

CHAPTER 14

Access and Enforcement Considerations

The RPM should strive to characterize all residences within the identified zone of contamination and achieve cleanup at all residences where lead concentrations exceed the cleanup level. At all residential cleanup sites, a percentage of homeowners typically will refuse to grant access to EPA for sampling and/or for cleanup. To meet remedial goals of protecting a community, all residences suspected of being located within a zone of contamination should be sampled.

It is important to work with the landowner (and renter/resident, if other than landowner) and be sensitive to a landowner's concerns regarding property access when providing them with the consent for access form. The project manager should educate the landowner of the dangers that lead contamination may pose. If a landowner still refuses to grant access following attempts to negotiate the consent for access form, the Region should consider issuing an access order for sampling (U.S. EPA 1990d) or seeking access using one of EPA's other authorities.

To ensure a clear record, these communications should be documented. If the owner continues to refuse the access necessary to implement the remedy, EPA's program office, in consultation with EPA counsel, should continue taking appropriate steps, such as seeking the assistance of the CIC to obtain consent, or if that fails, issuing a UAO to secure the cooperation of an uncooperative landowner. EPA may also seek a warrant or court order for access.

An owner of residential property on a Superfund site may be potentially liable under CERCLA Section 107(a)(1). However, as an exercise of enforcement discretion, EPA generally will not take CERCLA enforcement actions against an owner of residential property unless the residential homeowner's activities lead to a release, or threat of release, of hazardous substances resulting in the taking of a response action at a site (see *Policy Towards Owners of Residential Property at Superfund Sites* [July 3, 1991]).¹²⁶

Additionally, under CERCLA, a residential property owner may qualify for statutory protection from CERCLA liability as:

- a bona fide prospective purchaser;
- a contiguous property owner; or

¹²⁶ <https://www.epa.gov/sites/default/files/documents/policy-owner-rpt.pdf>.

- an innocent landowner.

Under both the statute and EPA's policy, a residential property owner is expected to cooperate with EPA and the party taking the response action (if other than EPA), and the project team should inform the owner of EPA's expectations for cooperation in connection with the remedy.

These obligations include:

- providing access and information as requested;
- agreeing to comply with land use restrictions relied on in connection with the remedy; and
- not impeding the effectiveness or integrity of ICs (see CERCLA Sections 101(40)(B)(vi), 107(q)(1)(a), 101(35)(A)-(B)).

If some properties are not addressed under site response actions (*e.g.*, current homeowners with no young children or women of child-bearing age), then consideration could be given to establishing a trust fund (under state authority or local law) to be administered by a local government for the cleanup of the property at a future date, when the property is transferred (*e.g.*, by sale) to a new owner. Buyers of contaminated properties could make use of the fund to have the property cleaned up at their discretion. For more information, see

<https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.cleanup&id=1000195#Enforce>.

If the situation involves contaminated rental properties, EPA should attempt securing access with the owners of the contaminated rental property using the consent for access form, while also communicating with the occupants appropriately and seeking their access as well. If the rental property owners refuse to agree to access, EPA should consider issuing a UAO for access to those owners of contaminated rental property who refuse to provide access. To ensure the protection of occupants, enforcement of the UAO may be necessary to clean up all rental properties with contamination greater than the cleanup level.