

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into by and between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB"), with its principal office at 1001 I Street, Sacramento, California 95814 and AKRAPOVIČ AMERICA, LLC with its principal place of business at 36 Waterworks Way, Irvine, California 92618 (hereinafter "AKRAPOVIČ"), collectively "The Parties."

RECITALS

1. California Vehicle Code (VC) section 27156(c) provides, in pertinent part, that "No person shall install, sell, offer for sale, or advertise any device intended for use with, or as a part of, any required motor vehicle pollution control device or system which alters or modifies the original design or performance of any such motor vehicle pollution control device or system."
2. VC section 27156(h) provides, in pertinent part, that this section shall not apply to an alteration, modification, or modifying device found by resolution of the State Air Resources Board to either not reduce the effectiveness of any required motor vehicle pollution control device or result in emissions from any such modified or altered vehicle which are at levels that comply with existing state or federal standards for the model year of the vehicle being modified or converted.
3. California Code of Regulations (CCR), title 13, section 2222(j) provides "The Executive Officer shall exempt aftermarket critical emission control parts on highway motorcycles from the prohibitions of California Vehicle Code sections 27156 and 38391 based on an evaluation conducted in accordance with the "California Evaluation Procedures for Aftermarket Critical Emission Control Parts on Highway Motorcycles" (The Procedures), as adopted on January 22, 2009, which is incorporated by reference herein."
4. The Procedures provide "If the Executive Officer finds that any manufacturer, distributor, retailer, or installer is manufacturing, supplying, distributing, offering for sale, selling, advertising, or installing an aftermarket critical emission control part for use on highway motorcycles in California in violation of these evaluation procedures, he or she may enjoin said manufacturer, distributor, retailer, or installer from any further manufacture, supply, distribution, offer for sale, sale, advertisement, or installation pursuant to section 43017 of the Health and safety Code. The Executive Officer may also assess civil penalties to the extent permissible under Part 5, Division 26 of the Health and Safety Code."
5. In addition, title 13, CCR, section 2225(a) provides, in pertinent part, that the Executive Officer may seek fines for violations of Vehicle Code Section 27156 or other laws or regulations, as applicable.
6. Health and Safety Code (HSC) section 43016 states, in pertinent part, "Any person who violates any provision of this part, or any order, rule, or regulation of the state board adopted pursuant to this part, and for which violation there is not provided in this part any other specific civil penalty or fine, shall be subject to a civil penalty not to exceed five hundred dollars (\$500) per vehicle, portable fuel container, spout, engine, or other unit subject to regulation under this part, as these terms are defined in this division or state board regulations."
7. AKRAPOVIČ is an importer and distributor of aftermarket critical emission control parts, including, but not limited to, exhaust systems for motorcycles.

8. Prior to January 29, 2013, AKRAPOVIČ manufactured for supply, offer and/or sale in California, supplied, distributed, sold, offered for sale, and/or advertised in California certain aftermarket critical emission control parts for on-highway motorcycles ("subject parts") that were not exempted by ARB pursuant to title 13, CCR, section 2222.
9. The subject parts altered or modified the original design or performance of the motor vehicle pollution control device or system.
10. The subject parts were not exempted by ARB pursuant to title 13, CCR, section 2222 et seq.
11. The manufacturing for supply, offer, and/or sale in California, supplying, distributing, selling, offering for sale and/or advertising in California of the subject parts were unlawful and in violation of VC section 27156(c) and title 13, CCR section 2222 et seq.
12. AKRAPOVIČ promptly and fully cooperated with ARB throughout its investigation.
13. AKRAPOVIČ has no prior enforcement record with ARB.
14. AKRAPOVIC immediately ceased all supply, distribution, offers for sale, and sales of the subject parts in California.
15. The retail prices of the subject parts ranged from roughly \$433 to \$2,700, with the average retail price of roughly \$900.
16. AKRAPOVIC has initiated a compliance plan to ensure that its distributors, dealers, and customers understand which aftermarket parts are legal or illegal for specific applications.
17. ARB alleges that if the facts described in recital paragraphs 1-11 were proven, civil penalties could be imposed against AKRAPOVIČ as provided in Health and Safety Code section 43016.
18. AKRAPOVIČ admits the facts described in recital paragraphs 1-11, but denies any liability arising therefrom.
19. AKRAPOVIČ is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with ARB. ARB accepts this Agreement in termination of this matter. Accordingly, the Parties agree to resolve this matter completely by means of this Agreement, without the need for formal litigation.

