

VEECO INSTRUMENTS INC

FORM 8-K

(Current report filing)

Filed 09/21/01 for the Period Ending 09/06/01

Address	TERMINAL DRIVE PLAINVIEW, NY 11803
Telephone	516 677-0200
CIK	0000103145
Symbol	VECO
SIC Code	3559 - Special Industry Machinery, Not Elsewhere Classified
Industry	Semiconductors
Sector	Technology
Fiscal Year	12/31

VEECO INSTRUMENTS INC

FORM 8-K

(Unscheduled Material Events)

Filed 9/21/2001 For Period Ending 9/6/2001

Address	TERMINAL DR PLAINVIEW, New York 11803
Telephone	516-349-8300
CIK	0000103145
Industry	Semiconductors
Sector	Technology
Fiscal Year	12/31

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): September 6, 2001

VEECO INSTRUMENTS INC.

(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

DELAWARE

0-16244

11-2989601

(STATE OR OTHER JURISDICTION
OF INCORPORATION)

(COMMISSION
FILE NUMBER)

(IRS EMPLOYER
IDENTIFICATION NO.)

100 SUNNYSIDE BOULEVARD, WOODBURY, NEW YORK

11797

(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)

(ZIP CODE)

Registrant's telephone number, including area code:

(516) 677-0200

NOT APPLICABLE.

(FORMER NAME OR FORMER ADDRESS, IF CHANGED SINCE LAST REPORT.)

Item 5. Other Events.

Veeco Instruments Inc. (the "Company") previously announced that it had entered into an Agreement and Plan of Merger, dated as of September 6, 2001 (the "Merger Agreement"), by and among the Company, Veeco Acquisition Corp. ("Acquisition"), Applied Epi, Inc. ("Applied Epi"), the shareholders of Applied Epi listed on the signature pages thereto and Paul E. Colombo, as Stockholders' Representative. In connection with the Merger Agreement, the Company and American Stock Transfer and Trust Company, as rights agent (the "Rights Agent"), entered into an amendment dated as of September 6, 2001 to the Rights Agreement, dated as of March 13, 2001, between the Company and the Rights Agent. The terms of the amendment are set forth in the Amendment to Rights Agreement attached as Exhibit 4.1 to this Current Report on Form 8-K and incorporated herein by reference.

On September 17, 2001, the Company consummated the transactions contemplated by the Merger Agreement. Pursuant to the Merger Agreement, Acquisition merged with and into Applied Epi. As a result, Applied Epi became a wholly-owned subsidiary of the Company. Under the Merger Agreement, the stockholders of Applied Epi became entitled to receive an aggregate of 3,883,460 shares of common stock of the Company and \$29.8 million in cash. The merger consideration was determined by arms-length negotiations among the respective parties. The cash portion of the merger consideration was paid out of the Company's available cash. The merger will be accounted for using the purchase method of accounting.

On September 19, 2001 Veeco issued a press release announcing the closing of the transactions contemplated by the Merger Agreement.

Item 7. Financial Statements, Pro Forma Financial Information and Exhibits.

a. Financial Statements of Business Acquired

To be filed by amendment on or before December 1, 2001.

b. Pro Forma Financial Information

To be filed by amendment on or before December 1, 2001.

c. Exhibits

EXHIBIT NO.	DESCRIPTION OF DOCUMENT
4.1	Amendment to Rights Agreement, dated as of September 6, 2001, between Veeco Instruments Inc. and American Stock Transfer and Trust Company, as rights agent.
99.1	Veeco Press Release dated September 19, 2001 as

filed with the Securities and Exchange Commission pursuant to Rule 425.

SIGNATURES

Pursuant to the requirement 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.

September 21, 2001

VEECO INSTRUMENTS INC.
(Registrant)

By: /S/ GREGORY A. ROBBINS

Gregory A. Robbins
Vice President and General Counsel

EXHIBIT INDEX

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Exhibit 4.1

AMENDMENT TO RIGHTS AGREEMENT

This AMENDMENT (the "Amendment") is being entered into as of September 6, 2001, between Veeco Instruments Inc., a Delaware corporation (the "Company"), and American Stock Transfer and Trust Company, a New York banking corporation, as rights agent (the "Rights Agent").

