

VEECO INSTRUMENTS INC

FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 09/18/01

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 S-8

(Securities Registration: Employee Benefit Plan)

Filed 9/18/2001

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 S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

VEECO INSTRUMENTS INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

11-2989601
(I.R.S. Employer Identification No.)

100 Sunnyside Boulevard, Woodbury, New York
(Address of Principal Executive Offices)

11797
(Zip Code)

APPLIED EPI, INC.

1993 STOCK OPTION PLAN

**APPLIED EPI, INC.
2000 STOCK OPTION PLAN**

**NON-QUALIFIED RESTRICTED STOCK OPTION AGREEMENTS
DATED AS OF JANUARY 2, 2001 BETWEEN APPLIED EPI, INC.
AND CERTAIN EMPLOYEES AND FORMER EMPLOYEES OF APPLIED EPI, INC.**
(Full title of the plans)

Gregory A. Robbins, Esq.
Vice President and General Counsel
Veeco Instruments Inc.
100 Sunnyside Boulevard
Woodbury, New York 11797
(Name and address of agent for service)

(516) 677-0200
(Telephone number, including area code, of agent for service)

Copies to:
Rory A. Greiss, Esq.
Kaye Scholer LLP
425 Park Avenue
New York, New York 10022
(212) 836-8000

CALCULATION OF REGISTRATION FEE

TITLE OF SECURITIES TO BE REGISTERED	AMOUNT TO BE REGISTERED (1)	PROPOSED MAXIMUM OFFERING PRICE PER SHARE	PROPOSED MAXIMUM AGGREGATE OFFERING PRICE	AMOUNT OF REGISTRATION FEE
Common Stock, par value \$.01 per share	431,537	\$20.98 (2)	\$9,053,646.26 (2)	\$2,390.16
Common Stock, par value \$.01 per share	72,678	\$54.35 (2)	\$3,950,049.30 (2)	\$1,042.81
Common Stock, par value \$.01 per share	305,427	\$0.27 (2)	\$82,465.29 (2)	\$21.77
=====				

(1) On September 17, 2001, pursuant to an Agreement and Plan of Merger dated as of September 6, 2001, a wholly-owned subsidiary of the Registrant merged (the "Merger") with and into Applied Epi, Inc. ("Applied Epi"). In connection with such Merger, the Registrant assumed certain option plans and option agreements of Applied Epi. Accordingly, as of the effective time of the Merger, the Common Stock of the Registrant was substituted for the common stock of Applied Epi previously issuable under such Applied Epi option plans and option agreements. Accordingly, the numbers of shares of the Registrant's Common Stock listed in the above table represents in the aggregate (a) 431,537 shares of the Registrant's Common Stock reserved for issuance under the Applied Epi, Inc. 1993 Stock Option Plan, (b) 72,678 shares of the Registrant's Common Stock reserved for issuance under the Applied Epi, Inc. 2000 Stock Option Plan, (c) 305,427 shares of the Registrant's Common Stock reserved for issuance under certain Non-Qualified Restricted Stock Option Agreements between Applied Epi and certain employees and former employees of Applied Epi. The option plans and option agreements described in this Note (1) are referred to collectively as the "Applied Epi Option Plans."

(2) Calculated pursuant to Rule 457(h)(1), based upon the weighted average exercise price payable by option holders upon option exercise to purchase shares of the Registrant's Common Stock pursuant to the relevant Applied Epi Option Plan(s).

SECTION 10(a) PROSPECTUS

The documents containing the information specified in Part I of this Registration Statement on Form S-8 will be sent or given to participants in the Plans as specified by Rule 428(b)(i) under the Securities Act of 1933, as amended. Such documents are not required to be, and are not being, filed by the Registrant with the Securities and Exchange Commission, either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act of 1933, as amended. Such documents, together with the documents incorporated by reference herein pursuant to Item 3 of Part II of this Registration Statement on Form S-8, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act of 1933, as amended.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE.

The following documents filed by Veeco Instruments Inc. (the "Company") with the Securities and Exchange Commission are hereby incorporated herein by reference:

1. The Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2000 filed on March 14, 2001.
2. The Company's Current Report on Form 8-K filed on February 16, 2001.
3. The Company's amendment on Form 8-K/A filed on March 12, 2001, relating to its Current Report on Form 8-K filed on February 16, 2001.
4. The Company's Current Report on Form 8-K filed on March 15, 2001.
5. The Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2001, filed on May 9, 2001.
6. The Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2001, filed on August 8, 2001.
7. The Company's Current Report on Form 8-K filed on September 14, 2001.
8. The description of the Company's common stock, par value \$.01 per share, contained in the Company's Registration Statement on Form 8-A, dated November 18, 1994, and any amendments or reports filed for the purpose of updating such description.

All documents filed by the Company with the Securities and Exchange Commission after the date hereof pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed incorporated by reference herein 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.

Not applicable.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

The Company's Amended and Restated Certificate of Incorporation permits the Company to indemnify to the fullest extent permitted by Section 145 of the Delaware General Corporation Law (the "DGCL") each person that such Section grants the Company the power to indemnify. The Company's Amended and Restated Certificate of Incorporation eliminates the personal liability of directors to the Company or its stockholders for monetary damages for breaches of fiduciary duty as directors to the fullest extent permitted by Delaware law. These provisions of the Company's Amended and Restated Certificate of Incorporation are consistent with the DGCL, which permits a Delaware corporation (i) to include in its certificate of incorporation a provision limiting or eliminating a director's liability for monetary damages for breach of the duty of care and (ii) to indemnify certain individuals, including its directors, officers and employees.

These provisions of the Company's Amended and Restated Certificate of Incorporation protect the Company's directors against personal liability for monetary damages resulting from breaches of their fiduciary duty of care, except as set forth below. Under the DGCL, absent these provisions, directors could be held liable for gross negligence in the performance of their duty of care but not for simple negligence. These provisions of the Company's Amended and Restated Certificate of Incorporation absolve directors of liability for negligence in the performance of their duties, including gross negligence. Directors remain liable for breaches of their duty of loyalty to the Company and its stockholders, as well as acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law and transactions from which a director derives improper personal benefit. These provisions also do not absolve directors of liability under Section 174 of the DGCL, which makes directors personally liable for unlawful dividends or unlawful stock repurchases or redemptions and expressly sets forth a negligence standard with respect to such liability.

Under the DGCL, current and former directors and officers as well as other employees and individuals (and persons serving at the request of the Company as a director, officer, employee or agent for another entity) may be indemnified against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement in connection with specified actions, suits or proceedings, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation -- a "derivative action"), if they acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interest of the Company and, with respect to any criminal action or proceeding, had no reasonable cause to believe their conduct was unlawful. A similar standard of care is applicable in the case of derivative actions, except that indemnification only extends to expenses (including attorneys' fees) actually and reasonably incurred in connection with the defense or settlement of such an action and the DGCL requires court approval before there can be any indemnification of expenses where the person seeking indemnification has been found liable to the Company.

The DGCL provides that the indemnification and advancement of expenses granted pursuant to it shall, unless otherwise provided when authorized, continue as to each person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

The Company maintains insurance to cover directors and officers against liability which they may incur in such capacity.

Except to the extent hereinabove set forth, there is no charter provision, by-law, contract, arrangement or statute under which any director or officer of the Company is insured or indemnified in any manner against any liability which he may incur in his capacity as such.

Insofar as indemnification for liabilities arising under the Securities Act of 1933, as amended (the "Securities Act"), may be permitted to directors, officers or persons controlling the Company pursuant to the foregoing provisions, the Company has been informed that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act, and is therefore unenforceable.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.

Not applicable.

ITEM 8. EXHIBITS.

EXHIBIT NO.	DESCRIPTION
4.1	Applied Epi, Inc. 1993 Stock Option Plan.*
4.2	Applied Epi, Inc. 2000 Stock Option Plan.*
4.3	Form of Applied Epi, Inc. Non-Qualified Restricted Stock Option Agreement.*
5.1	Opinion of Kaye Scholer LLP with respect to the legality of securities being registered.*
23.1	Consent of Ernst & Young LLP.*
23.2	Consent of PricewaterhouseCoopers LLP.*
23.3	Consent of Kaye Scholer LLP (included in the opinion filed as Exhibit 5.1).
24.1	Powers of Attorney (included on the signature pages hereof).

* Filed herewith.

ITEM 9. UNDERTAKINGS.

The undersigned registrant hereby undertakes:

- A. 1. To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the 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 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 Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) 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 Securities Act of 1933 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 whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, 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 Woodbury, New York on September 17, 2001.

VEECO INSTRUMENTS INC.

By: /s/ Edward H. Braun

Edward H. Braun
Chairman, Chief Executive Officer and President

POWER OF ATTORNEY

Each of the undersigned, in the capacities relative to the registrant stated below, hereby appoints Edward H. Braun, John F. Rein, Jr. and Gregory A. Robbins, and each of them acting individually, his true and lawful attorneys in fact, with full power of substitution, to sign and file with the Securities and Exchange Commission this registration statement and any and all amendments, including post-effective amendments, to this registration statement.

Pursuant to the requirements of the Securities Act of 1933, this registration statement and power of attorney has been signed by the following persons in the capacities indicated on September 17, 2001.

