

# “For the heck of it”

By Jason Barney

When a public storm water facility fails causing damage to property, people often file claims with the facility owner—often local government. This is regularly done with little thought about the underlying cause of the failure and done simply because government owns the facility. However, ownership does not equal fault and often a little more work needs to be done to identify the responsible party.

For example, in 2013 a catch basin overflowed and flooded the basement of a property, and the owner filed a claim for damages with the city. While the city acknowledged the catch basin overflowed, it identified the failure being due to a contractor’s previous work in rehabilitating an adjacent property, which involved its work on the underground facilities servicing it.

The problem is that the contractor excavated and discovered a pipe coupling, which they removed finding the pipe slightly separated. The contractor wrapped the separation with a used plastic concrete bag before re-coupling the pipe and burying it. When the contractor’s employee was asked, under oath, why he did this his response was that it, “was really pointless” and that he did so, “for the heck of it”.

The next significant rainstorm caused the plastic bag to dislodge and clog the pipe. While the contractor attempted to diminish his action in regard to the loss, the facts were clear. They were clear because the city had responded to the clog immediately after it occurred and photographed the line to prove the cause of the failure. The city made a motion to the court to dismiss it from the pending litigation and the court agreed, leaving the contractor to resolve the issue with the homeowner.