

NATIONAL RECOVERY ADMINISTRATION

CODE OF FAIR COMPETITION

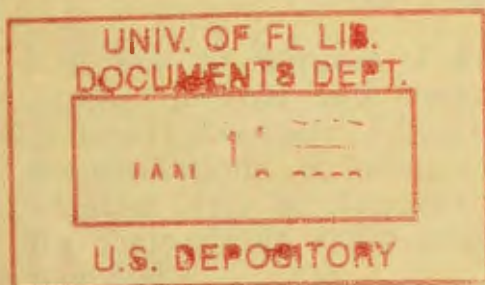
FOR THE

WOOD TANK INDUSTRY

AS SUBMITTED ON AUGUST 26, 1933

REGISTRY No. 323—01

The Code for the Wood Tank Industry
in its present form merely reflects the proposal of the above-mentioned
industry, and none of the provisions contained therein are
to be regarded as having received the approval of
the National Recovery Administration
as applying to this industry



UNITED STATES
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TENTATIVE CODE OF FAIR COMPETITION FOR THE WOOD TANK INDUSTRY

**FORMULATED IN ACCORDANCE WITH THE REQUIREMENTS OF
THE NATIONAL INDUSTRIAL RECOVERY ACT**

PREAMBLE

In order that labor may be reemployed, wages returned to a reasonable level and the merchandising of its products placed upon a profitable basis, this Code of Fair Competition is submitted in behalf of the Wood Tank Industry.

At a meeting held in New York City, August 18, 1933, attended by a number of leading manufacturers of Wooden Tanks a Code of Fair Business Practice was set up.

In the form in which it is finally approved by the President of the United States, this Code of Fair Competition will become mandatory upon the Wood Tank Industries throughout the United States.

ARTICLE 1—DEFINITIONS

1. Wood Tank Manufacturers means any person regularly conducting the business of manufacturing Tanks and such accessories as now or have been manufactured or assembled and used in connection therewith, and maintaining a sales and service organization for the selling, erecting, building, setting up or servicing of the equipment sold.

2. Tanks mean any type of Wood Tank of whatsoever construction for the purpose of storing water and all other types of liquids, semi-liquids, or solids.

3. "Person" means any natural person, partnership, association, or corporation.

4. "Board" means the Board of Directors comprising representatives of the industry representing all sections of the United States.

ARTICLE 2—ADMINISTRATION

1. For the purpose of Administration of this Code the Board is hereby directed and empowered, subject to the approval of the National Recovery Administration, to make rules, regulations, and interpretations, including trade practices necessary for the administration and enforcement of this Code and shall be responsible for maintaining strict conformity to the Code as adopted and/or modified.

2. Every person subject to this Code shall pay his proportionate share of the costs incident to the preparation, promulgation, purposes, administration, and enforcement thereof; such costs shall be prorated, assessed, and collected from all such persons in accordance with the actual reasonable requirements of the Code.

3. Membership in the Wood Tank Association shall be open to any person engaged in the manufacture of Wooden Tanks and such accessories thereof. Each and every person, member or nonmember of this Association shall be bound by the provisions of this Code and the rules and regulations issued thereunder, and shall be compelled to adhere to such penalties as may be prescribed by law. No inequitable restrictions on admission to membership in this Association are or may be imposed by this Association.

ARTICLE 3—LABOR

1. As required by title I, Section 7 (a) of the National Industrial Recovery Act, it is agreed:

(a) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection;

(b) That no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and

(c) That employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President of the United States.

(d) It is clearly understood that nothing in this Code shall impair in any particular, rights of the employee and employer to bargain individually or collectively as may be mutually satisfactory to them.

(e) Nothing in this Code is to impair the rights of employer to freedom in the selection, retention, and advancement of employees on the basis of merit.

2. No person under 16 years of age shall be employed.

3. (a) *Maximum hours of labor.*—The maximum hours of labor of employees subject to the jurisdiction of this Code shall be exclusive of executives, office and supervisory staff, salesmen, engineers, yard managers, watchmen, and learners (apprentices) between 16 and 20 years of age, and who have been in the employ of a person prior to July 12, 1933, except that where any owner, partner, stockholder, or manager performs any of the functions of labor, except office or executive work, he shall be bound to observe the maximum hours and shall be paid at least the established hourly rates of pay for the classification of labor performed.

(b) Under no circumstances shall any hourly rates of pay, for any class of labor, be reduced below that in effect on June 16, 1933.

(c) In the event of abrupt violent fluctuation in volume of business, it is proposed that some reasonable latitude may be provided for, and that during such rush season in maximum-hour provisions in this Code. It is therefore agreed that the number of hours of work per week may be averaged during such rush period, but no more than 48 hours per week, at all other times not over 44 hours per week, and at no time shall any employee be called upon to work more than 8 hours in any one day.