NAME AND TITLE

/s/ Edward H. Braun

Edward H. Braun
Chairman, Chief Executive Officer, President
and Director (principal executive officer)

/s/ John F. Rein, Jr.

John F. Rein, Jr.
Executive Vice President, Chief
Financial Officer and Secretary
(principal financial officer)

/s/ John P. Kiernan

John P. Kiernan
Vice President - Finance and Corporate
Controller
(principal accounting officer)

/s/ Richard A. D'Amore

Richard A. D'Amore
Director

/s/ Joel A. Elftmann

Joel A. Elftmann
Director

/s/ Heinz K. Fridrich

Heinz K. Fridrich
Director

/s/ Douglas A. Kingsley

Douglas A. Kingsley
Director

/s/ Dr. Paul R. Low

Dr. Paul R. Low
Director

/s/ Roger D. McDaniel

Roger D. McDaniel
Director

Irwin H. Pfister
Director

/s/ Walter J. Scherr

Walter J. Scherr
Director

EXHIBIT INDEX

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24.1	Powers of Attorney (included on the signature pages hereof).

* Filed herewith.

EXHIBIT 4.1

APPLIED EPI, INC. 1993 STOCK OPTION PLAN

1. **PURPOSE.** The purpose of the Applied Epi, Inc. 1993 Stock Option Plan is to promote the success of Applied Epi, Inc. (the "Corporation") and of any subsidiary of the Corporation (a "Subsidiary") by facilitating the employment and retention of key personnel and by furnishing continuing, long-term incentive to officers and other key employees upon whose efforts the success of the Corporation depends to a large degree. In addition, the Plan is intended to provide key employees on whom rests the major responsibility for the present and future success of the Corporation with an opportunity to acquire a proprietary interest in the Corporation and thereby to develop a stronger incentive to expend maximum effort for the continued success and growth of the Corporation.

2. **DEFINITIONS.** The following words and phrases as used herein shall have the meanings set forth below:

2.1 "Board" shall mean the Board of Directors of the Corporation.

2.2 "Code" shall mean the Internal Revenue Code of 1986, as amended.

2.3 "Committee" shall mean the Compensation Committee of the Board, if any, or such other committee of the Board as may be designated by the Board, from time to time, for the purpose of administering this Plan as contemplated by Article 4 hereof.

2.4 "Common Stock" shall mean the common stock, \$.01 par value, of the Corporation.

2.5 "Corporation" shall mean Applied Epi, Inc., a Minnesota corporation.

2.6 "Director" shall mean any member of the Board.

2.7 "Fair Market Value" of a share of Common Stock on any given date shall be determined by the Committee as follows:

(a) if the Common Stock is listed for trading on one or more national securities exchanges (including the Nasdaq National Market), the reported last sales price on the principal such exchange on the date in question, or if the Common Stock shall not have been traded on such exchange on such date, the reported last sales price on such exchange on the first day prior thereto on which the Common Stock was so traded; or

(b) if the Common Stock is not listed for trading on a national securities exchange (including the Nasdaq National Market) but is traded

in the over-the-counter market (including the Nasdaq Small Cap Market), the average of the highest and lowest bid prices for such Common Stock on the date in question, or if there are no such bid prices for such Common Stock on such date, the average of the highest and lowest bid prices on the first day prior thereto on which such prices existed; or

(c) if neither (a) nor (b) is applicable, by any means deemed fair and reasonable by the Committee, which determination shall be final and binding on all parties.

2.8 "ISO" shall mean any stock option granted pursuant to this Plan as an "incentive stock option" within the meaning of Section 422 of the Code.

2.9 "Non-Employee Director" shall mean a "Non-Employee Director" within the meaning of Rule 16b-3(b)(3) under the Securities Exchange Act of 1934.

2.10 "NQO" shall mean any stock option granted pursuant to this Plan which is not an ISO.

2.11 "Option" shall mean any stock option granted pursuant to this Plan, whether an ISO or an NQO.

2.12 "Optionee" shall mean any person who is the holder of an Option granted pursuant to this Plan.

2.13 "Option Agreement" shall mean the Stock Option Agreement entered into between the Corporation and an employee granted an Option hereunder, evidencing the grant of the Option and setting forth the terms and conditions applicable thereto.

2.14 "Outside Director" shall mean a Director who: (a) is not a current employee of the Corporation or any member of an affiliated group which includes the Corporation; (b) is not a former employee of the Corporation who receives compensation for prior services (other than benefits under a tax-qualified retirement plan) during the taxable year; (c) has not been an officer of the Corporation; and (d) does not receive remuneration from the Corporation, either directly or indirectly, in any capacity other than as a Director, except as otherwise permitted under Code Section 162(m) and regulations thereunder. For this purpose, remuneration includes any payment in exchange for goods or services. This definition shall be further governed by the provisions of Code Section 162(m) and regulations promulgated thereunder.

2.15 "Plan" shall mean this 1993 Stock Option Plan of the Corporation.

2.16 "Subsidiary" shall mean any corporation which at the time qualifies as a subsidiary of the Corporation under Section 424(f) of the Code.

3. **SHARES AVAILABLE UNDER PLAN.** The number of shares which may be issued pursuant to Options granted under this Plan shall not exceed 1,500,000 shares of the Common Stock of the Corporation; provided, however, that shares which become available as a result of canceled, unexercised, lapsed or terminated Options granted under this Plan shall be available for issuance pursuant to Options subsequently granted under this Plan. The shares issued upon exercise of Options granted under this Plan may be authorized and unissued shares or shares previously acquired or to be acquired by the Corporation.

4. **ADMINISTRATION.**

4.1 The Plan shall be administered by the Board, or at the Board's discretion, by a Committee appointed by the Board. The Committee shall consist of at least two Directors, all of whom shall be Outside Directors and Non-Employee Directors, who shall serve at the pleasure of the Board. Other than references in this Section 4.1, references to the "Committee" in this Plan shall be deemed to refer to the Board where the Board has not designated a Committee to administer the Plan.

4.2 The Committee shall have plenary authority, subject to provisions of the Plan, to determine when and to whom Options will be granted, the term of each Option, the number of shares covered by it, the participation by the Optionee in other plans, and any other terms or conditions of each Option. The Committee shall determine with respect to each grant of an Option whether a participant shall receive an ISO or an NQO. The number of shares, the term and the other terms and conditions of a particular kind of Option need not be the same, even as to Options granted at the same time. The Committee's recommendations regarding Option grants and terms and conditions thereof shall be conclusive.

4.3 The Committee shall have the sole responsibility for construing and interpreting the Plan, for establishing and amending any rules and regulations as it deems necessary or desirable for the proper administration of the Plan, and for resolving all questions arising under the Plan. Any decision or action taken by the Committee arising out of or about the construction, administration, interpretation and effect of the Plan and of its rules and regulations shall, to the extent permitted by law, be within its absolute discretion, except as otherwise specifically provided herein, and shall be conclusive and binding on all Optionees, all successors, and any other person, whether that person is claiming under or through any Optionee or otherwise.

4.4 No member of the Committee shall be liable, in the absence of bad faith, for any act or omission with respect to his services on the Committee. Service on the Committee shall constitute service as a member of the Board, so that the members of the Committee shall be entitled to indemnification and reimbursement as Board members pursuant to its Bylaws.

4.5 The Committee shall regularly inform the Board as to its actions with respect to all Options granted under the Plan and the terms and conditions and any such Options in a manner, at any times, and in any form as the Board may reasonably request.

5. PARTICIPANTS.

5.1 Participation in this Plan shall be limited to key personnel of the Corporation or of a Subsidiary, who are salaried employees of the Corporation or of a Subsidiary.

5.2 Subject to other provisions of this Plan, Options may be granted to the same participants on more than one occasion.

5.3 The Committee's determination under the Plan, including, without limitation, determination of the persons to receive Options, the form, amount and type of such Options, and the terms and provisions of Options need not be uniform and may be made selectively among otherwise eligible participants, whether or not the participants are similarly situated.

6. TERMS AND CONDITIONS.

6.1 Each Option granted under the Plan shall be evidenced by a written agreement, which shall be subject to the provisions of this Plan and to such other terms and conditions as the Corporation may deem appropriate.

6.2 The term of each Option shall be fixed by the Committee and shall be specified in each Option Agreement, but no ISO shall be exercisable more than ten years after the date the Option is granted. The term of any ISO granted to an Optionee that owns or is deemed to own (by reason of the attribution rules of Section 424(d) of the Code) more than ten percent (10%) of the combined voting power of all classes of stock of the Corporation or any Subsidiary, shall be no more than five years from the date of grant.

6.3 The exercise price per share shall be determined by the Committee at the time any Option is granted and shall be determined as follows:

(a) For employees who do not own (and are not deemed to own by reason of the attribution rules of Section 424(d) of the Code) stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Corporation or of any Subsidiary, the ISO exercise price per share shall not be less than one hundred percent (100%) of Fair Market Value of the underlying Common Stock on the date the Option is granted, as determined by the Committee.

(b) For employees who own (or who are deemed to own by reason of the attribution rules of Section 424(d) of the Code), stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Corporation or of any Subsidiary, the ISO exercise price per share shall not be less than one hundred ten percent (110%) of the Fair Market Value of the underlying Common Stock on the date the Option is granted, as determined by the Committee.

(c) The NQO exercise price per share shall be any price deemed appropriate by the Committee.

