

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

ASARCO LLC,

Petitioner,

v.

UNITED STATES  
ENVIRONMENTAL  
PROTECTION AGENCY and  
CHEREE PETERSON,  
Acting Regional  
Administrator, United States  
Environmental Protection Agency,  
Region 9,

Respondents.

PETITION FOR REVIEW

and

CORPORATE DISCLOSURE  
STATEMENT

Petition for Review

Pursuant to section 307(b)(1) of the federal Clean Air Act (“Act”), 42 U.S.C. § 7607(b)(1), and Rule 15(a) of the Federal Rules of Appellate Procedure, ASARCO LLC (“Asarco”), appearing through the undersigned counsel, hereby petitions the Court for review of the final rule entitled “Partial Approval and Disapproval of Air Quality Implementation Plans; Arizona; Regional Haze State Implementation Plan for the Second Implementation Period and Prong 4 (Visibility) for the 2015 Ozone and 2012 Particulate Matter Standards,” 89 Fed. Reg. 102744 (December 18, 2024) (Exhibit 1) (“Final Rule”).

As Asarco would show in its briefing before the Court, the Final Rule is materially deficient on several grounds, and therefore arbitrary, capricious and otherwise not in accordance with applicable law. These grounds include, without limitation, that: **(A)** the Respondents substantively relied on a guidance document, entitled “Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period,” dated July 8, 2021 (**Exhibit 2**) (**“2021 Clarifications Memo”**), as a material basis of the Final Rule, even though (1) the 2021 Clarifications Memo is an incorrect interpretation and constitutes a major substantive legal amendment of the statutes and codified regulations, 42 U.S.C. §§ 169A-169B and 40 C.F.R. § 51.308, pursuant to which the Final Rule was promulgated and (2) said interpretation and amendment cannot lawfully be relied upon as a basis for final agency action because they are not products of notice-and-comment rulemaking according to the requirements of 42 U.S.C. § 7607(d) and 5 U.S.C. § 553(b); and **(B)** the issues of the Respondents’ reliance on the 2021 Clarifications Memo and whether said reliance was in accordance with applicable law, including 42 U.S.C. § 7607(d) and 5 U.S.C. § 553(b), were raised with particularity in public comments filed on the Respondents’ proposal, 89 Fed. Reg. 47398 (Rulemaking Docket EPA-R09-OAR-2024-0005) (**“Proposal”**), which underlies the Final Rule; and **(C)** the 2021 Clarification Memo’s interpretation of the statutes is not entitled to judicial deference under the Supreme Court’s opinion

in *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024), which was published seventeen days before the July 15, 2024 conclusion of the comment period on the Proposal; and **(D)** the 2021 Clarification Memo makes such an expansive and unreasonable interpretation of the regulations that its interpretation of the regulations is not entitled to judicial deference under the Supreme Court's opinions in *Auer v. Robbins*, 519 U.S. 452 (1997) and *Kisor v. Wilkie*, 588 U.S. 558 (2019).

Corporate Disclosure Statement

Pursuant to Federal Rule of Appellate Procedure 26.1(d)(1) and Circuit Rule 26.1-1, Asarco certifies that it is a wholly-owned subsidiary of ASARCO USA Incorporated, which is a wholly-owned subsidiary of ASARCO Incorporated, which is a wholly-owned subsidiary of Americas Mining Corporation, which is a wholly-owned subsidiary of Grupo Mexico S.A.B. de C.V., a publicly held corporation. No other publicly held company holds a 10% or greater ownership interest in ASARCO LLC.

Respectfully submitted this 14th day of February, 2025.

By: s/ George Tsiolis

George A. Tsiolis  
Attorney at Law  
351 Lydecker Street  
Englewood, NJ 07631  
602-319-4021  
[gtsiolis@nj.rr.com](mailto:gtsiolis@nj.rr.com)  
Arizona Bar # 017527

*Attorney for ASARCO LLC*

## **CERTIFICATE OF SERVICE**

I hereby certify that, on February 14, 2024, I electronically filed the above Petition for Review and Corporate Disclosure Statement with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate electronic filing system, and caused the above Petition for Review and Corporate Disclosure Statement to be served via Federal Express on the following person:

Cheree D. Peterson  
Acting Regional Administrator  
U.S. Environmental Protection Agency Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

By: s/ George Tsiolis

George A. Tsiolis  
Attorney at Law  
351 Lydecker Street  
Englewood, NJ 07631  
602-319-4021  
gtsiolis@nj.rr.com