ARTICLE 4—MINIMUM WAGES

The minimum wages which shall be paid by persons in this industry, subject to the jurisdiction of this Code, shall be not less than 35¢ per hour. It is agreed that this paragraph establishes a guaranteed minimum rate of pay regardless of whether the employee is compensated on the basis of a time rate or otherwise performed, excepting learners (apprentices over 16 years of age and under 20 years, taking 3 years' course) who have been in the employ of a person prior to July 12, 1933, shall be paid 40% of the minimum wage the first 6 months of their employment; 50% the second 6 months; 60% the third 6 months; 70% the fourth 6 months; 80% the fifth 6 months; and the full minimum wages the last 6 months of the three-year course. And no new learners shall be employed.

ARTICLE 5—COST OF DOING BUSINESS

Cost shall constitute replacement price of merchandise, transportation thereon, manufacturing, depreciation, depletion, obsolescence, interest on investment, selling and administrative expense. All manufacturers in this industry shall adopt a uniform cost system, determined by standard accounting practice to arrive at such cost. Cost shall be computed by the Board of Directors, and shall be approved by the NRA Administrator. No person in this industry shall sell his product below such reasonable cost. The Tank Administrative Board shall establish uniform cost accounting system, applicable to every section of the United States, and each person of this industry shall adhere to the uniform system adopted to the extent of incorporating in all calculations of cost all of the elements outlined herein.

ARTICLE 6—BASIS OF FAIR SELLING PRICE

1. *Uniform Terms of Sale.*—All contracts of sale shall be in writing and shall contain a definite statement of specifications, price, quality, terms of payment, time and place of delivery, and all other items necessary to form a complete understanding. Definite standard terms of sale as published must be reasonably adhered to and the continued violation of such published terms by a person in this industry is a violation of this Code.

2. *Absorption of Transportation Costs.*—Standard, reasonable sales price shall be f.o.b. factory with hauling, or transportation added as a separate item to destination, and to be on a parity with railroad freight. The Tank Administrative Board shall adopt standard practices, binding upon all persons selling in all parts of the United States or foreign countries.

ARTICLE 7—RULES AND REGULATIONS TO PREVENT UNFAIR COMPETITIVE PRACTICES

1. *Secret Rebates.*—No person in this industry shall make a secret prepayment of transportation charges or permit the payment or allowance of secret rebates, so-called agency allowances to the purchaser, refunds, credits, or unearned discounts, whether in form of money or otherwise, or the giving of premiums, or extending to certain

purchasers special service or privilege not extended to all purchasers under like terms and conditions.

2. *Interference in Contracts.*—No person in these industries shall willfully interfere by any means or device whatsoever, in any existing contract or order between a seller and a purchaser or sale of any product handled by the industry, or the performance of any contractual duty or service connected therewith, such interference tending to cause the breach of an existing contract or order and being for the purpose or with the effect of dissipating, destroying or appropriating, in whole or in part, the patronage, property, or business of another engaged in this industry.

3. *Defamation of Competitor.*—No person in these industries shall defame a competitor by words or acts, falsely imputing to his dishonorable conduct, inability to perform contracts or questionable credit standing, or by the false disparagement of the grade or quality of his material.

4. *Conformity with Specification Requirements.*—No person engaged in this industry shall sell or offer for sale any product of the industry with intent to deceive customers or prospective customers, as to the quality, quantity, size, grade, or substance of each product.

5. *Misbranding.*—No person in this industry shall mark or brand products of the industry for the purpose or with the effect of misleading or deceiving purchasers with respect to the quality, quantity, size, grade, or substance of the materials purchased.

6. *Payment of Commission to Customer or Prospective Customer.*—No person in this industry shall pay or promise to pay, to a customer, to an employee of a customer or prospective customer, a commission or consideration of any character for the purpose of inducing, or compensating for a sale.

7. *Commercial Bribery.*—No person in this industry shall offer or give commissions, prizes, premiums, gifts or excessive entertainment as an act of commercial bribery to anyone in connection with the sale, purchase, or use of his products, or as an inducement thereto, and no person shall offer engineering service without compensation.

8. *Enticement of Employees.*—No person in this industry shall entice employees from a competitor nor interfere with a competitor's business through the enticement of his employees.

9. *Misrepresentation.*—No person in this industry shall misrepresent the capacity of a tank, or tanks, or misrepresent a competitor's product by the showing of pictures or photographs of competitor's products, broken or destroyed.