6.4 The aggregate Fair Market Value (determined as of the time the Option is granted) of the Common Stock with respect to which ISOs under this Plan or any other plan of the Corporation or its Subsidiaries are exercisable for the first time by an Optionee during any calendar year shall not exceed \$100,000. Further, no Optionee shall receive grants of Options under the Plan which exceed 250,000 shares during any fiscal year of the Corporation.

6.5 An Option shall be exercisable at such time or times, and with respect to such minimum number of shares, as may be determined by the Committee at the time of the grant; provided, however, that the Committee may, in its discretion, accelerate the exercise date for any unexercisable Options when the Committee deems such action to be appropriate under the circumstances. The Option Agreement may require, if so determined by the Committee, that no part of the Option may be exercised until the Optionee shall have remained in the employ of the Corporation or of a Subsidiary for such period after the date of the Option as the Committee may specify.

6.6 The Corporation may require as a condition to the sale of shares on the exercise of any Option, that the person exercising such Option represent to the Corporation that he or she is acquiring such shares without a view to the distribution thereof. The Corporation may prescribe the form of legend which shall be affixed to the stock certificate representing shares to be issued and the shares shall be subject to the provisions of any repurchase agreement or other agreement restricting the sale or transfer thereof. Such agreements or restrictions shall be noted on the certificate representing the shares to be issued.

7. EXERCISE OF OPTION.

7.1 Each exercise of an Option granted hereunder, whether in whole or in part, shall be by written notice thereof, delivered to the Chief Financial Officer of the Corporation (or such other person as he may designate). The notice shall state the number of shares with respect to which the Options are being exercised and shall be accompanied by payment in full for the number of shares so designated. Shares shall be registered in the name of the Optionee unless the Optionee otherwise directs in his or her notice of election.

7.2 Payment shall be made to the Corporation either (i) in cash, including certified check, bank draft or money order as authorized by the Corporation, or (ii) at the sole discretion of the Corporation, by delivering any combination of the following forms of payment, provided the total Fair Market Value of all payments made equals the exercise price: (a) shares of Corporation Common Stock already owned by the participant, (b) a promissory note reflecting terms and conditions acceptable to the Corporation, and/or (c) cash. With respect to (ii), the Fair Market Value of stock so delivered shall be determined as of the date immediately preceding the date of exercise.

7.3 Upon notification of the amount due and prior to, or concurrently with, the delivery to the Optionee of a certificate representing any shares purchased pursuant to the exercise of an Option, the Optionee shall promptly pay to the Corporation any amount necessary to satisfy applicable federal, state or local withholding tax requirements.

7.4 If the terms of an Option so permit, subject to the approval of the Committee, an Optionee may elect by written notice to the Chief Financial Officer of the Corporation (or such other person as he or she may designate), to satisfy the withholding tax requirements associated with the exercise of an Option by (i) authorizing the Corporation to retain from the number of shares of Common Stock that would otherwise be deliverable to the Optionee, or (ii) delivering to the Corporation from shares of Common Stock already owned by the Optionee, that number of shares having an aggregate Fair Market Value equal to the tax payable by the Optionee under Section 7.3. Any such election shall be in accordance with, and subject to, applicable tax and securities laws, regulations and rulings.

8. EXTRAORDINARY CORPORATE TRANSACTIONS. Notwithstanding the foregoing, unless the Stock Option Agreement provides otherwise, any Option granted under this Plan shall be exercisable in full, without regard to any installment exercise or vesting provisions, for a period specified by the Board, but not to exceed sixty (60) days nor be less than seven (7) days, prior to the occurrence of any of the following events: (i) dissolution or liquidation of the Corporation other than in conjunction with a bankruptcy of the Corporation or any similar occurrence, (ii) any merger, consolidation, acquisition, separation, reorganization, or similar occurrence, where the Corporation will not be the surviving entity or (iii) the transfer of substantially all of the assets of the Corporation or 75% or more of the outstanding Stock of the Corporation.

9. CHANGES IN CORPORATION'S CAPITAL STRUCTURE. The existence of outstanding Options shall not affect in any way the right or power of the Corporation or its stockholders to make or authorize any or all adjustments, recapitalizations, reorganizations or other changes in the Corporation's capital structure or its business, or any merger or consolidation of the Corporation, or any issuance of Common Stock or subscription rights thereto, or any merger or consolidation of the Corporation, or any issuance of bonds, debentures, preferred or prior preference stock ahead of or affecting the Common Stock or the rights thereof, or the dissolution or liquidation of the Corporation, or any sale or transfer of all or any part of its assets or business, or any other corporate act or proceeding, whether of a similar character or otherwise; provided, however, that if the outstanding shares of Common Stock of the Corporation shall at any time be changed or exchanged by declaration of a stock dividend, stock split, combination of shares or recapitalization, the number and kind of shares subject to the Plan or subject to any Options theretofore granted, and the Option exercise prices, shall be appropriately and equitably adjusted so as to maintain the proportionate number of shares without changing the aggregate Option exercise price.

10. ASSIGNMENTS. Any Option granted under this Plan shall be exercisable only by the Optionee to whom granted during his or her lifetime and shall not be assignable or transferable otherwise than by will or by the laws of descent and distribution.

11. SEVERANCE; DEATH; DISABILITY.

11.1 Except as otherwise provided in this Section 11 or the Option Agreement, an Option shall terminate, and no rights thereunder may be exercised, if the employment of the Optionee is terminated by any reason other than his or her death or disability, and all rights under the Option shall terminate and expire upon such termination.

11.2 If the Optionee dies while in the employ of the Corporation or a Subsidiary, the Optionee's rights under the Option may be exercised in whole or in part, without regard to any installment exercise restrictions, at any time within three months following such death by his or her personal representative or by the person or persons to whom such rights under the Option shall pass by will or by the laws of descent and distribution.

11.3 If the employment of the Optionee is terminated because of permanent disability, the Optionee, or his or legal representative, may at any time within not more than three months after termination of his or her employment, exercise his or her Option rights in whole or in part, without regard to any installment exercise restrictions.

11.4 Notwithstanding anything contained in Sections 11.1, 11.2 and 11.3 to the contrary, no Option rights shall be exercisable by anyone after the expiration of the term of the Option.

11.5 Transfers of employment between the Corporation and a Subsidiary, or between Subsidiaries, will not constitute termination of employment for purposes of any Option granted under this Plan. The Committee may specify in the terms and conditions of an Option whether any authorized leave of absence or absence for military or government service or for any other reasons will constitute a termination of employment for purposes of the Option and the Plan.

12. RIGHTS OF PARTICIPANTS. Neither the participant nor the personal representatives, heirs, or legatees of such participant shall be or have any of the rights or privileges of a shareholder of the Corporation in respect of any of the shares issuable upon the exercise of an Option granted under this Plan unless and until certificates representing such shares have been issued and delivered to the participant or to such personal representatives, heirs or legatees.

13. SECURITIES REGISTRATION. If any law or regulation of the Securities and Exchange Commission or of any other body having jurisdiction shall require the Corporation or the participant to take any action in connection with the exercise of an Option, then notwithstanding any contrary provision of an Option Agreement or this Plan, the date for exercise of such Option and the delivery of the shares purchased thereunder shall be deferred until the completion of the necessary action. In the event that the Corporation shall deem it necessary, the Corporation may condition the grant or exercise of an Option granted under this Plan upon the receipt of a satisfactory certificate that the Optionee is acquiring the Option or the shares obtained by exercise of the Option for investment purposes and not with the view or intent to resell or otherwise

distribute such Option or shares. In such event, the stock certificate evidencing such shares shall bear a legend referring to applicable laws restricting transfer of such shares. In the event that the Corporation shall deem it necessary to register under the Securities Act of 1933, as amended, or any other applicable statute, any Options or any shares with respect to which an option shall have been granted or exercised, then the participant shall cooperate with the Corporation and take such action as is necessary to permit registration or qualification of such Options or shares.

14. **UNFUNDED STATUS OF PLAN.** The Plan is intended to constitute an "unfunded" plan for incentive and deferred compensation. With respect to any payments not yet made to an Optionee by the Corporation, nothing contained herein shall give any such Optionee any rights that are greater than those of a general creditor of the Corporation. In its sole discretion, the Committee may authorize the creation of trusts or other arrangements to meet the obligations created under the Plan to deliver Common Stock or payments in lieu of or with respect to awards hereunder, provided, however, that the existence of such trusts or other arrangements is consistent with the unfunded status of the Plan.

15. **DURATION AND AMENDMENT.**

15.1 There is no express limitation upon the duration of the Plan, except for the requirement of the Code that all ISOs must be granted within ten years from the date the Plan is adopted, or the date the Plan is approved by the shareholders, whichever is earlier.

15.2 The Board may terminate or may amend the Plan at any time, provided, however, that the Board may not, without approval of the shareholders of the Corporation, (i) increase the maximum number of shares as to which Options may be granted under the Plan, (ii) permit the granting of ISOs at less than 100% of the Fair Market Value of the underlying Common Stock of the Corporation at the time of grant, or (iii) change the class of employees eligible to receive Options under the Plan.

