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FERRO CORP
Form S-8
August 22, 2003

As filed with the Securities and Exchange Commission on August 22, 2003
Registration No. 333-_____

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

FORM S-8
REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933

FERRO CORPORATION
(Exact name of Registrant as specified in its charter)

Ohio
(State or other jurisdiction of
incorporation or organization)

34-0217820
(I.R.S. Employer
Identification No.)

1000 Lakeside Avenue,
Cleveland, Ohio
(Address of Principal Executive Offices)

44114
(Zip Code)

2003 Long-Term Incentive Compensation Plan
(Full title of the plan)

James C. Bays
Vice President and General Counsel
Ferro Corporation
1000 Lakeside Avenue, Cleveland, Ohio 44114
(Name and address of agent for service)

(216) 641-8580
(Telephone number, including area code, of agent for service)

With copy to:

Mary Ann Jorgenson, Esq.
Squire, Sanders & Dempsey L.L.P.
4900 Key Tower, 127 Public Square
Cleveland, Ohio 44114-1304

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price per Share (2)	Proposed Maximum Aggregate Offering Price (2)	Reg
Common Stock, par value	3,250,000 shares	\$ 22.09	\$ 71,792,500	

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\$1.00 per share

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- (1) An undetermined number of additional shares of Common Stock may be issued if the anti-dilution provision of the Plan becomes operative.
- (2) Estimated solely for the purpose of calculating the amount of the registration fee. Pursuant to Rule 457(h), the proposed maximum offering price per share is based upon the average of the high and low prices for the Common Stock as reported on the New York Stock Exchange on August 19, 2003.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Certain Documents by Reference.

Ferro Corporation (the "Registrant") incorporates by reference and makes part of this Registration Statement the following documents:

- (a) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2002, filed with the Securities and Exchange Commission (the "Commission") pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act");
- (b) The Registrant's Quarterly Reports on Form 10-Q for the fiscal quarter ended March 31, 2003 and June 30, 2003;
- (c) The description of the Registrant's Common Stock, contained in the Registrant's Registration Statement on Form S-8 (Registration No. 33-12397) filed March 2, 1987, and any amendments or reports filed for the purpose of updating such description; and
- (d) The description of our common stock rights contained in our registration statement filed on Form 8-A filed May 15, 1996.

All documents subsequently filed by the Registrant or the Plan pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing such documents.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel

Mary Ann Jorgenson, the Secretary of the Registrant, is a partner in the law firm of Squire, Sanders & Dempsey L.L.P., which the Registrant

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retains as outside counsel.

Item 6. Indemnification of Directors and Officers. -----

The Registrant's Amended Code of Regulations provides that it shall indemnify its present and former directors or officers against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement, which are actually and reasonably incurred by the person because of his or her position with Registrant in connection with any threatened, pending or completed action, suit or proceeding.

With the exception of a lawsuit brought by Registrant or in its right, Ohio law permits indemnification of these individuals provided that they have acted in good faith, in a manner reasonably believed to be in or not opposed to Registrant's best interests and, with respect to any criminal action or proceeding, had no reason to believe their conduct

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was illegal. In the case of a lawsuit brought by Registrant or in its right, Ohio law, subject to certain exceptions, permits indemnification of these individuals against expenses, including attorneys' fees, actually and reasonably incurred by them in connection with the settlement or defense of the lawsuit provided that they have acted in good faith and in a manner reasonably believed to be in or not opposed to Registrant's best interests. One exception to this principal applies when the directors or officers are determined to be liable for negligence or misconduct in the performance of their duty to Registrant. In this case, Registrant is not permitted to indemnify the directors and officers, unless a court determines that the person is fairly and reasonably entitled to indemnity for such expenses and believes the expenses are appropriate.

The Registrant maintains contracts insuring it, with certain exclusions, against any liability to directors and officers that it may incur. The Registrant insures its directors and officers against liability and expenses (with certain exclusions), including legal fees, which they may incur because of their position with Registrant.

Each director and executive officer of the Registrant is a party to an indemnification agreement with the Registrant. The agreement provides that the Registrant will indemnify, with certain limitations, such director or executive officer against certain expenses (including, without limitation, attorneys' fees, judgments, fines and amounts paid in settlement) in connection with any claim against such director or executive officer arising out of such person's being a director or executive officer of the Registrant.

Item 7. Exemption From Registration Claimed. -----

Not applicable.

Item 8. Exhibits. -----

- 4.1 Eleventh Amended Articles of Incorporation. (Reference is made to Exhibit (3)(a) to Ferro Corporation's Quarterly Report on Form 10-Q for the three months ended June 30, 1998, which Exhibit is incorporated herein by reference.)
- 4.2 Certificate of Amendment to the Eleventh Amended Articles of Incorporation of Ferro Corporation filed December 28, 1994. (Reference is made to Exhibit (3)(b) to Ferro Corporation's

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- Quarterly Report on Form 10-Q for the three months ended June 30, 1998, which Exhibit is incorporated herein by reference.)
- 4.3 Certificate of Amendment to the Eleventh Amended Articles of Incorporation of Ferro Corporation filed January 19, 1998. (Reference is made to Exhibit (3)(c) to Ferro Corporation's Quarterly Report on Form 10-Q for the three months ended June 30, 1998, which Exhibit is incorporated herein by reference.)
- 4.4 Amended Code of Regulations. (Reference is made to Exhibit (3)(d) to Ferro Corporation's Quarterly Report on Form 10-Q for the three months ended June 30, 1998, which Exhibit is incorporated herein by reference.)
- 4.5 Amended and Restated Shareholder Rights Agreement between Ferro Corporation and National City Bank, Cleveland, Ohio, as Rights Agent, dated as of December 10, 1999. (Reference is made to Exhibit 4(k) to Ferro Corporation's Form 10-K for the year ended December 31, 1999, which Exhibit is incorporated herein by reference.)
- 5 Opinion of Squire, Sanders & Dempsey L.L.P. as to the legality of the securities registered.
- 23.1 Consent of KPMG LLP.
- 23.2 Consent of Squire, Sanders & Dempsey L.L.P. (contained in opinion filed as Exhibit 5).
- 99 2003 Long-Term Incentive Compensation Plan.

Item 9. Undertakings.

- (a) The undersigned Registrant hereby undertakes:

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(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933 (the "Act");

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;

(iii) To include any material information with respect to the plan of distribution not previously

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disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs (i) and (ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act of 1934 that are incorporated by reference in this registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act that is incorporated by reference in this registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question of whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Cleveland, and the State of Ohio, on June 27, 2003.

FERRO CORPORATION

By: /s/ Hector R. Ortino

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Hector R. Ortino
Chairman and
Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in their indicated capacities as of the 27th day of June, 2003.

/s/ Hector R. Ortino

Hector R. Ortino

Chairman and Chief Executive Officer
(Principal Executive Officer)

/s/ Thomas M. Gannon

Thomas M. Gannon

Corporate Vice President and Chief Financial Officer
(Principal Financial Officer and Principal Accounting Officer)

/s/ Michael H. Bulkin

Michael H. Bulkin

Director

/s/ Sandra Austin Crayton

Sandra Austin Crayton

Director

/s/ Jennie S. Hwang

Jennie S. Hwang

Director

/s/ William B. Lawrence

William B. Lawrence

Director

/s/ Michael F. Mee

Michael F. Mee

Director

William J. Sharp

Director

Dennis W. Sullivan

Director

/s/ Padmasree Warrior

Padmasree Warrior

Director

Director

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Alberto Weisser

EXHIBIT INDEX

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