WHEREAS, the Company and the Rights Agent are parties to a Rights Agreement, dated as of March 13, 2001, between the Company and the Rights Agent (the "Rights Agreement");

WHEREAS, it is proposed that the Company enter into an Agreement and Plan of Merger (the "AE Merger Agreement") by and among the Company, Veeco Acquisition Corp., a Minnesota corporation and a wholly owned subsidiary of the Company ("Veeco Acquisition"), Applied Epi, Inc., a Minnesota corporation ("Applied Epi"), and certain Applied Epi security holders pursuant to which Veeco Acquisition will merge with and into Applied Epi with the result that Applied Epi will be the surviving corporation and shall become a wholly owned subsidiary of the Company (the "AE Merger");

WHEREAS, pursuant to the AE Merger, Paul E. Colombo, Founder and Chairman of Applied Epi, will receive 3,646,969 shares of common stock and other securities of the Company, representing approximately 14.7% of the outstanding shares of common stock of the Company as of September 6, 2001; and

WHEREAS, pursuant to Section 27 of the Rights Agreement, the Company and the Rights Agent may supplement or amend the Rights Agreement in accordance with the provisions of Section 27 thereof. The Company now desires to amend the Rights Agreement as set forth in this Amendment and deems such amendments to be necessary and desirable. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Rights Agreement.

NOW THEREFORE, in consideration of the premises and the mutual agreement herein set forth, the parties hereby agree as follows:

1. AMENDMENT OF SECTION 1(a). Section 1(a) of the Rights Agreement is hereby amended to add the following sentence at the end thereof:

"Notwithstanding anything in this Agreement to the contrary, for so long as Paul E. Colombo and/or any of his existing or future Affiliates or Associates that have reported or are required to report ownership on Schedule 13G or Schedule 13D under the Exchange Act (or any comparable or successor report) and do not state any intention to, or reserve the right to, control or influence the management or policies of the Company or engage in any of the actions specified in Item 4 of Schedule 13D (other than the disposition of the Common Stock), none of Paul E. Colombo or any of his existing or future Affiliates or Associates shall be deemed to be an Acquiring Person solely by virtue of: (i) the execution of the AE Merger Agreement; (ii) the acquisition of Common Stock or other securities of the Company by Paul E. Colombo or his existing or future Affiliates or Associates

pursuant to the AE Merger; (iii) the grant by the Company of options to purchase Common Stock to Paul E. Colombo or his existing or future Affiliates or Associates in their capacity as consultants, employees or directors of the Company, or the exercise of such options; (iv) the acquisition by Paul E. Colombo or his existing or future Affiliates or Associates of up to one percent (1%) of the shares of Common Stock then outstanding in excess of the percentage of shares of Common Stock beneficially owned by Paul E. Colombo or his existing or future Affiliates or Associates under clauses (i), (ii) and (iii) above; and/or (v) the transfer of shares of Common Stock received pursuant to (ii), (iii) or (iv) above by and among Paul E. Colombo and/or any of his existing or future Affiliates or Associates."

2. AMENDMENT OF SECTION 1(kk). Section 1(kk) of the Rights Agreement is hereby amended to add the following proviso at the end thereof:

"; PROVIDED, HOWEVER, that for so long as Paul E. Colombo and/or any of his existing or future Affiliates or Associates that have reported or are required to report ownership on Schedule 13G or Schedule 13D under the Exchange Act (or any comparable or successor report) and do not state any intention to, or reserve the right to, control or influence the management or policies of the Company or engage in any of the actions specified in Item 4 of Schedule 13D (other than the disposition of the Common Stock), no Triggering Event shall result solely by virtue of: (i) the execution of the AE Merger Agreement; (ii) the acquisition of Common Stock or other securities of the Company by Paul E. Colombo or his existing or future Affiliates or Associates pursuant to the AE Merger; (iii) the grant by the Company of options to purchase Common Stock to Paul E. Colombo or his existing or future Affiliates or Associates in their capacity as consultants, employees or directors of the Company, or the exercise of such options; (iv) the acquisition by Paul E. Colombo or his existing or future Affiliates or Associates of up to one percent (1%) of the shares of Common Stock then outstanding in excess of the percentage of shares of Common Stock beneficially owned by Paul E. Colombo or his existing or future Affiliates or Associates under clauses (i), (ii) and (iii) above; and/or (v) the transfer of shares of Common Stock received pursuant to (ii), (iii) or (iv) above by and among Paul E. Colombo and/or any of his existing or future Affiliates or Associates."