16. **APPROVAL OF SHAREHOLDERS.** This Plan expressly is subject to approval of holders of a majority of the outstanding shares of Common Stock of the Corporation, and if it is not so approved on or before one year after the date of adoption of this Plan by the Board, the Plan shall not come into effect, and any Options granted pursuant to this Plan shall be deemed canceled.

17. **CONDITIONS OF EMPLOYMENT.** The granting of an Option to a participant under this Plan who is an employee shall impose no obligation on the Corporation to continue the employment of any participant and shall not lessen or affect the right of the Corporation to terminate the employment of the participant.

EXHIBIT 4.2

**APPLIED EPI, INC.
2000 STOCK PLAN**

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**APPLIED EPI, INC.
2000 STOCK PLAN**

SECTION 1. GENERAL PURPOSE OF PLAN; DEFINITIONS.

The name of this plan is the Applied Epi, Inc. 2000 Stock Plan (the "Plan"). The purpose of the Plan is to enable Applied Epi, Inc. (the "Company") and its Subsidiaries to retain and attract executives, other key employees, consultants and directors who contribute to the Company's success by their ability, ingenuity and industry, and to enable such individuals to participate in the long-term success and growth of the Company by giving them a proprietary interest in the Company.

For purposes of the Plan, the following terms shall be defined as set forth below:

- a. "BOARD" means the Board of Directors of the Company.
- b. "CAUSE" means a felony conviction of a participant or the failure of a participant to contest prosecution for a felony, or a participant's willful misconduct or dishonesty, any of which is directly and materially harmful to the business or reputation of the Company.
- c. "CODE" means the Internal Revenue Code of 1986, as amended.
- d. "COMMITTEE" means the Committee referred to in Section 2 of the Plan. If at any time no Committee shall be in office, then the functions of the Committee specified in the Plan shall be exercised by the Board.
- e. "COMPANY" means Applied Epi, Inc., a corporation organized under the laws of the State of Minnesota (or any successor corporation).
- f. "DISABILITY" means a physical or mental condition resulting from a bodily injury or disease or mental disorder rendering such person incapable of continuing to perform the employment duties of such person at the Company as such duties existed prior to the bodily injury, disease or mental disorder, as determined by the Committee.
- g. "EARLY RETIREMENT" means retirement, with consent of the Committee at the time of retirement, from active employment with the Company and any Subsidiary or Parent Corporation of the Company.
- h. "FAIR MARKET VALUE" of the Stock on any given date shall be determined by the Committee as follows: (a) if the Stock is listed for trading on one of more national securities exchanges, or is traded on the Nasdaq Stock Market, the last reported sales price on the principal such exchange or the Nasdaq Stock Market on the date in question, or if such Stock shall not have been traded on such principal

exchange on such date, the last reported sales price on such principal exchange or the Nasdaq Stock Market on the first day prior thereto on which such Stock was so traded; or (b) if the Stock is not listed for trading on a national securities exchange or the Nasdaq Stock Market, but is traded in the over-the-counter market, including the Nasdaq Small Cap Market, the closing bid price for such Stock on the date in question, or if there is no such bid price for such Stock on such date, the closing bid price on the first day prior thereto on which such price existed; or (c) if neither (a) or (b) is applicable, by any means fair and reasonable by the Committee, which determination shall be final and binding on all parties.

i. "INCENTIVE STOCK OPTION" means any Stock Option intended to be and designated as an "Incentive Stock Option" within the meaning of Section 422 of the Code.

j. "NON-EMPLOYEE DIRECTOR" means a "Non-Employee Director" within the meaning of Rule 16b-3(b)(3) of the Securities Exchange Act, as amended, or any successor rule.

k. "NON-QUALIFIED STOCK OPTION" means any Stock Option that is not an Incentive Stock Option, and is intended to be and is designated as a "Non-Qualified Stock Option."

l. "NORMAL RETIREMENT" means retirement from active employment with the Company and any Subsidiary or Parent Corporation of the Company on or after age 65.

m. "OUTSIDE DIRECTOR" means a director who (a) is not a current employee of the Company or any member of an affiliated group which includes the Company; (b) is not a former employee of the Company who receives compensation for prior services (other than benefits under a tax-qualified retirement plan) during the taxable year; (c) has not been an officer of the Company; (d) does not receive remuneration from the Company, either directly or indirectly, in any capacity other than as a director, except as otherwise permitted under Code Section 162(m) and regulations thereunder. For this purpose, remuneration includes any payment in exchange for goods or services. This definition shall be further governed by the provisions of Code Section 162(m) and regulations promulgated thereunder.

n. "PARENT CORPORATION" means any corporation (other than the Company) in an unbroken chain of corporations ending with the Company if each of the corporations (other than the Company) owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in the chain.

o. "RESTRICTED STOCK" means an award of shares of Stock that are subject to restrictions under Section 6 below.

p. "RETIREMENT" means Normal Retirement or Early Retirement.

q. "STOCK" means the Common Stock, \$.01 par value per share, of the Company.

r. "STOCK OPTION" means any option to purchase shares of Stock granted pursuant to Section 5 below.

s. "SUBSIDIARY" means any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company if each of the corporations (other than the last corporation in the unbroken chain) owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in the chain.

SECTION 2. ADMINISTRATION.

The Plan shall be administered by the Board of Directors or by a Committee appointed by the Board consisting of at least two directors, all of whom shall be Outside Directors and Non-Employee Directors and who shall serve at the pleasure of the Board. The Committee may be a subcommittee of the Compensation Committee of the Board.

The Committee shall have the power and authority to grant to eligible employees, consultants and directors pursuant to the terms of the Plan:

(i) Stock Options and (ii) Restricted Stock.

In particular, the Committee shall have the authority:

(i) to select the officers, other key employees, consultants and directors of the Company and its Subsidiaries to whom Stock Options and/or Restricted Stock awards may from time to time be granted hereunder;

(ii) to determine whether and to what extent Incentive Stock Options, Non-Qualified Stock Options, or Restricted Stock awards, or a combination of the foregoing, are to be granted hereunder;

(iii) to determine the number of shares to be covered by each such award granted hereunder;

(iv) to determine the terms and conditions, not inconsistent with the terms of the Plan, of any award granted hereunder (including, but not limited to, any restriction on any Stock Option or other award and/or the shares of Stock relating thereto); and

(v) to determine whether, to what extent and under what circumstances Stock and other amounts payable with respect to an award under this Plan shall be deferred either automatically or at the election of the participant.

The Committee shall have the authority to adopt, alter and repeal such administrative rules, guidelines and practices governing the Plan as it shall, from time to time, deem advisable; to interpret the terms and provisions of the Plan and any award issued under the Plan (and any agreements relating thereto); and to otherwise supervise the administration of the Plan. The Committee may delegate its authority to officers of the Company for the purpose of selecting employees who are not officers of the Company for purposes of (i) above.

All decisions made by the Committee pursuant to the provisions of the Plan shall be final and binding on all persons, including the Company and Plan participants.

SECTION 3. STOCK SUBJECT TO PLAN.

The total number of shares of Stock reserved and available for distribution under the Plan shall be 1,500,000. Such shares may consist, in whole or in part, of authorized and unissued shares.

If any shares that have been optioned cease to be subject to Stock Options, or if any shares subject to any Restricted Stock award granted hereunder are forfeited or such award otherwise terminates without a payment being made to the participant, such shares shall again be available for distribution in connection with future awards under the Plan.

In the event of any merger, reorganization, consolidation, recapitalization, stock dividend, other change in corporate structure affecting the Stock, or spin-off or other distribution of assets to shareholders, such substitution or adjustment shall be made in the aggregate number of shares reserved for issuance under the Plan, in the number and option price of shares subject to outstanding Stock Options granted under the Plan, and in the number of shares subject to Restricted Stock awards granted under the Plan as may be determined to be appropriate by the Committee, in its sole discretion, provided that the number of shares subject to any award shall always be a whole number.

SECTION 4. ELIGIBILITY.

Officers, other key employees, consultants and members of the Board of the Company and Subsidiaries who are responsible for or contribute to the management, growth and/or profitability of the business of the Company and its Subsidiaries are eligible to be granted Stock Options or Restricted Stock awards under the Plan. The optionees and participants under the Plan shall be selected from time to time by the Committee, in its sole discretion, from among those eligible, and the Committee shall determine, in its sole discretion, the number of shares covered by each award.

Notwithstanding the foregoing, no person shall receive grants of Stock Options and Restricted Stock awards under this Plan which exceed 250,000 shares during any fiscal year of the Company.

SECTION 5. STOCK OPTIONS.

Any Stock Option granted under the Plan shall be in such form as the Committee may from time to time approve.

The Stock Options granted under the Plan may be of two types: (i) Incentive Stock Options and (ii) Non-Qualified Stock Options. No Incentive Stock Options shall be granted under the Plan after July 21, 2010.

The Committee shall have the authority to grant any optionee Incentive Stock Options, Non-Qualified Stock Options, or both types of options. To the extent that any option does not qualify as an Incentive Stock Option, it shall constitute a separate Non-Qualified Stock Option.

Anything in the Plan to the contrary notwithstanding, no term of this Plan relating to Incentive Stock Options shall be interpreted, amended or altered, nor shall any discretion or authority granted under the Plan be so exercised, so as to disqualify either the Plan or any Incentive Stock Option under Section 422 of the Code. The preceding sentence shall not preclude any modification or amendment to an outstanding Incentive Stock Option, whether or not such modification or amendment results in disqualification of such Stock Option as an Incentive Stock Option, provided the optionee consents in writing to the modification or amendment.

