

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CLEARWATER FIBERGLASS POOLS & SPAS, INCORPORATED)	
_____)	
ALLEGED VIOLATION OF UNDERGROUND FACILITY DAMAGE PREVENTION ACT)	CASE NO. 2022-00092

OPENING ORDER

Clearwater Fiberglass Pools & Spas, Incorporated (Clearwater) has been named as a party to an investigation before the Kentucky Public Service Commission (Commission) for allegedly violating the Kentucky Underground Facility Damage Prevention Act (Act).¹

Pursuant to KRS 278.495(2), the Commission has jurisdiction to regulate the safety of natural gas facilities in Kentucky and to enforce minimum federal pipeline safety standards. Under the Act, the Commission has authority to investigate and assess civil penalties for any violation of the Act that results in excavation damage to an underground facility used to transport natural gas or hazardous liquid subject to federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.* Any person who violates any provision of the Act is subject to assessment of a civil penalty in the amount of \$250 for the first offense, no more than \$1,000 for the second offense within one year, and no more than \$3,000 for the third and any subsequent offense. Additionally, any person whose violation of the Act

¹ KRS 367.4901 through KRS 367.4917.

results in damage to an underground facility containing any flammable, toxic, corrosive, or hazardous material or results in the release of any flammable, toxic, corrosive, or hazardous material is subject to an additional penalty of up to \$1,000.

Following receipt of a report of excavation damage to its underground gas pipeline from an operator, Commission Staff (Staff) conducted an investigation and prepared an Incident Report, a copy of which is attached to this Order as an Appendix. In its Incident Report, Staff cites Clearwater for violation of the following provision of the Act:

KRS 367.4911(8) – The excavator shall contact the protection notification center to request remarking two (2) working days in advance of the expiration of each twenty-one (21) day period while excavation or demolition continues.

Based on its review of the Incident Report and being otherwise sufficiently advised, the Commission finds prima facie evidence that Clearwater violated the Underground Facility Damage Prevention Act. The Commission further finds that a formal investigation into the excavation damage incident should be conducted.

IT IS THEREFORE ORDERED that:

1. Clearwater shall submit to the Commission, via email sent to PSCED@ky.gov with the case number of this proceeding in the subject line of the message, a written response to the allegations contained in the Staff Incident Report within 20 days of receipt of this Order.

2. **Any partnership, corporation, or business entity (including a limited liability company) must be represented by an attorney licensed to practice law in Kentucky, and such representation includes the filing of papers with and appearances at hearings before the Commission.**


3. An individual may submit a response to the allegations contained in the Staff Incident Report without the representation of an attorney.

4. The Staff Incident Report 43263 in the Appendix to this Order is made a part of the record in this case.

5. **Please note that notice of a hearing to be held in this matter will be mailed to Clearwater once proof of service is received by the Commission. Parties who fail to appear after service will be subject to entry of a default judgment against them.**

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PUBLIC SERVICE COMMISSION

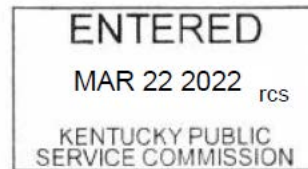


Chairman



Vice Chairman

Commissioner



ATTEST:



Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2022-00092 DATED MAR 22 2022

TWENTY-EIGHT PAGES TO FOLLOW

PIPELINE DAMAGE INVESTIGATION REPORT

Investigation Information

Investigator Eric Tout **Incident ID** 43263 **Investigation** 8192
Incident Date 11/12/2020 2:59:00 PM **Report Submitted** 12/8/2020

Operator Information

Operator Louisville Gas and Electric Company (LG&E) **Reported By** Mike Jones
Phone (502) 364-8281 **Email** Mike.Jones@lge-KU.com

Incident Location 225 Martini Rd. **Locate Ticket Number** 2010120592
 Campbellsburg KY 40011

County Henry

Excavator Information

Excavator Mike Miller **Organization ID** 0482973
 Clearwater Fiberglass Pools & Spas, Incorporated
Phone 502-475-6408 **Email**
Address 4602 Wattbourne Ln **Locate Ticket Number** 2010120592
 Louisville KY 40299

Damage Report (DR) Summary

Excavation Within 18" (Approximate Location)	Gas Or Hazardous Liquids		Type Of Equipment Used	Cost of Damage	Amount Billed
	Contained	Released			
Expired & Missed Locate	Yes	Yes	Not Specified	\$494.00	\$0.00

The Operator reports that the Excavator damaged a ½ inch gas service digging to install pool lines to a pump and the Locate Ticket (LT) was expired. The Operator also indicates that no markings remained, a few flags were present, and the remaining flags were marked incorrectly. The Operator confirmed with Locator, Chad Bayer, who acknowledged the incident location was missed located.

