

MAGNEGAS CORP  
Form PRER14C  
August 30, 2018

**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**SCHEDULE 14C INFORMATION**

**Information Statement Pursuant to Section 14(c)**

**of the Securities Exchange Act of 1934**

**(Amendment No. 1)**

Filed by the registrant

Filed by a party other than the registrant

Preliminary Information Statement

Confidential, for Use of the Commission Only (as permitted by Rule 14c-5(d)(2))

Definitive Information Statement

**MagneGas Corporation**

(Name of Registrant as Specified In Charter)

**Payment of Filing Fee (Check the appropriate box):**

No fee required.

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Fee computed on table below per Exchange Act Rules 14c-5(g) and 0-11.

1) Title of each class of Securities to which transaction applies:

2) Aggregate number of securities to which transaction applies:

3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

4) Proposed maximum aggregate value of transaction : \$\_\_\_\_\_

5) Total fee paid: \$\_\_\_\_\_

Fee paid previously with preliminary materials.

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

1) Amount Previously Paid:

2) Form, Schedule or Registration Statement No.

3) Filing Party:

4) Date Filed:

**MAGNEGAS CORPORATION**

**11885 44TH STREET NORTH**

**CLEARWATER, FL 33762**

**(727) 934-3448**

**NOTICE OF ACTIONS BY WRITTEN CONSENT OF HOLDERS OF  
NOT LESS THAN A MAJORITY OF THE AGGREGATE VOTING POWER  
OF ALL OUTSTANDING SHARES OF CAPITAL STOCK OF MAGNEGAS CORPORATION**

**WE ARE NOT ASKING YOU FOR A PROXY AND  
YOU ARE REQUESTED NOT TO SEND US A PROXY**

Dear Stockholder:

This Information Statement is being made available to the holders of record of the outstanding shares of common stock, \$0.001 per value per share (the “Common Stock”), the Series A Preferred Stock, \$0.001 par value per share (the “Series A Preferred Stock”), the Series B Convertible Preferred Stock, \$0.001 par value per share (the “Series B Preferred Stock”), the Series C Convertible Preferred Stock, \$0.001 par value per share (the “Series C Preferred Stock”), the Series D Convertible Preferred Stock, \$0.001 par value per share (the “Series D Preferred Stock”) and the Series E Convertible Preferred Stock, \$0.001 par value per share (the “Series E Preferred Stock”) and the Series F Convertible Preferred Stock, \$0.001 par value per share (the “Series F Preferred Stock”) of MagneGas Corporation, a Delaware corporation (the “Company”), as of the close of business on August 26, 2018 (the “Record Date”), pursuant to Rule 14c-2 promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”).

The purpose of the enclosed Information Statement is to inform you of actions taken on August 26, 2018 by written consent of Global Alpha, LLC (the “Majority Stockholder”). The Majority Stockholder is a privately-owned company of which Carla Santilli (a former member of our Board of Directors) and Ruggero Santilli each own 50%. Ermanno Santilli (our Chief Executive Officer and a member of our Board of Directors) and Luisa Ingargiola (our Chief Financial Officer and Secretary from 2007 through November 30, 2016, and a former member of our Board of Directors) are voting members of the Majority Stockholder but have no equity interest. Each share of Series A Preferred Stock has voting rights of 100,000 votes per share and votes generally with the shares of Common Stock on all matters except as otherwise required by law. The total aggregate number of votes for the Series A Preferred Stock is 100 billion. As of the Record Date, the Majority Stockholder’s holdings represented approximately 99% of the votes entitled to be cast by the outstanding shares of our voting stock. The enclosed Information Statement shall also

constitute the notice required under Section 228(e) of the Delaware General Corporation Law (“DGCL”).

On August 26, 2018, the Board of Directors (the “Board”) submitted the following actions to the Majority Stockholder for ratification and approval by consent in lieu of meeting, and the Majority Stockholder has ratified and approved the following actions:

1) The adoption of resolutions that have been adopted by the Board to approve the following transaction (the “Transaction”):

On August 28, 2018, MagneGas Corporation (the “Company”) entered into a Securities Purchase Agreement (“SPA”) with the investor listed on the signature page thereto (“Investor”). Under the terms of the SPA, the Company offered and agreed to sell up to 25,000,000 shares of Common Stock at any time during the offering period until the expiration or termination of the offering (each such purchase a “Closing”). The purchase price for the Common Stock is \$0.15 per share. Total gross proceeds to the Company upon completion of the offering (assuming full subscription) will be \$3,750,000.