Options granted under the Plan shall be subject to the following terms and conditions and shall contain such additional terms and conditions, not inconsistent with the terms of the Plan, as the Committee shall deem desirable.

(a) **OPTION PRICE.** The option price per share of Stock purchasable under a Stock Option shall be determined by the Committee at the time of grant. In no event shall the option price per share of Stock purchasable under an Incentive Stock Option be less than 100% of the Fair Market Value of the Stock on the date of the grant of the Stock Option. If an employee owns or is deemed to own (by reason of the attribution rules applicable under Section 424(d) of the Code) more than 10% of the combined voting power of all classes of stock of the Company or any Parent Corporation or Subsidiary and an Incentive Stock Option is granted to such employee, the option price shall be no less than 110% of the Fair Market Value of the Stock on the date the option is granted.

(b) **OPTION TERM.** The term of each Stock Option shall be fixed by the Committee, but no Incentive Stock Option shall be exercisable more than ten years after the date the option is granted. If an employee owns or is deemed to own (by reason of the attribution rules of Section 424(d) of the Code) more than 10% of the combined voting power of all classes of stock of the Company or any Parent Corporation or Subsidiary and an Incentive Stock Option is granted to such employee, the term of such option shall be no more than five years from the date of grant.

(c) **EXERCISABILITY.** Stock Options shall be exercisable at such time or times as determined by the Committee at or after grant. If the Committee provides, in its discretion, that any option is exercisable only in

installments, the Committee may waive such installment exercise provisions at any time, provided, however, that unless the Stock Option has been approved by the Board, the Committee or the shareholders of the Company, a Stock Option to a director, officer or a 10% shareholder of the Company or its Subsidiaries shall not be exercisable for a period of six (6) months after the date of the grant. Notwithstanding the foregoing, unless the Stock Option Agreement provides otherwise, any Stock Option granted under this Plan shall be exercisable in full, without regard to any installment exercise or vesting provisions, for a period specified by the Board, but not to exceed sixty (60) days nor be less than seven (7) days, prior to the occurrence of any of the following events: (i) dissolution or liquidation of the Company other than in conjunction with a bankruptcy of the Company or any similar occurrence, (ii) any merger, consolidation, acquisition, separation, reorganization, or similar occurrence, where the Company will not be the surviving entity or (iii) the transfer of substantially all of the assets of the Company or 75% or more of the outstanding Stock of the Company.

(d) **METHOD OF EXERCISE.** Stock Options may be exercised in whole or in part at any time during the option period by giving written notice of exercise to the Company specifying the number of shares to be purchased. Such notice shall be accompanied by payment in full of the purchase price, either by certified or bank check, or by any other form of legal consideration deemed sufficient by the Committee and consistent with the Plan's purpose and applicable law, including promissory notes or a properly executed exercise notice together with irrevocable instructions to a broker acceptable to the Company to promptly deliver to the Company the amount of sale or loan proceeds to pay the exercise price. As determined by the Committee, in its sole discretion, payment in full or in part may also be made in the form of unrestricted Stock already owned by the optionee or Restricted Stock subject to an award hereunder (based on the Fair Market Value of the Stock on the date the option is exercised, as determined by the Committee); provided, however, that in the event payment is made in the form of shares of Restricted Stock, the optionee will receive a portion of the option shares in the form of, and in an amount equal to, the Restricted Stock award tendered as payment by the optionee. No shares of Stock shall be issued until full payment therefor has been made. An optionee generally shall have the rights to dividends and other rights of a shareholder with respect to shares subject to the option when the optionee has given written notice of exercise, has paid in full for such shares, and, if requested, has given the representation described in paragraph (a) of Section 10.

(e) **NON-TRANSFERABILITY OF OPTIONS.** No Stock Option shall be transferable by the optionee otherwise than by will or by the laws of descent and distribution or pursuant to a qualified domestic relations order as defined by the Code or Title 1 of the Employee Retirement Income Security Act, or the rules thereunder, and all Stock Options shall be exercisable, during the optionee's lifetime, only by the optionee.

(f) **TERMINATION BY DEATH.** If an optionee's employment by the Company and any Subsidiary or Parent Corporation terminates by reason of death, the Stock Option may thereafter be immediately exercised, to the extent then exercisable (or on such accelerated basis as the Committee shall determine at or after grant), by the legal representative of the estate or by the legatee of the optionee under the will of the optionee, for a period of twelve months (or such

shorter period as the Committee shall specify at grant) from the date of such death or until the expiration of the stated term of the option, whichever period is shorter.

(g) **TERMINATION BY REASON OF DISABILITY.** If an optionee's employment by the Company and any Subsidiary or Parent Corporation terminates by reason of Disability, any Stock Option held by such optionee may thereafter be exercised, to the extent it was exercisable at the time of termination due to Disability (or on such accelerated basis as the Committee shall determine at or after grant), but may not be exercised after nine months (or such shorter period as the Committee shall specify at grant) from the date of such termination of employment or the expiration of the stated term of the option, whichever period is shorter. In the event of termination of employment by reason of Disability, if an Incentive Stock Option is exercised after the expiration of the exercise periods that apply for purposes of Section 422 of the Code, the option will thereafter be treated as a Non-Qualified Stock Option.

(h) **TERMINATION BY REASON OF RETIREMENT.** Unless otherwise determined by the Committee, if an optionee's employment by the Company and any Subsidiary or Parent Corporation terminates by reason of Retirement, any Stock Option held by such optionee may thereafter be exercised to the extent it was exercisable at the time of such Retirement, but may not be exercised after three months (or such shorter period as Committee shall specify at grant) from the date of such termination of employment or the expiration of the stated term of the option, whichever period is shorter.

(i) **OTHER TERMINATION.** Unless otherwise determined by the Committee, if an optionee's employment by the Company and any Subsidiary or Parent Corporation terminates for any reason other than death, Disability or Retirement, the Stock Option may be exercised to the extent it was exercisable at such termination for the lesser of three months or the balance of the option's term.

(j) **ANNUAL LIMIT ON INCENTIVE STOCK OPTIONS.** The aggregate Fair Market Value (determined as of the time the Option is granted) of the Common Stock with respect to which an Incentive Stock Option under this Plan or any other plan of the Company and any Subsidiary or Parent Corporation is exercisable for the first time by an optionee during any calendar year shall not exceed \$100,000.

(k) **EARLY EXERCISE.** The Option may, but need not, include a provision whereby the optionee may elect at any time before the termination of the optionee's employment with, or services as a director or consultant of, the Company or its Subsidiaries, to exercise the Option as to any part or all of the shares of Common Stock subject to the Option prior to full vesting of the Option. Any unvested shares so purchased may be subject to a repurchase option in favor of the Company or to any other restrictions the Board or the Committee determines to be appropriate.

SECTION 6. RESTRICTED STOCK.

(a) **ADMINISTRATION.** Shares of Restricted Stock may be issued either alone or in addition to other awards granted under the Plan. The Committee shall determine the officers and key employees of the Company and Subsidiaries to whom, and the time or times at which, grants of Restricted Stock will be made, the number of shares to be awarded, the time or times within which such awards may be subject to forfeiture, and all other conditions of the awards. The Committee may also condition the grant of Restricted Stock upon the attainment of specified performance goals. The provisions of Restricted Stock awards need not be the same with respect to each recipient.

In the event that Restricted Stock awards are granted to members of the Committee, such awards shall be granted by the Board.

(b) **AWARDS AND CERTIFICATES.** The prospective recipient of an award of shares of Restricted Stock shall not have any rights with respect to such award, unless and until such recipient has executed an agreement evidencing the award and has delivered a fully executed copy thereof to the Company, and has otherwise complied with the then applicable terms and conditions.

(i) Each participant shall be issued a stock certificate in respect of shares of Restricted Stock awarded under the Plan. Such certificate shall be registered in the name of the participant, and shall bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such award, substantially in the following form:

"The transferability of this certificate and the shares of stock represented hereby are subject to the terms and conditions (including forfeiture) of the Applied Epi, Inc. 2000 Stock Plan and an Agreement entered into between the registered owner and Applied Epi, Inc. Copies of such Plan and Agreement are on file in the executive offices of Applied Epi, Inc.

(ii) The Committee shall require that the stock certificates evidencing such shares be held in custody by the Company until the restrictions thereon shall have lapsed, and that, as a condition of any Restricted Stock award, the participant shall have delivered a stock power, endorsed in blank, relating to the Stock covered by such award.

(c) **RESTRICTIONS AND CONDITIONS.** The shares of Restricted Stock awarded pursuant to the Plan shall be subject to the following restrictions and conditions:

(i) Subject to the provisions of this Plan and the award agreement, during a period set by the Committee commencing with the date of such award (the "Restriction Period"), the participant shall not be permitted to sell, transfer, pledge or assign shares of Restricted Stock awarded under the Plan. Within these limits, the Committee may provide for the lapse of such restrictions in installments where deemed appropriate.

