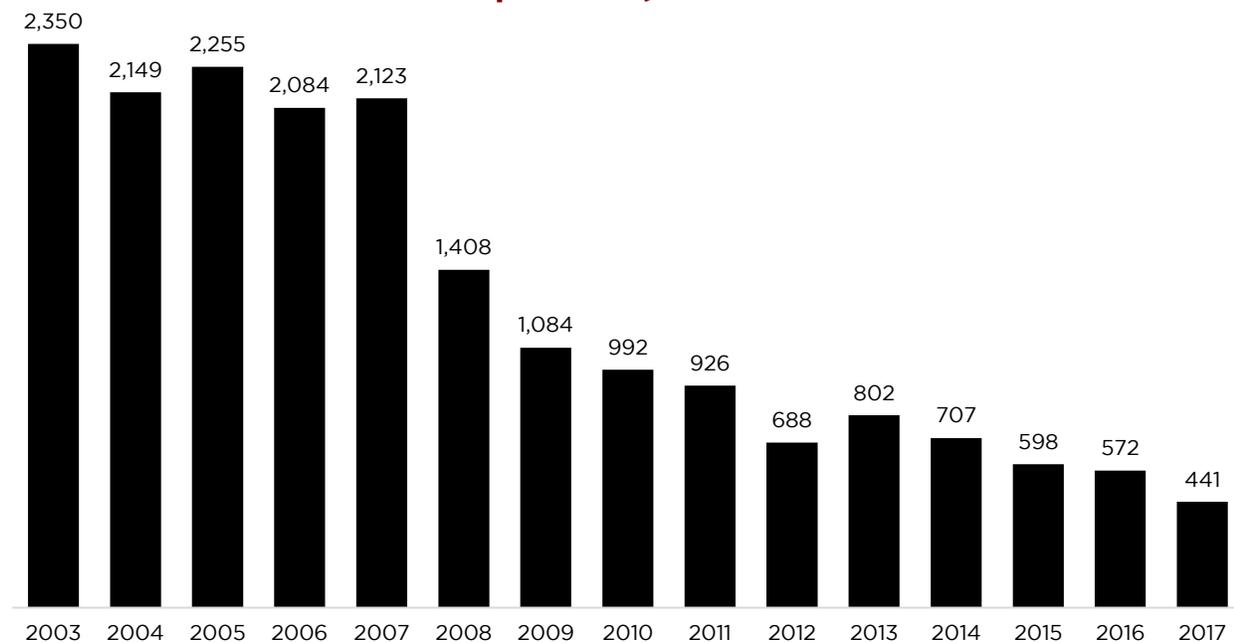


Figure 7

Figure 7 shows that since 2003, inspections of pollutant emitting facilities have declined by 81 percent.²⁸ This sharp decline may be due at least partly to changes in regulation. In 2011, IEPA established the Registration of Smaller Sources (ROSS) program, which reduced the number of air emissions sources requiring inspection.²⁹ However, since 2001, resource constraints have also impacted compliance and enforcement of the air laws. For example, from FY 2001 to FY 2005, IEPA did not submit a compliance monitoring plan (CMS) to U.S. EPA, as required by CMS policy.³⁰

²⁸ Ill. Office of the Comptroller, Illinois Public Accountability Reports (2003-2018),

<https://illinoiscomptroller.gov/financial-data/find-a-report/public-accountability-report/>. We appreciate the input of Jonathan Hettinger, who pointed us to the Public Accountability Reports. See Jonathan Hettinger, *Illinois Environmental Agency Suffers Deep Staff Cuts*, Midwest Center for Investigative Reporting (April 11, 2018) <https://investigatamidwest.org/2018/04/11/illinois-environmental-agency-suffers-deep-staff-cuts/>.

²⁹ In 2011, IEPA estimated that 3,200 of Illinois' 6,500 air emissions sources would be eligible for a much less burdensome annual registration process as a result of the ROSS program. See Ill. Env't Protection Agency, Biennial Report 2011-2012 (September 2013) at 8. <https://www2.illinois.gov/epa/Documents/epa.state.il.us/biennial-report/2011-2012-report.pdf>.

