



# australian network of environmental defender's offices

C/- Environment Defenders Office (Vic)  
PO Box 12123  
A'Beckett St Post Office  
Melbourne 8006

Tel: (03) 8341 3100  
Fax: (03) 8341 3111

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Carbon Farming Policy Branch, Land Division  
Department of Climate Change and Energy Efficiency  
GPO Box 854  
CANBERRA ACT 2601

## **Draft regulations on the Carbon Farming Initiative positive and negative lists**

We welcome the opportunity to make a submission on the draft *Carbon Credits (Carbon Farming Initiative) Regulations 2011* (Cth) (**the draft regulations**).

The Australian Network of Environmental Defenders Offices (**ANEDO**) is a network of 9 community legal centres in each state and territory specialising in public interest environmental law and policy. Our interest in the draft regulations, as maintained throughout this consultation process, is the public interest in laws that support a safe and healthy environment.

Though we do not have the scientific expertise to comment on the appropriateness of particular offset activities, we have made extensive comment on the regulatory design of the Carbon Farming Initiative (**CFI**), including the positive and negative list.<sup>1</sup>

We support the current design of the draft regulations. As noted in our submission on the design of the positive and negative lists, ANEDO has concerns with the positive and negative list and their place in the CFI. However, now that the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) has been passed, we take a pragmatic approach to ensuring that the positive and negative lists are designed as well as possible. In our submission on the design of the positive and negative lists, we made a number of recommendations for how to do that.<sup>2</sup>

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<sup>1</sup> ANEDO submission on the design of the Carbon Farming Initiative (21 January 2011); ANEDO submission to the Senate Inquiry into the Carbon Farming Initiative (8 April 2011); ANEDO submission to the House of Representatives Inquiry into the Carbon Farming Initiative bills (13 April 2011); ANEDO submission on the positive and negative lists for the Carbon Farming Initiative (29 June 2011), all available here: <http://www.edo.org.au/edonsw/site/policy.php#subs>.

<sup>2</sup> ANEDO submission on the positive and negative lists for the Carbon Farming Initiative (29 June 2011), available here: <http://www.edo.org.au/edonsw/site/policy.php#subs>.

We are pleased to see that many of those recommendations have been adopted in the draft regulations. In particular, we are pleased to see that:

- the activities included on the positive list are practised by less than 5% of that industry, making them as close to true additionality as practically possible;
- the guidelines for adding further activities to the positive list (yet to be published) will be based on an assessment as to whether they are practised by less than 5% of that industry;
- the negative list includes projects that were required by law as of March 2011, which removes the incentive for State Governments to repeal environmentally beneficial state-based regulation;
- forestry Managed Investment Schemes (**MIS**) are excluded completely.

There remain some recommendations from our submission that have not yet been implemented, which would improve the CFI even further. These recommendations relate to the *process* for building the positive and negative list, and include:

- ensuring that the public has the right to scrutinise and participate in additions to the positive list;
- ensuring that the public has the right to scrutinise and participate in additions to the negative list (including by nominating them for approval by the Minister and the Domestic Offsets Integrity Committee (**DOIC**)); and
- requiring the Minister to act consistent with the precautionary principle, and the advice of the DOIC, in making additions to the negative list.

We urge the Department to adopt these recommendations, preferably through legislation or regulations, but (if that is not possible) through administrative practice.

For further information, please contact Michael Power, [michael.power@edo.org.au](mailto:michael.power@edo.org.au).

Yours sincerely,

**Michael Power**

Law Reform Lawyer – EDO Victoria (on behalf of ANEDO)]