The DR is included as Attachment 1.

LT Summary

Ticket #	Valid	Initial Date	ExpirationDate (21 calendardays from initial date)	Incident Date	# of Days Expired	Within Scope of Excavation
2010120592	No	10/12/20	11/02/20	11/12/20	10	Yes

A review of LT...0592 revealed it was obtained on 10/12/20 it expired on 11/02/20 indicating the LT was expired 10 days prior the incident date of 11/12/20.

The LT is included as Attachment 2.

INVESTIGATION

On 11/10/20 an attempt to contact the Excavator at Clearwater Fiberglass Pools & Spas' web # 502-499-7550 resulted in a voice message being left.

On 11/16/21:

An attempt to contact the Excavator resulted in a message stating you have reached 502-475-6408 wherein a message was left. Mike Miller returned the call leaving a voice message indicating he no longer is employed with Clearwater referring calls to Donnie Mc Cubbins 502-640-5430.

PIPELINE DAMAGE INVESTIGATION REPORT

An attempt to contact the Excavator at 502-499-7550 resulted in the receptionist, Janice, stating Donnie McCubbing would call back on 11/17/21.

The Operator, via email, LG&E's Mike Jones, stated that the incident location was originally missed located. **Mr. Jones's email is included as Attachment 3.**

On 11/18/21:

Mr. McCubbins, via email, (DMCCUBBINS78@BELLSOUTH.NET) provide the following documents:

- Photographs: Indicating two yellow present along with red flags.
- Email: Indicting URG has been assigned to locate LT ...0592
- LT...0592: Outlined above and determined to be expired 10 days.
- USIC Ticket Status Information LT...0592: Indicating AT&T Charter Insight and Shelby Energy "Not Marked" "Excavation Onsite/Site Clear"
- Two Emails: From LG&E regarding LT...0592 providing information to the Excavator regarding facilities to be aware of.

Mr. Mc Cubbins's documents are Included as Attachment 4.

An email was sent to Mr. Mc Cubbins indicating a Demand Letter requiring the attendance to the Damage Prevention Course to receive the reduced penalty of \$250.00 is forthcoming.

VIOLATIONS

(Both Operator & Excavator)

Clearwater Fiberglass Pools & Spas Violation

KRS 367.4911(8) The excavator shall contact the protection notification center to request remarking two (2) working days in advance of the expiration of each twenty-one (21) day period while excavation or demolition continues.

Clearwater Fiberglass Pools & Spas # of Offences

(Including this incident)

Excavator	Last Offence Incident #	Last Offence Incident Date	Revert to 1 st Offence Date (Last Offence Date +365 Days)
1 st	N/A	N/A	N/A

LG&E Violation

KRS 367.4909(6) An operator shall, upon receiving an emergency locate request or a normal excavation locate request: **(a)** Inform the excavator of the approximate location and description of any of the operator's facilities that may be damaged or pose a safety concern because of excavation or demolition.

LG&E # of Offences

(Including this incident)

Operator	Last Offence Incident #	Last Offence Incident Date	Revert to 1 st Offence Date (Last Offence Date +365 Days)
3 rd or Subsequent	54025	8/26/2021	08/27/22

Attachment 1

Gas Excavation Damage Report

Louisville Gas and Electric Company

Submitted 12/8/2020 Incident ID: 43263

[Set back to Edit](#)[Staff Edit](#)[Print \(PDFForm.aspx?Rpt=GasInvestigation&IG=43263\)](#)

Reported By:

Name: Mike Jones
Phone: (502) 364-8281
Email: Mike.Jones@lge-KU.com

Gas Line Incident Occured:

Date: 11/12/2020
Time: 2:59 PM

Details:

Reported Date: 12/8/2020 11:22 AM

Incident Location Address:

Location:
Address: 225 Martini Rd.
City: Campbellsburg
State: KY
County: Henry
Zip: 40011

Confirm Code:

Number of Customers out: 1

Was gas or hazardous liquids contained in the underground facility?