³⁰ US Env't Protection Agency, Review of Illinois EPA Enforcement Program Federal Fiscal Year (FFY) 2005 (Aug 22, 2007) at 18.

While the emphasis has been to regulate large pollutant-emitting facilities, small businesses, such as dry-cleaners or auto-body shops, collectively contribute to pollution levels in the state and add to pollution from larger sources. In its 2019 State of the Air study, the American Lung Association (ALA) reported that compared to other American cities, Chicago had some of the worst ozone pollution levels from 2015 to 2017. The city's pollution levels have increased in the last couple of years. Chicago had a higher average of "unhealthy days" in the 2015-2017 period than it did in the ALA's report covering emissions data from 2014 to 2016.³¹ During the last five years, the percentage of volatile organic compound (VOC) and nitrogen oxide (NOx) from area sources in the city of Chicago has increased by eight percent and two percent, respectively.³² Without the same kind of permitting and inspection procedures that regulate large sources, educational and technical assistance that helps to ensure small businesses meet air pollution requirements is needed. Small source polluters that qualify under the ROSS program are managed by Illinois's small business and environmental assistance program (SBEAP), which helps small businesses meet national emissions standards and offers them educational materials, including fact sheets, guides, and trainings. IEPA oversees SBEAP jointly with the Illinois Department of Commerce (DCEO), primarily by providing technical assistance. IEPA and DCEO are both understaffed in these areas and in need of funds to support programs that maintain robust regulatory programs for small sources.³³

Declining resources not only affect the Bureau's regulatory, monitoring, inspection and reporting capacities, but they also impact the Bureau's engagement with the community. In June 2017, the Illinois Partners for Clean Air program, an outreach program that encouraged Illinois residents, businesses and government entities to sign up for air quality forecasts and to develop and implement action plans, was disbanded due to lack of funding and staffing issues.³⁴ Increased resources are needed to revive community outreach programs like Partners for Clean Air, as well as to develop training programs for staff specifically devoted to community issues.

These resource issues are compounded by US EPA's new, complex federal emissions and hazardous air pollutant standards. National Ambient Air Quality Standards (NAAQS) for nitrogen

³¹ Am. Lung Ass'n, State of the Air 2019, (2019) at 6, <https://www.lung.org/assets/documents/healthy-air/state-of-the-air/sota-2019-full.pdf>.

³² Ill. Env't Protection Agency, Bureau of Air, Draft Attainment Demonstration for the 2008 Ozone National Ambient Air Quality Standard for the Chicago Nonattainment Area at 28 (April 2017), <https://www2.illinois.gov/epa/public-notices/Documents/General%20Notices/Attainment%20Demonstration%20-%202008%20Ozone%20NAAQS%20-%20Chicago%20NAA.pdf>

³³ The number of professionals working on the DCEO's Business Development program has dropped from 31.5 professionals in 2010 to 18 professionals in 2017. See Ill. Office of the Comptroller, Illinois Public Accountability Reports (2000-2018), <https://illinoiscomptroller.gov/financial-data/find-a-report/public-accountability-report/>.

³⁴ Ill. Env't Protection Agency, FY 16/17 Performance Partnership Grant Annual Performance Report (January 25, 2018) at 15.

dioxide, sulfur dioxide and greenhouse gases come with expectations about practical enforceability of emissions limitations and the provision of permits. IEPA has expressed concern about its ability to implement the administrative steps required for compliance with these standards.³⁵ In February 2017, US EPA found that Illinois was among 15 states that did not submit State Implementation Plan (SIP) revisions on time and in a manner that satisfied requirements of the 2008 ozone NAAQS that apply to nonattainment areas and states in the Ozone Transport Region (OTR).³⁶ In December 2017, US EPA found that Illinois did not timely submit a revision to its SIP to satisfy moderate Nonattainment New Source Review (NNSR) requirements for the Chicago area. As a result, US EPA promulgated a Federal Implementation Plan (FIP) that required Illinois to submit a complete SIP within 18 months to avoid sanctions. IEPA avoided the FIP and sanctions when, in May 2018, US EPA approved IEPA's revised SIP, but only after Illinois had submitted two SIPs that US EPA had found deficient.³⁷

