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APPLIED DNA SCIENCES INC

Form 8-K

May 16, 2006

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

FORM 8-K

CURRENT REPORT

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

Date of report (Date of earliest event reported): May 16, 2006

Applied DNA Sciences, Inc
(Exact Name of Registrant as Specified in Charter)

| | | |
|-------------------|--------------------------|---------------------|
| Nevada | 002-90539 | 59-2262718 |
| (State or Other | (Commission File Number) | (IRS Employer |
| Jurisdiction | | Identification No.) |
| of Incorporation) | | |

25 Health Sciences Drive, Suite 113
Stony Brook, New York 11790
(Address of Principal Executive Offices) (Zip Code)

631-444-6861
(Registrant's telephone number, including area code)

Not Applicable
(Former Name or Former Address, if Changed Since Last Report)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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Item 4.02 Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review.

On January 28, 2005 and February 11, 2005, Applied DNA Sciences, Inc. (the "Company" or "we" or "us") closed on a private placement of its securities in which it sold \$7,371,000 in aggregate principal amount of 10% secured convertible promissory notes (the "Notes") and warrants to purchase 14,742,000 shares of its common stock (the "Warrants").

On May 16, 2006, our Board of Directors concluded that its previously issued financial statements as of and for (i) the fiscal year ended September 30, 2005, and (ii) the three month periods ended March 31, 2005, June 30, 2005 and December 31, 2005, should no longer be relied upon as a result of the Company having erroneously recorded the Warrants, and the common stock issued upon the conversion of all of the Notes in February, 2005, as "permanent equity."

Accordingly, we will restate our financial statements as of and for the fiscal year ended September 30, 2005, and as of and for the quarters ended March 31, 2005 and June 30, 2005, by disclosing the effect of these errors in an amended Form 10-KSB for the fiscal year ended September 30, 2005. We will restate our financial statements for the quarter ended December 31, 2005 by disclosing the effect of these errors in an amended Form 10-QSB for the three month period ended December 31, 2005.

These errors were discovered in connection with comments raised by the Securities and Exchange Commission (the "SEC") in their review and comment on the Registration Statement on Form SB-2, as amended, that we filed with the SEC on February 15, 2005 (the "Registration Statement") pursuant to the Registration Rights Agreement (the "Registration Rights Agreement") by and between the Company and VC Arjent Ltd., on behalf of the holders of the Registrable Securities (as defined in such agreement), in connection with our private placement in January and February, 2005 described above. These comments related to the Company's accounting for the Warrants and the common stock issued upon conversion of the Notes (pursuant to their terms, the Notes automatically converted into shares of our common stock upon the filing of the Registration Statement) considering the rights provided by the Registration Rights Agreement to the holders of these securities. Pursuant to the terms of the Registration Rights Agreement, if the Registration Statement was not declared effective on or before June 15, 2005, we are obligated to pay liquidated damages in the amount of 3.5% of the face amount of the Notes per month until the Registration Statement is declared effective. The Registration Statement has not been declared effective by the SEC, and we have been obligated to pay the liquidated damages set forth in the Registration Rights Agreement. The Registration Rights Agreement provides that, at our option, these liquidated damages can be paid in cash or restricted shares of our common stock. We paid liquidated damages in the form of restricted shares of our common stock for the period from June 15, 2005 to December 15, 2005. Based on the closing market prices of \$0.66, \$0.58, \$0.70, \$0.49, \$0.32 and \$0.20 for our common stock on July 15, 2005, August 15, 2005, September 15, 2005, October 17, 2005, November 15, 2005 and December 15, 2005, respectively, we issued a total of 3,807,375 shares of common stock in liquidated damages from August, 2005 to January, 2006.

The Emerging Issues Task Force ("EITF") is currently reviewing the accounting for securities with such liquidated damages provisions as stated in EITF 05-04, "The Effect of a Liquidated Damages Clause on a Freestanding Financial Instrument Subject to EITF 00-19." There are currently several views as to how to account for this type of transaction and the EITF has not yet reached a consensus. For instance, one could conclude that taken together, EITF 00-19, "Accounting for Derivative Financial Instruments Indexed To, and Potentially Settled in the Company's Own Stock," and EITF 05-04 provide that because the maximum potential liquidated damages for the failure to have the

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Registration Statement declared effective by June 15, 2005 is greater than the difference between the fair value of registered and unregistered shares of our common stock, the value of our common stock issued upon conversion of the

Notes should be classified as temporary, rather than permanent equity. Similarly, one could conclude that given the terms of the Warrants, under EITF 00-19 the fair value of the Warrants should be recorded as a liability, with an offsetting reduction to shareholders' equity, rather than permanent equity. This warrant liability would initially be measured at fair value using the Black-Scholes option pricing model, and then re-valued at each reporting date, with changes in the fair value reported as non-cash charges or credits to earnings.

The SEC announced its preferred interpretation of the accounting for common stock and warrants with registration rights under EITF 00-19 on December 1, 2005 in the Current Accounting and Disclosures Issues in the Division of Corporation Finance. The SEC concluded that for agreements containing registration rights where significant liquidated damages could be required to be paid to the holder of the instrument in the event the issuer fails to obtain or maintain the effectiveness of a registration statement for a preset time period, the common stock subject to such liquidated damages does not meet the tests required for shareholders' equity classification, and accordingly must be treated as temporary equity, or reflected between liabilities and shareholders' equity in the balance sheet until the requirements for treatment as permanent equity are satisfied. In analyzing instruments under EITF 00-19, the SEC concluded that the likelihood or probability of the Company's failure to have the Registration Statement declared effective is not a factor.

Historically, we classified the Warrants and the common stock issued upon conversion of the Notes as shareholders' equity, as we believed these securities met the requirements necessary to record them as shareholders' equity. After further review in accordance with the SEC's recent preferred interpretation of EITF 00-19 as it relates to the Warrants and the common stock issued upon conversion of the Notes, we have concluded that our financial statements for the fiscal year ended September 30, 2005, and interim periods ended March 31, 2005, June 30, 2005, and December 31, 2005, will be restated. The restatement will include the reclassification of the common stock issued upon conversion of the Notes from shareholders' equity to temporary equity, and the reclassification of the liability for the fair value of the Warrants from shareholders' equity and to warrant liability as of the date they were issued.

We are still completing our analysis of the effects of the change in the accounting for the Warrants and have not quantified the change in the results of operations for the period ended March 31, 2005 that will be included in the earnings statements to be reflected in the Form 10-QSB for the interim period ended March 31, 2006. Accordingly, we are not yet providing a reasonable estimate of the change in previously reported results.

Our Board of Directors discussed this matter with the Company's independent public accounting firm who agreed that the Company's annual and quarterly financial statements could not be relied upon and needed to be restated as described above.

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SIGNATURE

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

Applied DNA Sciences, Inc.
(Registrant)

By: /s/ James Hayward

James Hayward
Chief Executive Officer

Date: May 16, 2006