Therefore, for the purposes of calculating a provision for fines and penalties under Section 311 of the Clean Water Act, BP has continued to use an estimate of 3.2 million barrels of oil discharged to the Gulf of Mexico as its current best estimate, as defined in paragraphs 36-40 of IAS 37 ‘Provisions, contingent liabilities and contingent assets’, of the amount which may be used in calculating the penalty under Section 311 of the Clean Water Act. This reflects an estimate of total flow from the well of approximately 4 million barrels, and an estimate of barrels captured by vessels on the surface, currently estimated at 811,000 barrels. In utilizing this estimate, BP has taken into consideration not only its own analysis of the flow and discharge issue, but also the analyses and conclusions of other parties, including the US government. The estimate of BP and of other parties as to how much oil was discharged to the Gulf of Mexico may change, perhaps materially, over time. Changes in estimates as to flow and discharge could affect the amount actually assessed to Clean Water Act fines and penalties. The year-end provision continued to be based on a per-barrel penalty of $1,100 for the reasons discussed above, including BP’s continued conclusion that it did not act with gross negligence or engage in willful misconduct.

The amount and timing of these costs will depend upon what is ultimately determined to be the volume of oil spilled and the per-barrel penalty rate that is imposed. It is not currently practicable to estimate the timing of expensing these costs and the provision has been included within non-current liabilities on the balance sheet. No other amounts have been provided as at 31 December 2011 in relation to other potential fines and penalties because it is not possible to measure the obligation reliably. Fines and penalties are not covered by the trust fund.