Was gas or hazardous liquids released into the atmosphere? *

3/2020

Locate Request Ticket No.: 2010120592

Excavator: Contractor

Excavator Address:

First Name: Mike
Last Name: Miller
Organization ID:
Company: Clearwater Fiberglass Pools and Spa
Phone: 502-475-6408
Email:

Address: 4602 Wattbourne Ln
City: Louisville
State: KY
Zip: 40299
Confirm Code: Y
Excavation Damage: One Call notification practices not sufficient

Description of Incident ?Contractor damaged service digging on expired locate request.

Summary Information

12/8/2020

Full details such as the cause Contractor damaged .5" customer gas service digging to install pool lines to pump. Contractors ticket was a month old on day of damage. No marks remained, only a few flags. Flags indicate marks off. Contractor left shortly after damaging the service. I spoke with Homeowner. He claims marks were off for this locate. He said he had a locate previously and it was marked correctly for him to bury electric to new garage. I spoke with Locator, Chad Bayer, who acknowledged it was mislocated. He said on the previous locate, the meter was not accessible so he ran service from farm tap. This time he had access to wire at meter. Wire is broken about 10 ft out from meter and locator may have forced a signal. Regardless, the ticket was expired.

Extent of the damage Broken 1/2" gas service
Cost of the damage \$494.00
Steps taken to prevent re-occurrence I followed-up with Mike Miller on ticket. I advised him the damage was Clearwater Pools responsibility because of the expired ticket.
Amount billed to excavator \$0.00

Attachment 2

NORMAL NOTICE

Ticket : 2010120592 Date: 10/12/2020 Time: 09:25 Oper: ABLOCK Chan:000

State: KY Cnty: TRIMBLE City: BEDFORD
Subdivision:

Address : 225
Street : MARTINI LN
Cross 1 : US RT 421
Location: LOCATE ENTIRE REAR OF PROPERTY
:
Boundary: n 38.537633 s 38.534633 w -85.275959 e -85.256925

Work type : INSTALL POOL
Done for : MATT JONES
Start date: 10/15/2020 Time: 07:00 Hours notice: 69/48 Priority: NORM
Ug/Oh/Both: U Blasting: NO Emergency: N
Duration : N/A Depth: 6 FEET

Company : CLEARWATER FIBERGLASS POOLS AND SPAS Type: CONT
Co addr : 4602 WATTBOURNE LN
City : LOUISVILLE State: KY Zip: 40299
Caller : DONNIE MCCUBBINS Phone: (502)499-7550
Contact : MIKE MILLER - CELL Phone:
Mobile : (502)475-6408
Fax : (502)499-8648
Email : DMCCUBBINS78@BELLSOUTH.NET

Submitted date: 10/12/2020 Time: 09:25
Members: 0002 0007 0070 0139

* Responses are current as of 11/10/2021 07:45 AM

<u>Service Area</u>	<u>Utility Type(s)</u>	<u>Customer Service Contact</u>	<u>Positive Response</u>
LOUISVILLE GAS AND ELECTRIC 0002	ELECTRIC, GAS	LOUISVILLE GAS AND ELECTRIC CUSTOMER SERVICE (502) 589-1444	
INSIGHT COMMUNICATIONS 0007	CABLE TV	INSIGHT COMMUNICATIONS CUSTOMER SERVICE (502) 357-4400	No Conflict
SHELBY ENERGY COOPERATIVE INC 0070	ELECTRIC		No Conflict
AT&T DISTRIBUTION 0139	COMMUNICATIONS	AT&T DISTRIBUTION CUSTOMER SERVICE (888) 757-6500	

Attachment 3

Tout, Eric V (PSC)

From: Jones, Mike (Auburndale) <Mike.Jones@lge-ku.com>
Sent: Tuesday, November 16, 2021 12:10 PM
To: Tout, Eric V (PSC)
Subject: RE: 43263, 11/12/2020, 225 Martini Rd., Campbellsburg, Clearwater Fiberglass Pools & Spas

The ticket was mislocated but the ticket was expired.