C. Bureau of Land

Unlike in the Bureaus of Air and Water, where new federal regulations having been ever increasing over the last several years, the regulatory responsibilities in the Bureau of Land have remained relatively constant and with such, employees within the Bureau of Land may be an under-utilized asset within the agency. Figure 8 shows that as of 2018, the Bureau of Land had 223 staff members, compared to 164 staff members in the Bureau of Air (Figure 6) and 202 in the Bureau of Water (Figure 3).³⁸

The Agency has the opportunity to utilize staff across programs with complimentary goals in order to move higher priority programs forward. For example, the Brownfields Program, which was established in 1995, could be revitalized and expanded by having staff in various cleanup programs (e.g., LUST and Voluntary State Remediation Program (SRP)) work to market and support the Brownfields financial assistance programs. The Leaking Underground Storage Tank (LUST) cleanup program could be updated as well. Figure 9 shows the number of corrective action measures taken to address underground storage tank cleanups from 2006 to 2018. In a study from 2011 on the National LUST Cleanup Backlog, US EPA reported that for 73 percent of

³⁵ US Env't Protection Agency, Review of Illinois Environmental Protection Agency's New Source Review and Title V Permit Programs (Sept. 2017).

³⁶ *Id.*

³⁷ Air Plan Approval; Illinois; Nonattainment New Source Review Requirements for the 2008 8-Hour Ozone Standard, A Proposed Rule by the Env't Protection Agency, 83 Fed. Reg. 50551 (proposed October 9, 2018) (to be codified at 70 C.F.R. pt. 52).

³⁸ Ill. Office of the Comptroller, Illinois Public Accountability Reports (2003-2018), <https://illinoiscomptroller.gov/financial-data/find-a-report/public-accountability-report/>.

releases in Illinois, there was no data on the type of financing for cleanup releases. Illinois also commented that the high costs for cleanups were driven by older longer-term cleanups.³⁹