Additionally, at each Closing, the Company will grant the Investor that number of warrants equal to the number of shares of Common Stock purchased at each Closing (“Warrants”) at an exercise price of \$0.30 per share (“Exercise Price”). The Company is authorized to grant up to 25,000,000 Warrants. The Warrants may only be exercised for cash and expire on August 31, 2019. Total gross proceeds to the Company, assuming full exercise of the Warrants, will be \$7,500,000.

The issuance of the Common Stock is being made pursuant to a prospectus supplement and accompanying base prospectus relating to the Company’s effective shelf registration statement on Form S-3 (File No. 333-207928). The offering of the Warrants is exempt from registration under Section 4(a)(2) of the Securities Act of 1933, as amended (the “Securities Act”), in reliance upon the safe harbor provided by Rule 506(b) of Regulation D. Under the terms of the Warrants, the Company is required to file and will make best efforts to cause to be declared effective one or more resale registration statements on Form S-3 with respect to any Warrant shares within thirty (30) days of the Holder’s striking of any Warrants and the payment of the Exercise Price giving rise to such Warrant shares.

The Company may not issue any shares of Common Stock pursuant to the terms of the SPA or Warrants if the issuance of such shares of Common Stock would exceed the aggregate number of shares of Common Stock which the Company may issue pursuant to the SPA or upon exercise of the Warrants without breaching the Company’s obligations under the rules or regulations of the Nasdaq Capital Market (“Principal Market”) (the number of shares which may be issued without violating such rules and regulations, the “Exchange Cap”), except that such limitation shall not apply in the event that the Company (A) obtains the approval of its stockholders as required by the applicable rules of the Principal Market for issuances of shares of Common Stock in excess of such amount or (B) obtains a written opinion from outside counsel to the Company that such approval is not required, which opinion shall be reasonably satisfactory to the Holder.

The Board submitted the terms and conditions of the Transaction to the Majority Stockholder for ratification and approval by consent in lieu of meeting, and the Majority Stockholder has ratified and approved the issuance and sale, as part of the Transaction, of the 25,000,000 shares of Common Stock, including the 25,000,000 shares of Common Stock issuable upon exercise of the Warrants (including issuances in excess of the Exchange Cap) in order to comply with NASDAQ Marketplace Rule 5635(d), all as may be required by and in accordance with NASDAQ Marketplace Rule 5635(d).

The Board is not soliciting your consent or your proxy in connection with these actions, and no consents or proxies are being requested from stockholders.

Under Rule 14c-2 of the Exchange Act, the actions taken by the Majority Stockholder will not be effective until 20 days after the enclosed Information Statement is first mailed or otherwise delivered to our stockholders entitled to receive notice thereof.

**THIS IS NOT A NOTICE OF A SPECIAL MEETING OF STOCKHOLDERS, AND NO STOCKHOLDER MEETING WILL BE HELD TO CONSIDER ANY MATTER DESCRIBED HEREIN. THIS INFORMATION STATEMENT IS BEING FURNISHED TO YOU SOLELY FOR THE PURPOSE OF INFORMING STOCKHOLDERS OF THE MATTERS DESCRIBED HEREIN PURSUANT TO SECTION 14(c) OF THE EXCHANGE ACT AND THE REGULATIONS PROMULGATED THEREUNDER, INCLUDING REGULATION 14C AND PURSUANT TO SECTION 228(E) OF THE DGCL. WE ARE NOT ASKING YOU FOR A CONSENT OR PROXY AND YOU ARE REQUESTED NOT TO SEND US A CONSENT OR PROXY.**