From: Tout, Eric V (PSC) <ericv.tout@ky.gov>
Sent: Tuesday, November 16, 2021 12:03 PM
To: Jones, Mike (Auburndale) <Mike.Jones@lge-ku.com>
Subject: 43263, 11/12/2020, 225 Martini Rd., Campbellsburg, Clearwater Fiberglass Pools & Spas

EXTERNAL email. STOP and THINK before responding, clicking on links, or opening attachments.

Hello Mike,

This report indicates that the incident location was missed marked is this correct?

*Thanks,
Eric V. Tout
Kentucky Public Services Commission
Division of Inspections / Damage Prevention
211 Sower Blvd., Frankfort, KY 40601
Office: 502-782-2622
Fax: 502-564-1582*

----- The information contained in this transmission is intended only for the person or entity to which it is directly addressed or copied. It may contain material of confidential and/or private nature. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is not allowed. If you received this message and the information contained therein by error, please contact the sender and delete the material from your/any storage medium.

Attachment 4

Tout, Eric V (PSC)

From: donnie mccubbins <dmccubbins78@bellsouth.net>
Sent: Thursday, November 18, 2021 11:46 AM
To: Tout, Eric V (PSC)
Subject: Clearwater Pools (BUD # 2010120592 @ 225 Martini Rd)





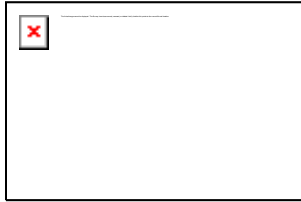




2020-10-13 17:15:28

Tout, Eric V (PSC)

From: donnie mccubbins <dmccubbins78@bellsouth.net>
Sent: Thursday, November 18, 2021 11:54 AM
To: Tout, Eric V (PSC)
Subject: Clearwater Pools (BUD # 2010120592 @ 225 Martini Rd)



******* THIS EMAIL IS INTENDED FOR SUPPLEMENTAL INFORMATION ONLY. THIS IS NOT A RECORD OF COMPLETION FOR THE LOCATING OF LG&E'S UNDERGROUND FACILITIES. *******

Ticket #: 2010120592

Ticket Address: 225 MARTINI LN BEDFORD, KY

Caller Name & Phone: DONNIE MCCUBBINS (502)475-6408

Contractor Name & Phone: CLEARWATER FIBERGLASS POOLS AND SPAS (502)499-7550

THE ABOVE LOCATE REQUEST HAS BEEN ASSIGNED TO URG, A CONTRACT LOCATOR FOR LOUISVILLE GAS AND ELECTRIC. ANY QUESTIONS OR ADDITIONAL INFORMATION REGARDING THIS LOCATE REQUEST SHOULD BE DIRECTED TO URG BY USING THE CONTACT INFORMATION PROVIDED BELOW:

(502) 625-5629

This notification is powered by [DigTix and sent on behalf of LG&E \(lge-ku.com\)](http://lge-ku.com).



Home - DigTix

Providing the latest digital tools created with safety in mind

Tout, Eric V (PSC)

From: donnie mccubbins <dmccubbins78@bellsouth.net>
Sent: Thursday, November 18, 2021 11:52 AM
To: Tout, Eric V (PSC)
Subject: Clearwater Pools (BUD # 2010120592 @ 225 Martini Rd)
Attachments: en51473489.pdf; KUPI CONFRM 2020 10 12 #00000 2010120592-00A NORM NEW .msg

****CAUTION** PDF attachments may contain links to malicious sites. Please contact the COT Service Desk ServiceCorrespondence@ky.gov for any assistance.**

00000 KUPIa 10/12/2020 09:32:29 2010120592-00A NORM NEW GRID

NORMAL NOTICE

Ticket : 2010120592 Date: 10/12/2020 Time: 09:25 Oper: ABLOCK Chan:000

State: KY Cnty: TRIMBLE City: BEDFORD

Subdivision:

Address : 225

Street : MARTINI LN

Cross 1 : US RT 421

Location: LOCATE ENTIRE REAR OF PROPERTY

:

Boundary: n 38.537633 s 38.534633 w -85.275959 e -85.256925

Work type : INSTALL POOL

Done for : MATT JONES

Start date: 10/15/2020 Time: 07:00 Hours notice: 69/48 Priority: NORM

Ug/Oh/Both: U Blasting: NO Emergency: N

Duration : N/A Depth: 6 FEET

Company : CLEARWATER FIBERGLASS POOLS AND SPAS Type: CONT Co addr : 4602 WATTBOURNE LN

City : LOUISVILLE State: KY Zip: 40299

Caller : DONNIE MCCUBBINS Phone: (502)499-7550 Contact : MIKE MILLER - CELL Phone:

Mobile : (502)475-6408

Fax : (502)499-8648

Email : DMCCUBBINS78@BELLSOUTH.NET

Submitted date: 10/12/2020 Time: 09:25

Members: 0002 0007 0070 0139

Eric this the 2nd attachment copy and pasted just in case the file wouldnt open for you

Tout, Eric V (PSC)

From: tickets@kentucky811.org
Sent: Monday, October 12, 2020 9:33 AM
To: dmccubbins78@bellsouth.net
Subject: KUPI CONFIRM 2020/10/12 #00000 2010120592-00A NORM NEW

00000 KUPIa 10/12/2020 09:32:29 2010120592-00A NORM NEW GRID

NORMAL NOTICE

Ticket : 2010120592 Date: 10/12/2020 Time: 09:25 Oper: ABLOCK Chan:000

State: KY Cnty: TRIMBLE City: BEDFORD
Subdivision:

Address : 225
Street : MARTINI LN
Cross 1 : US RT 421
Location: LOCATE ENTIRE REAR OF PROPERTY

:
Boundary: n 38.537633 s 38.534633 w -85.275959 e -85.256925

Work type : INSTALL POOL
Done for : MATT JONES
Start date: 10/15/2020 Time: 07:00 Hours notice: 69/48 Priority: NORM
Ug/Oh/Both: U Blasting: NO Emergency: N
Duration : N/A Depth: 6 FEET

Company : CLEARWATER FIBERGLASS POOLS AND SPAS Type: CONT Co addr : 4602 WATTBOURNE LN
City : LOUISVILLE State: KY Zip: 40299
Caller : DONNIE MCCUBBINS Phone: (502)499-7550 Contact : MIKE MILLER - CELL Phone:
Mobile : (502)475-6408
Fax : (502)499-8648
Email : DMCCUBBINS78@BELLSOUTH.NET

Submitted date: 10/12/2020 Time: 09:25

Members: 0002 0007 0070 0139

Ticket Status Notification

To: CLEARWATER FIBERGLASS POOLS AND SPAS

Email: DMCCUBBINS78@BELLSOUTH.NET

Below lists utilities that were stasured by USIC. Please note there may be other Utilities which include private facilities that may be present in the work area and are NOT the responsibility of USIC to locate or mark.

You are receiving this notification because your contact information is listed on the above ticket from the One Call System. If you have any questions regarding this notification, please contact USIC at 1-800-762-0592.

<u>Ticket</u>	<u>Address</u>
2010120592	225 MARTINI LN,BEDFORD,KY

<u>Utility</u>	<u>Locate Date /</u>	<u>Status</u>	<u>Detail</u>
AT&T Services Tele - KY	10/14/20 12:29 PM	Not Marked	Excavation Onsite Clear
Charter Insight Kentucky Partners Bowling	10/14/20 12:29 PM	Not Marked	Excavation Site Clear
Shelby Energy Cooperative Inc KY	10/14/20 12:29 PM	Not Marked	Excavation Site Clear

Stay Up-to-Date with Real-Time Access to USIC's assigned Tickets through our DigCheck Pro App. You will have the flexibility to see Open and Closed Tickets, Post Locate Photos, and Street Views! There is no cost to access our DigCheck Pro App.