Bureau of Land Actual Headcount, 2003-2018

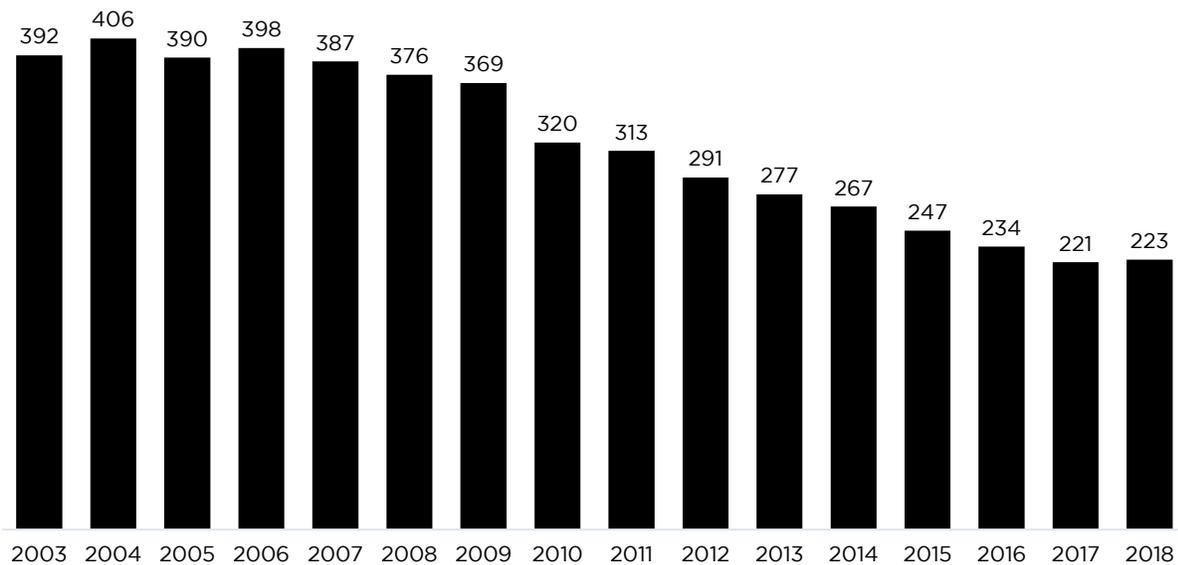


Figure 8

Additionally, the Bureau of Land would benefit from an evaluation to determine the value-added of the current remediation programs, policies and regulations—from whether the SRP should be modified to establish timelines for projects to receive a No Further Remediation Letter, to whether gas-station owners should obtain pollution liability insurance to lessen the burden on taxpayers paying for spills due to poor equipment maintenance. In particular, IEPA should reassess the payment-by-review structure which governs the Voluntary Cleanup Program and which may dis-incentivize employees from moving a cleanup to completion. This evaluation may result in identifying staff resources that could be moved to higher priority environmental programs.

³⁹ U.S. Env't Protection Agency, The National LUST Cleanup Backlog: A Study of Opportunities, at 23, 25 (Sept. 2011), https://www.epa.gov/sites/production/files/2014-03/documents/backlog_national_chapter.pdf.

Besides the Brownfields Program, other programs that address solid waste, landfills and composting could be renovated to become more focused on energy issues, such as utilizing landfill gas energy for electricity. Lack of modernization not only results in inefficiencies; it also means that IEPA has been unable to participate in national reporting programs that can aid in future permitting and enforcement actions. Databases should be updated and investment in technologies and training programs should be made for accurate electronic reporting.