By order of the Board of Directors

*/s/ Ermanno Santilli*

Ermanno Santilli

August 30 , 2018 Chief Executive Officer and Director

**INFORMATION STATEMENT**

**OF**

**MAGNEGAS CORPORATION**

**11885 44TH STREET NORTH**

**CLEARWATER, FL 33762**

**(727) 934-3448**

**WE ARE NOT ASKING YOU FOR A PROXY AND  
YOU ARE REQUESTED NOT TO SEND US A PROXY.**

**PURPOSE OF INFORMATION STATEMENT**

This Information Statement advises stockholders of MagneGas Corporation (the “Company”) of action taken on August 26, 2018 by written consent of Global Alpha, LLC (the “Majority Stockholder”). The Majority Stockholder is a privately-owned company of which Carla Santilli (a member of our Board of Directors) and Ruggero Santilli each own 50%. Ermanno Santilli (our Chief Executive Officer and a member of our Board of Directors) and Luisa Ingargiola (our Chief Financial Officer and Secretary from 2007 through November 30, 2016, and a former member of our Board of Directors) are voting members of the Majority Stockholder but have no equity interest. The Majority Stockholder holds a majority of the aggregate voting power of all outstanding shares of capital stock of the Company entitled to vote on the matters set forth in this Information Statement as of August 26, 2018 (the “Record Date”).

**OVERVIEW OF ACTIONS**

On August 28, 2018, MagneGas Corporation (the “Company”) entered into a Securities Purchase Agreement (“SPA”) with the investor listed on the signature page thereto (“Investor”). Under the terms of the SPA, the Company offered and agreed to sell up to 25,000,000 shares of Common Stock at any time during the offering period until the expiration or termination of the offering (each such purchase a “Closing”). The purchase price for the Common Stock is \$0.15 per share. Total gross proceeds to the Company upon completion of the offering (assuming full subscription) will be \$3,750,000.

Additionally, at each Closing, the Company will grant the Investor that number of warrants equal to the number of shares of Common Stock purchased at each Closing (“Warrants”) at an exercise price of \$0.30 per share (“Exercise Price”). The Company is authorized to grant up to 25,000,000 Warrants. The Warrants may only be exercised for cash and expire on August 31, 2019. Total gross proceeds to the Company, assuming full exercise of the Warrants, will be \$7,500,000.

The issuance of the Common Stock is being made pursuant to a prospectus supplement and accompanying base prospectus relating to the Company’s effective shelf registration statement on Form S-3 (File No. 333-207928). The offering of the Warrants is exempt from registration under Section 4(a)(2) of the Securities Act of 1933, as amended (the “Securities Act”), in reliance upon the safe harbor provided by Rule 506(b) of Regulation D. Under the terms of the Warrants, the Company is required to file and will make best efforts to cause to be declared effective one or more resale registration statements on Form S-3 with respect to any Warrant shares within thirty (30) days of the Holder’s striking of any Warrants and the payment of the Exercise Price giving rise to such Warrant shares.

The Company may not issue any shares of Common Stock pursuant to the terms of the SPA or Warrants if the issuance of such shares of Common Stock would exceed the aggregate number of shares of Common Stock which the Company may issue pursuant to the SPA or upon exercise of the Warrants without breaching the Company’s obligations under the rules or regulations of the Nasdaq Capital Market (“Principal Market”) (the number of shares which may be issued without violating such rules and regulations, the “Exchange Cap”), except that such limitation shall not apply in the event that the Company (A) obtains the approval of its stockholders as required by the applicable rules of the Principal Market for issuances of shares of Common Stock in excess of such amount or (B) obtains a written opinion from outside counsel to the Company that such approval is not required, which opinion shall be reasonably satisfactory to the Holder.

Until such time as the Corporation has received stockholder approval as required by NASDAQ Marketplace Rule 5635(d), the Corporation may not issue a number of shares of Common Stock which, when aggregated with the shares of Common Stock issued in the Transaction pursuant to the SPA, and any shares of Common Stock issued pursuant to the Warrants, would exceed the Exchange Cap. As a result, stockholder approval is required under NASDAQ Marketplace Rule 5635(d) to issue any shares of Common Stock above the Exchange Cap.



The Board submitted the terms and conditions of the Transaction to the Majority Stockholder for ratification and approval by consent in lieu of meeting, and the Majority Stockholder has ratified and approved the issuance and sale, as part of the Transaction, of the 25,000,000 shares of Common Stock, including the 25,000,000 shares of Common Stock issuable upon exercise of the Warrants (including issuances in excess of the Exchange Cap) in order to comply with NASDAQ Marketplace Rule 5635(d), all as may be required by and in accordance with NASDAQ Marketplace Rule 5635(d).