(ii) Except as provided in paragraph (c)(i) of this Section 6, the participant shall have, with respect to the shares of Restricted Stock, all of the rights of a shareholder of the Company, including the right to vote the shares and the right to receive any cash dividends. The Committee, in its sole discretion, may permit or require the payment of cash dividends to be deferred and, if the Committee so determines, reinvested in additional shares of Restricted Stock (to the extent shares are available under Section 3 and subject to paragraph (f) of Section 10). Certificates for shares of Unrestricted Stock shall be delivered to the grantee promptly after, and only after, the period of forfeiture shall have expired without forfeiture in respect of such shares of Restricted Stock.

(iii) Subject to the provisions of the award agreement and paragraph (c)(iv) of this Section 6, upon termination of employment for any reason during the Restriction Period, all shares still subject to restriction shall thereupon be forfeited by the participant.

(iv) In the event of special hardship circumstances of a participant whose employment is terminated (other than for Cause), including death, Disability or Retirement, or in the event of an unforeseeable emergency of a participant still in service, the Committee may, in its sole discretion, when it finds that a waiver would be in the best interest of the Company, waive in whole or in part any or all remaining restrictions with respect to such participant's shares of Restricted Stock.

(v) All restrictions with respect to any participant's shares of Restricted Stock shall lapse or be deemed to have lapsed or been terminated on the tenth (10th) business day prior to the occurrence of any of the following events: (i) dissolution or liquidation of the Company, other than in conjunction with a bankruptcy of the Company or any similar occurrence, (ii) any merger, consolidation, acquisition, separation, reorganization or similar occurrence, where the Company will not be the surviving entity or (iii) the transfer of substantially all of the assets of the Company or 75% or more of the outstanding Stock of the Company.

SECTION 7. TRANSFER, LEAVE OF ABSENCE, ETC.

For purposes of the Plan, the following events shall not be deemed a termination of employment:

(a) a transfer of an employee from the Company to a Parent Corporation or Subsidiary, or from a Parent Corporation or Subsidiary to the Company, or from one Subsidiary to another;

(b) a leave of absence, approved in writing by the Committee, for military service or sickness, or for any other purpose approved by the Company if the period of such leave does not exceed ninety (90) days (or such longer period as the Committee may approve, in its sole discretion); and

(c) a leave of absence in excess of ninety (90) days, approved in writing by the Committee, but only if the employee's right to reemployment is guaranteed either by a statute or by contract, and provided that, in the case of any leave of absence, the employee returns to work within 30 days after the end of such leave.

SECTION 8. AMENDMENTS AND TERMINATION.

The Board may amend, alter, or discontinue the Plan, but no amendment, alteration, or discontinuation shall be made (i) which would impair the rights of an optionee or participant under a Stock Option or Restricted Stock award theretofore granted, without the optionee's or participant's consent, or (ii) which without the approval of the shareholders of the Company would cause the Plan to no longer comply with Rule 16b-3 under the Securities Exchange Act of 1934, Section 422 of the Code or any other regulatory requirements

The Committee may amend the terms of any award or option theretofore granted, prospectively or retroactively, but, subject to Section 3 above, no such amendment shall impair the rights of any holder without his consent. The Committee may also substitute new Stock Options for previously granted options, including previously granted options having higher option prices.

SECTION 9. UNFUNDED STATUS OF PLAN.

The Plan is intended to constitute an "unfunded" plan for incentive and deferred compensation. With respect to any payments not yet made to a participant or optionee by the Company, nothing contained herein shall give any such participant or optionee any rights that are greater than those of a general creditor of the Company. In its sole discretion, the Committee may authorize the creation of trusts or other arrangements to meet the obligations created under the Plan to deliver Stock or payments in lieu of or with respect to awards hereunder; provided, however, that the existence of such trusts or other arrangements is consistent with the unfunded status of the Plan.

SECTION 10. GENERAL PROVISIONS.

(a) The Committee may require each person purchasing shares pursuant to a Stock Option under the Plan to represent to and agree with the Company in writing that the optionee is acquiring the shares without a view to distribution thereof. The certificates for such shares may include any legend which the Committee deems appropriate to reflect any restrictions on transfer.

All certificates for shares of Stock delivered under the Plan pursuant to any Restricted Stock awards shall be subject to such stock-transfer orders and other restrictions as the Committee may deem advisable under the rules, regulations, and other requirements of the Securities and Exchange Commission, any stock exchange upon which the Stock is then listed, and any applicable Federal or state securities laws, and the Committee may cause a legend or legends to be put on any such certificates to make appropriate reference to such restrictions.

(b) Subject to paragraph (d) below, recipients of Restricted Stock awards under the Plan (not including Stock Options) are not required to make any payment or provide consideration other than the rendering of services.

(c) Nothing contained in this Plan shall prevent the Board of Directors from adopting other or additional compensation arrangements, subject to shareholder approval if such approval is required; and such arrangements may be either generally applicable or applicable only in specific cases. The adoption of the Plan shall not confer upon any employee of the Company or any subsidiary any right to continued employment with the Company or a Subsidiary, as the case may be, nor shall it interfere in any way with the right of the Company or a Subsidiary to terminate the employment of any of its employees at any time.

(d) Each participant shall, no later than the date as of which any part of the value of an award first becomes includable as compensation in the gross income of the participant for Federal income tax purposes, pay to the Company, or make arrangements satisfactory to the Committee regarding payment of, any Federal, state, or local taxes of any kind required by law to be withheld with respect to the award. The obligations of the Company under the Plan shall be conditional on such payment or arrangements and the Company and Subsidiaries shall, to the extent permitted by law, have the right to deduct any such taxes from any payment of any kind otherwise due to the participant. With respect to any award under the Plan, if the terms of such award so permit, a participant may elect by written notice to the Company to satisfy part or all of the withholding tax requirements associated with the award by (i) authorizing the Company to retain from the number of shares of Stock that would otherwise be deliverable to the participant, or (ii) delivering to the Company from shares of Stock already owned by the participant, that number of shares having an aggregate Fair Market Value equal to part or all of the tax payable by the participant under this Section 10(d). Any such election shall be in accordance with, and subject to, applicable tax and securities laws, regulations and rulings.

(e) At the time of grant, the Committee may provide in connection with any grant or award made under this Plan that the shares of Stock received as a result of such grant shall be subject to a repurchase right in favor of the Company, pursuant to which the participant shall be required to offer to the Company upon termination of employment for any reason any shares that the participant acquired under the Plan, with the price being the then Fair Market Value of the Stock or, in the case of a termination for Cause, an amount equal to the cash consideration paid for the Stock, subject to such other terms and conditions as the Committee may specify at the time of grant. The Committee may, at the time of the grant of an award under the Plan, provide the Company with the right to repurchase, or require the forfeiture of, shares of Stock acquired pursuant to the Plan by any participant who, at any time within two years after termination of employment with the Company, directly or indirectly competes with, or is employed by a competitor of, the Company.

(f) The reinvestment of dividends in additional Restricted Stock at the time of any dividend payment shall only be permissible if the Committee (or the Company's chief executive or chief financial officer) certifies in writing that under Section 3 sufficient shares are available

for such reinvestment (taking into account then outstanding Stock Options and other Plan awards).

SECTION 11. EFFECTIVE DATE OF PLAN.

The Plan was approved by the Board and became effective on July 31, 2000.

EXHIBIT 4.3

NON-QUALIFIED RESTRICTED STOCK OPTION AGREEMENT

Applied Epi, Inc.

OPTIONEE:	_____
GRANT DATE:	January 2, 2001
NUMBER OF OPTION SHARES:	_____ Shares
OPTION PRICE PER SHARE:	\$0.05 per Share
EXPIRATION DATE:	January 2, 2011

THIS AGREEMENT is made as of the Grant Date stated above, by and between Applied Epi, Inc., a Minnesota corporation (the "Company"), and the Optionee named above (the "Optionee"). The Optionee is a current or prior employee of the Company and holds performance units in the Company's Employee Performance Stock Ownership Plan (the "Phantom Stock Plan"). The performance units permit the Optionee to receive cash at a stated formula value, which is tied to the Company's earnings over a three-year period. The Company has terminated the Phantom Stock Plan as of December 31, 2000.

In connection with the termination of the Phantom Plan and in exchange for the Optionee's performance units, the Company is providing the Optionee with this option to purchase shares of the Company's restricted common stock, par value \$.01 per share (the "Restricted Stock"), on the terms and conditions set forth in this Agreement. Upon exercise of the option, the Restricted Stock will not be freely transferable and will be subject to the restrictions described in Section 5, below.

NOW, THEREFORE, the Company and the Optionee agree as follows:

1. GRANT OF OPTION. In exchange for the Optionee's performance units in and all rights under the Phantom Stock Plan, including all rights to receive cash under the Phantom Stock Plan, the Company hereby grants to the Optionee, and the Optionee hereby accepts in exchange for the performance units and all rights under the Phantom Stock Plan, the right and option (the "Option") to purchase all or part of the aggregate number of shares of Restricted Stock stated above (the "Option Shares"), on the terms and conditions set forth in this Agreement. The number of Option Shares is subject to adjustment as provided in Section 14 of this Agreement.

2. NATURE OF OPTION. This Option is NOT intended to be an "incentive stock option" within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended (the "Code").

3. PURCHASE PRICE. The purchase price of the Option Shares shall be the Option Price per share stated above. The Option Price is subject to adjustment as provided in Section 14 of this Agreement.

