Template PERFORMANCE OR PAYMENT BOND

Date bond executed: __________

Effective date: __________

Principal: (legal name and business address) _____________

Type of organization: (insert "individual," "joint venture," "partnership," or "corporation") ___________

State of incorporation: __________

Surety: (name and business address) _____________

Name, address, permit number, if any, and (closure, post-closure care, or corrective action) cost estimate for the facility: _____________

Penal sum of bond: $________

Surety's bond number: __________

Know all men by these present, That we, the Principal and Surety hereto are firmly bound to the Department of Environmental Quality, Commonwealth of Virginia, (hereinafter called the Department) in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of each sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas, said Principal is required to have a Mitigation Banking Instrument (MBI) approved by Department of Environmental Quality, Commonwealth of Virginia, in order to own or operate the XXXX Mitigation Bank identified above, and

Whereas, said Principal is required to provide financial assurance to ensure the aquatic resources will be restored or established on site. The amount of the assurances must be sufficient to acquire replacement compensatory mitigation sufficient to offset the initial release of credits through an approved bank or in-lieu fee program in the event of a default. Now, therefore the conditions of this obligation are such that if the Principal shall faithfully perform (wetland, stream restoration, enhancement), whenever required to do so, of the bank identified above in accordance with Bank Development Plan (BDP) submitted to receive said MBI approval and other requirements of said MBI as such plan and permit may be amended or renewed pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,
Or, if the Principal shall provide alternate financial assurance as specified in the Department's regulations and obtain the director's written approval of such assurance, within 120 days of the date notice of cancellation is received by the Director of the Department of Environmental Quality from the Surety, then this obligation will be null and void, otherwise it is to remain in full force and effect for the life of the management facility identified above.

The Surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Director of the Department of Environmental Quality, Commonwealth of Virginia, that the Principal has been found in violation of the requirements of the MBI, the Surety must either perform (wetland, stream restoration, enhancement) in accordance with the approved MBI, purchase credits at an approved mitigation bank or in lieu fee fund with a service area identical to the bank or forfeit the (wetland, stream restoration, enhancement) amount guaranteed for the bank to the Commonwealth of Virginia.

Upon notification by the Director of the Department of Environmental Quality, Commonwealth of Virginia, that the Principal has been found in noncompliance with the MBI to complete (wetland, stream restoration, enhancement) within one full growing season following the first sale of initial credits, the Surety must either perform (wetland, stream restoration, enhancement) in accordance with the MBI purchase credits at an approved mitigation bank or in lieu fee fund with a service area identical to the bank or forfeit the (wetland, stream restoration, enhancement) amount guaranteed for the bank to the Commonwealth of Virginia.

The Surety hereby waives notification of amendments to the (wetland, stream restoration, enhancement) plans, MBI, applicable laws, statutes, rules, and regulations and agrees that such amendments shall in no way alleviate its obligation on this bond.

For purposes of this bond, (wetland, stream restoration, enhancement) shall be deemed to have been completed when the Director of the Department of Environmental Quality, Commonwealth of Virginia, determines that the conditions of the approved plan have been met.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but the obligation of the Surety hereunder shall not exceed the amount of said penal sum unless the Director of the Department of Environmental Quality, Commonwealth of Virginia, should prevail in an action to enforce the terms of this bond. In this event, the Surety shall pay, in addition to the penal sum due under the terms of the bond, all interest accrued from the date the Director of the Department of Environmental Quality, Commonwealth of Virginia, first ordered the Surety to perform. The accrued interest shall be calculated at the judgment rate of interest pursuant to § 6.1-330.54 of the Code of Virginia.

The Surety may cancel the bond by sending written notice of cancellation to the owner or operator and to the Director of the Department of Environmental Quality, Commonwealth of Virginia, and the Norfolk District of the US Army Corps of Engineers provided, however, that cancellation cannot occur (1) during
the 120 days beginning on the date of receipt of the notice of cancellation by the director as shown on the signed return receipt; or (2) while an enforcement action is pending.

The Principal may terminate this bond by sending written notice to the Surety, provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond by the Director of the Department of Environmental Quality, Commonwealth of Virginia.

In witness whereof, the Principal and Surety have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety and I hereby certify that the wording of this surety bond is identical to the wording specified in 9VAC20-70-290 B of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities as such regulations were constituted on the date shown immediately below.

Principal

Signature(s): __________

Name(s) and Title(s): (typed)__________

Corporate Surety

Name and Address: __________

State of Incorporation: __________

Liability Limit: $___

Signature(s): __________

Name(s) and Title(s): (typed)__________

Corporate Seal:

C. Wording of irrevocable standby letter of credit.

(Note: Instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.)