3. AMENDMENT OF SECTION 1. Section 1 of the Rights Agreement is hereby amended to add the following subparagraphs at the end thereof:

(ll) "Applied Epi" shall mean Applied Epi, Inc., a Minnesota corporation.

(mm) "AE Merger" shall mean the merger of Veeco Acquisition with and into Applied Epi pursuant to the AE Merger Agreement with the result that Applied Epi will be the surviving corporation and shall become a wholly owned subsidiary of the Company.

(nn) "AE Merger Agreement" shall have the meaning set forth in Section 35 hereof.

(oo) "Veeco Acquisition" shall mean Veeco Acquisition Corp., a Minnesota corporation and a wholly owned subsidiary of the Company.

4. AMENDMENT OF SECTION 3(a). Section 3(a) of the Rights Agreement is hereby amended to add the following sentence at the end thereof:

"Notwithstanding anything in this Agreement to the contrary, for so long as Paul E. Colombo and/or any of his existing or future Affiliates or Associates that have reported or are required to report ownership on Schedule 13G or Schedule 13D under the Exchange Act (or any comparable or successor report) and do not state any intention to, or reserve the right to, control or influence the management or policies of the Company or engage in any of the actions specified in Item 4 of Schedule 13D (other than the disposition of the Common Stock), a Distribution Date shall not be deemed to have occurred solely by virtue of: (i) the execution of the AE Merger Agreement; (ii) the acquisition of Common Stock or other securities of the Company by Paul E. Colombo or his existing or future Affiliates or Associates pursuant to the AE Merger; (iii) the grant by the Company of options to purchase Common Stock to Paul E. Colombo or his existing or future Affiliates or Associates in their capacity as consultants, employees or directors of the Company, or the exercise of such options; (iv) the acquisition by Paul E. Colombo or his existing or future Affiliates or Associates of up to one percent (1%) of the shares of Common Stock then outstanding in excess of the percentage of shares of Common Stock beneficially owned by Paul E. Colombo or his existing or future Affiliates or Associates under clauses (i), (ii) and (iii) above; and/or (v) the transfer of shares of Common Stock received pursuant to (ii), (iii) or (iv) above by and among Paul E. Colombo and/or any of his existing or future Affiliates or Associates."

5. AMENDMENT OF SECTION 7(a). Section 7(a) of the Rights Agreement is hereby amended to add the following sentence at the end thereof:

"Notwithstanding anything in this Agreement to the contrary, for so long as Paul E. Colombo and/or any of his existing or future Affiliates or Associates that have reported or are required to report ownership on Schedule 13G or Schedule 13D under the Exchange Act (or any comparable or successor report) and do not state any intention to, or reserve the right to, control or influence the management or policies of the Company or engage in any of the actions specified in Item 4 of Schedule 13D (other than the disposition of the Common Stock), none of: (i) the execution of the AE Merger Agreement; (ii) the acquisition of Common Stock or other securities of the Company by Paul E. Colombo or his existing or future Affiliates or Associates pursuant to the AE Merger; (iii) the grant by the Company of options to purchase Common Stock to Paul E. Colombo or his existing or future Affiliates or Associates in their capacity as consultants, employees or directors of the Company, or the exercise of such options; (iv) the acquisition by Paul E. Colombo or his existing or future Affiliates or Associates

of up to one percent (1%) of the shares of Common Stock then outstanding in excess of the percentage of shares of Common Stock beneficially owned by Paul E. Colombo or his existing or future Affiliates or Associates under clauses (i), (ii) and (iii) above; and/or (v) the transfer of shares of Common Stock received pursuant to (ii), (iii) or (iv) above by and among Paul E. Colombo and/or any of his existing or future Affiliates or Associates shall be deemed to be events that cause the Rights to become exercisable pursuant to the provisions of this Section 7 or otherwise."