## **OUTSTANDING SHARES AND VOTING RIGHTS**

At the close of business on the Record Date, there were 39,923,403.61 shares of our Common Stock outstanding.

At the close of business on the Record Date, there were 1,000,000 shares of Series A Preferred Stock outstanding. All 1,000,000 shares of Series A Preferred Stock are held by the Majority Stockholder. Each share of Series A Preferred Stock has voting rights of 100,000 votes per share and votes generally with the shares of Common Stock on all matters except as otherwise required by law. The total aggregate number of votes for the Series A Preferred Stock is 100 billion. As of the Record Date, the Majority Stockholder's holdings represented approximately 99% of the votes entitled to be cast by the outstanding shares of our voting stock, all of which approved and adopted the matters set forth herein.

The Board is not soliciting your consent or your proxy in connection with these actions, and no consents or proxies are being requested from stockholders. The vote that was required to approve the transactions described in this Information Statement was the affirmative vote of the holders of a majority of the aggregate voting power of all outstanding shares of capital stock of the Company entitled as of the Record Date to vote on such matters.

Section 228 of the Delaware General Corporation Law and Article II, Section 11 of the Company's By-Laws, as amended, provide that stockholders of the Company may act by written consent without a meeting if such stockholders hold the number of shares representing not less than the minimum number of votes that would be necessary to authorize or take such actions at a meeting at which all shares entitled to vote thereon were present and voted.

## **EFFECTIVENESS OF CORPORATE ACTIONS**

Under Rule 14c-2 of the Securities Exchange Act of 1934, as amended, the actions taken by the Majority Stockholder will not be effective until 20 days after this Information Statement is first mailed or otherwise delivered to our

stockholders entitled to receive notice thereof.

### **Dissenters' Right of Appraisal**

No dissenters' or appraisal rights under the Delaware General Corporation Law are afforded to the Company's stockholders as a result of the approval of the actions taken by the Majority Shareholder.

### **INTEREST OF CERTAIN PERSONS IN OR OPPOSITION TO MATTERS ACTED UPON**

No officer or director has any substantial interest in the matters acted upon by our Board of Directors and the Majority Stockholder, other than in their roles as an officer or director or Majority Shareholder.

### **ADDITIONAL INFORMATION**

The Company is subject to the informational requirements of the Exchange Act and in accordance therewith files reports, proxy statements and other information including annual and quarterly reports on Form 10-K and 10-Q with the Commission. Reports and other information filed by the Company can be inspected and copied at the public reference facilities maintained at the Commission at Room 1024, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such material can be obtained upon written request addressed to the Commission, Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549, at prescribed rates. The Commission maintains a web site on the Internet (<http://www.sec.gov>) that contains reports, proxy and information statements and other information regarding issuers that file electronically with the Commission through the Electronic Data Gathering, Analysis and Retrieval System (also known as "EDGAR").

## **DELIVERY OF DOCUMENTS TO SECURITY HOLDERS SHARING AN ADDRESS**

We will send only one Information Statement and other corporate mailings to stockholders who share a single address unless we received contrary instructions from any stockholder at that address. This practice, known as “householding,” is designed to reduce our printing and postage costs. However, the Company will deliver promptly upon written or oral request a separate copy of the Information Statement to a stockholder at a shared address to which a single copy of the Information Statement was delivered. You may make such a written or oral request by (a) sending a written notification stating (i) your name, (ii) your shared address and (iii) the address to which the Company should direct the additional copy of Information Statement, to the Company at Corporate Secretary, 11885 44th Street North, Clearwater, FL 33762, telephone: (727) 934-3448.

If multiple stockholders sharing an address have received one copy of the Information Statement or any other corporate mailing and would prefer the Company to mail each stockholder a separate copy of future mailings, you may send notification to or call the Company’s principal executive offices. Additionally, if current stockholders with a shared address received multiple copies of the Information Statement or other corporate mailings and would prefer the Company to mail one copy of future mailings to stockholders at the shared address, notification of such request may also be made by mail or telephone to the Company’s principal executive offices.

