

Does a Custom Manure Hauler Need to Be a Certified Pesticide Applicator to Apply Instinct?

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The Question

Instinct, like N-Serve, is a nitrogen stabilizer to inhibit the bacteria that naturally convert N from the ammonium form to the mobile nitrate form. Unlike N-Serve, however, Instinct is a microencapsulated formulation that remains stable on the soil surface for up to 10 days, allowing growers flexibility in fertilizer application and incorporation and, thus, making it an ideal choice when applying liquid manure. But, like N-Serve, it too is registered by EPA as a pesticide so the question came up whether a custom manure hauler applying manure containing Instinct needs to be a certified and licensed pesticide applicator.

The N-Serve Example

Not too long ago, a similar question was asked whether a co-op employee needs to be a certified and licensed pesticide applicator when applying N-Serve and the answer to that question is 'no'. The reason for this is two-pronged: first, the application of N-Serve, a pesticide, is to the fertilizer itself with the purpose of protecting the fertilizer and, as such, the fertilizer with N-Serve is considered a "treated article", exempt from further EPA regulation. Second, the untreated fertilizer in most cases is owned by the co-op, and being N-Serve is a non restricted-use pesticide, a co-op employee may mix (add) N-Serve to the nitrogen fertilizer without being certified or licensed. And being the co-op applicator is applying a treated article, even if the article was previously treated with a restricted-use pesticide, that person too is not legally required to be certified and licensed. A detailed discussion on N-Serve and pesticide certification requirements may be searched in the Wisconsin Crop Manager newsletter archives (ipcm.wisc.edu).

So, if a co-op employee does not need to be a certified and licensed pesticide applicator to mix and/or apply N-Serve, and because Instinct is protecting the nitrogen in manure making it a treated article as it is with ammoniacal fertilizers protected by N-Serve, it would seem logical that a custom manure hauler also would not need to be a certified and licensed pesticide applicator when mixing and/or applying manure treated with Instinct. To answer this question, we have to separately discuss the handling task of mixing and the handling task of applying. The reason why the handling tasks of mixing and applying becomes important boils down to who owns the fertilizer product at the time Instinct is mixed or applied. When dealing with N-Serve, we indicated that in most cases the co-op owns the fertilizer. But when dealing with Instinct, it is typically the farmer who owns the manure, not the manure hauler.

The Answer to Different Scenarios

Mixing (adding) Instinct with manure. Farmers may mix Instinct with manure, and load and apply this manure to property in their control, without becoming certified pesticide applicators because Instinct is not a restricted-use pesticide. Uncertified farmers also are allowed to mix, load, and apply Instinct for up to three different producers not to exceed 500 acres in any one calendar year. However, any farmer exceeding these allowable limits would require certification and licensing as a commercial pesticide applicator in the Field & Vegetable Crops category.

Likewise, an uncertified farmer may mix Instinct to manure they own prior to application by a custom manure hauler.

If a custom hauler mixes Instinct to manure owned by others, then he/she would need to be certified and licensed as a commercial pesticide applicator in either the Mixer/Loader category (mix and load pesticides) or the Field & Vegetable Crops category (mix, load, or apply pesticides). Wisconsin law requires that commercial applicators for hire must be certified and licensed to mix, load, or apply any pesticide, whether or not the pesticide is restricted-use.

Applying manure pre-mixed with Instinct. If the farmer premixes Instinct with manure before application by a custom hauler, the hauler would not require pesticide applicator certification and licensing to apply the manure because it is considered a treated article (the very same reason why a co-op employee is exempt from pesticide applicator certification and licensing when applying a fertilizer already treated with N-Serve).

Applying manure and Instinct simultaneously. If the farmer-owned manure and Instinct are applied or injected simultaneously by a custom hauler/applicator, the person performing this operation must be certified and licensed as a commercial pesticide applicator in the Field & Vegetable Crops category because this is considered a for hire pesticide application (also true of a co-op employee injecting N-Serve to farmer-owned nitrogen fertilizer).