6. AMENDMENT OF SECTION 11. Section 11 of the Rights Agreement is hereby amended to add the following sentence after the first sentence of said Section:

"Notwithstanding anything in this Agreement to the contrary, for so long as Paul E. Colombo and/or any of his existing or future Affiliates or Associates that have reported or are required to report ownership on Schedule 13G or Schedule 13D under the Exchange Act (or any comparable or successor report) and do not state any intention to, or reserve the right to, control or influence the management or policies of the Company or engage in any of the actions specified in Item 4 of Schedule 13D (other than the disposition of the Common Stock), none of: (i) the execution of the AE Merger Agreement; (ii) the acquisition of Common Stock or other securities of the Company by Paul E. Colombo or his existing or future Affiliates or Associates pursuant to the AE Merger; (iii) the grant by the Company of options to purchase Common Stock to Paul E. Colombo or his existing or future Affiliates or Associates in their capacity as consultants, employees or directors of the Company, or the exercise of such options;

(iv) the acquisition by Paul E. Colombo or his existing or future Affiliates or Associates of up to one percent (1%) of the shares of Common Stock then outstanding in excess of the percentage of shares of Common Stock beneficially owned by Paul E. Colombo or his existing or future Affiliates or Associates under clauses (i), (ii) and (iii) above; and/or (v) the transfer of shares of Common Stock received pursuant to (ii), (iii) or (iv) above by and among Paul E. Colombo and/or any of his existing or future Affiliates or Associates shall be deemed to be events of the type described in this Section 11 or to cause the Rights to be adjusted or to become exercisable in accordance with this Section 11."

7. ADDITION OF SECTION 35. The Rights Agreement is hereby amended to add the following new Section 35:

"Section 35. MERGER WITH APPLIED EPI

The Company, Veeco Acquisition and Applied Epi have entered into an Agreement and Plan of Merger, dated as of September 6, 2001, as it may be amended from time to time (the "AE Merger Agreement"). Notwithstanding anything in this Agreement to the contrary, if the AE Merger Agreement shall be terminated for any reason, then, effective as of the time of such termination, the following provisions which were added to this Agreement by the Amendment to Rights Agreement, dated as of September 6, 2001, shall be deemed repealed and deleted without any further action on the part of the Company or the Rights

Agent: (1) the last sentence of Section 1(a) hereof, (2) the proviso at the end of Section 1(kk) hereof, (3) subsections (ll), (mm), (nn) and (oo) of Section 1 hereof, (4) the last sentence of Section 3(a) hereof, (5) the last sentence of Section 7(a) hereof and (6) the second sentence of Section 11 hereof."

8. **EFFECTIVENESS.** This Amendment shall be deemed effective as of the date first written above. Except as amended hereby, the Rights Agreement shall remain in full force and effect and shall be otherwise unaffected hereby.

9. **MISCELLANEOUS.** This Amendment shall be deemed to be a contract made under the laws of the State of Delaware and for all purposes shall be governed by and construed in accordance with the laws of such state applicable to contracts to be made and performed entirely within such state without giving effect to the principles of conflict of laws thereof. This Amendment may be executed in any number of counterparts, each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument. If any term or other provision of this Amendment is determined to be invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other terms and provisions of this Amendment shall nevertheless remain in full force and effect and upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, this Amendment and such term or other provision shall be deemed to have been amended so as to effect the original intent of the parties as closely as possible in an acceptable manner to the board of directors of the Company.

IN WITNESS WHEREOF, this Amendment to the Rights Agreement is executed under seal as of the date first set forth above.

VEECO INSTRUMENTS INC.