Underground Storage Tank Cleanup Actions and Cleanups Remaining, 2006-2018

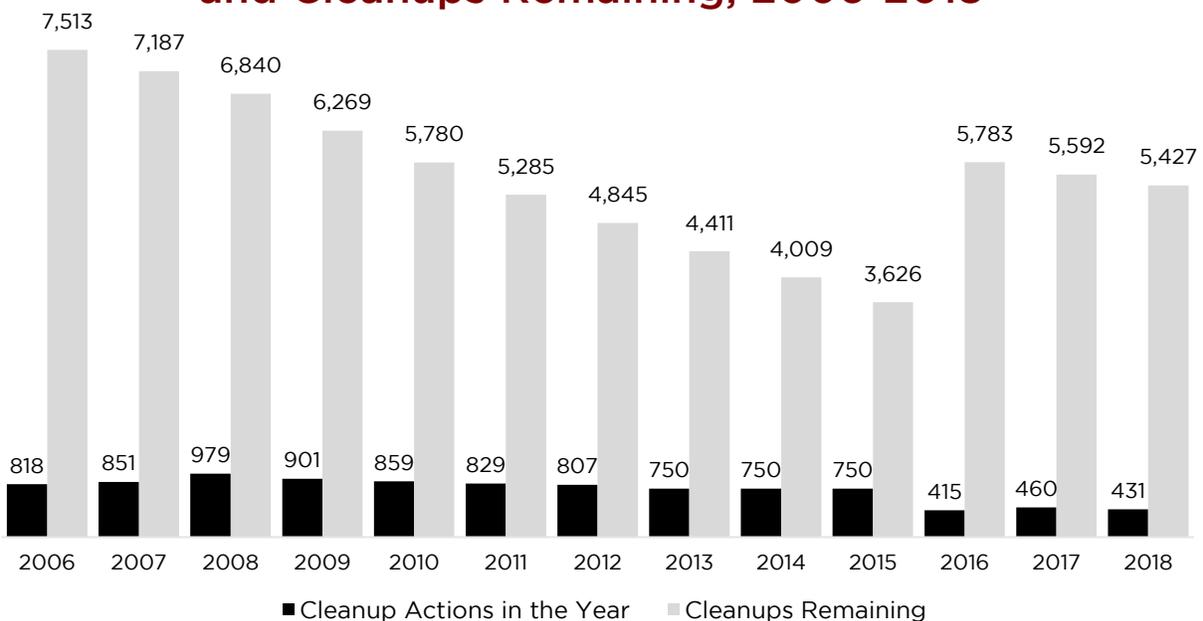


Figure 9

D. Enforcement

Robust enforcement of environmental laws and regulations is crucial for protecting the environment and public health and for ensuring that polluters do not benefit from a competitive advantage if they violate the law. This function serves to level the playing field and to protect responsible companies from having to compete with companies that shirk their legal obligations. Figure 10 shows a decline in the number of cases referred from the agency to the Illinois Attorney General’s Office in recent years. While the number of cases may vary from year to year for a variety of reasons, and while the agency may be using Compliance Commitment Agreements (CCAs) more than enforcement referrals to achieve environmental objectives, the decline in referrals does raise questions about the agency’s approach to enforcing environmental laws.

IEPA could improve in several areas of enforcement by developing more consistent policies, implementing training programs, and improving record-keeping. For instance, in 2013, US EPA reported that IEPA lacked a set process for determining whether violations of the Clean Air Act (CAA) should be addressed with a referral to the Illinois Attorney General's Office or through a CCA.⁴⁰ In addition to inconsistencies in terms of the application of policy, US EPA reported that IEPA's case files often failed to document determinations about enforcement actions and penalty calculations.⁴¹ To address these issues, US EPA has recommended that IEPA establish universal policies; however, IEPA has expressed concern about this approach because enforcement determinations are made on a case-by-case basis.⁴² Where policies cannot be universalized, IEPA needs additional resources to develop more comprehensive strategies and to train its professionals.

Number of Enforcement Cases Referred to the Attorney General from Bureau of Air, Water and Land, 2010-2017

