

Chief Justice Roberts turned down a request this morning to stay EPA's mercury rule. Until the past month, this would have been completely un-noteworthy, because such a stay would have been unprecedented. But the Court's startling recent stay of the EPA Clean Power Plan suggested that the door might have been wide open. Fortunately, that doesn't seem to be true.

In some ways, a stay in this case would be even more shocking than the earlier one. Only the states, not industry, were seeking the stay. Some industry members even argued that a stay would just disrupt their planning. Moreover, as the government pointed out, the states were seeking review of a very narrow issue: whether the D.C. Circuit should have vacated the rule pending a remand to the agency. Since the agency plans to act within the next six weeks, this issue would have become moot well before the Court could decide it.

Still, given the Court's completely unexpected stay of the climate change regulations, it does come as a relief to see that the Court hasn't completely lost any sense of restraint.