By: /s/ Edward H. Braun

Name: Edward H. Braun

*Title: Chief Executive Officer and
President*

**AMERICAN STOCK TRANSFER AND
TRUST COMPANY**

By: /s/ Herbert J. Lemmer

Name: Herbert J. Lemmer

*Title: Vice President and General
Counsel*

[LOGO VEECO] NEWS

Veeco Instruments Inc., 100 Sunnyside Boulevard, Woodbury, NY 11797 Tel. 516-677-0200 Fax 516-677-0380

FOR IMMEDIATE RELEASE

FINANCIAL CONTACT: DEBRA WASSER, VICE PRESIDENT OF INVESTOR RELATIONS, 516-677-0200, X1472 TRADE MEDIA
CONTACT: FRAN BRENNEN, DIR. OF MARKETING COMM.,
516-677-0200 X1222

VEECO COMPLETES MERGER WITH APPLIED EPI

Woodbury, NY, Wednesday, September 19, 2001 - Veeco Instruments Inc. (NASDAQ: VECO) today announced that it has completed its merger with Applied Epi, Inc., the world's leading supplier of molecular beam epitaxy (MBE) equipment used in the manufacture of high-speed compound semiconductor devices for telecommunications, optoelectronic and wireless markets.

Applied Epi received approximately 4 million shares of Veeco common stock and \$30 million in cash. The merger will be accounted for using the purchase method of accounting.

Edward H. Braun, Chairman, President and CEO of Veeco commented, "We are pleased to have completed this merger ahead of schedule. As we have mentioned, Applied Epi adds a critical "high-value" deposition product line, molecular beam epitaxy (MBE), to our current line of process equipment. By adding Applied Epi's MBE capabilities, we will be well positioned to play a leading role in the future integration of III-V compound semiconductor and silicon device development. In fact, since the merger was announced, Applied Epi has shipped a dual reactor GEN2000 to IQE, the world's leading merchant epiwafer supplier for the compound semiconductor industry."

The GEN 2000 is the world's first high volume production MBE system integrating ultra high vacuum (UHV) with cluster tool architecture.

-more-

Paul Colombo, founder of Applied Epi, said the company will "leverage Veeco's worldwide service network and its investment in Applied Epi R&D to better serve our expanding customer base of compound semiconductor manufacturers."

Veeco Instruments Inc. is a worldwide leader in process equipment and metrology tools for the optical telecommunications, data storage, semiconductor and research markets. Manufacturing and engineering facilities are located in New York, California, Colorado, Arizona and Minnesota. Global sales and service offices are located throughout the United States, Europe, Japan and Asia Pacific. Additional information on Veeco can be found at [HTTP://WWW.VEECO.COM](http://WWW.VEECO.COM).

TO THE EXTENT THAT THIS NEWS RELEASE DISCUSSES EXPECTATIONS ABOUT MARKET CONDITIONS OR ABOUT MARKET ACCEPTANCE AND FUTURE SALES OF VEECO'S PRODUCTS, OR OTHERWISE MAKES STATEMENTS ABOUT THE FUTURE, SUCH STATEMENTS ARE FORWARD-LOOKING AND ARE SUBJECT TO A NUMBER OF RISKS AND UNCERTAINTIES THAT COULD CAUSE ACTUAL RESULTS TO DIFFER MATERIALLY FROM THE STATEMENTS MADE. THESE FACTORS INCLUDE THE CYCLICAL NATURE OF THE OPTICAL TELECOMMUNICATIONS, DATA STORAGE AND SEMICONDUCTOR INDUSTRIES, RISKS ASSOCIATED WITH THE ACCEPTANCE OF NEW PRODUCTS BY INDIVIDUAL CUSTOMERS AND BY THE MARKETPLACE, AND OTHER FACTORS DISCUSSED IN THE BUSINESS DESCRIPTION AND MANAGEMENT'S DISCUSSION AND ANALYSIS SECTIONS OF VEECO'S REPORT ON FORM 10-K AND ANNUAL REPORT TO SHAREHOLDERS.

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