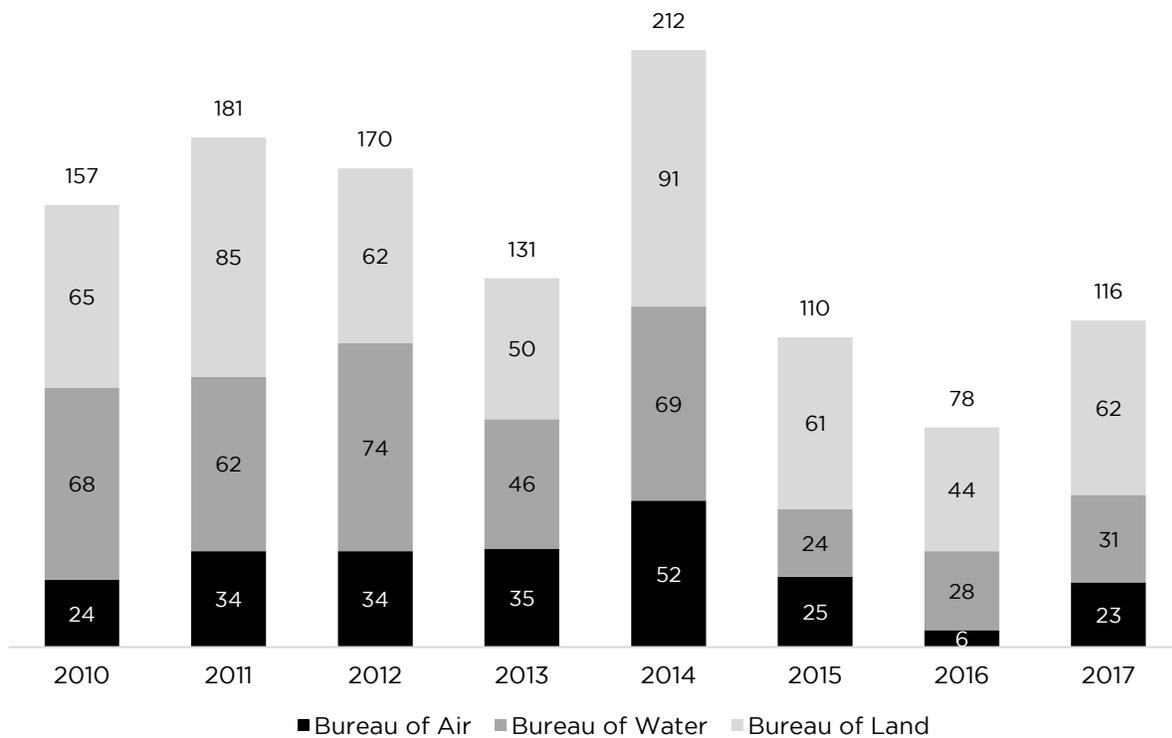


Figure 10

⁴⁰ US Env't Protection Agency, State Review Framework, Illinois, Clean Water Act, Clean Air Act, and Resource Conservation Recovery Act Implementation in Federal Fiscal Year 2013, (May 4, 2015) at 29.

⁴¹ *Id.* at 28-29.

⁴² *Id.*

IEPA also needs more people. Enforcement is labor-intensive. Referrals to the Attorney General involve responsibilities such as conducting an on-site inspection, reviewing documents, helping to prepare a case, preparing for a deposition, and potentially appearing in court, and CCAs take time to develop the facts, to set a strategy, and to negotiate with the violator.

Relatedly, IEPA's Office of Solid Waste and Emergency Response could also benefit from technological improvements to support enforcement of environmental laws. In 2017, for example, the office was neither able to participate in US EPA's digital inspector program by gathering inspection data electronically, nor could it update software and equipment due to technical issues. As a result, IEPA's participation in this program was reported "on hold" in both 2014 and 2015.⁴³

III. Recommendations

We encourage the General Assembly to increase funding for IEPA. We also make several recommendations that not only identify new resources, but also highlight strategies for maximizing IEPA's present resources.

1. Environmental fees should be raised to ensure that, at a minimum, the complete costs of permitting, inspecting, regulating, remediating, and preventing pollution are covered by the fees paid. We understand that the current fee schedule was established in 2003, and the statute does not provide for an escalator to keep pace with inflation or the rising cost of pension payments and healthcare—payments that are taken directly from IEPA's funds. In updating, IEPA should examine fee structures of other states that may be more sustainable.
2. IEPA and the General Assembly should develop new sources of revenue, particularly sources designed to incentivize positive environmental decision-making, such as statewide plastic bottle or bag fees, water-quality utility fees, or storm water fees.
3. IEPA also needs additional resources to undertake any statewide climate initiatives and to participate in any regional or national greenhouse reduction efforts. With those resources, IEPA could work with other agencies and provide leadership in the state achieving 100 percent clean energy within the next 30 years.
4. IEPA must respond to the need for more community outreach and environmental justice work. In order to encourage engagement and to ensure that the current notification process is a worthwhile and efficient expenditure of IEPA's resources, IEPA needs to clarify its environmental justice notification process for both IEPA employees and the

⁴³ Ill. Env't Protection Agency, FY 14/15 Performance Partnership Agreement between Illinois and Region 5, USEPA, (Sept. 26, 2013) at 15.

public.⁴⁴ The agency also needs to hire additional professionals to work across agencies and within communities on these issues and to support and empower the Illinois Environmental Justice Commission.

5. IEPA must modernize the delivery of environmental protection through improved technology, and it must provide its employees a modern work environment with modern technology.
6. IEPA should initiate a staffing plan that would identify priorities, optimize timely hiring, establish training programs, and facilitate knowledge transfer of retiring workers. In order to attract and maintain a workforce of skilled professionals, IEPA must also develop a robust mentoring program to ensure knowledge transfer from retiring workers.
7. The governor should establish a blue-ribbon panel consisting of former IEPA leaders and key environmental protection stakeholders to analyze IEPA's capacity and programmatic needs, and to make recommendations about the future of the agency.