4. DURATION OF OPTION. This Option shall be in effect for the period commencing on the Grant Date stated above and ending on the Expiration Date stated above. All rights of the Optionee under this Option shall terminate and be forfeited to the extent this Option has not been exercised at the date this Option expires.

5. RESTRICTIONS ON OPTION SHARES. Upon exercise of this Option as described in Section 6 below, Optionee shall receive shares of the Company's Restricted Stock. The Optionee agrees that the shares of Restricted Stock shall not be sold, exchanged, transferred, pledged, hypothecated, or otherwise disposed of, whether voluntarily, involuntarily, or by operation of law, until the earlier of the following to occur: (1) six months after the consummation of a firm commitment, underwritten initial public offering of the Company's common stock; or (2) a Sale (as defined in this Section 5) of the Company. A "Sale" of the Company shall mean any of the following:

(i) the sale, lease, exchange or other transfer, directly or indirectly, of substantially all of the assets of the Company (in one transaction or in a series of related transactions) to a person or entity that is not controlled by the Company;

(ii) the entering into an agreement for the sale of common stock of the Company (whether outstanding or newly issued shares) to a person not a shareholder on the date hereof who thereby acquires majority voting control of the Company, subject to such transaction actually being consummated;

(iii) the approval by the shareholders of the Company of any plan or proposal for a merger or consolidation to which the Company is a party if the shareholders of the Company immediately prior to the effective date of such merger or consolidation own, immediately following the effective date of such merger or consolidation, securities of the surviving corporation representing 50% or less of the combined voting power of the surviving corporation's then outstanding securities ordinarily having the right to vote at elections of directors, subject to such transaction actually being consummated; or

(iv) the approval by the shareholders of the Company of any plan or proposal for a merger or consolidation to which the Company is a party and pursuant to which the Company does not survive, subject to such transaction actually being consummated.

6. MANNER OF EXERCISE OF OPTION.

(a) **TIME OF EXERCISE.** This Option may be exercised at any time, and at one or more times before it expires. This Option, when exercised, may be exercised for some or all of the Option Shares, and any Option Shares that are not purchased at that time may be purchased at a subsequent date of exercise. The exercise of this Option at each date of exercise shall be subject to all of the terms and conditions of this Agreement, including but not limited to the provisions of Sections 6 and 7 of this Agreement.

(b) **EXERCISE ONLY BY OPTIONEE OR OTHER PROPER PARTY.** During the lifetime of the Optionee, the Optionee is the only person who may exercise this Option, except that, if the Optionee shall be incapacitated, the Optionee's guardian or other legal representative may exercise this Option on behalf of the Optionee. If the Optionee shall die, this Option may be exercised only by the personal representatives, executors or administrators of the Optionee's estate or by the person or persons to whom the Optionee's rights under this Option shall pass by the Optionee's will or the laws of descent and distribution.

(c) **NOTICE OF EXERCISE.** To exercise this Option, the Optionee (or other proper party in the event of the Optionee's incapacity or death) shall deliver a written notice of exercise (the "Notice of Exercise") to the Company at its principal executive office. The Notice of Exercise shall be in the form attached to this Agreement as Exhibit A, shall state the number of Option Shares with respect to which this Option is being exercised and shall be accompanied by payment in full of the aggregate Option Price for all Option Shares designated in the Notice of Exercise. If required by the Company, in its sole discretion, the Notice of Exercise shall also include other representations and agreements as to the purchaser's investment intent with respect to the Option Shares. The Notice of Exercise shall be signed by the Optionee (or other proper party in the event of the Optionee's incapacity or death) and must be delivered to the Company prior to the termination or expiration of this Option.

(d) **PAYMENT OF OPTION PRICE.** The aggregate Option Price for all Option Shares designated in the Notice of Exercise shall be paid in cash (including check, bank draft or money order), by tendering shares of the Company's common stock that are already owned by the Optionee having an aggregate Fair Market Value (as defined in Section 9) on the date of exercise which is not less than the aggregate Option Price, or by a combination of such methods.

(e) **WITHHOLDING REQUIREMENTS.** Upon exercise of the Option by the Optionee and prior to the delivery of shares purchased pursuant to such exercise, the Company shall have the right to require the Optionee to remit to the Company cash in an amount sufficient to satisfy applicable federal and state tax withholding requirements. The Company shall inform the Optionee as to whether it will require the Optionee to remit cash for withholding taxes in accordance with the preceding sentence within two (2) business days after receiving from the Optionee notice that such Optionee intends to exercise, or has exercised, all or a portion of the Option.

7. RESTRICTIONS ON EXERCISE OF OPTION.

(a) This Option may not be exercised for a fraction of a share.

(b) This issuance of Option Shares upon the exercise of this Option shall be subject to all applicable laws, rules, and regulations. If the Company determines at any date of exercise that the issuance of the Option Shares requires the listing, registration or qualification of the Option Shares on any securities exchange or under any federal or state law, or the consent or approval of any regulatory body, this Option shall not be exercisable and the Option Shares shall not be issued unless and until such requirements are fulfilled in a manner satisfactory to the Company.

8. TAXATION UPON EXERCISE OF OPTION. The Optionee understands that the exercise of this Option will cause the Optionee to recognize income for tax purposes. The amount of taxable income will be equal to the amount by which the Fair Market Value (as defined in Section 9 of this Agreement) of the Option Shares that are purchased on the date of exercise exceeds the aggregate Option Price for such Option Shares.

9. FAIR MARKET VALUE. "Fair Market Value" means, with respect to the common stock, the following:

(a) If the common stock is listed or admitted to unlisted trading privileges on any national securities exchange or is not so listed or admitted but transactions in the common stock are reported on the Nasdaq National Market or on the Nasdaq SmallCap Market, the closing sale price of the common stock on such exchange or reported by the Nasdaq National Market or the Nasdaq SmallCap Market as of such date (or, if no shares were traded on such day, as of the next preceding day on which there was such a trade).

(b) If the common stock is not so listed or admitted to unlisted trading privileges or reported on the Nasdaq National Market or the Nasdaq SmallCap Market, and bid and asked prices therefor in the over-the-counter market are reported on the OTC Bulletin Board Service (or any comparable reporting service), the mean of the closing bid and asked prices as of such date, as so reported by the OTC Bulletin Board Service (or such comparable reporting service).

(c) If the common stock is not so listed or admitted to unlisted trading privileges, or reported on the Nasdaq National Market or the Nasdaq SmallCap Market, and such bid and asked prices are not so reported, such price as the Board of Directors of the Company or the appropriate committee thereof determines in good faith in the exercise of its reasonable discretion. The Board of Director's or committee's determination as to the current value of the common stock shall be final, conclusive and binding for all purposes and on all persons, including, without limitation, the Company, the shareholders of the Company, the Optionee and their respective successors-in-interest. No member of the Board of Directors or any committee shall be liable for any determination regarding current value of the common stock that is made in good faith.

10. **NONTRANSFERABILITY OF OPTION.** This Option shall not be transferable by the Optionee, other than by will or the laws of descent and distribution, and this Option may be exercised, during the lifetime of the Optionee, only by the Optionee. This deposit, if required, shall remain in effect with respect to any portion of the Option Shares until the occurrence of any of the events described in Section 5 of this Agreement.

11. **RIGHTS AS SHAREHOLDER.** The Optionee (or any other party claiming rights through the Optionee) shall not be, or be deemed to be, a holder of any Option Shares for any purpose unless and until certificates for such shares are issued to the Optionee (or other proper party in the event of the Optionee's incapacity or death).

12. **DEPOSIT OF CERTIFICATES.** The Optionee agrees that, at any time upon the request of the Company, the Optionee shall deposit with the Company the certificate or certificates representing the Option Shares (to the extent the certificate or certificates are not, at the time of such request, already deposited with the Company), together with the stock powers or other instruments of transfer appropriately endorse in blank by the Optionee. This deposit, if requested, shall remain in effect with respect to any portion of the Option Shares until the occurrence of any of the events described in Section 5 of this Agreement.

13. **NO PROMISE OF CONTINUED EMPLOYMENT.** This Option does not constitute an express or implied promise that the Company will hire or continue to employ the Optionee, and if the Optionee is or becomes an employee of the Company, this Option shall not interfere in any way with the Company's right to terminate the Optionee's employment at any time.

14. **ADJUSTMENTS.** In the event of any change in the outstanding shares of the Company's common stock by reason of any stock dividend, recapitalization, reorganization, merger, consolidation, split-up, combination or exchange of shares, or rights offering to purchase the Company's common stock at a price substantially below fair market value, or other similar change affecting the common stock, while any portion of this Option is outstanding and unexercised, the Board of Directors of the Company or the appropriate committee thereof shall make such adjustments in the number of Option Shares and in the Option Price as shall be equitable and appropriate in order to prevent substantial dilution or enlargement of the rights granted to, or available for, the Optionee. No adjustments shall be made in connection with the issuance by the Company of any warrants, rights, or options to acquire additional shares of common stock or of securities converted into common stock at a price that is not substantially below the Fair Market Value (as defined in Section 9) of the common stock at the date such warrants, rights or options are issued.

15. **INTERPRETATION.** The interpretation and construction of any provision of this Option shall be made by the Board of Directors of the Company or an appropriate committee thereof and shall be final, conclusive and binding on the Optionee and all other persons.