TERMS AND RELEASE

In consideration of ARB not filing a legal action against AKRAPOVIČ for the violations alleged above, and in consideration of the other terms set out below, ARB and AKRAPOVIČ agree as follows:

1. As a condition of this Settlement Agreement, AKRAPOVIČ shall pay the total sum of eighty-eight thousand dollars (\$88,000.00) as a penalty. This amount shall be payable upon execution of this settlement agreement and by check payable to the **California Air Pollution Control Fund**, addressed to:

Tony Zeng, Air Resources Engineer
Air Resources Board
9528 Telstar Avenue
El Monte, California 91731

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2. If the Attorney General files a civil action to enforce this settlement agreement, AKRAPOVIČ shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
3. AKRAPOVIČ shall not manufacture for supply, distribution, offer, or sale in California or supply, distribute, offer for sale, sell, or advertise in California any aftermarket critical emission control part in violation of title 13, CCR, section 2222 or Vehicle Code section 27156.
4. This Agreement shall apply to and be binding upon AKRAPOVIČ and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and predecessors and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
5. Now, therefore, in consideration of the payment by AKRAPOVIČ to the California Air Pollution Control Fund in the amount specified above, ARB hereby releases AKRAPOVIČ and Akrapovič d.d., Malo Hudo 8A, 1295 Ivančna Gorica, Slovenia (hereinafter "Akrapovič d.d."), its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary, affiliated and parent corporations, and predecessors from any and all claims that ARB may have based on the facts and allegations described in recital paragraphs 1-11, above, including any claims under VC sections 27156 and 38391 as well as California Business and Professions Code section 17200 et seq. Subject to full payment as described above, ARB further releases AKRAPOVIČ's dealers and customers, including dealers and customers of Akrapovič d.d., but only with regard to the subject parts manufactured by AKRAPOVIČ d.d. The undersigned represent that they have the authority to enter this Agreement.
6. This Agreement constitutes the entire agreement and understanding between ARB and AKRAPOVIČ concerning the claims and settlement in this Agreement, and this Agreement fully supersedes and replaces any and all prior negotiations and agreement of any kind or nature, whether written or oral, between ARB and AKRAPOVIČ concerning these claims.
7. No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all parties to this Agreement.
8. Advice of Counsel. Each Party to this Agreement has reviewed the Agreement independently, has had the opportunity to consult counsel, is fully informed of the terms and effect of this Agreement, and has not relied in any way on any inducement, representation, or advice of any other Party in deciding to enter into this Agreement.
9. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice of law rules.
10. Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect to the extent necessary to fulfill the Agreement's purpose and the intent of the Parties.
11. Waiver. The failure of any Party to enforce any provision of this Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Agreement. The rights and remedies granted all Parties herein are cumulative and the election

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of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Agreement or otherwise provided by law.

12. Captions. The captions by which the sections and subsections of this Agreement are identified are for convenience only, and shall have no effect whatsoever upon their interpretation.
13. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.
14. This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either party on the ground that said party drafted it.
15. **SB 1402 Statement**

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010, Health and Safety Code section 39617) requires the ARB to provide information on the basis for the penalties it seeks. This required information, which is provided throughout this settlement agreement, is summarized here.

The manner in which the penalty amount was determined, including a per unit or per vehicle penalty.

Penalties must be set at levels sufficient to discourage violations. The penalties in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in Health and Safety Code section 43024.

The per unit penalty in this case is a maximum of \$500 per unit per strict liability violation. The penalty obtained in this case is \$500.00 per unit for approximately 176 units.

The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.

ARB alleges that the penalty provision being applied in this case, Health and Safety Code section 43016, is appropriate because AKRAPOVIČ allegedly sold, and/or offered for sale, and/or advertised the subject non-California certified aftermarket critical emission control parts that were not exempted pursuant to Title 13, CCR section 2222.

Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.

The provisions cited above do not prohibit emissions above a specified level. It is not practicable to quantify these emissions, because the information necessary to do so, such as emission rates and time of use, is not available. There are no testing results available that would indicate how much emissions increased as a result of the use of the uncertified aftermarket critical emission control parts. However, since the aftermarket critical emission control parts were not certified for sale in California, emissions attributable to them are illegal and excess. The parties had adequate opportunity to conduct such testing, but elected not to do so in the interests of settlement and because of the time and expense involved.


16. AKRAPOVIČ acknowledges that ARB has complied with SB 1402 in prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at Health and Safety Code section 43024, has explained the manner

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in which the penalty amount was calculated (including a per unit or per vehicle penalty, if appropriate), has identified the provision of law under which the penalty is being assessed, and has considered and determined that this penalty is not being assessed under a provision of law that prohibits the emission of pollutants at a specified level.

17. Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar case negotiation, and the potential costs and risk associated with litigating these particular violations. The penalty reflects violations extending over a certain period of time, considered together with the complete circumstances of this case.
18. The penalty in this case was based in part on confidential business information provided by AKRAPOVIČ that is not retained by ARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between ARB and AKRAPOVIČ that ARB does not retain in the ordinary course of business either. The penalty also reflects ARB's assessment of the relative strength of its case against AKRAPOVIČ, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that AKRAPOVIČ may have secured from its alleged actions.
19. This Settlement Agreement by and between the STATE OF CALIFORNIA AIR RESOURCES BOARD and AKRAPOVIČ AMERICA, LLC. consists of 5 pages, 19 recitals, and 19 terms and release.

California Air Resources Board

By: 
Name: Ellen M. Peter
Title: Chief Counsel
Date: 4/3/2013

AKRAPOVIČ AMERICA, LLC

By: 
Name: Kristina Haby
Title: Manager General Affairs
Date: 3-21-13