10. *Fraud and Misrepresentation.*—No person in this industry shall make, cause, or permit to be made or published, any false, untrue, or deceptive statement by way of photograph, advertisement, or otherwise concerning grade, quality, character, nature, origin, manufacture, or preparation of products of a competitor.

11. *Patents, Trade Marks, and Trade Names.*—No person in this industry shall imitate the trade marks or trade names of a competitor which results in deception to buyers and consumers, which may be an invasion of property rights of such competitor. The circulation of threats of suits for infringement of patent or trade mark among customers of a competitor, not made in good faith, for the purpose of harassing and intimidating customers, is an unfair trade practice.

12. *Guarantee—Misrepresentation.*—No person in this industry shall make any statement either oral, written, or printed, for the purpose of having the effect of misleading or deceiving purchasers with respect to the quality, grade, longevity, brand, or substance of the goods purchased. Long contingent guarantees not backed by adequate resources are condemned.

13. *Enforcing observance by distributors and agents.*—No person in this industry shall permit his products to be handled by a middleman or agent standing between producer and consumer who violates the provisions of this Code of Fair Competition.

ARTICLE 8—GENERAL

1. No provision in this Code shall be interpreted or implied in such manner as to:

- (a) Promote monopolies
- (b) Permit or encourage unfair competition
- (c) Eliminate or oppress small enterprises, or
- (d) Discriminate against small enterprises.

2. This Code or any of its provisions may be cancelled or modified and any approved rule issued thereunder shall be in effect to any extent upon due conformity to any action of the President of the United States, under 9B of the National Industrial Recovery Act.

3. Amendments to this Code may be proposed to the Tank Administrative Board or may be initiated by it and when approved by the said Board shall be effective, subject to approval by the President of the United States.

4. Supplemental Code provisions affecting or pertaining to any change or alterations not inconsistent with the provisions of this Code may be recommended to the Administrator, such supplements shall have the same effect as any other provisions of this Code.

5. *Violations.*—Any act that is deemed to be an unfair trade practice shall be considered as a violation of this Code and of the rules and regulations attached hereto and the act under which the Code is authorized. Violation by any person subject to any provisions of this Code or of any approved Code issued thereunder, or of any agreement entered into by him under this Code, is an unfair method of competition and the offender shall be subject to the penalties imposed by the National Industrial Recovery Act.

ARTICLE 9—LIMITATIONS ON PLANTS, NEW PRODUCTION, AND DUMPING

1. Already existing manufacturing facilities of this industry being for years past and at present more than adequate to the needs of the country; it is agreed that no new person beyond those already in operation in the Tank Industry may be established, unless it is determined by appropriate authority under the National Industrial Recovery Act that existing channels of distribution have failed to fulfil their responsibilities: *Provided, however,* That nothing herein shall prevent the sale and subsequent operation of plants engaged in the industry on the effective date of this Act or the passage of title by operation of law and their subsequent use.



2. A Planning Committee (9 in number) selected from the northern, southern, eastern, and western sections of the United States to study this problem and promulgate fair and reasonable rules to prevent overproduction and its resultant losses to the industry, labor, and the public at large. Its findings when approved by the Administrator shall be incorporated in and become a part hereof.

3. *Anti-Dumping*.—To prevent dumping, from sources outside of the industry, as well as within, which has been so prevalent during the past few years, any producer or dealer in the commodities used primarily by this industry or any person in this industry shall not sell such materials below the general market price established and prevailing where delivery is made.

EFFECTIVE DATE

If any provision of this Code is declared invalid or unenforceable, the remaining provisions shall remain in full force and effect the same as if they had been separately presented for approval by the President of the United States.

This Code shall be in effect within 10 days after its approval by the President of the United States.

The following Tank Manufacturers have approved the aforesaid code:

Atlantic Tank Corporation, North Bergen, N.J.

A. J. Corcoran, Inc., Jersey City, N.J.

Amos H. Hall & Sons, Philadelphia, Pa.

Hammond Tank & Lumber Co., San Francisco, Calif.

Hydro & Chemical Tank Co., New York City.

David Issex & Sons, Brooklyn, N.Y.

Issex Bros., Brooklyn, N.Y.

Mayer Tank Manufacturing Co., Brooklyn, N.Y.

New England Tank & Tower Co., Everett, Mass.

J. Rosenwach, Brooklyn, N.Y.

G. Woolford Wood Tank Manufacturing Co., Philadelphia, Pa.

The Baltimore Cooperage Tank & Tower Co., Baltimore, Md.

The above Code is respectfully submitted for approval or modification by the President of the United States.

Vice President and Counsel
Wood Tank Manufacturers of America.