16. ENTIRE AGREEMENT. This Agreement sets forth the entire understanding of the parties hereto and supersedes in their entirety all prior contracts, agreements, arrangements, communications, discussions, representations and warranties, whether oral or written, among the parties with respect to the subject matter hereof. Without limiting the foregoing, the parties acknowledge that this Agreement was not entered into pursuant to, and is not governed by the terms of, any stock option plan or similar plan, including the Phantom Stock Plan.

17. GOVERNING LAW. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Minnesota.

IN WITNESS WHEREOF, the Company has caused this Agreement to be executed in its corporate name by its duly authorized officer, and the Optionee has executed this Agreement as of the Grant Date state above.

COMPANY: APPLIED EPI, INC.

By: _____

Title: _____

OPTIONEE: _____

By: _____

Title:

EXHIBIT A

NOTICE OF EXERCISE

(To be completed and signed when the Option is exercised)

TO: Applied Epi, Inc.
DATE: -----
RE: Non-Qualified Restricted Stock Option Agreement dated January 2, 2001
A. EXERCISE OF OPTION. I hereby elect to exercise the stock option

identified above with respect to the following number of shares of Restricted Stock (the "Option Shares"), effective as of the date stated above:

No. of Option Shares to be purchased:	----- shares
Option Price per Share:	\$0.05 per share
Total Purchase Price:	\$ -----

Payment of the Total Purchase Price for the Option Shares in the amount stated above is enclosed with this Notice of Exercise.

Please prepare the stock certificate in the following name(s):

B. PURCHASER'S REPRESENTATIONS. I hereby represent, warrant and agree as follows:

1. ACCESS TO INFORMATION. In connection with the exercise of the Option and the purchase of the Option Shares, I have had access to information about the business and financial condition of the Company and have had the opportunity to ask questions of, and receive answers from, the management of the Company as to the business and financial condition of the Company.
2. PURCHASE FOR OWN ACCOUNT. I am acquiring the Option Shares for investment and solely for my own account and without the intention of reselling or redistributing the Option Shares. I agree that I will not sell or otherwise dispose of the Option Shares in a manner inconsistent with such representations.
3. SHARES NOT REGISTERED. I understand that the Option Shares are not being registered under the Securities Act of 1933 or any state securities laws; that I cannot sell the Option Shares unless they are subsequently registered or unless an exemption from such registration is available with

respect to any such sale; and accordingly, that I must bear the economic risk of the investment for an indefinite period of time.

4. RESTRICTIONS ON OPTION SHARES. I agree not to sell, exchange, transfer, pledge, hypothecate, or otherwise dispose of, whether voluntarily, involuntarily, or by operation of law, any of the Option Shares until the earlier of the following to occur: (1) six months after the consummation of a firm commitment, underwritten initial public offering of the Company's common stock; or (2) a Sale of the Company. A "Sale" of the Company shall mean any of the following:

(i) the sale, lease, exchange or other transfer, directly or indirectly, of substantially all of the assets of the Company (in one transaction or in a series of related transactions) to a person or entity that is not controlled by the Company;

(ii) the entering into an agreement for the sale of common stock of the Company (whether outstanding or newly issued shares) to a person not a shareholder on the date hereof who thereby acquires majority voting control of the Company, subject to such transaction actually being consummated;

(iii) the approval by the shareholders of the Company of any plan or proposal for a merger or consolidation to which the Company is a party if the shareholders of the Company immediately prior to the effective date of such merger or consolidation own, immediately following the effective date of such merger or consolidation, securities of the surviving corporation representing 50% or less of the combined voting power of the surviving corporation's then outstanding securities ordinarily having the right to vote at elections of directors, subject to such transaction actually being consummated; or

(iv) the approval by the shareholders of the Company of any plan or proposal for a merger or consolidation to which the Company is a party and pursuant to which the Company does not survive, subject to such transaction actually being consummated.

5. RESTRICTIVE LEGENDS. I agree that the Company will place the following restrictive legend on the certificates representing the Option Shares to reflect the restrictions described above and may place stop-transfer restrictions on the Option Shares represented by such certificates. Such legend shall be substantially in the following form:

"The securities represented by this certificate have not been registered under the Securities Act of 1933 or applicable state securities laws and may not be sold, transferred or otherwise disposed of except pursuant to registration, exemption from registration or operation of law. Furthermore, the transfer of the shares represented by this certificate is subject to the terms and conditions of a Non-Qualified Restricted Stock Option Agreement dated January 2, 2001

between Applied Epi, Inc. and the registered owner. Any attempt to transfer such shares in violation of the Non-Qualified Restricted Stock Option Agreement is void. A copy of such Non-Qualified Stock Option Agreement is on file in the offices of Applied Epi, Inc."

6. DEPOSIT OF CERTIFICATES. I agree that, at any time upon the request of the Company, I shall deposit with the Company the certificate or certificates representing the Option Shares (to the extent the certificate or certificates are not, at the time of such request, already deposited with the Company), together with stock powers or other instruments of transfer appropriately endorsed in blank by me. This deposit, if requested, shall remain in effect with respect to any portion of the Option Shares until the occurrence of any of the events described in Section 4 above.

7. TAXATION UPON EXERCISE OF OPTION. I understand that the exercise of this Option will cause me to recognize income for tax purposes. The amount of taxable income will be equal to the amount by which the Fair Market Value of the Option Shares that I am purchasing exceeds the Total Purchase Price for the Option Shares.

[NAME OF OPTIONEE]

Street Address

City, State and ZIP

Social Security Number

EXHIBIT 5.1

[KAYE SCHOLER LLP LETTERHEAD]

(212) 836-8000

September 17, 2001

Veeco Instruments Inc.
100 Sunnyside Boulevard
Woodbury, New York 11797

Ladies and Gentlemen:

We have acted as special counsel to Veeco Instruments Inc., a Delaware corporation (the "Company"), in connection with the Company's registration statement on Form S-8 (the "Registration Statement") to be filed pursuant to the Securities Act of 1933, as amended. The Registration Statement relates to an aggregate of 809,642 shares of the Company's common stock, par value \$.01 per share (the "Common Stock"), (a) 431,537 of which may be issued upon the exercise of stock options granted pursuant to the Applied Epi, Inc. 1993 Stock Option Plan, (b) 72,678 of which may be issued upon the exercise of stock options granted pursuant to the Applied Epi, Inc. 2000 Stock Option Plan and (c) 305,427 of which may be issued upon the exercise of stock options granted pursuant to non-qualified restricted stock option agreements between Applied Epi, Inc. and certain employees and former employees of Applied Epi, Inc. The Applied Epi, Inc. option plans and stock option agreements described in clauses (a) through (c) above are referred to in this opinion collectively as the "Option Plans". The Option Plans have been assumed by the Company pursuant to the terms of the Agreement and Plan of Merger (the "Merger Agreement") among the Company, Veeco Acquisition Corp., Applied Epi, Inc., the shareholders of Applied Epi, Inc. listed on the signature pages thereto and Paul E. Colombo, as Stockholders' Representative, dated as of September 6, 2001, whereby Veeco Acquisition Corp., a wholly-owned subsidiary of Veeco, merged with and into Applied Epi, Inc. (the "Merger"). The Merger was consummated on September 17, 2001.

In that connection, we have reviewed the Company's Amended and Restated Certificate of Incorporation, as amended, its Third Amended and Restated Bylaws, resolutions adopted by its Board of Directors and its stockholders, the Registration Statement, the Option Plans, the Merger Agreement and such other documents and proceedings as we have deemed appropriate.

On the basis of such review, and having regard to legal considerations that we deem relevant, we are of the opinion that, assuming the due authorization and valid issuance of the options being assumed by Veeco in the Merger under the Option Plans, the shares of Common Stock to be offered pursuant to the Registration Statement have been duly authorized and, when issued in accordance with the terms set forth in the Option Plans, will be validly issued, fully paid and nonassessable.

We advise you that we are members only of the Bar of the State of New York and that our opinion set forth above is based as to matters of law solely on applicable provisions of the General Corporation Law of the state of Delaware, and we express no opinions as to any other laws, statutes, ordinances, rules or regulations.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement. In giving this opinion, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Securities and Exchange Commission.

Very truly yours,

/s/ Kaye Scholer LLP

EXHIBIT 23.1

CONSENT OF INDEPENDENT AUDITORS

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the Applied Epi, Inc. 1993 Stock Option Plan, the Applied Epi, Inc. 2000 Stock Option Plan and the Non-Qualified Restricted Stock Option Agreements Dated as of January 2, 2001 Between Applied Epi, Inc. and Certain Employees and Former Employees of Applied Epi, Inc., of our report dated February 5, 2001, with respect to the consolidated financial statements and schedule of Veeco Instruments Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2000, filed with the Securities and Exchange Commission.

Melville, New York
September 17, 2001

Exhibit 23.2

CONSENT OF INDEPENDENT ACCOUNTANTS

We hereby consent to the incorporation by reference in this Registration Statement on Form S-8 of Veeco Instruments Inc. of our report dated October 19, 1999 relating to the financial statements of CVC, Inc., which appears in Veeco Instruments Inc.'s Annual Report on Form 10-K for the year ended December 31, 2000.

/s/ PricewaterhouseCoopers LLP

Rochester, New York

September 17, 2001

End of Filing

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