



# Illinois Coal Ash Cleanup and Storage Act: Key Takeaways

by Bruce M. Engel

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## ABOUT THE AUTHOR



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Bruce is a Partner in the Insurance and Reinsurance Practice Group. He represents insurers and reinsurers worldwide. His practice primarily involves insurance and reinsurance coverage analysis, litigation, and arbitration. He is experienced in addressing issues related to the underwriting, placement, and claims handling of facultative and treaty reinsurance contracts.



Insurers are increasingly facing claims by utility companies for the clean-up of coal ash, which for decades has been disposed of in unlined ponds and landfills.

Following a large coal ash spill at the Tennessee Valley Authority in 2008, the EPA began to assess coal ash impoundments and established regulations in 2015 for the disposal of coal combustion residuals (CCRs or coal ash). These regulations continue to be litigated. Certain states have also enacted their own regulations, which are generally stricter than the EPA's.

On May 29, the Illinois legislature passed the Coal Ash Cleanup and Storage Act. The act is expected to be signed by the Governor. Illinois becomes the third state, after North Carolina and Virginia to address coal ash through state legislation.

Among other things, the Act:

- Requires closure alternatives analysis, including analysis of complete removal of CCRs;
- Posting of a bond for closure, post closure and remediation based on a 30 year post closure care period;
- Requires the Pollution Control Board ("Board") to adopt rules to implement the act within 8 months;
- Allows public participation in the permit process;
- Requires identification of areas of environmental justice concerns;
- Prioritizes impoundments required to close; and
- Imposes fees to be used by the Agency in connection with this act.

*Please let me know if you have any questions or would like additional information as the Act awaits the Governor's signature.*