Beyond these recommendations to address IEPA authorities and operating resources, any major capital spending plan should include investments in IEPA capacity that would generate employment, allow for new economic development, and reduce pollution of our land, air, and water, including:

1. Air and water quality monitoring stations to restore lost capacity, to monitor public health threats, and to track environmental changes, including but not limited to the agency's water monitoring programs and Nutrient Loss Reduction Strategy superstation network;
2. Lab equipment at state labs to allow IEPA to assist local governments with testing requirements;
3. Site cleanup funds to remediate toxic waste sites not covered by the federal Superfund program;
4. Brownfield revolving loan program to incentivize cleanup and economic development;
5. Implementation for Nutrient Loss Reduction Strategy—funds for wastewater treatment and agricultural projects to implement INLRS;
6. An updated IT system to improve monitoring, permitting and enforcement; and

⁴⁴ In an article from November 2018, the *Chicago Tribune* found that for more than half of the permits affecting conditions in environmental justice areas considered by the IEPA, no public hearings have been held in nearly three years. The *Tribune* also found that between January 2015 and August 2018, almost 2,000 permit applications were catalogued in the state's environmental justice outreach database and marked as complete; however, in 56 percent of these cases, no notification was sent. Of the applications for which notifications letters were sent, communities were given a minimum of two weeks or less to respond. Chris Pressnall, environmental justice officer for the IEPA, stated that it has been almost two years since the IEPA's environmental justice office held any community meetings in an environmental justice community. Tony Briscoe, "Illinois EPA is supposed to inform poor, minority communities about potential polluters, but many have been left in the dark," *The Chicago Tribune*, (Nov. 15, 2018), <https://www.chicagotribune.com/news/ct-met-illinois-environmental-justice-pollution-20181024-story.html>.

7. Changes to state revolving fund rules to make financing of green infrastructure projects and other non-point pollution control projects a priority under water loan programs.

It will likely be appropriate to pair these capital investments with increased general appropriations and other revenue increases to cover annual program administration expenses.

IV. Conclusion

During the past two decades, IEPA's budget and staff have been on the decline generally. Lower levels of funding and fewer employees have hamstrung the agency's work. Reports and evaluations from US EPA, as well as IEPA itself, during the past 20 years show that, in addition to other problems, compliance monitoring and enforcement activities, such as inspections, have declined; data management is often incomplete or inaccurate; standard-setting is slow-moving; and community involvement has dwindled. These resource constraints have become an important problem in the wake of recent federal rollbacks. As IEPA's resources continue to decline, its responsibilities grow and become more complex. Governor Pritzker's recent executive order places responsibility for many of these issues squarely in the hands of IEPA. If the agency is to monitor the federal government's environmental proposals and ensure the protection of Illinoisans, it will need to use its existing resources more effectively and to have even more resources to address all of the environmental challenges facing the state.

A first step to address these issues would be additional funding through some mix of increased environmental fees and general appropriations. Modernized technology and equipment as well as new hires are clear areas where funds are needed. Necessary changes within the agency—such as more effective training policies as key leaders move into retirement or increased agency involvement in environmental justice issues through outreach programs—require funds as well. Environmental problems in our country and our state will only become more urgent and complicated during the coming years and decades. While there may be some areas in which IEPA needs to work more efficiently, our legislative and executive leaders must reverse this downward path in IEPA resources and capacity by providing the agency with the additional funds it needs to fulfill its mission.

In the spring of 1970, Illinois became the first state to establish an environmental protection agency, and operations officially began on July 1st of that year.⁴⁵ In July 2020, our state will

⁴⁵ Ill. Env't Protection Agency, History: The Beginnings, <https://www2.illinois.gov/epa/about-us/introduction/Pages/History.aspx> (Last visited Jul. 11, 2019).

celebrate the agency's 50th anniversary. As we approach this date, we should examine the agency's evolution and performance over the last decades; reflect on recurring and emerging challenges; and identify areas where state environmental protection can be improved to ensure that the agency can accomplish its core duty: to safeguard environmental quality in order to protect health, welfare, property and the quality of life.