

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

Current report filing

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FILER

**MAGNEGAS CORP**

CIK: [1353487](#) | IRS No.: **260250418** | State of Incorporation: **DE** | Fiscal Year End: **1231**  
Type: **8-K** | Act: **34** | File No.: [001-35586](#) | Film No.: **13851793**  
SIC: **3559** Special industry machinery, nec

Mailing Address  
35246 US 19 #311  
PALM HARBOR FL 34684

Business Address  
150 RAINVILLE ROAD  
TARPON SPRINGS FL 34689  
(727) 932-9593

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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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FORM 8-K

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CURRENT REPORT  
PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): **May 16, 2013**

**MAGNEGAS CORPORATION**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation)

**000-51883**

(Commission File Number)

**26-0250418**

(IRS Employee Identification No.)

**150 Rainville Road**

**Tarpon Springs, FL 34689**

(Address of principal executive offices)(Zip Code)

Registrant's telephone number, including area code: **(727) 934-3448**

**Not applicable**

(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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### Item 3.03 Material Modification to Rights of Security Holders

On May 16, 2013, an amendment to the Certificate of Designation (the "Amendment") of the Company's Series A Preferred Stock ("Series A") was filed with the Delaware Secretary of State to require the vote, or written consent, of at least 51% of the outstanding shares of Series A in order to create, issue, repeal or modify any other series of the Company's preferred stock.

The foregoing description of the Amendment is qualified in its entirety by the Amendment to the Series A Certificate of Designation filed as Exhibit 4.1 to this Current Report on Form 8-K, which is incorporated by reference herein.

### Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

The disclosure set forth under Item 3.03 (Material Modification to Rights of Security Holders) is hereby incorporated by reference to this Item 5.03.

### Item 9.01 Financial Statements and Exhibits.

#### (d) Exhibits.

Exhibit

Number    Description

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4.1        Amendment to Series A Certificate of Designation

### SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**MAGNEGAS CORPORATION**

Date: May 16, 2013

By: /s/ Ermanno Santilli

Ermanno Santilli

Chief Executive Officer

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*State of Delaware*  
*Secretary of State*  
*Division of Corporations*  
*Delivered 04:33 PM 05/14/*  
*2013*  
*FILED 04:32 PM 05/14/*  
*2013*  
*SRV 130580140 - 4074115*  
*FILE*

**AMENDMENT NO. 1 TO  
CERTIFICATE OF DESIGNATIONS,  
PREFERENCES AND RIGHTS OF  
SERIES A PREFERRED STOCK OF  
MAGNEGAS CORPORATION**

Magnegas Corporation, a Delaware Corporation (the "Corporation"), DOES HEREBY CERTIFY:

Pursuant to authority expressly granted and vested in the Board of Directors of the Corporation by the provisions of the Corporation's Certificate of Incorporation, as amended, the Board of Directors adopted the Certificate of Designations, Preferences and Rights of Series A Preferred Stock on April 2, 2007 (i) authorizing 1,000,000 shares, par value \$0.001 series of the Corporation's Series A Preferred Stock (the "**Series A Preferred Stock**") out of the Corporation's previously authorized 10,000,000 shares of preferred stock, \$0.001 par value per share, and (ii) providing for the designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations or restrictions thereof, of 1,000,000 shares of Series A Preferred Stock of the Corporation (the "**Original Certificate of Designation**");

**Recitals**

WHEREAS, the Board of Directors of the Corporation and the Majority Shareholders of the Series A Preferred Stock wish to amend the Original Certificate of Designation duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware (the "**Amendment**").

**Amendment**

1. **Defined Terms.** Unless otherwise indicated herein, all terms which are capitalized but are not otherwise defined herein shall have the meaning ascribed to them in the Original Certificate of Designation.

2. **Amendment to Original Certificate of Designation.**

Section 5 "Vote to Change the Terms of or Issue Series A Preferred Stock" of the Original Certificate of Designation is hereby amended and restated in its entirety as follows:

"The affirmative vote at a meeting duly called for such purpose, or the written consent without a meeting, of the holders of not less than fifty-one percent (51%) of the then outstanding shares of Series A Preferred Stock shall be required for (i) any change to the Corporation's Articles of Incorporation that would amend, alter, change or repeal any of the preferences, limitations or relative rights of the Series A Preferred Stock, (ii) any issuance of additional shares of Series A Preferred Stock or (iii) the creation, issuance, repeal or modification of any other series of preferred stock."

3. **Ratifications; Inconsistent Provisions.** Except as otherwise expressly provided herein, the Original Certificate of Designation, is, and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects. Notwithstanding the foregoing to the contrary, to the extent that there is any inconsistency between the provisions of the Original Agreement and this Amendment, the provisions of this Amendment shall control and be binding.

4. Counterparts. This Amendment may be executed in any number of counterparts, all of which will constitute the same instrument and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party. Facsimile or other electronic transmission of any signed original document shall be deemed the same as delivery of an original.

***[The Remainder of this Page is Blank]***

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IN WITNESS WHEREOF, Ermanno Santilli, Chief Executive Officer of the Corporation, under penalties of perjury, does hereby declare and certify that this is the act and deed of the Corporation and the facts stated herein are true and accordingly has signed this Amendment on April 30, 2013.

/s/ Ermanno Santilli

Ermanno Santilli

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