Sign up by emailing DigCheck@usiclcl.com and provide your
First Name:
Last Name:
Company Name:
Email Address:
State or States:
Phone Number:

You can download DigCheck Pro from Apple App Store or Google Play Store Now!

It's Free!



Questions or Comments:

DigCheck@usiclcl.com

Tout, Eric V (PSC)

From: donnie mccubbins <dmccubbins78@bellsouth.net>
Sent: Thursday, November 18, 2021 12:08 PM
To: Tout, Eric V (PSC)
Subject: Clearwater Pools (BUD # 2010120592 @ 225 Martini Rd)

******* THIS EMAIL IS INTENDED FOR SUPPLEMENTAL INFORMATION ONLY. THIS IS NOT A RECORD OF COMPLETION FOR THE LOCATING OF LG&E'S UNDERGROUND FACILITIES. *******

Ticket #: 2010120592

Ticket Address: 225 MARTINI LN BEDFORD, KY

Caller Name & Phone: DONNIE MCCUBBINS (502)499-7550

Contractor Name & Phone: CLEARWATER FIBERGLASS POOLS AND SPAS (502)499-7550

******* IT HAS BEEN DETERMINED THIS LOCATE REQUEST IS NEAR AN LG&E HIGH PRESSURE "NATURAL GAS PIPELINE FACILITY AND A MECHANICAL COUPLER MAY BE PRESENT. *******

DO NOT DIG IN THIS AREA UNTIL ALL UNDERGROUND UTILITY LINES ARE LOCATED. THE LOCATION OF THE NATURAL GAS LINE WILL BE INDICATED BY YELLOW PAINT AND/OR FLAGS.

TAKE CARE TO OBSERVE SITE MARKINGS SUCH AS PAINT AND FLAGS. EXCAVATION ACTIVITIES OTHER THAN HANDDIGGING OR VACUUM EXCAVATION ARE PROHIBITED BY STATE LAW WITHIN THE STATUTORY TOLERANCE ZONE OF UNDERGROUND UTILITIES.

IF YOU UNEARTH A BOLTED STYLE MECHANICAL COUPLER SUCH AS THE ONE SHOWN IN THE PHOTO BELOW ON AN LG&E HIGH PRESSURE STEEL GAS PIPELINE, IMMEDIATELY DO THE FOLLOWING:

1. STOP EXCAVATING AS SOON AS THE COMPRESSION COUPLING IS IDENTIFIED. DO NOT EXPOSE ADDITIONAL PORTIONS OF THE COMPRESSION COUPLING OR ADDITIONAL PIPE ON EITHER SIDE OF THE COMPRESSION COUPLING.
2. VACATE THE EXCAVATION AND SURROUNDING AREA. A PERIMETER SHOULD BE ESTABLISHED AROUND THE EXCAVATION TO KEEP THE PUBLIC AT A DISTANCE.
3. CALL LG&E AT 502-627-3740.

IF YOU WILL NOT BE ONSITE DURING EXCAVATION ACTIVITIES, PROVIDE THIS EMAIL TO THOSE WHO WILL BE.

If you have concerns or questions about the site markings, please contact LG&E at 502-364-8209.



Tout, Eric V (PSC)

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Sent: Thursday, November 18, 2021 12:08 PM
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Subject: Clearwater Pools (BUD # 2010120592 @ 225 Martini Rd)

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Ticket #: 2010120592

Ticket Address: 225 MARTINI LN BEDFORD, KY

Caller Name & Phone: DONNIE MCCUBBINS (502)499-7550

Contractor Name & Phone: CLEARWATER FIBERGLASS POOLS AND SPAS (502)499-7550

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2. VACATE THE EXCAVATION AND SURROUNDING AREA. A PERIMETER SHOULD BE ESTABLISHED AROUND THE EXCAVATION TO KEEP THE PUBLIC AT A DISTANCE.
3. CALL LG&E AT 502-627-3740.

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Janice Cecil
Registered Agent
Clearwater Fiberglass Pools & Spas, Incorporated
4602 Wattbourne Ln.
Louisville, KENTUCKY 40299

*Donnie McCubbins
Clearwater Fiberglass Pools & Spas, Incorporated
4602 Wattbourne Ln.
Louisville, KENTUCKY 40299